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## Constitution of Encircle Community Services Ltd

ACN 169 899 914  
ABN 87 944 092 271

A company limited by guarantee

Date: 26 October 2022

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# Constitution of Encircle Community Services Ltd

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## 1. Name

The name of the company is 'Encircle Community Services Ltd'.

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## 2. Type of company

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

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## 3. Objects

The objects of the company are to operate as a charity for the benefit of individuals, families and communities, targeting the most disadvantaged by:

- 3.1 Fostering cooperation between persons, groups and organisations in relation to community wellbeing.
- 3.2 Promoting and assisting the development and implementation of community services engaged in the relief of poverty, homelessness, legal and social distress including domestic violence or disadvantage.
- 3.3 Coordinating and supporting community development activities and advocating to governments and the community for adequate resources.
- 3.4 Facilitating and participating in public forums and seminars on community issues.
- 3.5 Encouraging community involvement and participating in meeting the objectives of the company.
- 3.6 Undertaking other activities and functions which are incidental to the attainment of the objectives of the company.

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## 4. Powers

- 4.1 The company has the powers of:
  - (a) an individual; and
  - (b) a company limited by guarantee under the Corporations Act,which the company may only use to carry out its object(s) as set out in clause 3.
- 4.2 The company may, for example:
  - (a) enter into contracts;
  - (b) acquire, hold, deal with and dispose of property;
  - (c) make charges for services and facilities it supplies; and
  - (d) do other things necessary or convenient to be done in carrying out its affairs and/or objects.

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## **5. Not-for-profit**

- 5.1 The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 5.2 and 55.
- 5.2 Clause 5.1 does not stop the company from doing the following, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company; or
  - (b) making a payment to a member in carrying out the company's object(s).

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## **6. Classes of members**

- 6.1 The membership of the company shall consist of:
- (a) ordinary members; and
  - (b) life members.
- 6.2 The number of ordinary members is unlimited.
- 6.3 For the purposes of voting, each member will hold a single vote, cast by their nominated representative.

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## **7. New membership**

- 7.1 An applicant for ordinary membership of the company must be proposed by one member of the company (the proposer) and seconded by another member (the seconder).
- 7.2 An application for ordinary membership must be:
- (a) in writing;
  - (b) signed by the applicant and the applicant's proposer and seconder; and
  - (c) in the form decided by the board of directors.
- 7.3 The membership application form must inform the applicant of the guarantee liability of members (see clause 8) and that the company holds public liability insurance and the amount of such insurance.
- 7.4 Life membership may be determined from time to time by the board of directors in its sole discretion where a member is deemed to have made a significant contribution to the company.

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## **8. Members' liability**

If the company is wound up while the member is a member, or within 12 months after the member stops being a member, the member's liability shall be \$10.00 only, which is to be used to pay for:

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

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## **9. Approval of new members**

- 9.1 The board of directors must consider an application for membership at the next meeting of the board held after it receives an application
- 9.2 The directors must decide at the meeting whether to approve or not approve the application.
- 9.3 If a majority of the directors present at the meeting vote to accept the applicant as a member, the applicant must be accepted as a member.
- 9.4 The secretary of the company must, as soon as practicable, after the directors, decide to approve or not approve an application, give the applicant a written notice of the decision. The directors are not required to give reasons.

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## **10. When membership starts**

An applicant will become a member when they are entered on the company's register of members.

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## **11. When membership ends**

- 11.1 A member may resign from the company by giving a written notice of resignation to the secretary.
- 11.2 The resignation takes effect on:
  - (a) the day and at the time the notice is received by the secretary; or
  - (b) if a later day is stated in the notice, the later day.
- 11.3 The board of directors may resolve to suspend or terminate a member's membership if the member:
  - (a) is convicted of an indictable offence;
  - (b) does not comply with any of the provisions of this constitution;
  - (c) conducts himself or herself in a way considered by the board to be injurious or prejudicial to the character or interests of the company.
  - (d) a member is, or any step is taken for that member to become, either an insolvent under administration or an externally administered body corporate; or
  - (e) there is a succession by another body corporate or entity to the assets and liabilities of the member.
- 11.4 Before the board of directors pass any resolution under clause 11.3, the directors must give the member at least 14 days notice of the proposed resolution and a full and fair opportunity to show why the membership should not be terminated.
- 11.5 If, after considering all representations made by the member in accordance with clause 11.4, the board of directors decides to suspend or terminate the membership, the secretary must give the member a written notice of the decision as soon as practicable.
- 11.6 A member will otherwise immediately stop being a member if:

- (a) they are deceased;
- (b) the company is wound up or otherwise dissolved or deregistered;
- (c) they resign, in accordance with clause 11.2; or
- (d) they have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

11.7 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.

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## 12. Dispute resolution

12.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:

- (a) one or more members;
- (b) one or more directors; or
- (c) the Company.

12.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 11 until the disciplinary procedure is completed.

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

12.4 If those involved in the dispute do not resolve it under clause 12.4, they must within 10 days:

- (a) tell the directors about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

12.5 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
  - (i) for disputes between members, a person chosen by the directors; or
  - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.

12.6 A mediator chosen by the directors under clause 12.5(b)(i):

- (a) may be a member or former member of the company
- (b) must not have a personal interest in the dispute; and

- (c) must not be biased towards or against anyone involved in the dispute.
- 12.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and
  - (d) not make a decision on the dispute.

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## 13. Register of members

- 13.1 The register of members must include the following particulars for each current member and former member who stopped being a member of the company within the last seven years:
- (a) the full name of the member;
  - (b) the postal, residential or email address of the member;
  - (c) any alternative address nominated by the member for the service of notices;
  - (d) the date of admission as a member;
  - (e) the date of death or time of resignation of the member;
  - (f) details about the termination or reinstatement of membership; and
  - (g) any other particulars the board of directors or the members at a special general meeting decide.
- 13.2 The register must be open for inspection by members of the company at all reasonable times.
- 13.3 A member must contact the secretary to arrange an inspection of the register.

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## 14. Prohibition on use of information on register of members

- 14.1 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members, in particular, a member of the company must not:
- (a) use information obtained from the register of members of the company to contact, or send material to, another member of the company for the purpose of advertising for political, religious, charitable or commercial purposes; or
  - (b) disclose information obtained from the register to someone else, knowing that the information is likely to be used to contact, or send material to, another member of the company for the purpose of advertising for political, religious, charitable or commercial purposes.
- 14.2 Clause 14.1 does not apply if the use or disclosure of the information is approved by the company.

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## 15. Membership of the board of directors

- 15.1 The board will consist of a minimum of 5 directors. The maximum number of directors will be decided by the board.
- 15.2 A member of the board of directors must be a member of the company.
- 15.3 Ideally, the board will include a balanced representation of members from:
- (a) professions whose skills and experience will contribute to the board of directors and the company,
  - (b) the geographical area serviced by the company,
  - (c) diverse services and activities within the community sector,
  - (d) all genders; and
  - (e) diverse cultures.
- 15.4 A member of the company may be appointed to a casual vacancy on the board of directors under clause 20.

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## 16. Electing the board of directors

- 16.1 A director may only be elected as follows:
- (a) any two members of the company may nominate another member (the candidate) to serve as a director;
  - (b) the nomination must be:
    - (i) in writing;
    - (ii) signed by the candidate and the members who nominated him or her; and
    - (iii) given to the secretary at least fourteen days before the annual general meeting at which the election is to be held;
  - (c) each member of the company present and eligible to vote at the annual general meeting may vote for one candidate for each vacant position on the board of directors.
- 16.2 The board will ensure that at all times the company has in place a transparent procedure for assessing the suitability of a member to be a director, the outcome of which procedure is that a member "is recommended" or "is not recommended" to become a director, and which recommendation is communicated to members in accordance with clause 16.5.
- 16.3 Notwithstanding the outcome of the process referred to in clause 16.2, any member may still nominate as a director in accordance with clause 16.1.
- 16.4 A person may be a candidate only if the person is:
- (a) aged 18 years and over;
  - (b) a member of the company; and

- (c) not ineligible to be elected as a director under the Corporations Act or the ACNC Act.
- 16.5 A list of the candidates' names in alphabetical order, with the names of the members who nominated each candidate and the recommendation of the board pursuant to clause 16.2, must be posted in a conspicuous place in the office or usual place of meeting of the company, and on the company's website, for at least seven days immediately preceding the annual general meeting.
- 16.6 If required by the board of directors, balloting lists must be prepared containing the names of the candidates in alphabetical order.
- 16.7 The directors must ensure that, before a candidate is elected as a member of the board, the candidate is advised that the company holds public liability insurance and the amount of such insurance.

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## **17. Term of director including maximum term**

- 17.1 At each annual general meeting:
  - (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire; and
  - (b) at least one-third of the remaining directors must retire.
- 17.2 The directors who must retire at each annual general meeting under clause 17.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 17.3 Other than a director appointed under clause 17.1(a), a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 17.4 Each director must retire at least once every three years.
- 17.5 A director who retires under clause 17.1 may nominate for election or re-election, subject to clause 17.6.
- 17.6 A director who has held office for a continuous period of nine (9) years or more may only be re-appointed or re-elected by a special resolution

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## **18. Appointment and role of the secretary**

- 18.1 The company must have at least one secretary, who may also be a director.
- 18.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- 18.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 18.4 The secretary's functions include, but are not limited to:
  - (a) calling meetings of the board, including preparing notices of a meeting and of the business to be conducted at the meeting in consultation with the chairperson of the board;

- (b) ensuring that minutes and other records (including notices of meetings and resolutions) are kept of each meeting;
  - (c) keeping copies of all correspondence and other documents relating to the company; and
  - (d) maintaining the register of members of the company.
- 18.5 Unless otherwise delegated by the board of directors, the secretary will act as the public officer of the company.

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## **19. Resignation, removal or vacation of office of a director**

- 19.1 A director may resign from the board by giving written notice of resignation to the secretary.
- 19.2 The resignation takes effect at:
- (a) the time the notice is received by the secretary; or
  - (b) if a later time is stated in the notice, the later time.
- 19.3 A director may be removed from office at a special general meeting of the company if a majority of the members present and eligible to vote at the meeting vote in favour of removing the director.
- 19.4 Before a vote of members is taken about removing the director from office, reasons for removal must be given and the director must be given a full and fair opportunity to show cause why they should not be removed from office.
- 19.5 A director has no right of appeal against his or her removal from office under this clause.
- 19.6 A director will otherwise immediately stop being a director of the company if they:
- (a) are deceased;
  - (b) are absent for 3 consecutive directors' meetings without approval from the directors; or
  - (c) become ineligible to be a director of the company under the Corporations Act or the ACNC Act.

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## **20. Vacancies on the board of directors**

- 20.1 If a casual vacancy happens on the board of directors, the continuing members of the board may appoint another member of the company to fill the vacancy until the next annual general meeting, provided that member:
- (a) gives the company their signed consent to act as a director of the company; and
  - (b) is not ineligible to be a director under the Corporations Act or the ACNC Act.
- 20.2 If a vacancy happens in the office of secretary, the directors must ensure a secretary is appointed or elected for the company within one (1) month after the vacancy happens.

- 20.3 The continuing members of the board may act despite a casual vacancy on the board.
- 20.4 However, if the number of directors is fewer than the number fixed under clause 26.1 as a quorum of the directors, the continuing directors may act only to:
- (a) increase the number of directors to the number required for a quorum; or
  - (b) call a special general meeting of the company.

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## **21. Functions of the board of directors**

- 21.1 The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company,
  - (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 3
  - (c) not to misuse their position as a director;
  - (d) not to misuse information they gain in their role as a director;
  - (e) to disclose any perceived or actual material conflicts of interest;
  - (f) to ensure that the financial affairs of the company are managed responsibly; and
  - (g) not to allow the company to operate while it is insolvent.
- 21.2 Subject to these rules or any Special Resolution of the members of the company carried at a special general meeting, the directors have the general control and management of the administration of the affairs, property and funds of the company and may exercise all the powers of the company, except for power that, under the Corporations Act or this constitution, may only be used by members.
- 21.3 The board of directors has authority to interpret the meaning of these rules and any matter relating to the company on which the rules are silent, but any interpretations must have regard to the relevant Acts, including any regulation made under these Acts.

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## **22. Payments to directors**

- 22.1 The company must not pay fees to a director for acting as a director.
- 22.2 The company may:
- (a) pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- 22.3 Any payment made under clause 22.2 must be approved by the directors.

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## **23. Meetings of the board of directors**

- 23.1 Subject to this clause, the board of directors may meet and conduct its proceedings as it considers appropriate.
- 23.2 The board of directors must meet at least once every four months to exercise its functions.
- 23.3 The directors must decide how a meeting is to be called.
- 23.4 Notice of a meeting is to be given in the way decided by the directors.
- 23.5 The board of directors may hold meetings, or permit a director to take part in its meetings, by using any technology (such as video or teleconferencing) that reasonably allows the director to hear and take part in discussions as they happen.
- 23.6 A director who participates in the meeting as mentioned in clause 23.5 is taken to be present at the meeting.
- 23.7 A matter for resolution arising at a board meeting is passed if more votes are cast by directors entitled to vote in favour of the resolution than against it, and if the votes are equal, the resolution is decided in the negative.
- 23.8 The chairperson is to chair the board meeting.
- 23.9 If there is no chairperson or if the chairperson is not present within ten minutes after the time fixed for a board meeting, the directors may choose one of their number to chair the meeting.

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## **24. Conflicts of interest**

- 24.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors; or
  - (b) if all of the directors have the same conflict of interest, to advise the members at the next general meeting, or at an earlier time if reasonable to do so.
- 24.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 24.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 24.4:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 24.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the company, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 25);

- (c) their interest relates to a payment by the company under clause 25 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

24.5 The Secretary shall cause a Register of potential Conflicts of Interest to be created and maintained.

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## 25. Indemnity, insurance and access

### 25.1 Indemnity

25.1.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.

25.1.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

25.1.3 In this clause, 'to the relevant extent' means:

- (a) to the extent that the company is not precluded by law (including the Corporations Act) from doing so; and
- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

25.1.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

### 25.2 Insurance

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

### 25.3 Directors' access to documents

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

25.3.2 If the directors agree, the company must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors; and

- (b) any other documents referred to in those documents.

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## **26. Quorum for and adjournment of board meeting**

- 26.1 At a board meeting, more than 50% of the directors elected to the board as at the close of the last annual or applicable special general meeting of the members form a quorum and additionally, directors appointed to fill a casual vacancy after the last annual or applicable special general meeting will be included in establishing the quorum.
- 26.2 If there is no quorum within thirty minutes after the time fixed for a board meeting called on the request of members of the board, the meeting lapses.
- 26.3 If there is no quorum within thirty minutes after the time fixed for a board meeting called other than on the request of the directors:
- (a) the meeting is to be adjourned for at least one day; and
  - (b) the directors who are present are to decide the day, time and place of the adjourned meeting.
- 26.4 If, at an adjourned meeting mentioned in clause 26.3, there is no quorum within thirty minutes after the time fixed for the meeting, the meeting lapses.

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## **27. Special meeting of board of directors**

- 27.1 If the secretary receives a written request signed by at least 33% of the directors, the secretary must call a special meeting of the board by giving each director notice of the meeting within fourteen days after the secretary receives the request.
- 27.2 If the secretary is unable or unwilling to call the special meeting, the chairperson must call the meeting.
- 27.3 A request for a special meeting must state:
- (a) why the special meeting is called; and
  - (b) the business to be conducted at the meeting
- 27.4 A notice of the special meeting must state:
- (a) the day, time and place of the meeting; and
  - (b) the business to be conducted at the meeting
- 27.5 A special meeting of the board of directors must be held within fourteen days after notice of the meeting is given to the directors.
- 27.6 For the avoidance of any doubt, clauses 23.5 to 23.9 inclusive apply to special meetings.

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## **28. Minutes of board meetings**

- 28.1 The secretary must ensure full and accurate minutes of all questions, matters, resolutions (including written resolutions) and other proceedings of each board meeting are entered in a minute book in a timely manner.
- 28.2 To ensure the accuracy of the minutes, the minutes of each board meeting must be signed by the chairperson of the meeting, or the chairperson of the next board meeting, verifying their accuracy.

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## **29. Appointment of subcommittees**

- 29.1 The board of directors may appoint a subcommittee consisting of members of the company considered appropriate by the board to help with the conduct of the company's operations.
- 29.2 A member of the subcommittee who is not a member of the board of directors is not entitled to vote at a board meeting.
- 29.3 A subcommittee may elect a chairperson of its meetings.
- 29.4 If a chairperson is not elected, or if the chairperson is not present within ten minutes after the time fixed for a meeting, the members present may choose one of their number to be a chairperson of the meeting.
- 29.5 A subcommittee may meet and adjourn as it considers appropriate.
- 29.6 A question arising at a subcommittee meeting is to be decided by a majority vote of the members present at the meeting and, if the votes are equal, the question is to be decided in the negative.

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## **30. Chief executive officer**

- 30.1 The directors may appoint any person, not being a director, to the position of chief executive officer for the period and on the terms (including as to remuneration) they see fit.
- 30.2 The chief executive officer is not a member of the board of directors of the company but may attend meetings of the board except where the directors otherwise request.
- 30.3 The directors may, upon terms and conditions and with any restrictions they see fit, confer on an chief executive officer any of the powers that the directors can exercise.
- 30.4 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.
- 30.5 The directors may revoke or vary an appointment, or any of the powers conferred on chief executive officer.
- 30.6 If an chief executive officer becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as chief executive officer.

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## **31. Acts not affected by defects or disqualification**

- 31.1 An act performed by the board of directors, a subcommittee or a person acting as a member of the board is taken to have been validly performed.
- 31.2 Clause 31.1 applies even if the act was performed when:
- (a) there was a defect in the appointment of a director, subcommittee or person acting as a member of the board; or
  - (b) a director, subcommittee member or person acting as a member of the board was disqualified from being a member,
- if that circumstance was not known by the board, committee or person (as the case may be) when the act was done.

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## **32. Resolutions of board without meeting**

- 32.1 A written resolution signed by each director is as valid and effectual as if it had been passed at a board meeting that was properly called and held.
- 32.2 A resolution mentioned in clause 32.1 may consist of several documents in like form, each signed by one or more members of the board.
- 32.3 An email from a director may serve as a written resolution and may be agreed to by email for the purposes of clause 32.1 but only if sent from an email address previously notified to the secretary.
- 32.4 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner in the manner set out in clause 32.3

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## **33. Annual general meeting**

- 33.1 Each annual general meeting must be held:
- (a) at least once each year; and
  - (b) within six months after the end date of the company's reportable financial year
- 33.2 The secretary must give members 21 days notice of an annual general meeting.

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## **34. Business to be conducted at an annual general meeting**

- 34.1 The following business must be conducted at each annual general meeting of the company:
- (a) receiving the company's financial statement, and audit report, for the last reportable financial year;
  - (b) presenting the financial statement and audit report to the meeting for adoption;
  - (c) electing members of the board of directors; and
  - (d) appointing an auditor or an accountant for the present financial year any other business determined by the board of directors.

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## **35. Special general meeting**

- 35.1 The secretary must call a special general meeting by giving each member of the company notice of the meeting within fourteen days after:
- (a) being directed to call the meeting by the board of directors; or
  - (b) being given a written request signed by:
    - (i) at least 33% of the number of members of the board of directors when the request is signed; or
    - (ii) at least the number of ordinary members of the company equal to double the number of members of the company on the board when the request is signed plus one.
- 35.2 A request mentioned in clause 35.1(b) must state:

- (a) why the special general meeting is being called; and
  - (b) the business to be conducted at the meeting.
- 35.3 A special general meeting must be held within three months after the secretary:
- (a) is directed to call the meeting by the board of directors;
  - (b) is given the written request mentioned in clause 35.1(b); or
  - (c) is given the written notice of intention to appeal mentioned in clause **Error! Reference source not found..**

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## 36. Notice of General Meetings

- 36.1 Notice of a general meeting must be given to:
- (a) each member entitled to vote at the meeting;
  - (b) each director; and
  - (c) the auditor (if any).
- 36.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 36.3 Members may elect to receive notice:
- (a) in person;
  - (b) by post;
  - (c) by facsimile; or
  - (d) by electronic means.
- 36.4 Subject to clause 36.5, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand; or
  - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 36.5 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
  - (b) appoint a director in order to replace a director who was removed; or
  - (c) remove an auditor.
- 36.6 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in one or more physical venues and using virtual technology or using virtual technology only, the technology that will be used to facilitate this)

- (b) the general nature of the meeting's business;
- (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - (i) the proxy does not need to be a member of the company; and
  - (ii) the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting;

36.7 If a general meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

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### **37. Quorum for, and adjournment of, annual or special general meeting**

- 37.1 The quorum for an annual or special general meeting is at least the number of members elected or appointed to the board of directors at the close of the last annual general meeting plus one.
- 37.2 No business may be conducted at an annual or special general meeting unless there is a quorum of members when the meeting proceeds to business.
- 37.3 If there is no quorum within thirty minutes after the time fixed for an annual or general meeting called on the request of the board of directors or the company, the meeting lapses.
- 37.4 If there is no quorum within thirty minutes after the time fixed for an annual or general meeting called other than on the request of the board or the company:
  - (a) the meeting is to be adjourned for at least seven days; and
  - (b) the board is to decide the day, time and place of the adjourned meeting
- 37.5 The chairperson may, with the consent of any meeting at which there is a quorum, and must if directed by the meeting, adjourn the meeting from time to time and place to place.
- 37.6 If a meeting is adjourned under clause 37.5, only the business left unfinished at the meeting from which the adjournment took place may be conducted at the adjourned meeting.
- 37.7 The secretary is not required to give the members notice of an adjournment or of business to be conducted at an adjourned meeting unless a meeting is adjourned for at least thirty days.
- 37.8 If a meeting is adjourned for at least thirty days, notice of the adjourned meeting must be given in the same way notice is given for an original meeting.

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### **38. Auditor's right to attend meetings**

- 38.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

- 38.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

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## **39. Procedure at annual or special general meeting**

- 39.1 A member may take part and vote at an annual or special general meeting in person, by proxy, by attorney or by using any technology that reasonably allows the member to hear and take part in discussions as they happen.
- 39.2 A member who participates in an annual or special general meeting as mentioned in clause 39.1 is taken to be present at the meeting
- 39.3 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.
- 39.4 At each annual or special general meeting:
- (a) the chairperson is to preside as chairperson;
  - (b) if there is no chairperson or if the chairperson is not present within ten minutes after the time fixed for the meeting or is unwilling to act, the members present must elect one of their number to be chairperson of the meeting; and
  - (c) the chairperson must conduct the meeting in a proper and orderly way.

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## **40. Voting at annual or special general meetings**

- 40.1 At an annual or special general meeting:
- (a) each question, matter or ordinary resolution must be decided by a majority of votes of the members present, either in person or by proxies; and
  - (b) each Special Resolution must be decided by a vote of 75% of the members present, either in person or by proxies, and who are entitled to vote on the resolution.
- 40.2 Each member present and eligible to vote is entitled to one vote only and, if the votes are equal, the chairperson has a casting vote as well as a primary vote.
- 40.3 A member is not entitled to vote at an annual or special general meeting if the member's annual subscription is in arrears at the date of the meeting.
- 40.4 If at least 20% of the members present demand a secret ballot, voting must be by secret ballot.
- 40.5 If a secret ballot is held, the chairperson must appoint two members to conduct the ballot in the way the chairperson decides.
- 40.6 The result of a secret ballot as declared by the chairperson is taken to be resolution the meeting at which the ballot was held.

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## **41. Challenge to member's right to vote**

- 41.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.

- 41.2 If a challenge is made under clause 41.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

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## 42. Minutes of annual and special general meetings

- 42.1 The secretary must ensure full and accurate minutes of all questions, matters, resolutions (including written resolutions) and other proceedings of each annual or special general meeting are entered in a minute book in a timely manner, together with each notice of general meeting.
- 42.2 To ensure the accuracy of the minutes the minutes of each annual or special general meeting must be signed within a reasonable time after the meeting by the chairperson of the annual or special general meeting, or the chairperson of the next annual or special general meeting, verifying their accuracy.
- 42.3 If asked by a member of the company, the secretary must, within 28 days after the request is made:
- (a) Make the minute book for a particular annual or special general meeting available for inspection by the member at a mutually agreed time and place and
  - (b) Give the member copies of the minutes of the meeting
- 42.4 The company may require the member to pay the reasonable costs of providing of the minutes.

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## 43. Appointment of proxy

- 43.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf. A proxy may be a member of the company or another person.
- 43.2 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) vote in a vote in a secret ballot (but only to the extent allowed by the appointment); and
  - (c) join in to demand a secret ballot under clause 40.4.
- 43.3 An instrument appointing a proxy must be in writing and be in following or similar form:
- [Name of company]:*
- I \_\_\_\_\_, of \_\_\_\_\_, being a member of the company, appoint \_\_\_\_\_, of \_\_\_\_\_, as my proxy to vote for me on my behalf at the (annual/special) [strike out whichever is not wanted] general meeting of the company, to be held on the \_\_\_\_ day of 20\_\_\_\_.
- And at any adjournment of the meeting.
- Signed this \_\_\_\_ day of 20\_\_\_\_.
- Signature \_\_\_\_\_.
- 43.4 The instrument appointing a proxy must:

- (a) if the appointor is an individual, be signed by the appointer or the appointor's attorney properly authorised in writing; or
- (b) if the appointor is the nominated representative of an organisational or business member:
  - (i) be under seal; or
  - (ii) be signed by a properly authorised officer or attorney of the organisation or business.

43.5 The instrument appointing a proxy is taken to confer authority to join in demanding a secret ballot.

43.6 Each instrument appointing a proxy must be given to the secretary before start of the meeting or adjourned meeting at which the person named in the instrument proposed to vote.

43.7 If a member wants a proxy to vote for or against a resolution, the instrument appointing the proxy must be in the following or similar form:

[Name of company]:

I, \_\_\_\_\_ of \_\_\_\_\_, being a member of the company, appoint \_\_\_\_\_ of \_\_\_\_\_ as my proxy to vote for me on my behalf at the (annual/special) [strike out whichever is not wanted] general meeting of the company, to be held on the \_\_\_\_ day of 20\_\_\_\_.

Signature

This form is to be used \*in favour of/against\* [strike out whichever is not wanted] the following resolutions – [List relevant resolutions]

43.8 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

43.9 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of a representative or agent who appointed the proxy.

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## 44. Voting by proxy

44.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).

44.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;

- (b) if the way they must vote is specified on the proxy form, must vote that way; and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

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## **45. Representatives of members**

- 45.1 An incorporated member may appoint as a representative:
  - (a) one individual to represent the member at meetings; and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 45.2 The appointment of a representative by a member must:
  - (a) be in writing;
  - (b) include the name of the representative;
  - (c) be signed on behalf of the member; and
  - (d) be given to the company or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 45.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 45.4 The appointment may be standing (ongoing).

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## **46. Alteration of the constitution**

- 46.1 Subject to the Corporations Act, this constitution may be amended, repealed or added to by passing a special resolution carried at a special general meeting.
- 46.2 The members must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.

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## **47. Common seal**

- 47.1 The board of directors must ensure the company has a common seal.
- 47.2 The common seal must be:
  - (a) kept securely by the directors; and
  - (b) used only under the authority of the board of directors.
- 47.3 Each instrument to which the seal is attached must be signed by a member of the board and countersigned by:
  - (a) the secretary;
  - (b) another member of the board; or
  - (c) a person authorised by the board.

- 47.4 The company may execute a document without using a common seal if the document is signed by:
- (a) two directors of the company, or
  - (b) a director and the secretary.

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## **48. Funds and accounts**

- 48.1 The funds of the company must be kept in an account held in the name of the company in one or more financial institutions as decided by the board of directors.
- 48.2 The company must make and keep written financial records that:
- (a) are in the English language showing full and accurate particulars of the financial affairs of the company.
  - (b) correctly record and explain its operations, transactions and financial position and performance; and
  - (c) enable true and fair financial statements to be prepared and to be audited.
- 48.3 The company must retain its financial records referred to in clause 48.2 for at least 7 years.
- 48.4 The directors must take reasonable steps to ensure that the company's records are kept safe.
- 48.5 All amounts of money received by the company, in whatever form, must be deposited in a financial institution account referred to in clause 48.1 as soon as practicable after receipt.
- 48.6 Any payment by the company of an amount in excess of the amount determined the board of directors must be paid by means other than cash.
- 48.7 All non-cash financial transactions may be conducted by cheque, electronic funds transfer (EFT or EFTPOS), debit card, credit card or other means (e.g. fuel cards) as approved from time to time by the board of directors.
- Any such financial transaction may be approved and signed by two of the following:
- (a) the chairperson;
  - (b) the vice-chairperson;
  - (c) the secretary;
  - (d) the chair of the Finance Audit and Risk Management Committee; or
  - (e) any member of the company's staff authorised by the board of directors to make financial transactions.
- 48.8 A petty cash account must be kept on the imprest system, and the board of directors must decide the amount of petty cash kept in the account.
- 48.9 All expenditure or transfer of money from any company account must be approved or ratified at a board meeting.

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## **49. General financial matters**

- 49.1 On behalf of the board of directors, the Chairperson of the Finance Audit and Risk Management Committee must, as soon as practicable after the end date of each financial year, ensure a financial statement for the last reportable financial year is prepared.
- 49.2 The income, funds and property of the company must be used solely in promoting the company's objects and exercising the company's powers.
- 49.3 No part of the company's income, funds or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members.

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## **50. Documents**

The board of directors must ensure the safe custody of books, documents, files, instruments of title and securities of the company.

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## **51. Notice to the company**

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

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

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## **52. Notice to members**

- 52.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
  - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
  - (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 52.2 If the company does not have an address for the member, the company is not required to give notice in person.

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## **53. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 52.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

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## **54. Financial year**

The end date of the company's financial year is 30 June in each year.

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## **55. Surplus Assets not to be distributed to members**

If the company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company, unless that member or former member is a Registered Charity.

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## **56. Distribution of Surplus Assets to another entity**

- 56.1 Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the company is wound up must be distributed to one or more charities:
- (a) with charitable object(s) similar to, or inclusive of, the object(s) in clause 3;
  - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the company; and
  - (c) which is a public benevolent institution for the purposes of the Income Tax Assessment Act 1997 (Cth).
- 56.2 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

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## **57. Definitions and Interpretation**

- (a) In this constitution:
  - (i) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and

- (ii) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

(b) In this constitution:

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

**Acts** means the ACNC Act and the Corporations Act.

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

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

**Special Resolution** means a resolution to be considered at an annual general meeting or a special general meeting:

(c) of which notice has been given under clause 36.6(c); and

(d) which requires at least 75% of the votes cast by Members Present and entitled to vote on the resolution to be passed.

**Surplus Assets** means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

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## 58. Reading this constitution with the Corporations Act and the ACNC Act

- 58.1 This constitution is intended to comply with the Corporations Act and the ACNC Act.
- 58.2 The replaceable rules set out in the Corporations Act do not apply to the company.
- 58.3 While the company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 58.4 If the company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- 58.5 A word or expression that is not defined in this constitution, but is defined in the Corporations Act or the ACNC Act has, if the context permits, the meaning given by these Acts.