

A PUBLIC COMPANY LIMITED BY GUARANTEE

CONSTITUTION

of

Rural Workforce Agency, Victoria Limited

ACN 081 163 519

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A PUBLIC COMPANY LIMITED BY GUARANTEE
CONSTITUTION of
RURAL WORKFORCE AGENCY, VICTORIA LIMITED
ACN 081 163 519

1 INTERPRETATION

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Affected Member has the meaning given to that term in clause 6.4;

AGM means an annual general meeting of the Company;

Assessment of Current and Future Needs means an assessment of the preferred make-up of the Board at a given time, based on the Board Skills Matrix and an expectation of preferred skills and competencies being optimised;

Auditor means the auditor for the time being of the Company;

Board means the board of Directors of the Company from time to time;

Board Skills Matrix means a skills and competency framework for the Board, taking into account the strategic plan of the Company;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Melbourne, Victoria, and concludes at 5 pm on that day;

Charities Act means any law, rule, ordinance, regulation, order or statutory instrument from time to time regulating the registration, reporting or governance obligations of the Company as a charity;

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

By-laws means by-laws made by the Board under clause 13.4;

Chair means any person appointed for the time being as chair of the Board;

Chief Executive Officer means the person appointed by the Board from time to time as chief executive officer of the Company in accordance with clause 12.1;

Commissioner means a commissioner under the Charities Act or the Tax Act, as applicable, having responsibility for the tax or charitable status or registration of the Company;

Committee means a committee appointed or formed by the Board in accordance with clause 14.8;

Company means Rural Workforce Agency, Victoria Limited (ACN 081 163 519);

Constitution means the constitution of the Company as constituted by this document as amended from time to time;

Deputy Chair means any person appointed for the time being as Deputy Chair of the Board;

Director means a person who is a director for the time being of the Company and **Directors** means more than one director, and in relation to rules applying to meetings of the Board or voting by the Directors, all Directors then entitled to vote unless otherwise provided for in this Constitution;

Member means a corporation who is registered as a member of the Company from time to time (as evidenced by the then current register of members) and **Members** means more than one Member;

Membership means being a Member of the Company;

Nominations and Remuneration Committee means the committee established by the Board for the purposes of clause 11.2;

Objects has the meaning given in clause 3;

Officer means a Director or Secretary and where the context permits, includes a former Director or Secretary;

Secretary means any person appointed for the time being as a secretary of the Company; and

Tax Act means any law, rule, ordinance, regulation, order or statutory instrument from time to time regulating the tax, taxation concession or deductible gift recipient status of the Company.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) an expression used in this Constitution that has a particular meaning in the Corporations Act has the same meaning in this Constitution;

- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to a **clause** or **annexure** is a reference to a clause of or an annexure to this Constitution;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Constitution;
- (f) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (g) **related** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (h) **including** and **includes** are not words of limitation;
- (i) the words **at any time** mean at any time and from time to time;
- (j) a word that is derived from a defined word has a corresponding meaning;
- (k) where a period of time is expressed as years or the period between annual general meetings, it means unless otherwise stated, to the end of the next annual general meeting in the given year, not a calendar year, or if there is no annual general meeting in a given year, to the end of the period prescribed by the Board;
- (l) **monetary amounts** are expressed in Australian dollars; and
- (m) the singular includes the plural and vice-versa.

1.3 Application of Corporations Act

- (a) To the extent not inconsistent with this Constitution and the Charities Act, Division 8 of Part 1.2 of the Corporations Act applies in relation to the interpretation and application of this Constitution, so far as that part is capable of application to the Company.
- (b) The replaceable rules contained in the Corporations Act do not apply to the Company.

1.4 Application of Charities Act and Tax Act

This Constitution is subject to the Charities Act and the Tax Act and:

- (a) any provision of the Charities Act or the Tax Act which must be provided for in the governing documents of the Company, forms part of this Constitution; and
- (b) where there is any inconsistency between a clause of this Constitution and the Charities Act or the Tax Act, the Charities Act or the Tax Act (as the case may be) prevails to the extent of the inconsistency,

to the extent necessary to maintain the taxation concession, deductible gift recipient endorsement and/or charitable status of the Company.

2 NATURE OF THE COMPANY

The Company is a public company limited by guarantee.

3 OBJECTS OF THE COMPANY

The Company is a charitable and not-for-profit institution, established and operated to promote the prevention or control of diseases in human beings through the support and establishment of health workforces, workforce distribution measures and associated pathways that:

- (a) provide preventative health measures that address chronic disease issues within diverse communities across Victoria;
- (b) accommodate and respond to the current and future health and health service needs of those communities; and
- (c) support and enable the achievement of equity in health service access across relevant communities,

and to do anything consistent with, necessary or desirable to support and further those objects.

4 SCOPE OF CAPACITY AND POWERS OF THE COMPANY

- (a) The Company has the legal capacity and powers set out in the Corporations Act.
- (b) The Company must only exercise its powers directly or indirectly in the furtherance of the Objects.

- (c) The Company must not be carried on for the purpose of the profit or gain of any Member.
- (d) Subject to clause 11.8, any income and property of the Company must be applied solely towards the promotion of the Objects and not distributed or paid to the Members, whether directly or indirectly except for the payment in good faith to a Member or Director for any services rendered or goods supplied to the Company, on reasonable commercial terms approved by the Board.

5 LIABILITY OF MEMBERS

- (a) Each Member undertakes to contribute to the Company for payment of:
 - (i) the debts and liabilities of the Company; and
 - (ii) the costs, charges and expenses of any winding up,if the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member.
- (b) The amount that each Member is liable to contribute under clause 5(a) is limited to \$10.00.

6 MEMBERSHIP

6.1 Admission of new Members

- (a) There will be no limit on the number of Members provided that at all times at least 75% of all the Members must have a strong association or connection with the Objects. The By-laws may set out how the required connection is assessed.
- (b) Any corporation (including an incorporated association) wishing to support the Objects and activities of the Company may apply to become a Member by submitting an application in a form approved by the Board from time to time and paying the joining fee (if any) and the first annual subscription, both of which are refundable if the application is rejected.
- (c) The amount of joining fees and annual subscriptions for Members will be determined by the Board from time to time and shall be payable in advance on the first day of July each year.
- (d) All Members have a right to attend and vote at general meetings.

6.2 Becoming a Member

- (a) At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and by resolution either accept or reject the application. The Board is not required to give any reasons for the rejection of an applicant.
- (b) Subject to the Act, an applicant becomes a Member on the registration of their name in the Company's register of members.
- (c) All Members are bound by the provisions of this Constitution.
- (d) The Board may close the register of members for up to 60 days per financial year.

6.3 Rights of Members are non-transferable

The rights and obligations of a Member, including any voting rights and the right to appoint Directors, are personal to the Member and are not transferable except as otherwise specified in clauses 6.4 and 9.

6.4 Recognition of successors

If a Member (the **Affected Member**) is subject to a merger, reconstruction, amalgamation or equivalent event, the Board may resolve to confer the rights of the Affected Member to the successor of the Affected Member and which is recognised by the Board as continuing the substantive functions of the Affected Member, in the Affected Member's place.

6.5 Discipline of Members

- (a) The Board may reprimand, censure, fine, suspend or expel a Member for:
 - (i) failing to comply with this Constitution, including supporting By-laws; or
 - (ii) conduct unbecoming of a Member or prejudicial to the interests of the Company.
- (b) Before taking action the Board:
 - (i) may investigate the conduct of any Member, and any Member who is the subject of a review must provide reasonable assistance to the Board; and
 - (ii) must give notice in writing to that Member of the Board's intention to do so and stating the Board's reason for the proposed suspension or expulsion.

- (c) Any notice under clause 6.5(b) must:
 - (i) afford procedural fairness to the notified Member; and
 - (ii) specify a time and place at which the Member may appear before the Board to show cause why the proposed action should not be taken, such time to be not less than 14 days from the date of the notice.
- (d) The Board must promptly notify a Member in writing of any action to be taken under this clause 6.5 with the Board's decision being final.

6.6 Cessation of Membership

A Member ceases to be a Member if the Member:

- (a) resigns as a Member of the Company by giving notice in writing to the Secretary;
- (b) is wound up or dissolved except for the purposes of reconstruction or amalgamation recognised by the Board under clause 6.4;
- (c) does not renew their membership within 21 days of the Company calling on the Member to do so; or
- (d) wilfully refuses to or neglects to comply with the terms of this Constitution or applicable By-laws or has acted in a manner which in the reasonable opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company, and the Board has resolved to expel the Member from the Company in accordance with clause 6.5.

6.7 Register of members

- (a) The Secretary must maintain a register of members in accordance with the Corporations Act and the Charities Act.
- (b) Each Member will notify the Secretary in writing of any change in that Member's name, postal address or electronic address within a period of one month following such change. All notices given in accordance with clause 22.1 to the name and an address last notified by a Member will be deemed to be properly received by that Member.

6.8 Body corporate representative

- (a) Each Member may appoint an individual person as its representative to exercise on its behalf any or all of the rights and powers it may exercise:
 - (i) at general meetings of the Members;

- (ii) at meetings of creditors; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.
- (c) An appointment of a corporate representative must be in writing and be signed by the Member appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (d) The instrument appointing a corporate representative may restrict the exercise of any of the Member's rights or powers.
- (e) An instrument purporting to appoint a corporate representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (f) An instrument appointing a corporate representative must be received by the Company at any of the following:
 - (i) the registered office; or
 - (ii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.
- (g) The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.
- (h) A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case of an adjourned general meeting, before the resumption of the adjourned general meeting) at which a corporate representative votes:
 - (i) the Member who appointed the corporate representative ceases to be a Member; or

- (ii) the Company has received notice of the revocation of the instrument appointing the corporate representative or the appointment of a new corporate representative.
- (i) The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.
- (j) The chair of a general meeting of the Company may in the chair's discretion admit an instrument of appointment of a corporate representative notwithstanding that it is received by the Company after the time set out in clause 6.8(e).
- (k) A Director cannot act as a representative for the purposes of this clause 6.8.

6.9 Disputes and mediation

- (a) If there is a dispute between a Member and another Member or between a Member and the Company, the dispute will be managed in accordance with the principles of natural justice and in a fair and equitable manner and the Board has the power to make By-laws for that purpose.
- (b) If the parties to a dispute referred to in clause 6.9(a) are unable to resolve the dispute through direct communication, then the parties must within any 10 days of a notification from the Company or any other timeframe prescribed in the applicable By-laws, hold a meeting in the presence of a mediator who meets the requirements prescribed in the By-laws.
- (c) If mediation does not result in the dispute being resolved, the parties to the dispute may seek to resolve the dispute in accordance with the Act or otherwise at law.
- (d) This clause 6.9 does not in any way limit or abrogate the authority and power of the Board under clauses 6.5 and 6.6(d).

7 GENERAL MEETINGS OF MEMBERS

7.1 AGM

- (a) The Company must hold an AGM each year unless the Members agree that an AGM need not be held.
- (b) The Directors must make available at an AGM each report required under the Corporations Act and the Charities Act.

- (c) The business of the AGM will be as set out in the notice of meeting and any business to be considered under the Corporations Act and the Charities Act.
- (d) The chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- (e) If the Auditor or their representative is at the meeting, the chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements, and the independence of the Auditor in relation to the conduct of the audit.
- (f) If a Member intends to attend an AGM, it must appoint a representative in accordance with clause 6.8.

7.2 Director convening a general meeting

- (a) Subject always to clause 13.3, any 3 Directors may together convene a general meeting at any time by giving notice in writing to the Secretary.
- (b) The notice must detail any proposed resolution, the names of the Directors requesting the meeting and be signed by all of the Directors making the request. For this purpose, signatures of the Directors may be contained in more than one document.
- (c) If the Secretary receives a notice in accordance with clauses 7.2(a) and 7.2(b), the Secretary must advise the Company, the Board must convene a general meeting within 21 days after the date of receipt of that advice.
- (d) A general meeting requested by the Directors in accordance with this clause 7.2 must be held no later than 2 months after the request is received by the Secretary.

7.3 Meetings requested by Members

- (a) If the Board receives a request from the Members in accordance with the Corporations Act or the Charities Act to convene a general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request, if required to do so under the Corporations Act or the Charities Act.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members

making the request. For this purpose, signatures of the Members may be contained in more than one document.

- (c) A general meeting requested by the Members in accordance with the Corporations Act or the Charities Act must be held no later than 2 months after the request is received by the Company.

7.4 Notice of general meeting

Subject to clause 7.5, at least 21 days' notice of a general meeting must be given to the Members entitled to be present at that general meeting, the Directors and the Auditor. The notice must state:

- (a) the date, time and place of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) the general nature of the business to be conducted at the meeting;
- (c) any proposed resolutions; and
- (d) contain a statement informing the Members of the right to appoint a proxy.

7.5 Shorter notice of general meeting

Subject to the Corporations Act and the Charities Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to by the Members in accordance with the requirements of the Corporations Act.

7.6 Use of technology

Without limiting the generality of the Corporations Act, a general meeting may be convened or held at two or more venues using any technology that gives Members a reasonable opportunity to participate at that general meeting (including telephone, closed circuit television or other electronic means of audio or audio/visual communication).

7.7 Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place of, postpone or cancel a general meeting. Notice must be given to each Member and each person entitled to receive notice of the meeting of the new place of, postponement or cancellation of the meeting,
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

7.8 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place of that general meeting;
- (c) postponement of that general meeting, including the date, time and place of the postponed meeting; or
- (d) if required, resumption of that adjourned general meeting.

7.9 Ballots

Subject to the Corporations Act, whenever the Board thinks fit it may submit any question or resolution to the vote of all Members entitled to a vote at a general meeting by means of a postal or electronic ballot in such form and returnable in such manner as the Board decides, provided that notice of any ballot must be given to each Member in the manner provided in clause 7.4 or clause 7.7. A resolution approved by a majority or specific majority of the Members voting by such ballot will have the same force and effect as such a resolution would have if carried by such a majority or specific majority at a duly constituted general meeting.

8 PROCEEDINGS AT GENERAL MEETINGS

8.1 Quorum requirements

The quorum for a general meeting will be one quarter of all Members present in person or by proxy, attorney or representative.

8.2 Where a quorum is not present

- (a) If a quorum is not present within 15 minutes after the time appointed for a general meeting or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members pursuant to the Corporations Act or the Charities Act, will be dissolved; and
 - (ii) in any other case, will be adjourned to be resumed on a day, time and place as the chair of that meeting may determine.

- (b) If a quorum is not present within 15 minutes after the time appointed for the resumption of the adjourned general meeting, the general meeting will be dissolved.

8.3 Chairing general meetings

- (a) The Chair will chair each general meeting.
- (b) If the Chair is not present within 15 minutes after the time appointed for the holding of a general meeting or is unwilling to act, the Deputy Chair will act as chair, or if the Deputy Chair is not present or unwilling to act then the Directors present may elect one of their number to chair that meeting.

8.4 Deciding questions submitted to a general meeting

- (a) At any general meeting, a resolution put to a vote will be decided by a show of hands unless a poll is demanded under clause 8.5.
- (b) Unless a poll is demanded, a declaration by the chair that a resolution has, on a show of hands, been carried, carried unanimously, carried by a particular majority or lost or not carried by a particular majority, and an entry to that effect made in the minutes book of the Company and signed by the chair is conclusive evidence of that fact unless the contrary is proved.

8.5 Calling and conduct of a poll

- (a) A poll may be demanded:
 - (i) by the chair of the meeting or by at least 3 Members present in person at the meeting and entitled to vote on the resolution; and
 - (ii) before a vote on a show of hands is taken, before the result of a vote on a show of hands is declared or immediately after the result of a vote on a show of hands is declared.
- (b) The demand for a poll may be withdrawn.
- (c) If a poll is demanded on the election of a chair or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place as the chair directs.
- (d) The demand of a poll will not prevent the continuance of a general meeting for the transaction of any business other than the question on which a poll has been demanded.

8.6 Adjournment of a meeting

- (a) The chair may, with the consent of the meeting at which a quorum is present adjourn the meeting from time to time and place to place but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) If a general meeting is adjourned for 30 days or more, at least 30 days' notice of the adjourned meeting will be given as in the case of the original meeting.

9 PROXY

9.1 Appointment of proxy

- (a) A Member may appoint one person as proxy to attend and vote on its behalf at a general meeting of the Company.
- (b) The instrument appointing a proxy may restrict the exercise of any power.
- (c) A proxy may be, but does not have to be, a Member, but cannot be a Director, unless the Director is acting as the chair of a general meeting.

9.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

9.3 Proxy to be received by Company

- (a) The instrument appointing a proxy is not effective unless it is received, together with any additional documentation (if necessary) by the Company at least 48 hours before the general meeting at any of the following:
 - (i) the registered office; or
 - (ii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.
- (b) The chair of a general meeting may in the chair's discretion admit an instrument of appointment of a proxy notwithstanding that it is received by the Company after the time set out in clause 9.3(a).

9.4 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

9.5 Validity of votes of proxy

A vote cast by a proxy appointed by a Member will be valid unless before the start of a general meeting at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

9.6 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

10 VOTING BY MEMBERS

10.1 Entitlement to vote

Each Member has one vote, whether on a show of hands, or on a poll.

10.2 Chair will have a casting vote

If on any resolution an equal number of votes are cast for and against a resolution, the chair of the general meeting will both on a show of hands and on a poll have a second or casting vote.

10.3 Proxy vote to be identified

Before a vote is taken the chair of the general meeting must inform the Members present whether any proxy votes have been received.

10.4 Objection to right to vote

A challenge to a right to vote at a general meeting may only be made at that general meeting and must be determined by the chair of the meeting, whose decision is final.

10.5 Circular resolutions

- (a) A resolution in writing signed, endorsed or assented to by all the Members entitled to vote on the resolution will be as valid and effectual as if it had been passed at a general meeting duly called and constituted. Any such resolution may consist of several documents, statements or acknowledgements in the same or similar form, each signed or given by one or more of the Members.
- (b) A resolution passed pursuant to clause 10.5(a) will be deemed to have been passed at a general meeting held on the day on which and at the time at which the resolution was last signed, endorsed or assented by a Member.

11 BOARD OF DIRECTORS

11.1 Number of Directors

The Board is to consist of no less than 6 and up to 9 Directors, subject to any temporary vacancy.

11.2 Constitution of the Board

The Board must develop and maintain:

- (a) a Board Skills Matrix; and
- (b) an Assessment of Current and Future Needs,

to be applied by the Nominations and Remuneration Committee for the purposes of constituting the Board.

11.3 Establishment of Nominations and Remuneration Committee

- (a) The Board must establish a Nominations and Remuneration Committee comprising:
 - (i) 1 Board member;
 - (ii) 2 persons representative of the Members; and
 - (iii) 1 independent member.
- (b) The Nominations and Remuneration Committee is responsible for:
 - (i) applying the Assessment of Current and Future Needs to establish skills and competency based selection criteria for preferred candidates or nominees for all vacant Director positions at each AGM;
 - (ii) developing and implementing a recruitment process for each vacant Director position within an appropriate timeline and keeping the Board informed throughout that process;
 - (iii) recommending to the Members those persons to be appointed to fill the vacant positions, based on the Assessment of Current and Future Needs; and
 - (iv) reviewing, assessing and making recommendations on the remuneration arrangements of the Board.
- (c) The recommendations of the Nominations and Remuneration Committee concerning the composition of the Board must be put to the Members in the AGM for endorsement by the Members.
- (d) If the Members endorse the Board composition recommendations of the Nominations and Remuneration Committee, the new Directors recommended by the Nominations and Remuneration Committee are appointed with effect from the end of the AGM, subject to a new Director having consented to act.

(e) If the Members do not endorse the Board composition recommendations of the Nominations and Remuneration Committee:

- (i) the Nominations and Remuneration Committee must call for and allow for nominations from the Members within the 14 days after the AGM, to fill each position left vacant at the end of the AGM;
- (ii) the Nominations and Remuneration Committee must identify eligible and suitable candidates for the vacant positions;
- (iii) if the number of eligible and suitable candidates does not exceed the number of vacancies, those candidates will be deemed to be appointed with effect from the date of the Nominations and Remuneration Committee's determination, subject to a new Director having consented to act; and
- (iv) if the number of eligible and suitable candidates exceeds the number of vacancies,

then the Nominations and Remuneration Committee's must conduct or oversee a ballot (First Round) where Members will vote on the contested nominations in accordance with the following procedure:

- (v) ballot paper or electronic form will be prepared and sent out to all Members within 10 days after the date for nominations for vacant Director position(s) closed;
- (vi) the ballot paper or electronic form will set out the names of all candidates (in alphabetical order based on the candidates' first name) and respective checkboxes;
- (vii) if there is one vacant Director position, Members will vote by marking 'X' in the checkbox (or equivalent) next to the name of their preferred candidate;
- (viii) if there is more than one vacant Director position, Members will vote by marking 'X' in the checkbox (or equivalent) next to the names of their preferred candidates. Members must not rank candidates in order of preference on a single ballot;
- (ix) to be valid, ballot papers or electronic form must be returned or submitted within 20 days after the date they were sent out;
- (x) all paper ballots or electronic forms received within the timeframe prescribed in clause 11.3(e)(ix) will be counted by the Nominations and Remuneration Committee under the supervision of at least one Director after the date for returning ballots has closed;

- (xi) depending on the number of vacant Director position(s), the candidates receiving the most votes will be elected as Director(s), subject to a new Director having consented to act;
- (xii) if there is a tie between one or more candidates, the Nominations and Remuneration Committee will conduct a second ballot (Second Round) from which all but the candidates with the same number of votes will be excluded;
- (xiii) ballot papers or electronic forms for the Second Round will be prepared and sent out to all Members within 5 days after the date for returning ballot papers for the First Round closed;
- (xiv) to be valid, ballots papers or electronic forms for the Second Round must be returned within 10 days after the date they were sent out;
- (xv) depending on the number of vacant Director position(s), the candidate(s) receiving the most votes on the Second Round will be elected as Director(s), subject to a new Director having consented to act; and
- (xvi) the outcomes of the First Round and Second Round (if applicable) will be announced to the Members, as soon as reasonably practicable and the elected Director(s) will commence office with effect from the end of the First Round, or if there is a Second Round, the end of the Second Round.

11.4 Casual vacancies

The Board will have the power to appoint any other person to be a Director to fill a casual vacancy in the number of Directors. Any Director so appointed will hold office only until the end of the next AGM following their appointment and will be eligible for re-election.

11.5 Period of appointment of Directors

- (a) Subject to clauses 11.4, 11.5(b) and 11.13, each Director will hold office for a period of 3 years from the date of their appointment or any lesser period set out in the resolution under which a Director is appointed.
- (b) Retiring Directors will be eligible for re-election or re-appointment and may serve in that position for a maximum of 3 consecutive terms (being a maximum of 9 consecutive years), after which time they will not be eligible for re-election or re-appointment as a Director until at least 5 years have lapsed from the date upon which they ceased to be a Director.

11.6 Non-eligibility of Auditor

The Auditor is ineligible to be elected or appointed as a Director.

11.7 Other offices held by Directors

If any Director is called upon to perform extra duties or to make any special exertions or otherwise for the purpose of the Company, the Company may remunerate the Director for doing so as may be determined by the Board and such remuneration will be in addition to the Director's remuneration referred to in clause 11.8(a).

11.8 Remuneration of Directors

The Directors will be entitled to be:

- (a) paid such reasonable remuneration for their services as may from time to time be fixed by the Company in general meeting, which must have regard to the recommendations of the Nominations and Remuneration Committee and otherwise reflect the then current remuneration guidelines and policies applicable to an organisation of the type and kind of the Company or in the absence of any such guidelines and policies, take into account those nearest to the type and kind of the Company, including guidelines and policies for government bodies or government appointments;
- (b) reimbursed for all reasonable travelling and other expenses (as determined by the Board from time to time) properly incurred by them in consequence of their attendance at Board meetings, meetings of Committees or general meetings of the Company or otherwise in connection with the business of the Company; and
- (c) paid for any service rendered to the Company in a professional or technical capacity outside the scope of the ordinary duties of a Director where the service and amount payable is on reasonable and proper terms and the provision of that service has the Board's prior approval.

11.9 Financial benefits to Directors

The Company must not give a financial benefit to a Director or any other related party of the Company except as permitted under the Corporations Act and the Charities Act.

11.10 Vacancy in the number of Directors

The continuing Directors may act notwithstanding any vacancy in their body but, if their number falls below the minimum for the time being fixed under the Corporations Act, the continuing Director or Directors will not act except for the

purpose of filling vacancies or convening general meetings for so long as their number is below the minimum.

11.11 No alternate Directors

**11.12 A Director cannot appoint an alternate director to act in their absence.
Removal of a Director**

- (a) Subject to this clause 11.12, the Company may, remove a Director from office, and appoint another person as a Director in the removed Director's place, by resolution at a general meeting.
- (b) A Director will not be removed by, or required to vacate their office because of, any resolution, request or notice of the Directors or any of them.
- (c) At least 2 months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.
- (d) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, the Director the subject of the notice must be given a copy of the notice as soon as practicable and must be informed that they may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director under this clause 11.12 is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

11.13 Vacation of office of a Director

The office of Director will become vacate if the Director:

- (a) resigns from office by notice in writing to the Company;
- (b) is removed from office by resolution of the Company at a general meeting in accordance with clause 11.12;
- (c) becomes of unsound mind or becomes liable to be dealt with in any way under the law relating to mental health;

- (d) is absent from 4 consecutive meetings of Directors without special leave of absence from the Board;
- (e) is the subject of 3 notices of material non-compliance with any code of conduct prescribed under clause 13.3 during any term of office;
- (f) becomes a bankrupt or makes any arrangement or composition with personal creditors generally;
- (g) becomes an employee of the Company (other than solely by reason of their position on the Board being deemed to create an employee relationship, if that is the case);
- (h) ceases to be a Director or becomes prohibited from being a Director under the Corporations Act or the Charities Act; or
- (i) ceases to meet any of the qualification criteria specified in clause 11.2.

11.14 Material personal interests

- (a) Unless an exception under the Corporations Act and the Charities Act applies, if a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest.
- (b) The notice required by clause 11.14(a) must include details of the nature and extent of the interest and how the matter relates to the affairs of the Company and must be given at a meeting of Directors as soon as practicable after the Director becomes aware of their interest in the matter.
- (c) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter unless:
 - (i) the interest does not need to be disclosed under the Corporations Act and the Charities Act; or
 - (ii) the Directors considering the matter who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature of their interest in the matter and its relation to the affairs of the Company; and
 - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.

12 CHIEF EXECUTIVE OFFICER

12.1 Appointment by the Board

The Board may from time to time appoint a person to the office of Chief Executive officer of the Company for such period and on such terms as the Board determines.

12.2 Remuneration

The remuneration of the Chief Executive Officer will be determined by the Board.

12.3 Delegation of powers

The Board may from time to time entrust to and confer upon the Chief Executive Officer for the time being such of the powers exercisable under this Constitution by the Directors as they may think fit and may confer such power for such time and to be exercised upon such terms and conditions and with such restrictions as they think expedient, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

13 POWERS AND DUTIES OF DIRECTORS

13.1 General powers

- (a) Subject to the Corporations Act and to any provision of this Constitution:
 - (i) the activities of the Company are to be managed by or under the direction of the Directors; and
 - (ii) the Directors may exercise all powers of the Company that are not required to be exercised in a general meeting.
- (b) A negotiable instrument approved by the Board may be signed, drawn, accepted, endorsed or otherwise executed either by any two Directors or in any other way approved by the Board.

13.2 Authority for others to act

- (a) The Board may delegate any of their powers to a committee of Directors, a Director, an employee of the Company or any other person.
- (b) The Board may, by power of attorney, appoint any person or body of persons to be the Attorney of the Company for any period and for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

13.3 Duties

- (a) The Board has the duties prescribed by the Corporations Act and the Charities Act and in discharging their duties to the Company, each Director must at all times (without limitation):
- (i) act in the best interest of the Company irrespective of personal, professional, commercial or other interests, and in a manner based on transparency, accountability and responsibility;
 - (ii) use their position and any information obtained in the course of that position for proper purposes, and not to gain an advantage for themselves or someone else or to cause detriment to the Company;
 - (iii) disclose conflicts of interest;
 - (iv) exercise a degree of care and diligence that a reasonable person would exercise;
 - (v) demonstrate high ethical standards and integrity in their personal and professional dealings with other Directors and Members of the Company;
 - (vi) act honestly and in good faith; and
 - (vii) comply with any code of conduct adopted by the Board from time to time.

13.4 By-laws

- (a) The Board may from time to time make, vary and rescind By-laws in relation to the Company.
- (b) The By-laws for the time being in force, and which are not inconsistent with this Constitution, are binding on Members and have full effect accordingly.
- (c) Any By-law made by the Board may be set aside by a special resolution of a general meeting of Members.

14 BOARD MEETINGS

14.1 Board to conduct business as they see fit

Subject always to clause 13.3, the Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit except that the Board:

- (a) must meet at least 4 times each year; and
- (b) will endeavour to meet at least on a bi-monthly basis.

14.2 Quorum

Subject to clause 14.3, the quorum necessary for the transaction of the business of the Board will be one plus half of the number of Directors appointed from time to time, excluding any Director on leave of absence approved by the Board.

14.3 Use of technology

- (a) Without limiting the discretion of the Board to regulate their meetings under clause 14.1, a meeting of the Board may be convened or held at 2 or more places using any technology consented to by all Directors, excluding any Director on leave of absence approved by the Board.
- (b) Any consent may be a standing consent.
- (c) A Director may only withdraw their consent a reasonable period before a Board meeting.

14.4 Chair and Deputy Chair

- (a) The Board may appoint one of their number to the office of Chair who will hold office for a term of 2 years from the date of their appointment (with their term of office ending at the conclusion of the first Board Meeting following the AGM in the given year their term is to end). A retiring Chair may be eligible for re-appointment and may serve a further term of 2 years.
- (b) The Board may appoint one of their number to the office of Deputy Chair who will hold office for a term of 2 years from the date of their appointment. A Deputy Chair may be eligible for re-appointment and may serve a further term of 2 years.
- (c) A Director who has acted as a Chair or Deputy Chair for 2 term will not be eligible for re-election or re-appointment as a Chair or Deputy Chair until at least 2 years have lapsed from the date upon which they ceased to be a Chair or Deputy Chair.
- (d) The process for appointing the Chair and/or the Deputy Chair may be set out in By-laws.

14.5 Chairing meetings of the Board

- (a) The Chair will chair each Board meeting.

- (b) If the Chair is not present within 15 minutes after the time appointed for the holding of a meeting of the Board or is unwilling to act, the Deputy Chair will act as chair, or if the Deputy Chair is not present or unwilling to act then the Directors present may elect one of their number to chair that meeting.

14.6 Deciding questions submitted to a Board meeting

- (a) Questions arising at any Board meeting will be decided by a majority of votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director is entitled to vote and has one vote.
- (c) In the case of an equality of votes the chair of the meeting will have a second or casting vote.

14.7 Circular resolutions

- (a) A resolution in writing signed, endorsed or assented to by all the Directors entitled to vote on the resolution (other than a Director excluded by clause 14.7(b)) will be as valid and effectual as if it had been passed at a Board meeting duly called and constituted.
- (b) A vote on a circular resolution excludes a Director:
 - (i) on leave of absence approved by the Board;
 - (ii) who disqualifies themselves from considering the thing or resolution in question on the grounds that they are not entitled at law to do so or has a conflict of interest; or
 - (iii) who the other Directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question.
- (c) A resolution passed pursuant to clause 14.7(a) will be deemed to have been passed at a Board meeting held on the day on which and at the time at which the resolution was last signed or endorsed by a Director.

14.8 Formation of Committees

- (a) The Board may by resolution or in writing:
 - (i) delegate any of their powers to a Committee consisting of such member or members of as they think fit; or
 - (ii) establish an advisory Committee to report to the Board.
- (b) Any Committee so formed or so appointed, including the Nominations and Remuneration Committee, will in the exercise of the powers so delegated (if

any) and conform to any regulations that may from time to time be imposed on it by the Directors.

14.9 Governance of Committee meetings

The meetings and proceedings of any Committee will be governed by this Constitution for regulating the meetings and proceedings of the Board so far as this Constitution are applicable to those meetings and not superseded by any regulations made by the Directors under clause 14.8.

14.10 Validity of acts

All acts done at any Board meeting or by a Committee or by any person acting as a Director is valid, notwithstanding:

- (a) that it is afterwards discovered that there was some defect in the appointment of the Directors, the Committee or persons acting as Directors or any of them;
- (b) that they are or any of them were disqualified; or
- (c) that they are or any of them were not entitled to vote..

15 SECRETARY

15.1 Appointment

The Directors must appoint a Secretary in accordance with the Corporations Act.

15.2 Terms and conditions of office

A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors think fit.

16 DIRECTORS' AND MEMBERS' MINUTES

16.1 Minutes

- (a) The Company must keep minute books in which it records:
 - (i) proceedings and resolutions of general meetings;
 - (ii) proceedings and resolutions of Board meetings, including Committee meetings;
 - (iii) resolutions passed by Members without a meeting; and

- (iv) resolutions passed by Directors without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.
- (c) The Company must ensure that the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

16.2 Members' access to minutes

Members are entitled to request access to the minute book of meetings of Members in accordance with the Corporations Act.

17 ACCOUNTS AND AUDIT

17.1 Accounting records

- (a) The Board must ensure that accounting and other records of the Company are kept in accordance with applicable laws, including the Corporations Act, the Charities Act and the Tax Act.
- (b) The records must at all times be open to inspection by the Directors, subject to any limitations under applicable laws.

17.2 Accounts

Each financial year, the Company must prepare a financial report and a Directors' report in accordance with the Corporations Act and the Charities Act.

17.3 Auditor

The Company must if required by the Corporations Act and the Charities Act appoint an auditor to audit the Company's financial statements in accordance with the Corporations Act and the Charities Act.

18 INDEMNITY

18.1 Indemnity

- (a) Subject to the Corporations Act and clause 18.1(c), the Company will indemnify each Officer against, and will pay the Director on demand, the amount of any liability to another person (other than the Company or a

related body corporate of the Company) incurred by the Officer in the course of performing their duties as an Officer.

- (b) The Company may indemnify any other employee of the Company who is an officer of the Company for the purposes of the Corporations Act at the Board's discretion, by way of entering into a deed of indemnity with the employee.
- (c) The indemnity under clause 18.1(a) does not:
 - (i) apply if a liability is covered by insurance or would be covered by insurance if no indemnity was conferred or applicable; or
 - (ii) extend to or apply to a liability:
 - (A) which arises out of misconduct under the indemnified Officers' terms and conditions of engagement by the Company or a breach of those terms and conditions (if any);
 - (B) which arises from conduct of the indemnified Officer involving a lack of good faith;
 - (C) which cannot be recovered under a policy of insurance maintained by the Company by reason of the acts or omissions of the indemnified Officer having voided that cover or prejudiced the Company's right or entitlement to make a claim in respect of that liability;
 - (D) attributable to proceedings against the indemnified Officer in which the grounds for making those proceedings are established or the indemnified Officer is found guilty;
 - (E) attributable to a claim for relief by the indemnified Officer which is denied by a court or tribunal;
 - (F) attributable to a pecuniary penalty order against the indemnified Officer for non-compliance with the indemnified Officer's duties under an applicable law;
 - (G) attributable to action taken by the Company to remove the indemnified Officer from office or terminate their engagement by the Company; or
 - (H) excluded under a deed of indemnity entered into by the Company and the indemnified Officer.
- (d) An indemnified Officer must repay to the Company any amounts advanced by the Company under any indemnity in this clause 18.1 if:

- (i) any of the exceptions set out in clause 18.1(c) apply;
 - (ii) a court subsequently determines that the indemnification is not permitted; or
 - (iii) the indemnification is not permitted by the Corporations Act.
- (e) For the purposes of this clause 18.1, the Company has the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
- (f) If the Board determines that an Officer is not entitled to be indemnified, the Officer will be entitled to direct that the Company obtain and follow, at the Company's expense, an opinion as to such entitlement from a Senior Counsel with relevant expertise, selected by the Board.

19 CONTRACT OF INSURANCE

Except to the extent precluded by the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an Officer, against liabilities incurred by an Officer.

20 DEDUCTIBLE GIFT RECIPIENT STATUS AND WINDING UP

20.1 Revocation of deductible gift recipient status

If the Company is registered with or recognised by the Commissioner as being entitled to receive tax deductible gifts, and that endorsement is revoked prior to a winding-up or dissolution of the Company, surplus gifts and deductible contributions must be distributed in accordance with clause 20.2.

20.2 Winding up

- (a) If the Company is wound up or dissolved, then any assets and property that remains (after satisfaction of all debts and liabilities of the Company including the payment of costs and expenses of the winding up) must not be paid or distributed to Members (whether directly or indirectly) but must be given or transferred to such other fund, authority or institution as the Directors may determine prior to the actual winding up which:
- (i) has charitable objects similar to the Objects;
 - (ii) is registered with or recognised by the Commissioner as being an income tax exempt charity if the Company had been;

- (iii) is registered with or recognised by the Commissioner as being a entitled to receive tax deductible gifts if the Company had been; and
 - (iv) prohibits the distribution of its income and property among its Members to an extent at least as great as that imposed on the Company by clause 4(d) and this clause 20.
- (b) If the Board does not determine the recipient(s) of the property distributable under clause 2020.1 , the property will be transferred to a fund, authority or institution determined by a Judge of the Supreme Court of Victoria subject to clause 2020.1.

21 TIME FOR DOING ACTS

- (a) If:
- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Constitution,
- expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

22 NOTICES

22.1 Method of giving notice

A notice may be given by the Company to any Member :

- (a) by hand to the Member or the Member's representative;
- (b) by sending it by post to the address for that Member appearing in the register of members or any alternative address nominated by the Member; or
- (c) by sending it to the electronic address (if any) for that Member appearing in the register of members or nominated by the Member.

22.2 When notice will be deemed to have been given

Any notice or other communication to a Member under this Constitution:

- (a) if given by hand, will be deemed to have been given on the day it was so delivered;
- (b) if given by post to an address within Australia, will be deemed to have been given 3 Business Days after being sent;
- (c) if given by post to an address outside Australia, will be deemed to have been given 6 Business Days after being sent; and
- (d) if given by electronic transmission, will be deemed to have been given on the date on which the Company's electronic equipment reports that the notice or communication has been sent or delivered.

22.3 Proving service

In proving service, a certificate in writing signed by any Officer or authorised delegate of the Board stating that the notice was duly sent will be conclusive evidence of that fact.

22.4 Signature

The signature to any notice to be given by the Company may be written, endorsed or printed (including by electronic means).

23 AMENDMENTS TO CONSTITUTION

- (a) The Company must:
 - (i) comply with the terms pursuant to which any concession, endorsement, licence or authority or approval is held or enjoyed or might be held or enjoyed by the Company, including in respect of any endorsement or concession under the Charities Act and Tax Act; and
 - (ii) obtain all necessary consents and approvals to any amendment of this Constitution required by the Charities Act, the Tax Act or applicable laws or endorsement, licence, authority or approval held by the Company.
- (b) A modification or repeal of any provision of this Constitution takes effect:
 - (i) on the date on which the resolution is passed if the resolution does not specify a later date;
 - (ii) on the date specified in the resolution if the relevant date is later than the date on which the resolution is passed; or

- (iii) on the date on which the change takes effect at law, if a later date.