

# Constitution of National Affordable Housing Consortium Ltd

A company limited by guarantee

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# Constitution of National Affordable Housing Consortium Ltd

## A company limited by guarantee

### 1 General

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#### 1.1 Name of the Company

The name of the Company is National Affordable Housing Consortium Ltd.

#### 1.2 Liability of Members

The liability of the Members is limited.

#### 1.3 Replaceable Rules

The Replaceable Rules do not apply to the Company.

### 2 Definitions and interpretation

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#### 2.1 Definitions

In this document:

Term	Definition
<b>ACNC</b>	means the Australian Charities and Not-for-profits Commission.
<b>ACNC Legislation</b>	means the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth), <i>Australian Charities and Not-for-profits Commission Regulations 2022</i> (Cth) and <i>Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012</i> (Cth).
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>Board</b>	means the Board of Directors of National Affordable Housing Consortium Ltd.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday where the Office is located.
<b>Chairperson</b>	includes an acting Chairperson under rule 12.5(b).
<b>Charity</b>	means a charity registered under the ACNC Legislation.
<b>Committee</b>	means a committee to which powers have been delegated by the Board under rule 12.7.
<b>Company</b>	means National Affordable Housing Consortium Ltd.
<b>Constitution</b>	means the constitution of the Company.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth) and <i>Corporations Regulations 2001</i> (Cth).
<b>Director</b>	means a person appointed or elected to the office of Director of the Company.
<b>Deductible Gift Recipient</b>	means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 1997.

<b>Term</b>	<b>Definition</b>
<b>DGR Gifts</b>	<p>means:</p> <p>(a) gifts of money or property for the Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;</p> <p>(b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 1997 in relation to a fundraising event (as defined by section 995-1 of the ITAA 1997) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and</p> <p>(c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.</p>
<b>Executive Officer</b>	for the purposes of rule 20, means a person who is concerned, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a Director of the Company).
<b>Fee Date</b>	means 1 July each year.
<b>ITAA 1997</b>	means <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Member</b>	means any person who is or becomes a Member under the Corporations Act or this Constitution.
<b>Nominations Committee</b>	means a committee appointed by the Board under rule 12.7.
<b>Office</b>	means the registered office of the Company.
<b>Officer</b>	<p>for the purposes of rule 20, means a Director or Secretary of the Company or a person:</p> <p>who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;</p> <p>who has the capacity to affect significantly the Company's financial standing; or</p> <p>under whose instructions or wishes the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business</p>
<b>Purpose</b>	means the purpose set out in rule 3.1.
<b>Proceedings</b>	for the purposes of rules 20.2 and 20.4 has the meaning set out in rule 20.5.
<b>Register</b>	means the register of the Members of the Company established under the Corporations Act.
<b>Registered Address</b>	means the address of a Member specified in the Register or another address notified by the Member to the Company as the place they will accept service of notices.

<b>Term</b>	<b>Definition</b>
<b>Replaceable Rules</b>	means the replaceable rules under the Corporations Act and includes any replaceable rules that become or may become a provision of the Corporations Act.
<b>Seal</b>	means the common seal of the Company if any.
<b>Secretary</b>	means a person appointed as secretary of the Company and includes a person appointed to perform the duties of secretary.
<b>special resolution</b>	means a member resolution passed at a general meeting: <ul style="list-style-type: none"> <li>(a) of which 21 days' notice specifying the intention to propose the resolution as a special resolution has been given pursuant to this Constitution and the Act; and</li> <li>(b) by not less than 75% of the votes cast.</li> </ul>

## **2.2 Interpretation**

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (g) a reference to this document includes the agreement recorded by this document;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (k) a reference to 'month' means calendar month.

### **3 Purpose and powers**

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#### **3.1 Purpose of Company**

The Purpose for which the Company is established is to be a charitable institution that provides benevolent relief to people in need, including by providing housing.

#### **3.2 Powers of the Company**

The Company has all the powers of an individual and a body corporate, subject to rule **Error! Reference source not found.**

### **4 Non-profit nature of the Company**

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#### **4.1 Non-profit**

- (a) The income and property of the Company must only be applied towards the promotion of the Purpose of the Company set out in this Constitution.
- (b) No income or property may be paid or transferred, directly or indirectly, to a Member except for payments:
  - (i) in return for services rendered by or goods supplied by a Member to the Company in the ordinary and usual course of business; or
  - (ii) as principal payments on money lent by a Member, and interest payments if the interest is at a commercial rate.

#### **4.2 Distribution of assets on winding up or revocation of endorsement**

- (a) Where property remains after the winding-up or dissolution of the Company, and satisfaction of all its debts and liabilities, it must not be distributed to the Members.
- (b) If the Company is a Deductible Gift Recipient, any DGR gifts must be deposited in a separate bank account or otherwise identified so that they can be distinguished from the Company's other assets.
- (c) If the Company is a Deductible Gift Recipient and:
  - (i) is wound up; or
  - (ii) ceases to be endorsed as a Deductible Gift Recipient;any DGR gifts remaining after satisfying the Company's liabilities and expenses must be transferred to a Charity or Charities endorsed as a Deductible Gift Recipient.
- (d) If on the winding up or dissolution of the Company there is a surplus of assets after satisfying all the Company's liabilities and expenses and complying with clause 4.2(c), the surplus:
  - (i) must not be paid or distributed to a Member in their capacity as a Member; and
  - (ii) must be given or transferred to a Charity (or Charities) which:
    - (A) has a similar purpose to the Purpose,
    - (B) prohibits the distribution of income, profit and assets to its members in their capacity as members; and



- (C) is able to be registered under section 149C of the *Taxation Administration Act 2001* (Qld).
- (e) The Members must decide before any winding up, dissolution or revocation which Charity (or Charities) will receive a distribution under clause 4.2(d). If the Members fail to decide, the matter must be determined by application to the District Court in the State of Queensland.

#### **4.3 National Regulatory System for Community Housing winding-up requirements**

- (a) In this rule, the terms 'Community Housing Asset', 'Corresponding Law', 'Housing Agency', 'Participating Jurisdiction' and 'Registered Provider' have the same meanings as in the *Housing Act 2003* (Qld) where they relate to 'Community Housing Assets' in Queensland, otherwise where 'Community Housing Assets' are located in a Participating Jurisdiction, these terms have the same meaning as in the Corresponding Law of the Participating Jurisdiction.
- (b) Despite rule 4.2, each Community Housing Asset remaining upon the company's winding up must be transferred as follows:
  - (i) each remaining Community Housing Asset of the Company in Queensland must be transferred under s 37H(2)(a) of the *Housing Act 2003* (Qld); and
  - (ii) each remaining Community Housing Asset of the Company located in a Participating Jurisdiction must be transferred under the Corresponding Law of that Participating Jurisdiction,
  - (iii) to:
    - (A) a Housing Agency in the Participating Jurisdiction;
    - (B) another Registered Provider (or Registered Community Housing Provider as applicable under a Corresponding Law) in the Participating Jurisdiction; or
    - (C) another entity as prescribed under the Corresponding Law; provided that entity meets the requirements in clause 4.2(d)(ii) above.

#### **4.4 Limited liability on winding up**

- (a) If the Company is wound up the Members must contribute the guarantee amount to the assets of the Company for the:
  - (i) payment of the debts and liabilities of the Company contracted before the Member ceased to be a Member; and
  - (ii) costs of winding up.
- (b) The guarantee amount referred to in rule 4.4(a) is the maximum liability of a Member and is fixed at \$10.

## **5 Membership**

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### **5.1 Members**

- (a) The Members are:
  - (i) the Directors of the Company; and

- (ii) any other natural person that the Board allows to be a Member, subject to the Constitution.
- (b) Subject to rule **Error! Reference source not found.**, the Board must ensure that:
  - (i) the Directors of the Company make up no more than 49% of the Members; and
  - (ii) the Members who are not directors of the Company make up no more than 74% of the Members.
- (c) No decision, resolution or action taken by Members will be invalid solely because the portion of Members who are (or are not) directors of the Company infringes the rule set out in clause 5.1(b) above.

## **5.2 How to apply to become a Member**

- (a) A person may apply to become a Member by writing to the Secretary stating that they:
  - (i) want to become a Member of the Company;
  - (ii) consent to be a member of any other company whose membership is tied to the membership of the Company;
  - (iii) support the purpose(s) of the Company, and
  - (iv) agree to comply with the Constitution, including paying any guarantee under the Constitution if required.

## **5.3 Board decides whether to approve Membership**

- (a) The Board must consider an application for Membership within a reasonable time after the Secretary receives the application.
- (b) If the Board approves an application, the Secretary must as soon as possible:
  - (i) enter the new Member on the register of Members, and
  - (ii) write to the applicant to tell them that their application was approved, and the date that their Membership started.
- (c) If the Board rejects an application, the Secretary must write to the applicant as soon as possible to tell them that the application has been rejected, but does not have to give reasons.
- (d) For the avoidance of doubt, the Board may approve an application even if the application does not state the matters listed in clauses 5.2(a)(i), 5.2(a)(iii) or 5.2(a)(iv). In that case, by applying to be a Member, the applicant agrees to those three matters.

## **5.4 When a person becomes a Member**

An applicant will become a Member when they are entered on the register of Members.

## **5.5 When a person stops being a Member**

A person immediately stops being a Member if they:

- (a) die;

- (b) resign, by writing to the Secretary;
- (c) are removed under clause 6;
- (d) cease as a member of any company whose membership is tied to membership in the Company; or
- (e) 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.

## **5.6 Classes**

The only class of membership is ordinary membership.

## **5.7 Register of Members**

The Company must establish and maintain a register of Members which includes the full name and address for notices of each Member, and any other particulars determined by the Board.

## **5.8 Other**

- (a) Membership is personal to the Member and is not transferable.
- (b) A Member is not entitled to assign its Membership in the Company.

# **6 Dispute resolution and disciplinary procedures**

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## **6.1 Dispute resolution**

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under the Constitution between a Member or Director and:
  - (i) one or more Members;
  - (ii) one or more Directors; or
  - (iii) the Company.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is already the subject of a disciplinary procedure under this clause until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under paragraph 6.1(c) above, they must within 10 days:
  - (i) tell the directors about the dispute in writing;
  - (ii) agree or request that a mediator be appointed; and
  - (iii) attempt in good faith to settle the dispute by mediation.
- (e) The mediator must:
  - (i) be chosen by agreement of those involved; or
  - (ii) where those involved do not agree:
    - (A) for disputes between Members, be a person chosen by the Directors; or

- (B) for other disputes, be 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.
- (f) A mediator chosen by the Directors under paragraph 6.1(e)(ii) above:
  - (i) may be a Member or former Member of the Company;
  - (ii) must not have a personal interest in the dispute; and
  - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
  - (i) allow those involved a reasonable chance to be heard;
  - (ii) allow those involved a reasonable chance to review any written statements;
  - (iii) ensure that those involved are given natural justice, and
  - (iv) not make a decision on the dispute.

## **6.2 Disciplining members**

- (a) In accordance with this clause, the Directors may resolve to warn, suspend or remove a Member from the Company if the Directors consider that:
  - (i) the Member has breached the Constitution, or
  - (ii) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- (b) At least 14 days before the Directors' meeting at which a resolution under clause 6.2(a) will be considered, the Secretary must notify the Member in writing:
  - (i) that the Directors are considering a resolution to warn, suspend or remove the Member;
  - (ii) that this resolution will be considered at a directors' meeting and the date of that meeting;
  - (iii) what the Member is said to have done or not done;
  - (iv) the nature of the resolution that has been proposed; and
  - (v) that the Member may provide an explanation to the directors, and details of how to do so.
- (c) Before the Directors pass any resolution under clause 6.2(a), the Member must be given a chance to explain or defend themselves by:
  - (i) sending the Directors a written explanation before that Directors' meeting; and/or
  - (ii) speaking at the meeting.
- (d) After considering any explanation under clause 6.2(c), the Directors may:
  - (i) take no further action;
  - (ii) warn the Member;

- (iii) suspend the Member's rights as a Member for a period of no more than 12 months;
  - (iv) remove the Member from Membership;
  - (v) 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
  - (vi) require the matter to be determined at a general meeting.
- (e) The Directors cannot fine a Member.
  - (f) The Secretary must give written notice to the Member of the decision under clause 6.2(d) as soon as possible.
  - (g) Disciplinary procedures must be completed as soon as reasonably practical.
  - (h) 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.

## **7 Financial records**

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### **7.1 Keeping of financial records**

- (a) Proper books and financial records must be kept recording the financial affairs of the Company for at least seven years. The Company must comply with the relevant accounting and auditing requirements of the Corporations Act and the ACNC Legislation.
- (b) The Board must distribute to the Members at the end of each financial year, copies of the financial report including a copy of the auditor's report and any other documentation as required by the Corporations Act and the ACNC Legislation.

### **7.2 Appointment of auditor**

The Company must appoint a qualified auditor as required by the Corporations Act.

### **7.3 General meetings**

- (a) Subject to the Constitution, general meetings of the Company may be held at the times and places and in the manner decided by the Board.
- (b) If Members with at least 25% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the Board must:
  - (i) within 21 days of the Members' request, give all Members notice of a general meeting; and
  - (ii) hold the general meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members have (in clause 7.3(b)) is to be worked out as at midnight before the Members request the meeting.
- (d) The Members who make the request for a general meeting must:
  - (i) state in the request any resolution to be proposed at the meeting;

- (ii) sign the request; and
- (iii) give the request to the Company.
- (e) 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.
- (f) A person who is invited by the Board or the Chairperson to attend a general meeting, may be present at that meeting.

#### **7.4 General meetings called by members**

- (a) If the Directors do not call the meeting within 21 days of being requested under clause 7.3(b), 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a meeting under clause 7.4(a) the Members must:
  - (i) as far as possible, follow the procedures for general meetings set out in the Constitution;
  - (ii) call the meeting using the list of Members on the Company's Member register, which the Company must provide to the Members making the request at no cost; and
  - (iii) hold the general meeting within three months after the request was given to the Company.
- (c) The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

#### **7.5 Annual general meeting**

- (a) A general meeting, called the annual general meeting, must be held at least once in every calendar year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting shall include:
  - (i) a review of the Company's activities;
  - (ii) a review of the Company's finances;
  - (iii) any auditor's report;
  - (iv) the election of Directors; and
  - (v) the appointment and payment of auditors, if any.
- (c) 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.
- (d) 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.

#### **7.6 Notice of general meeting**

- (a) At least 21 days' notice of a general meeting must be given to the Members by the Board in the form and in the manner the Board decides, subject to the

Corporations Act. Inadvertent failure to give notice of any general meeting to a person entitled to notice does not invalidate a resolution passed at that meeting.

- (b) Subject to the Corporations Act, if the meeting is to be held at two or more places the notice must set out details of the technology used to conduct the meeting.
- (c) If any business to be transacted at the general meeting concerns the auditor, notice of the general meeting and copies of any other communications relating to the general meeting that a Member is entitled to receive must be given to the auditor in the same way notice must be given to Members under the Constitution.

## **8 Proceedings of meetings**

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### **8.1 Auditor**

The auditor and their representative may attend and be heard on any part of the business of a general meeting concerning the auditor. The auditor or their representative, if present at the meeting, may be questioned by the Members about the audit.

### **8.2 Quorum**

- (a) The quorum for a general meeting is the presence of at least 5 Members, in person or by electronic means.
- (b) No business may be conducted at a general meeting if a quorum is not present.

### **8.3 Adjournment in absence of quorum**

- (a) 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:
  - (i) if the date is not specified – the same day in the next week;
  - (ii) if the time is not specified – the same time; and
  - (iii) if the place is not specified – the same place.
- (b) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

### **8.4 Chairperson**

- (a) The Chairperson of the Board must be Chairperson at every general meeting.
- (b) If at any general meeting:
  - (i) the Chairperson of the Board is not present at the specified time for holding the meeting; or
  - (ii) the Chairperson of the Board is present but is unwilling to act as Chairperson of the meeting;

then the Members present and entitled to vote at the general meeting may choose another Director as Chairperson of the meeting.

#### **8.5 Using technology to hold meetings**

- (a) The Company may hold a general meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person at the meeting.

#### **8.6 General conduct of meeting**

- (a) Except as set out in the Corporations Act, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as decided by the Chairperson.
- (b) The Chairperson may at any time he or she considers it necessary for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members.

#### **8.7 Adjournment**

- (a) The Chairperson may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (b) If the Chairperson exercises a right of adjournment of a meeting under this rule, the Chairperson has the sole discretion to decide whether to seek the approval of the Members to the adjournment.
- (c) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

#### **8.8 Members' resolutions and statements**

- (a) Members with at least 25% of the votes that may be cast on a resolution may give:
  - (i) written notice to the Company of a resolution they propose to move at a general meeting (Members' resolution); and/or
  - (ii) 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).
- (b) A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- (c) A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.



- (d) 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.
- (e) The percentage of votes that Members have (as described in clause 8.8(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a Members' resolution under clause (a)(i), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- (g) This clause does not limit any other right that a Member has to propose a resolution at a general meeting.

### **8.9 Company must give notice of proposed resolution or distribute statement**

- (a) If the Company has been given a notice or request under clause 8.8:
  - (i) 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
  - (ii) 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.
- (b) The Company does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:
  - (i) it is more than 1,000 words long;
  - (ii) the Board considers it may be defamatory;
  - (iii) clause 8.9(a)(ii) 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
  - (iv) 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.

### **8.10 Circular resolutions of members**

- (a) Subject to clause 8.10(c), the Board may put a resolution to the Members to pass a resolution without a general meeting being held (a circular resolution).
- (b) The Board must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- (c) Circular resolutions cannot be used:

- (i) for a resolution to remove an auditor, appoint a Director or remove a Director;
  - (ii) for passing a special resolution; or
  - (iii) where the Corporations Act or the Constitution requires a meeting to be held.
- (d) A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 8.10(e) or 8.10(f) below.
- (e) Members may sign:
  - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (f) The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **9 The Board**

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### **9.1 Duties**

Directors must comply with their duties, including those duties imposed on them by the Act and Governance Standard 5 of the ACNC Legislation.

### **9.2 Directors**

- (a) The Board must comprise of at least five and up to ten Directors as follows:
  - (i) at least two of the Directors must be persons who ordinarily reside in Victoria;
  - (ii) up to six persons appointed by the Members; and
  - (iii) up to three persons appointed by the Board for such term (up to three years) and upon such conditions as the Board may determine for their particular knowledge, skills and experience.
- (b) In making an appointment to the Board, the Members must consider any recommendations from the Nominations Committee having regard to the Company's policy for the desirable qualities, skills, knowledge and experience for a Director of the Company.
- (c) The Chairperson shall be appointed by the Board for any period the Board decides.

### **9.3 Retirement of Directors**

- (a) A Director must retire from office at the conclusion of the third year following his or her appointment as a Director.
- (b) All Directors are eligible for reappointment for up to three consecutive terms up to a maximum of twelve years from their initial appointment as a Director.

- (c) If there is any query or dispute about retirements under this rule, the Board is to determine which of the Directors are to retire.

#### **9.4 Qualification for Membership of the Board**

- (a) The Board must have a policy setting out criteria for the eligibility of a person for appointment as a Director.
- (b) An individual must not be ineligible to be a Director under the Act of the ACNC Legislation.
- (c) A Director appointed by the Members under rule 9.4(a) must become a Member of the Company and if the person ceases to be a Director the person immediately ceases to be a Member, but is eligible to re-apply for Membership.

#### **9.5 Casual vacancies**

The Board has power to appoint a qualified person as a Director to fill a casual vacancy among the Board until the appointment of a Director by the Members.

#### **9.6 Remuneration of Directors**

- (a) The Directors may be remunerated for their services as Directors as determined by the Members from time to time.
- (b) The Directors are entitled to be reimbursed for expenses incurred in performing their role as Directors as determined by the Board from time to time.

### **10 Vacation of office**

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#### **10.1 Resignation**

A Director may resign from the Board by written notice delivered to the Secretary. The resignation takes effect when the notice is received by the Secretary, or on a later date specified in the notice.

#### **10.2 Removal**

- (a) A Director may be removed from office by a resolution of the Members.
- (b) The Director must be given the opportunity to present his or her case orally or in writing to the Members before the Members determine whether to remove him or her from office.
- (c) A Director removed under rule 10.2(a) retains office until the dissolution or adjournment of the general meeting at which the Director is removed.

#### **10.3 Termination of office of Director**

The office of a Director is vacated upon a Director:

- (a) becoming an insolvent under administration, suspending payment to creditors, or compounding with or assigning the Director's estate for the benefit of creditors;
- (b) becoming a person of unsound mind or is a patient under laws about mental health, or whose estate is administered under laws about mental health;

- (c) being absent from meetings of the Board for three consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be given;
- (d) resigning office by written notice to the Company;
- (e) being removed from office by the Members or under the Corporations Act or the ACNC Legislation; or
- (f) being prohibited from being a Director by reason of the operation of law.

#### **10.4 Directors who are employees of the Company**

The office of a Director who is an employee of the Company and/or any of its subsidiaries, becomes vacant upon the Director ceasing to be employed (so that they are no longer employed by the Company or any subsidiary of the Company) but the person concerned is eligible for reappointment or re-election as a Director of the Company.

### **11 Exercise of voting power**

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#### **11.1 Exercise of voting power in other corporations**

The Board may exercise the voting power conferred by the shares in any corporation owned by the Company at the Board's discretion (including voting in favour of any resolution appointing any of the Directors as Directors of that corporation). A Director may vote in favour of the exercise of those voting rights even if the Director is, or may be about to be appointed, a Director of that other corporation and may be interested in the exercise of those voting rights.

### **12 Proceedings of the Board**

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#### **12.1 Procedures about Board meetings**

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Until otherwise decided by the Board, one half of the Directors form a quorum.
- (c) Notice is considered given to a Director, and all Directors are considered to have consented to the method of giving notice, if notice is sent by mail, personal delivery, by electronic mail to the usual place of residence or electronic address of the Director (if any electronic address is notified to the Company) or at any other address given to the Secretary by the Director subject to the right of the Director to withdraw the consent within a reasonable period before a meeting.

#### **12.2 Meetings by telephone or other means of communication**

- (a) The Board may meet either in person or by telephone or by other means of communication as determined by the Board from time to time.

- (b) All persons participating in the meeting must be able to hear and be heard by all other participants.
- (c) A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, if one or more of the Directors present at the meeting is at that place for the duration of the meeting.

### **12.3 Votes at meetings**

Questions arising at any Board meeting are decided by a majority of votes. The Chairperson has a casting vote if the votes are equal.

### **12.4 Convening of meetings**

- (a) The Directors must meet at least six times each year to conduct the business of the Company.
- (b) A meeting of the Board must be convened if requested by a Director.
- (c) The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum, constitutes a meeting of the Directors. All the provisions in this constitution relating to meetings of the Directors
- (d) apply, as far as they can and with any necessary changes, to meetings of the Directors by telephone or other electronic means.
- (e) A Director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.

### **12.5 Chairperson**

- (a) The Chairperson of the Board is to chair Board meetings.
- (b) If at any meeting the Chairperson is not present at the time specified for holding the meeting (or, if being present, the relevant Director refuses to act as Chairperson), the Directors present may choose one of their number to chair of the meeting.

### **12.6 Competence to exercise powers**

A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

### **12.7 Delegation of powers to Committees**

- (a) The Board may, subject to the law, delegate any of its powers to Committees consisting of one or more Directors or any other person the Board thinks fit.
- (b) A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

### **12.8 Proceedings of Committees**

- (a) Committee proceedings are governed by the proceedings in this document that apply to meetings and proceedings of the Board.
- (b) A Committee must follow instructions imposed by the Board.

- (c) A Committee is under the control and direction of the Board and has no power in the management of the Company.

### **12.9 Validity of acts**

- (a) Acts of the Board, a Committee or a Director, even if it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or that any of them were disqualified, are valid as if each person was duly appointed and qualified, and continued to be a Director or a member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the minimum number fixed under this document, the continuing Directors may act to increase the number of Directors to that number, or to call a general meeting of the Company, but for no other purpose.

### **12.10 Resolution in writing**

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all of the Directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board. It may consist of several documents in the same form each signed by one or more of the Directors.
- (b) A document produced by mechanical or electronic means under the name of a Director with their authority is deemed to be a document in writing signed by that Director.

## **13 Powers of the Board**

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### **13.1 General powers of the Board**

- (a) The Board will be responsible for the overall direction and control of the management of the Company and the formulation of policies to be applied in carrying out the Company's Purpose.
- (b) Subject to rule 13.3, the management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by this document) may exercise all powers and do all things as are within the power of the Company and are not by this document or by Corporations Act directed or required to be exercised or done by the Company in general meeting.
- (c) The Board may make regulations and by-laws consistent with the Constitution, which in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company's finances, affairs and property, or are necessary to give effect to the company's strategy and amend or rescind any regulations and by-laws.
- (d) A regulation or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting.
- (e) A resolution or regulation made by the Company in general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

### **13.2 Directors may contract with Company**

- (a) A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company or any other person either as buyer, seller or otherwise. No contract or arrangement with the Company or any other person by a Director or any contract or arrangement by or for the Company or any other person in which a Director is in any way interested may be avoided for that reason.
- (b) A Director need not account to the Company for any profit realised by any contract or arrangement, by reason of holding the office of or of the fiduciary relationship established by the office.
- (c) No Director may as a Director vote in respect of any contract or arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Corporations Act and if the Director does vote his vote may not be counted. The Director must not be counted in the quorum present at the meeting. These prohibitions may be relaxed or suspended by ordinary resolution passed at a general meeting, subject to the Corporations Act.
- (d) A Director interested in any contract or arrangement may, despite the interest, attest the affixing of the Seal to, or otherwise sign any document evidencing or otherwise connected with the contract or arrangement.

### **13.3 Accountability to Members**

The Directors must account to the Members in relation to the affairs of the Company.

## **14 Company Secretary**

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- (a) The Secretary shall be appointed by the Board and holds office on the terms and conditions the Board decides. The Secretary may also be a Director of the Company.
- (b) Even if the Secretary is not a Director, the Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- (c) The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## **15 Other salaried officers**

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The Board may appoint and dismiss officers and employees on the terms it thinks fit.

## **16 The Seal**

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### **16.1 Company Seal is optional**

The Company may have a Seal.

### **16.2 Affixing the Seal**

- (a) The Seal must only be used with the authority of the Board.
- (b) Every document to which the Seal is affixed must be signed by a Director and countersigned by the Secretary or by a second Director, or another person appointed by the Board for the purpose.

- (c) The Board may affix a signature by mechanical means.

### **16.3 Execution of documents without a Seal**

The Company may sign a document without a seal, including a deed, by having the document signed by:

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

### **16.4 Other ways of executing documents**

Despite rules 16.2 and 16.3, any document including a deed, may also be signed by the Company in any other manner permitted by law.

## **17 Minutes**

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### **17.1 Contents of minutes**

The Board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the Directors present at each meeting of the Company, the Board and of Committees; and
- (b) details of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and Committees.

### **17.2 Signing of minutes**

The minutes of a meeting of the Board or of a Committee or of the Company, if signed by the Chairperson of the meeting or by the Chairperson of the next meeting, are prima facie evidence of the matters stated in the minutes.

## **18 Amending this Constitution**

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- (a) The Company may only alter this Constitution by special resolution in accordance with the Corporations Act.
- (b) The Members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.

## **19 Notices**

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### **19.1 Service of notices**

- (a) A notice may be given by the Company to a Member:
  - (i) by personally giving it to their Member Representative;
  - (ii) by leaving it at the Member's Registered Address;
  - (iii) by sending it by prepaid post or courier or facsimile transmission to the Member's Registered Address; or
  - (iv) by sending it to the electronic address (if any) nominated by the Member.



- (b) All notices sent by prepaid post or courier to the Member whose Registered Address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

## **19.2 When notice deemed to be served**

- (a) A notice sent by post is considered served at the expiration of five Business Days after the envelope containing the notice is posted. It is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (b) A notice served on a Member personally delivered by courier to, or left at the Member's Registered Address is considered served when delivered.
- (c) A notice served on a Member by facsimile transmission is considered served when the transmission is sent. A facsimile is considered sent when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee.
- (d) A notice served on a Member by electronic means is considered served when the electronic message is sent to the electronic address provided. An email is considered sent unless within three hours of the transmission, the sender's email system generates a message that the email has not been delivered to the email address.

## **19.3 Member not known at Registered Address**

Where a Member does not have a Registered Address or where the Company has bona fide reason to believe that the Member is not known at the Member's Registered Address, all future notices are considered given to the Member if the notice is exhibited in the Office, for a period of 48 hours (and is considered served at the commencement of that period), until the Member informs the Company of a Registered Address.

## **19.4 Signature to notice**

The signature on any notice given by the Company may be written or printed.

## **19.5 Reckoning of period of notice**

Where a given number of days' notice or notice extending over any other period is required to be given, the day of service is not to be counted in the number of days or other period.

## **19.6 Persons entitled to notice of general meeting**

- (a) Notice of every general meeting is to be given to:
  - (i) a Member;
  - (ii) each Director;
  - (iii) the Secretary; and
  - (iv) the auditor for the time being of the Company.
- (b) Other persons may receive notices of general meetings at the discretion of the Chairperson.

### **19.7 Notification of change of address**

A Member must notify the Company of any change of address and any new address must be entered in the Register which will then become the Member's Registered Address.

## **20 Indemnity and insurance**

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### **20.1 Indemnity in favour of Directors, Secretaries and Executive Officers**

Subject to the Corporations Act and the provisions of this rule, the Company must indemnify each Director, Secretary and Executive Officer to the maximum extent permitted by law, against any Liability incurred by them because of their holding office as, and acting in the capacity of, Director, Secretary or Executive Officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G Corporations Act or a compensation order under section 1317H Corporations Act; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

### **20.2 Indemnity for legal costs**

The Company must indemnify each Director, Secretary and Executive Officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them because of their holding office as, and acting in the capacity of, Director, Secretary or Executive Officer of the Company other than for legal costs incurred:

- (a) in defending or resisting Proceedings, in which the Director, Secretary or Executive Officer is found to have a Liability for which they could not be indemnified under rule 20.1;
- (b) in defending or resisting criminal Proceedings in which the Director, Secretary or Executive Officer is found guilty;
- (c) in defending or resisting Proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 20.2(c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing Proceedings for the court order); or
- (d) in Proceedings for relief to the Director, Secretary or Executive Officer under the Corporations Act in which the court denies the relief.

### **20.3 Indemnity for employees**

Subject to the Corporations Act and rule 20.4 the Company may indemnify an employee, who is not a Director, Secretary or Executive Officer of the Company, to the maximum extent permitted by law, against any Liability incurred by them because of their holding office as, and acting in the capacity of, an Officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;

- (b) a Liability for a pecuniary penalty order under section 1317G Corporations Act or a compensation order under section 1317H Corporations Act; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

#### **20.4 Indemnity for legal costs of employees**

The Company may indemnify an employee other than a Director, Secretary or Executive Officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or because of their holding office as, and acting in the capacity of, an Officer of the Company other than for legal costs incurred:

- (a) in defending or resisting Proceedings, in which the Officer is found to have a Liability for which they could not be indemnified under rule 19.3;
- (b) in defending or resisting criminal Proceedings in which the Officer is found guilty;
- (c) in defending or resisting Proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 20.4 does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing Proceedings for the court order); or in proceedings for relief to the Officer under the Corporations Act in which the court denies the relief.

#### **20.5 Proceedings**

For the purposes of rule 20.2 and 20.4 'proceedings' includes the outcomes of the proceedings and any appeal about the proceedings.

#### **20.6 Insurance for the benefit of Directors, Secretaries and Executive Officers**

Subject to the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or Executive Officer of the Company acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a liability arising from negligence or other conduct.

#### **20.7 Insurance for other Officers**

Subject to the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an employee and also an Officer of the Company, acting in that capacity, but who is not a Director, Secretary or Executive Officer of the Company against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

## 20.8 When insurance may not be provided by the Company

The Company must not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or Executive Officer or an employee who is also an Officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty about the Company; or
- (b) a contravention of section 182 or section 183 Corporations Act.

## 20.9 Definitions for rule 20

In rule 20:

Term	Definition
<b>Executive Officer</b>	means a person who is concerned, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a Director of the Company).
<b>Liability</b>	includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense.
<b>Officer</b>	means: a Director or Secretary of the Company; a person: <ul style="list-style-type: none"><li>(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;</li><li>(ii) who has the capacity to affect significantly the Company's financial standing; or</li><li>(iii) under whose instructions or wishes the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Board or the Company).</li></ul>