

# **CONSTITUTION OF YOUTH ENTERPRISES AUSTRALIA LIMITED**

Australian Company Number (ACN) 673 990 513  
Australian Business Number (ABN) 39 828 126 747

A company limited by guarantee pursuant to the *Corporations Act 2001* (Cth)



**STEADY ADVISORY**

# TABLE OF CONTENTS

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<b>Chapter A – Preliminary Matters</b>	<b>5</b>
1. Name of the company	5
2. Type of company	5
3. Limitation of members' liability	5
4. Reading this constitution together with other laws	5
5. Definitions	5
<b>Chapter B – Charitable purposes and powers</b>	<b>6</b>
6. Governing object and charitable purposes of the company	6
7. Powers	6
8. Company must operate as a not-for-profit	7
9. Amending this constitution	7
<b>Chapter C – Matters relating to company members</b>	<b>8</b>
10. Membership and register of members	8
11. Who can be a member	8
12. How to apply to become a member	8
13. Directors decide whether to approve membership	9
14. When a person becomes a member of the company	9
15. When a person ceases to be a member of the company	9
<b>Chapter D – Dispute resolution and disciplinary procedures</b>	<b>10</b>
16. Dispute resolution	10
17. Disciplining members	11
<b>Chapter E – Members' meetings</b>	<b>12</b>
18. General meetings called by directors	12
19. General meetings called by members	12
20. Annual general meetings	12
21. Notice of general meetings	13
22. Quorum at general meetings	14
23. Auditor's right to attend meetings	14
24. Right to appoint an attorney	14

25. How meetings of members may be held	15
26. Chair for general meetings	15
27. Role of the Chair	15
28. Adjournment of meetings	15
<b>Chapter F – Members’ resolutions and statements</b>	<b>16</b>
29. Members' resolutions and statements	16
30. Company must give notice of proposed resolution	16
31. Circular resolutions of members	17
<b>Chapter G – Voting at general meetings</b>	<b>18</b>
32. How many votes a member has	18
33. Challenge to member’s right to vote	18
34. Method of voting	18
35. Demand for a poll	18
36. Conduct of a poll	19
37. Declaring the result of a vote on show of hands	19
38. When and how a vote in writing must be held	19
39. Appointment of proxy	19
40. Voting by proxy	20
<b>Chapter H – Directors &amp; officeholders</b>	<b>21</b>
41. Number of directors	21
42. Election and appointment of directors	21
43. Election of Chair	21
44. Term of office	22
45. When a director stops being a director	22
<b>Chapter I – Powers of directors</b>	<b>23</b>
46. Powers of directors	23
47. Delegation of directors’ powers	23
48. Payments to directors	23
49. Execution of documents	23
<b>Chapter J – Duties of directors</b>	<b>24</b>
50. Duties of directors	24
51. Conflicts of interest	24
<b>Chapter K – Directors’ meetings</b>	<b>25</b>
52. When the directors meet	25
53. Calling directors’ meetings	25
54. Chair for directors’ meetings	25

55. Quorum at directors' meetings	25
56. Using technology to hold directors' meetings	25
57. Passing directors' resolutions	25
58. Circular resolutions of directors	25
<b>Chapter L – The secretary</b>	<b>26</b>
59. Appointment and role of secretary	26
<b>Chapter M – Minutes and records</b>	<b>27</b>
60. Minutes and records	27
61. Financial and related records	27
62. By-laws	27
63. Notice	28
64. Financial year	28
<b>Chapter N – Indemnity, insurance and winding up</b>	<b>29</b>
65. Indemnities to directors and officers	29
66. Directors' and officers' liability Insurance	29
67. Directors' right of access to documents and records	29
68. Winding up	29
<b>Chapter O – Reference</b>	<b>31</b>
69. Definitions and interpretation	31

## Chapter A – Preliminary Matters

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### 1. Name of the company

The name of the **company** is **Youth Enterprises Australia Limited** (the **company**).

### 2. Type of company

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

### 3. Limitation of members' liability

The liability of the company's members is limited to an amount not exceeding \$1.00 ("**the guarantee**") which each member must contribute to the property of the **company** if the **company** is wound up while the member is a member, or otherwise for a period not exceeding 12 months after they stop being a member. This contribution is required to be paid towards the:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member; and/or
- (b) costs associated with the winding up of the **company**.

### 4. Reading this constitution together with other laws

- 4.1 The replaceable rules set out in the **Corporations Act** are displaced by the constitution and do not apply to the **company**.
- 4.2 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.
- 4.3 If the **company** is not a **registered charity** (even if it remains a charity under section 5 of the **Charities Act**), the **Corporations Act** overrides any clause in this constitution which is inconsistent with the **ACNC Act**.
- 4.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and addressing the same issue, has the same meaning in this constitution.

### 5. Definitions

In this constitution, words and phrases have the meaning set out in clause 69.

## Chapter B – Charitable purposes and powers

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### 6. Governing object and charitable purposes of the company

- 6.1 The purposes for which the company is established and maintained is for the principal purpose of providing relief from suffering, distress, misfortune, and helplessness of young people or other marginalised cohorts who are experiencing long term unemployment, severe disadvantage or are otherwise at risk, including indigenous Australians, refugees and at-risk youth.
- 6.2 The company works with schools, industry and community stakeholders to provide at-risk youth and other marginalised cohorts with opportunities to explore a diverse suite of career options.
- 6.3 The **company** seeks to enhance the employability of these cohorts, including by providing education and training and re-connecting them back into community by:
- (a) Facilitating workplace learning – providing young people (especially young people at-risk, indigenous, young people with disability and newly arrived young people) or other marginalised cohorts with access to applied learning via structured workplace learning, apprenticeships and traineeships;
  - (b) Delivery of outreach services – providing case management support to at-risk youth and marginalised cohorts already separated or disengaged from education or training;
  - (c) Delivery of vocational training – directly providing low-cost access to pre-accredited and accredited training to at-risk youth and marginalised cohorts;
  - (d) Delivery of community education – linking at-risk youth and marginalised cohorts disengaged from education and employment with opportunities for applied learning;
  - (e) Facilitating vocational training – linking at-risk youth or other marginalised cohorts with Registered Training Organisations to undertake accredited courses;
  - (f) Establishing social enterprise programs – establishing and delivering programs for at-risk youth or other marginalised cohorts that promote education and training as an investment in a young person’s capacity to fulfil their potential for economic and social participation. These programs focus on developing skills and qualifications for ‘life and learning’ including those necessary to enjoy active and productive working lives; and
  - (g) Addressing skill-shortage areas – delivering programs to at-risk youth or other marginalised cohorts for the purposes of addressing skill-shortage areas for these cohorts to improve their employment prospects and, in turn, to lead to lower unemployment levels, thereby impacting the wellbeing of the broader community.
- 6.4 Through its programs, the **company** aims to:
- (a) address skill shortage areas; and
  - (b) lead to lower unemployment levels, thereby positively impacting the wellbeing of young people and other marginalised cohorts, and in turn, positively impacting the broader community.

### 7. Powers

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

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

## 8. Company must operate as a not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 68.
- 8.2 The income and assets of the company shall be applied solely to further its purpose(s) in clause 6.
- 8.3 Clause 5 does not prevent the **company** from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**; or
  - (b) making a payment to a member in carrying out the **company**'s charitable purpose(s).

## 9. Amending this constitution

- 9.1 Subject to clause 9.3, the members may only amend this constitution by passing a **special resolution** at a meeting of members.
- 9.2 Any amendment made to this constitution will take effect from the date of the special resolution, or from any later date specified in the resolution passing the amendment.
- 9.3 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

## Chapter C – Matters relating to company members

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### 10. Membership and register of members

10.1 The members of the **company** are:

- (a) initial members,
- (b) directors, and
- (c) any other person that the directors allow to be a member, in accordance with this constitution.

10.2 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
  - (i) name
  - (ii) address
  - (iii) any alternative address nominated by the member for the service of notices, and
  - (iv) date the member was entered on to the register.
- (b) for each person who stopped being a member in the last 7 years:
  - (i) name
  - (ii) address
  - (iii) any alternative address nominated by the member for the service of notices, and
  - (iv) dates the membership started and ended.

10.3 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

### 11. Who can be a member

11.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 12.

11.2 Incorporated bodies are ineligible to become members of the **company**.

### 12. How to apply to become a member

12.1 A person (as provided for in clause 11) may apply to become a member of the **company** by writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purpose(s) of the **company**, and
- (c) agree to comply with the **company**'s constitution, including paying the guarantee under clause 3 if required.



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

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 13.2 If the directors in their absolute discretion elect to approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors exercise their absolute discretion to reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected. The directors are not required to provide reasons for the rejection of the application.
- 13.1 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters.

### **14. When a person becomes a member of the company**

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

### **15. When a person ceases to be a member of the company**

A person immediately stops being a member if:

- (a) they die;
- (b) they resign, by giving written notice to the secretary;
- (c) they are expelled under clause 17; or
- (d) they have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## Chapter D – Dispute resolution and disciplinary procedures

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### 16. Dispute resolution

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members;
  - (b) one or more directors; or
  - (c) the **company**.
- 16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days:
- (a) tell the directors about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved; or
  - (b) where those involved do not agree:
    - (i) for disputes between members, a person chosen by the directors; or
    - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 16.6 A mediator chosen by the directors under clause (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.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and
  - (d) not make a decision on the dispute.

## 17. Disciplining members

17.1 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**.

17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 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.

17.3 Before the directors pass any resolution under clause 17.1, 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.

17.4 After considering any explanation under clause 17.3, 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**.

17.5 The directors cannot fine a member.

17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible.

17.7 Disciplinary procedures must be completed as soon as reasonably practical.

17.8 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.

## Chapter E – Members’ meetings

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### 18. General meetings called by directors

- 18.1 The directors may call a **general meeting** at any time by passing an ordinary resolution to that effect.
- 18.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the members’ request, give all members notice of a **general meeting**; and
  - (b) hold the **general meeting** within 2 months of the members’ request.
- 18.3 The percentage of votes that members have (in clause 18.1) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the **company**.

### 19. General meetings called by members

- 19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.1, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 19.2 To call and hold a meeting under clause 2 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
  - (b) call the meeting using the list of members on the **company’s** member register, which the **company** must provide to the members making the request at no cost; and
  - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 19.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

### 20. Annual general meetings

- 20.1 A general meeting, called the 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.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **company’s** activities;
  - (b) a review of the **company’s** finances;
  - (c) any auditor’s report;
  - (d) the election of directors; and
  - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company’s** activities and finances during the period since the last annual **general meeting**.
- 20.4 The Chair of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

## 21. Notice of general meetings

21.1 Notice of a **general meeting** must be given to:

- (a) each member entitled to vote at the meeting;
- (b) each director; and
- (c) the auditor (if any).

21.2 Notice of a general **meeting** must be provided in writing at least 21 days before the meeting.

21.3 Members may elect to receive notice:

- (d) In person;
- (e) by post;
- (f) by facsimile; or
- (g) by electronic means.

21.4 Subject to clause 21.5, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
- (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

21.5 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (h) remove a director;
- (i) appoint a director in order to replace a director who was removed; or
- (j) remove an auditor.

21.6 Notice of a **general meeting** must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in one or more physical venues and using virtual technology or using virtual technology only, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - (i) the proxy does not need to be a member of the **company**;
  - (ii) the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
  - (iii) the proxy form must be delivered to the **company** at least 48 hours before the meeting.

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

## 22. Quorum at general meetings

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

## 23. Auditor's right to attend meetings

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

## 24. Right to appoint an attorney

- 24.1 Notwithstanding anything in this constitution, members of the **company** have the right to appoint an attorney to manage their affairs in relation to company administration.
- 24.2 Members' attorneys may, in accordance with their appointors' directions:
- (a) represent the member at meetings and sign circular resolutions under clause 31; and
  - (b) vote for any resolution, or participate in any poll; and/or
  - (c) join in the demand for any poll at a meeting of members.
- 24.3 The appointment of an attorney by a member must:
- (a) be in writing;
  - (b) include the name of the attorney;
  - (c) be signed on behalf of the member; and
  - (d) be given to the **company** or, for representation at a meeting, be given to the Chair before the meeting starts.
- 24.4 For the avoidance of doubt, a member's attorney has all the rights of a member relevant to the purposes of the appointment as an attorney.
- 24.5 The appointment may be for a single meeting or standing (ongoing).

## 25. How meetings of members may be held

25.1 The **company** may hold a **general meeting** at:

- (a) at one or more physical venues; or
- (b) one or more physical venues and using virtual and/or videoconferencing technology; or
- (c) using only virtual and/or videoconferencing technology.

25.2 The members as a whole must be given a reasonable opportunity to participate in the meeting.

25.3 Anyone using this technology is taken to be present in person at the meeting.

## 26. Chair for general meetings

26.1 The **elected Chair** is entitled to Chair **general meetings**.

26.2 The members present and entitled to vote at a **general meeting** may choose a director or member to be the Chair for that meeting if:

- (a) there is no **elected Chair**; or
- (b) the **elected Chair** is not present within 30 minutes after the starting time set for the meeting; or
- (c) the **elected Chair** is present but says they do not wish to act as Chair of the meeting.

## 27. Role of the Chair

27.1 The Chair is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

27.2 The Chair does not have a casting vote.

## 28. Adjournment of meetings

28.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the Chair to adjourn it.

28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Chapter F – Members’ resolutions and statements

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### 29. Members' resolutions and statements

29.1 Members with at least 5% of the votes that may be cast on a resolution may give:

- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members’ resolution); and/or
- (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members’ statement).

29.2 A notice of a members’ resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

29.3 A request to distribute a members’ statement must set out the statement to be distributed and be signed by the members making the request.

29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

29.5 The percentage of votes that members have (as described in clause 29) is to be worked out as at midnight before the request or notice is given to the **company**.

29.6 If the **company** has been given notice of a members’ resolution under clause 29.1(a), the resolution must be considered at the next **general meeting** that occurs more than two months after the notice is given.

29.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

### 30. Company must give notice of proposed resolution

30.1 If the **company** has been given written notice of a members’ resolution or a written request under clause 29(1):

- (a) in time to send the notice of proposed members’ resolution or a copy of the members’ statement to members with a notice of meeting, it must do so at the **company**’s cost; or
- (b) too late to send the notice of proposed members’ resolution or a copy of the members’ statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members’ resolution or a copy of the members’ statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.

30.2 The **company** does not need to send the notice of proposed members’ resolution or a copy of the members’ statement to members if:

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



## 31. Circular resolutions of members

- 31.1 Subject to clause 31.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 31.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director;
  - (b) for passing a **special resolution**; or
  - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 31.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.
- 31.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 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.

## Chapter G – Voting at general meetings

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### 32. How many votes a member has

32.1 Each member who is entitled to vote has:

- (a) on a show of hands, one vote, and
- (b) on a poll, one vote.

### 33. Challenge to member's right to vote

33.1 A member or the Chair may only challenge a person's right to vote at a **general meeting** at that meeting.

33.2 If a challenge is made under clause 2, the Chair must decide whether or not the person may vote. The Chair's decision is final.

### 34. Method of voting

34.1 Voting must be decided on a poll if:

- (a) the notice of the meeting set out an intention to propose the resolution and stated the resolution; or
- (b) the company has given notice of the resolution under clause 29; or
- (c) a poll is demanded.

34.2 If a poll is not required or has not been demanded, voting may be conducted by:

- (a) a show of hands;
- (b) a vote in writing; or
- (c) another method chosen by the Chair that is fair and reasonable in the circumstances.

34.3 Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

### 35. Demand for a poll

35.1 A demand for a poll may be made by:

- (a) the Chair of the meeting;
- (b) at least 5 members entitled to vote on the resolution; or
- (c) at least 5% of members present having the right to vote at the meeting.

35.2 The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

## 36. Conduct of a poll

- 36.1 The demand for a poll may be withdrawn.
- 36.2 If a poll is duly demanded (and the demand not withdrawn), it must be taken in such manner and at such time as the Chair of the meeting directs.
- 36.3 A poll demanded on the election of a Chair or on any question of adjournment must be taken at the meeting and without an adjournment.
- 36.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

## 37. Declaring the result of a vote on show of hands

- 37.1 On a show of hands, the Chair's decision is conclusive evidence of the result of the vote.
- 37.2 The Chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

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

- 38.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
  - (b) the Chair.
- 38.2 A vote in writing must be taken when and how the Chair directs, unless clause 38.2 applies.
- 38.3 A vote in writing must be held immediately if it is demanded under clause 38.1:
- (a) for the election of a Chair under clause 26.2; or
  - (b) to decide whether to adjourn the meeting.
- 38.4 A demand for a vote in writing may be withdrawn.

## 39. Appointment of proxy

- 39.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 39.2 A proxy does not need to be a member.
- 39.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment);
  - (c) join in the demand for a poll under clause 35.1; and
  - (d) join in to demand a vote in writing under clause 38.1.
- 39.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address;
  - (b) the **company's** name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.

## 39. Appointment of proxy (Cont.)

- 39.5 A proxy appointment may be for a single meeting or standing (ongoing).
- 39.6 Proxy forms must be received by the **company** at the address stated in the notice under clause (c) or at the **company's** registered address at least 48 hours before a meeting.
- 39.7 A proxy appointment form may be delivered in person, by post, facsimile or by electronic means.
- 39.8 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 39.9 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 39.10 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## 40. Voting by proxy

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

## Chapter H – Directors & officeholders

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### 41. Number of directors

41.1 The company must have at least three directors, but may appoint no more than ten directors at any time.

### 42. Election and appointment of directors

42.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.

42.2 Apart from the initial directors and directors appointed under clause 42.5, the members may elect a director by an ordinary resolution passed in a **general meeting**.

42.3 Each of the directors must be appointed by a separate resolution, unless:

- (a) the members present have first passed a resolution that the appointments may be voted on together; and
- (b) no votes were cast against that resolution.

42.4 A person is eligible for election as a director of the **company** if they:

- (a) are a member of the **company**;
- (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting);
- (c) give the **company** their signed consent to act as a director of the **company**;
- (d) have not served their maximum term limit as a director pursuant to clause 44.8; and
- (e) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

42.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

- (a) is a member of the **company**;
- (b) gives the **company** their signed consent to act as a director of the **company**;
- (c) that person has not previously served a maximum term limit as a director of the company under clause 44.8; and
- (d) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

42.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

### 43. Election of Chair

43.1 The directors must elect a director as the **company's elected Chair**.

43.2 The election of the Chair must take place at the first meeting of directors, or they may otherwise be appointed for a term of three years by way of circular resolution immediately following the registration of the **company**. The **elected Chair** is thereafter elected at the expiry of their three-year term.

43.3 The term of a Chair will expire immediately prior to elections under clause 43.2.

43.4 A director may serve as elected Chair for a maximum of 3 consecutive terms.

43.5 Subject to clause 43.4, the Board may, at their discretion, agree to elect a director for an additional term as Chair.

## 44. Term of office

44.1 Each director is appointed for a term of three years.

44.2 At each annual **general meeting**:

- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
- (b) at least one-third of the remaining directors must retire.

44.3 The directors who must retire at each annual **general meeting** under clause (a) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

44.4 Other than a director appointed under clause 42.3, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.

44.5 Each director must retire at least once every three years.

44.6 A director who retires under clause 1 may nominate for election or re-election, subject to clause 44.7.

44.7 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected for a further one-year term by a **special resolution**.

44.8 Directors may only serve a maximum of two further one-year terms under clause 44.8, after which they must retire and are no longer eligible for re-election.

## 45. When a director stops being a director

45.1 A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the **company**;
- (e) are absent for **3** consecutive directors' meetings without approval from the directors;
- (f) Serve a maximum term limit as a director pursuant to clause 44.8; or
- (g) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

## Chapter I – Powers of directors

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### 46. Powers of directors

- 46.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purpose(s) set out in clause 6.
- 46.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 46.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 47; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 46.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

### 47. Delegation of directors' powers

- 47.1 The directors 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.
- 47.2 The delegation must be recorded in the **company's** minute book.
- 47.3 The exercise of the power by the delegate is as effective as if the directors had exercised it.

### 48. Payments to directors

- 48.1 The company may pay fees to a director for acting as a director. The quantum of fees paid to directors must be consistent with the **company's** not-for-profit character and be reasonable in the circumstances.
- 48.2 In addition to the fees paid to directors under clause 48.1, the **company** may:
- (a) pay a director for work they do for the **company**, other than in the capacity as a director or officer of the **company**, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 48.3 Any payment(s) made under clause 48.2 must be approved by the directors.
- 48.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

### 49. Execution of documents

- 49.1 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.
- 49.2 A person may sign a document:
- (a) by signing a physical form of the document by hand; or
  - (b) by signing an electronic form of the document using electronic means, including digital signatures.

## Chapter J – Duties of directors

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### 50. Duties of directors

50.1 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:

- (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 in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 51;
- (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.

### 51. Conflicts of interest

51.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution), except provided under clause 51.2:

- (a) to the other directors; or
- (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.

51.2 A director does not need to disclose an actual or perceived material conflict of interest to the other directors under clause 51.1 if:

- (a) their interest arises because they are a member of the **company**, and the other members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 66); and/or
- (c) their interest relates to a payment by the **company** under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**.

51.3 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

51.4 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 51.5:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

51.5 A director may still be present and vote if:

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



## Chapter K – Directors’ meetings

### 52. When the directors meet

52.1 The directors may decide how often, where and when they meet, but they must not meet less than four times per year or any other frequency as the directors determine is appropriate in the circumstances.

### 53. Calling directors’ meetings

53.1 A director may call a directors’ meeting by giving reasonable notice to all of the other directors.

53.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 54. Chair for directors’ meetings

54.1 The **elected Chair** is entitled to Chair directors’ meetings.

54.2 The directors at a directors’ meeting may choose a director to be the Chair for that meeting if the elected **Chair** is:

- (a) not present within 30 minutes after the starting time set for the meeting; or
- (b) present but does not want to act as Chair of the meeting.

### 55. Quorum at directors’ meetings

55.1 Unless the directors determine otherwise, the quorum for a directors’ meeting is a majority (more than 50%) of directors.

55.2 A quorum must be present for the whole directors’ meeting.

### 56. Using technology to hold directors’ meetings

56.1 The directors may hold their meetings by using any single or combination of meeting technologies (such as video or teleconferencing) that is agreed to by all of the directors.

56.2 The directors’ agreement may be a standing (ongoing) one.

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

### 57. Passing directors’ resolutions

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

### 58. Circular resolutions of directors

58.1 The directors may pass a circular resolution without a directors’ meeting being held.

58.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 58.3 or clause 58.4.

58.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

58.4 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.

58.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 58.3 or clause 58.4.

## Chapter L – The secretary

### 59. Appointment and role of secretary

59.1 The **company** must have at least one secretary, who may also be a director.

59.2 A secretary must 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.

59.3 The directors must decide the terms and conditions under which the secretary is appointed that they deem fit, including any remuneration.

59.4 The role of the secretary includes, but is not limited to:

- (a) maintaining a register of the **company**'s members; and
- (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

## Chapter M – Minutes and records

### 60. Minutes and records

60.1 The **company** must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of **general meetings**;
- (b) circular resolutions of members;
- (c) a copy of a notice of each **general meeting**; and
- (d) a copy of a members' statement distributed to members under clause 30.

60.2 The **company** must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
- (b) minutes of circular resolutions of directors.

60.3 To allow members to inspect the **company's** records:

- (a) the **company** must give a member access to the records set out in clause 9; and
- (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 60.2 and clause 61.

60.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:

- (a) the Chair of the meeting; or
- (b) the Chair of the next meeting.

60.5 The directors must ensure that minutes confirming a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

### 61. Financial and related records

61.1 The **company** must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

61.2 The **company** must also keep written records that correctly record its operations.

61.3 The **company** must retain its records for at least 7 years.

61.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

### 62. By-laws

#### Board-level policies and/or company by-laws

62.1 The directors may pass a resolution to make by-laws to give effect to this constitution.

62.2 Members and directors must comply with by-laws as if they were part of this constitution.

## 63. Notice

### What constitutes valid notice

63.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 64 to 67, unless specified otherwise.

63.2 Clauses 64 to 67 do not apply to a notice of proxy under clause 39.6.

### Notice to the company

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

- (c) delivering it to the **company's** registered office
- (d) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (e) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
- (f) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

### Notice to members

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

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

63.5 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

### When notice is taken to be given

63.6 A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 63.4(e) is taken to be given on the business day after the notification that the notice is available is sent.

## 64. Financial year

64.1 The **company's** financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

## Chapter N – Indemnity, insurance and winding up

### 65. Indemnities to directors and officers

- 65.1 The **company** indemnifies 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**.
- 65.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 65.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

### 66. Directors' and officers' liability insurance

- 66.1 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 incurred by the person as an officer of the **company**.

### 67. Directors' right of access to documents and records

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

### 68. Winding up

#### Surplus assets not to be distributed to members

- 68.1 If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 68.2.

#### Distribution of surplus assets

- 68.2 Subject to the *Corporations Act* and any other applicable Act, and any court order, any surplus assets (including 'gift funds' defined in clause 68.5) that remain after the **company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6;
  - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the **company**; and
  - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).

68.3 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 of Victoria to make this decision.

68.4 If the company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 68.2(a), (b) and (c), as decided by the directors.

68.5 For the purpose of this clause:

(a) 'gift funds' means:

- (i) gifts of money or property for the principal purpose of the **company**;
- (ii) contributions made in relation to a fund-raising event held for the principal purpose(s) of the **company**; and
- (iii) money received by the **company** because of such gifts and contributions.

(b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

## Chapter O – Reference

### 69. Definitions and interpretation

#### Definitions

In this constitution:

<b>ACNC Act</b>	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)
<b>company</b>	means the <b>company</b> referred to in clause 1;
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth);
<b>elected Chair</b>	means a person elected by the directors to be the <b>company's</b> Chair under clause 43;
<b>general meeting</b>	means a meeting of members and includes the annual <b>general meeting</b> , under clause 3;
<b>initial member</b>	means a person who is named in the application for registration of the <b>company</b> , with their consent, as a proposed member of the <b>company</b> ;
<b>member present</b>	means, in connection with a <b>general meeting</b> , a <b>member present</b> in person, by representative or by proxy at the venue or venues for the meeting;
<b>registered charity</b>	means a charity that is registered under the <b>ACNC Act</b> ;
<b>special resolution</b>	means a resolution: <ul style="list-style-type: none"><li>(i) of which notice has been given under clause (b), and</li><li>(ii) that has been passed by at least 75% of the votes cast by <b>members present</b> and entitled to vote on the resolution; and</li></ul>
<b>surplus assets</b>	means any assets of the <b>company</b> that remain after paying all debts and other liabilities of the <b>company</b> , including the costs of winding up.

#### Interpretation

In this constitution:

- (c) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (d) 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).