



CONSTITUTION OF Anglicare Australia Ltd

Australian Company Number (ACN) [insert ACN]
Australian Business Number (ABN) 95 8341 982 62

A company limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is Anglicare Australia Ltd (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. Limited liability of Members

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

4. The guarantee

Each **Member** must contribute an amount not more than \$10 (the guarantee) to the property of 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.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 77 and 79.

Charitable purposes and powers

6. Object

The **company's** object is to provide benevolent relief to people suffering from poverty, sickness, distress, misfortune, destitution or helplessness by any means including by:

- (a) leading and supporting the Anglican Church of Australia in pursuit of the gospel imperative of justice and care
- (b) providing a national structure for consultations between Anglican human services and government, and facilitate communication with the community services sector
- (c) encouraging co-operation and sharing of resources between agencies, parishes, dioceses and national ministries
- (d) enhancing the profile of Anglican human services within the church and the wider community

- (e) advocating for enhanced services to the marginalised
- (f) affirming and promoting human service as integral to the mission of the church, and
- (g) doing such other things as are incidental or conducive to the attainment of the **company's** object.

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. 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, 75 and 76.

8.2 Clause 8.1 does not stop 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 the constitution

9.1 Subject to clause 9.2, the **Members** may amend this constitution by passing a **special resolution**.

9.2 The **Members** must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

10. Membership and register of Members

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

- (a) **Initial Members**, and
- (b) any other body corporate 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 entity 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 The **company** must give current **Members** access to the register of **Members**.
- 10.4 Information that is accessed from the register of **Members** must only be used in a manner relevant to the interests or rights of **Members**.

11. Who can be a Member

To be eligible to apply to be a Member under clause 12, a person must:

- (a) be an Anglican body corporate with a governance link to the Anglican Church of Australia
- (b) have a substantial purpose and activity in the area of human services
- (c) have a project to relieve poverty and distress
- (d) be involved in the pursuit of justice and care, and
- (e) support the purposes of the **company**.

12. How to apply to become a Member

An eligible body (as defined 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 4 and the membership fee under clause 15 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** 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** 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.
- 13.4 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 an entity becomes a Member**

Other than **Initial Members**, an applicant will become a **Member** when they are entered on the register of **Members**.

15. **Membership fees**

The **Members** must pay such membership fees as prescribed from time to time by the **Directors**.

16. **When an entity stops being a Member**

An entity immediately stops being a **Member** if they:

- (a) are wound up or otherwise dissolved or deregistered
- (b) resign, by writing to the secretary
- (c) are expelled under clause 19
- (d) cease to meet the eligibility requirements for membership of the **company**
- (e) failing to pay any fee that may be prescribed by the **Directors** from time to time within [12] months after the fee was due and payable, or
- (f) 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**.

17. **Associates**

17.1 An “Associate” of the predecessor incorporated association of the **company** at the date of registration of the **company** and any person the **Directors** admit as an **Associate** under this clause are the **Associates** of the **company**.

17.2 A body corporate may apply and may be admitted as an **Associate** at the discretion of the **Directors** in accordance with a by-law.

17.3 An **Associate** is entitled to receive notices of **general meetings** and to attend thereat but shall not be entitled to vote.

17.4 An **Associate** must pay the annual membership fees as are determined by the **Directors** from time to time.

Dispute resolution and disciplinary procedures

18. **Dispute resolution**

18.1 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**.

18.2 A **Member** must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.

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

- 18.4 If those involved in the dispute do not resolve it under clause 18.3, 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.
- 18.5 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.
- 18.6 A mediator chosen by the **Directors** under clause 18.5(b)(i):
- (a) may be a representative of 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.
- 18.7 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.

19. Disciplining Members

- 19.1 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**.
- 19.2 At least 14 days before the **Directors'** meeting at which a resolution under clause 19.1 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) allegations against the **Member**
 - (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.
- 19.3 Before the **Directors** pass any resolution under clause 19.1, 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.
- 19.4 After considering any explanation under clause 19.3, 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**.
- 19.5 The **Directors** cannot fine a **Member**.
- 19.6 The secretary must give written notice to the **Member** of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the **Member** as a result of any decision made in good faith under this clause.

General meetings of Members

20. General meetings called by Directors

- 20.1 The **Directors** may call a **general meeting**.
- (a) If at least 30% of the **Members** (as of midnight before the **Members'** request) make a written request to the **company** for a **general meeting** to be held, the **Directors** 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.
- 20.2 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**.
- 20.3 Separate copies of a document setting out the request may be signed by **Members** if the wording of the request is the same in each copy.

21. General meetings called by Members

- 21.1 If the **Directors** do not call the meeting within 21 days of being requested under clause 20.1(a), the **Members** who made the request may call and arrange to hold a **general meeting**.
- 21.2 To call and hold a meeting under clause 21.1 the **Members** must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of **Members** on the **company's** register of **Members**, 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**.

- 21.3 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.

22. Annual general meeting

- 22.1 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.
- 22.2 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.
- 22.3 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**.
- 22.4 The chairperson 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**.

23. Notice of general meetings

- 23.1 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).
- 23.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an **annual general meeting**, all the **Members** entitled to attend and vote at the **annual general meeting** agree beforehand, or
 - (b) for any other **general meeting**, **Members** with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a **Director**
 - (b) appoint a **Director** in order to replace a **Director** who was removed, or
 - (c) remove an auditor.
- 23.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business

- (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - (d) a statement that **Members** have the right to appoint proxies and that, if a **Member** appoints a proxy:
 - i. the proxy needs to be a representative of 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.
- 23.6 If a **general meeting** is adjourned (put off) for one month or more, the **Members** must be given new notice of the resumed meeting.

24. **Quorum at general meetings**

- 24.1 For a **general meeting** to be held, at least 30% of **Members** (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one **Member**).
- 24.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 24.3 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 chairperson specifies. If the chairperson 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.
- 24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

25. **Auditor's right to attend meetings**

- 25.1 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.
- 25.2 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.

26. **Representatives of Members**

- 26.1 A **Member** may appoint as a representative:
- (a) one individual to represent the **Member** at meetings and to sign circular resolutions under clause 33, and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a **Director**.
- 26.2 The appointment of a representative by a **Member** must:
- (a) be in writing
 - (b) include the name of the representative

- (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 chairperson before the meeting starts.
- 26.3 A representative has all the rights of a **Member** relevant to the purposes of the appointment as a representative.
- 26.4 The appointment may be standing (ongoing).

27. Using technology to hold meetings

- 27.1 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.
- 27.2 Anyone using this technology is taken to be present in person at the meeting.

28. Chairperson for general meetings

- 28.1 The **Elected Chairperson** is entitled to chair **general meetings**.
- 28.2 The **Members** present and entitled to vote at a **general meeting** may choose a **Director** or **Member** to be the chairperson for that meeting if:
- (a) there is no **Elected Chairperson**, or
 - (b) the **Elected Chairperson** is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the **Elected Chairperson** is present but says they do not wish to act as chairperson of the meeting.

29. Role of the chairperson

- 29.1 The chairperson 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)).
- 29.2 The chairperson does not have a casting vote.

30. Adjournment of meetings

- 30.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **Members present** direct the chairperson to adjourn it.
- 30.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

31. Members' resolutions and statements

- 31.1 A **Member** 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)**.
- 31.2 A notice of a **Members' resolution** must set out the wording of the proposed resolution and be signed by the **Members** proposing the resolution.
- 31.3 A request to distribute a **Members' statement** must set out the statement to be distributed and be signed by the **Members** making the request.
- 31.4 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.
- 31.5 If the **company** has been given notice of a **Members' resolution** under clause 31.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 31.6 This clause does not limit any other right that a **Member** has to propose a resolution at a **general meeting**.

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

- 32.1 If the **company** has been given a notice or request under clause 31:
 - (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.
- 32.2 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 32.1(b) 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**.

33. **Circular resolutions of Members**

- 33.1 Subject to clause 33.3, the **Directors** may put a resolution to the **Members** to pass a resolution without a **general meeting** being held (a circular resolution).
- 33.2 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.
- 33.3 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.
- 33.4 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 33.5 or clause 33.6.
- 33.5 **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.
- 33.6 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.

Voting at general meetings

34. How many votes a Member has

Each **Member** has one vote.

35. Challenge to Member's right to vote

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

36. How voting is carried out

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

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

- 37.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **Members present**, or

- (b) the chairperson.
- 37.2 A vote in writing must be taken when and how the chairperson directs, unless clause 37.3 applies.
- 37.3 A vote in writing must be held immediately if it is demanded under clause 37.1:
 - (a) for the election of a chairperson under clause 28.2, or
 - (b) to decide whether to adjourn the meeting.
- 37.4 A demand for a vote in writing may be withdrawn.

38. **Appointment of proxy**

- 38.1 A **Member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 38.2 A proxy must be the representative a **Member**.
- 38.3 A proxy appointed to attend and vote for a **Member** has the same rights as the **Member** to:
 - (a) speak at the meeting
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 37.1.
- 38.4 An appointment of proxy (proxy form) must be signed by the **Member** appointing the proxy and must contain:
 - (a) the **Member's** name and address
 - (b) 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.
- 38.5 A proxy appointment may be standing (ongoing).
- 38.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 23.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 38.7 A proxy does not have the authority to speak and vote for a **Member** at a meeting while the **Member** is at the meeting.
- 38.8 Unless 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) revokes the proxy's appointment, or
 - (b) revokes the authority of a representative or agent who appointed the proxy.
- 38.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

39. **Voting by proxy**

- 39.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a **Member** appointed as a proxy from voting as a **Member** on a show of hands).
- 39.2 When a vote in writing is held, a proxy:
 - (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and

- (c) if the proxy is also a **Member** or holds more than one proxy, may cast the votes held in different ways.

Directors

40. **Composition of the board of Directors**

The board of **Directors** of the **company** is to be comprised of:

- (a) the **Elected Chairperson** elected by the **Members** in accordance with clause 43.2,
- (b) subject to clause 41, up to 6 Directors elected by the **Members** in accordance with clause 43.1 (**Elected Directors**), and
- (c) up to 3 Directors appointed by the Directors from time to time (**Appointed Directors**) [so there is a diversity of representation/ to bring such expertise, skills and experience as the Directors regard as necessary or useful at any time].

41. **Number of Elected Directors**

The number of **Elected Directors** (excluding the **Elected Chairperson**) must be such number between 3 and 6 as the **Members** may determine from time to time. In the absence of any such determination, the number of **Elected Directors** will be [5].

42. **Qualifications of Directors and Elected Chairperson**

42.1 To be eligible for the office of **Director**, a person must:

- (a) be a representative of a **Member** (appointed under clause 26)
- (b) give the **company** their signed consent to act as a **Director**, and;
- (c) not be ineligible to be a **Director** under the **Corporations Act** or the **ACNC Act**.

42.2 In addition to the qualifications in clause 42.1, to be eligible for the office of **Elected Chairperson**, a person must be a communicant member of the Anglican Church and actively associated with the work of a **Member**.

43. **Elected Directors and Elected Chairperson elected at an annual general meeting**

43.1 **Members** may, at an **annual general meeting** at which:

- (a) an **Elected Director** retires or otherwise vacates office; or
- (b) an **Elected Director** vacancy exists by operation of clause 41 or otherwise, by resolution fill the vacated office by electing an individual to that office.

43.2 **Members** may, at an **annual general meeting** at which an **Elected Chairperson** retires or otherwise vacates office by resolution fill the vacated office by electing an individual to that office.

43.3 The election of **Directors** and the **Elected Chairperson** pursuant to clauses 43.1 and 43.2 must be by way of ballot in such usual and proper manner as the **Directors** may direct.

44. **Nominations of candidates for election as Elected Directors and the Elected Chairperson**

- 44.1 Nominations of candidates for election as **Elected Directors** and the **Elected Chairperson** must be:
- (a) made in writing, signed by the nominated representatives of two **Members**, and
 - (b) accompanied by the written consents of both the candidate and the **Member** they represent, and
 - (c) in the case of nominations for election as the **Elected Chairperson**, delivered to the Secretary at least 14 days before the **annual general meeting**, and
 - (d) in the case of nominations for election as an **Elected Director**, delivered to the **Executive Director** at least 14 days before the **annual general meeting**.

45. **Nomination of Appointed Directors**

- 45.1 The **Directors** may seek nominations for appointments as an **Appointed Director** in any manner they determine, and may approve or reject such nominations in their discretion without giving reasons.
- 45.2 In considering whether to approve or reject a nomination, the **Directors** should have regard to relevant factors, including:
- (a) the expertise and qualifications of the persons nominated and the need for the **Appointed Directors** to include persons with experience in relevant areas; and
 - (b) the requirements (if any) attaching to the tax endorsements of the **company**.

46. **Casual vacancy**

- 46.1 The **Directors** may at any time appoint any person meeting the requirements of clause 42.1 to be a **Director** to fill a casual vacancy in the office of an **Elected Director**, provided the total number of **Elected Directors** does not exceed the number determined in clause 41.
- 46.2 A **Director** appointed under clause 46.1 holds office until the conclusion of the next **annual general meeting** of the **company** but is eligible for election at that meeting.
- 46.3 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.

47. **Terms and retirement of Directors**

- 47.1 At each **annual general meeting**:
- (a) any **Director** appointed by the **Directors** to fill a casual vacancy must retire, and
 - (b) at least one-third of the remaining **Elected Directors** and at least one-third of the remaining **Appointed Directors** must retire.
- 47.2 The **Directors** who must retire at each **annual general meeting** under clause 47.1(b) 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.

- 47.3 Other than a **Director** appointed under clause 46.1, 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.
- 47.4 Each **Director** must retire at least once every three years.
- 47.5 The **Members** may by ordinary resolution remove any **Elected Director** before the expiration of that **Elected Director's** period of office, and may by an ordinary resolution appoint another person in the place of that **Elected Director**.
- 47.6 A **Director** who retires under clause 47.1 may nominate for election or re-election, subject to clause 47.7.
- 47.7 A **Director** may not hold office for a continuous period of twelve years and then cannot be elected or appointed as **Director** for at least three years from the date of retirement.

48. **When a Director stops being a Director**

A **Director** stops being a **Director** if they:

- (a) give written notice of resignation as a **Director** to the **company**
- (b) die
- (c) are removed as a **Director** by a resolution of the **Members**
- (d) are a representative of a **Member**, and that **Member** stops being a **Member**
- (e) cease to meet the eligibility requirements of a **Director** in clause 42.1, or in the case of the **Elected Chairperson**, cease to meet the eligibility requirements of an **Elected Chairperson** in clause 42, or
- (f) are absent for 3 consecutive **Directors'** meetings without approval from the **Directors**.

Powers of Directors

49. **Powers of Directors**

- 49.1 The **Directors** are responsible for managing and directing the activities of the **company** to achieve the purpose(s) set out in clause 6.
- 49.2 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**.
- 49.3 The **Directors** must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 51, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 49.4 The **Directors** cannot remove a **Director** or auditor. **Directors** and auditors may only be removed by a **Members'** resolution at a **general meeting**.

50. Delegation of Directors' powers

- 50.1 The **Directors** may delegate any of their powers and functions to a committee, a **Director**, an employee of the **company** (such as the **Executive Director**) or any other person, as they consider appropriate.
- 50.2 The delegation must be recorded in the **company's** minute book.

51. Payments to Directors

- 51.1 The **company** must not pay fees to a **Director** for acting as a **Director**.
- 51.2 The **company** may:
- (a) 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
 - (b) reimburse a **Director** for expenses properly incurred by the **Director** in connection with the affairs of the **company**.
- 51.3 Any payment made under clause 51.2 must be approved by the **Directors**.
- 51.4 The **company** may pay premiums for insurance indemnifying **Directors**, as allowed for by law (including the **Corporations Act**) and this constitution.

52. 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.

Duties of Directors

53. Duties of Directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a **Director** of 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 54
- (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.

54. Conflicts of interest

- 54.1 A **Director** must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of **Directors** (or that is proposed in a circular resolution):
- (a) to the other **Directors**, or
 - (b) if all of the **Directors** have the same conflict of interest, to the **Members** at the next **general meeting**, or at an earlier time if reasonable to do so.
- 54.2 The disclosure of a conflict of interest by a **Director** must be recorded in the minutes of the meeting.
- 54.3 Each **Director** who has a material personal interest in a matter that is being considered at a meeting of **Directors** (or that is proposed in a circular resolution) must not, except as provided under clause 54.4:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 54.4 A **Director** may still be present and vote 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 72)
 - (c) their interest relates to a payment by the **company** under clause 71 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the **Director** to vote on the matter, or
 - (e) the **Directors** who do not have a material personal interest in the matter pass a resolution that:
 - i. identifies the **Director**, the nature and extent of the **Director's** interest in the matter and how it relates to the affairs of the **company**, and
 - ii. says that those **Directors** are satisfied that the interest should not stop the **Director** from voting or being present.

Directors' meetings

55. When the Directors meet

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

56. Calling Directors' meetings

- 56.1 A **Director** may call a **Directors'** meeting by giving reasonable notice to all of the other **Directors**.
- 56.2 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**.

57. **Chairperson for Directors' meetings**

- 57.1 The **Elected Chairperson** is entitled to chair **Directors'** meetings.
- 57.2 The **Directors** at a **Directors'** meeting may choose a **Director** to be the chairperson for that meeting if the **Elected Chairperson** 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 chairperson of the meeting.

58. **Quorum at Directors' meetings**

- 58.1 Unless the **Directors** determine otherwise, the quorum for a **Directors'** meeting is a majority (more than 50%) of **Directors**.
- 58.2 A quorum must be present for the whole **Directors'** meeting.

59. **Using technology to hold Directors' meetings**

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

60. **Passing Directors' resolutions**

A **Directors'** resolution must be passed by a majority of the votes cast by **Directors** participating in the meeting and entitled to vote on the resolution.

61. **Circular resolutions of Directors**

- 61.1 The **Directors** may pass a circular resolution without a **Directors'** meeting being held.
- 61.2 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 61.3 or clause 61.4.
- 61.3 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.
- 61.4 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.
- 61.5 A circular resolution is passed when the last **Director** signs or otherwise agrees to the resolution in the manner set out in clause 61.3 or clause 61.4.

Secretary

62. Appointment and role of secretary

- 62.1 The **company** must have at least one secretary, who may also be a **Director**.
- 62.2 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**.
- 62.3 The **Directors** must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 62.4 The role of the secretary includes:
- (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.

Minutes and records

63. Minutes and records

- 63.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of **Members**
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a **Members'** statement distributed to **Members** under clause 32.
- 63.2 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**.
- 63.3 To allow **Members** to inspect the **company's** records:
- (a) the **company** must give a **Member** access to the records set out in clause 63.1, and
 - (b) the **Directors** may authorise a **Member** to inspect other records of the **company**, including records referred to in clause 63.2 and clause 64.1.
- 63.4 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 chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 63.5 The **Directors** must ensure that minutes of the passing of a circular resolution (of **Members** or **Directors**) are signed by a **Director** within a reasonable time after the resolution is passed.

64. Financial and related records

- 64.1 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.
- 64.2 The **company** must also keep written records that correctly record its operations.
- 64.3 The **company** must retain its records for at least 7 years.
- 64.4 The **Directors** must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

65. By-laws

- 65.1 The **Directors** may pass a resolution to make by-laws to give effect to this constitution.
- 65.2 **Members, Associates** and **Directors** must comply with by-laws as if they were part of this constitution.

Notice

66. What is notice

- 66.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 67 to 69, unless specified otherwise.
- 66.2 Clauses 67 to 69 do not apply to a notice of proxy under clause 38.6.

67. Notice to the company

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

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) 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

68. Notice to Members

68.1 Written notice or any communication under this constitution may be given to a **Member**:

- (a) in person
- (b) by posting it to, or leaving it at the address of the **Member** in the register of **Members** or an alternative address (if any) nominated by the **Member** for service of notices
- (c) sending it to the email or other electronic address nominated by the **Member** as an alternative address for service of notices (if any)

- (d) if agreed to by the **Member**, by notifying the **Member** at an email or other electronic address nominated by the **Member**, that the notice is available at a specified place or address (including an electronic address).
- 68.2 If the **company** does not have an address for the **Member**, the **company** is not required to give notice in person.

69. **When notice is taken to be given**

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 68.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

70. **Company's 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.

Indemnity, insurance and access

71. **Indemnity**

- 71.1 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**.
- 71.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 71.3 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).
- 71.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

72. **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 incurred by the person as an officer of the **company**.

73. **Directors' access to documents**

73.1 A director has a right of access to the financial records of the **company** at all reasonable times.

73.2 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.

Winding up

74. **Surplus assets not to be distributed to Members**

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 75.1.

75. **Distribution of surplus assets**

75.1 Subject to clause 76, the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** 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, and
- (b) which also prohibit the distribution of any **surplus assets** to its **Members** to at least the same extent as the **company**.

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

76. **Transfer of surplus Gifts and Deductible Contributions – deductible gift recipients**

Where the company has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act:

- (a) as an entity, or
- (b) in relation to a fund or institution it operates, and
- (c) the **company** is wound up, or

- (d) the fund or institution is wound up, or
 - (e) an endorsement under Subdivision 30 BA of the **Tax Act** is revoked;
- then, after payment of liabilities, any surplus:
- (f) **Gifts**,
 - (g) **Deductible Contributions**; and
 - (h) money received by the **company** because of such **Gifts** or **Deductible Contributions**;

remaining in the **company**, fund or institution (whichever is relevant) must be transferred to one or more funds or institutions that comply with clause 75.1 and are each deductible gift recipients.

Definitions and interpretation

77. Definitions

In this constitution:

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

Appointed Director means a **Director** referred to in clause 40(c) and does not include an **Elected Director**.

annual general meeting means a general meeting referred to in clause 22.

Associate means a person entered on the register of the **company** as an **Associate**.

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

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

Deductible Contributions means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the **Tax Act** in relation to a fundraising event held for that purpose.

Director means an individual holding office as director of the company.

Directors means some or all of the **Directors** acting as a board.

Elected Chairperson means a person elected by the **Members** to be the **company's** chairperson under clause 43.2.

Elected Director means a **Director** elected pursuant to clause 43.1 and does not include an **Appointed Director**.

Executive Director means the person appointed by the **Directors** to run the day to day operations of the **company**.

general meeting means a meeting of **Members** and includes the **annual general meeting**, under clause 22.1.

Gifts means gifts of money or property for the principal purpose of the company.

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**.

Member means a person entered on the register of the **company** as a **Member**, and does not include an **Associate**.

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.

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

special resolution means a resolution:

- i. of which notice has been given under clause 23.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **Members present** and entitled to vote on the resolution.

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.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

78. **Reading this constitution with the Corporations Act**

- 78.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 78.2 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.
- 78.3 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.
- 78.4 A word or expression that is defined in the **Corporations Act** or used in that Act and covering the same subject, has the same meaning as in this constitution.

79. **Interpretation**

In this constitution:

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