

Constitution

**CORPORATIONS ACT 2001
COMPANY LIMITED BY GUARANTEE**

**AUSTRALIAN YOUTH CLASSICAL MUSIC COMPETITION LIMITED ACN
159 947 378**

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CONSTITUTION

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AUSTRALIAN YOUTH CLASSICAL MUSIC COMPETITION LIMITED ACN 159 947 378

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Constitution:

- 1.1.1. **ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).
- 1.1.2. **Annual General Meeting** means a meeting of Members held under clause 6.3.1.
- 1.1.3. **ASIC** means the Australian Securities and Investments Commission.
- 1.1.4. **Board** means the board of Directors of the Company from time to time.
- 1.1.5. **Circular Resolution** means a circular resolution:
 - 1.1.5.1. of the Members under clause 7.3; or
 - 1.1.5.2. of the Board under clause 12.7.
- 1.1.6. **Company** means the company to which this Constitution relates, being the company named above.
- 1.1.7. **Constitution** means this constitution as originally adopted or as amended from time to time.
- 1.1.8. **Corporations Act** means the Corporations Act 2001 (Cth).
- 1.1.9. **Director** means a director of the Company.
- 1.1.10. **Elected Chairperson** means a person elected by the Board to be the Company's chairperson under clause 9.5.
- 1.1.11. **Electronic Signature** has the meaning under clause 14.4.
- 1.1.12. **Eligible Charity** means a charity:
 - 1.1.12.1. with charitable purposes similar to, or inclusive of, the Principal Purpose; and
 - 1.1.12.2. which prohibits the distribution of any Surplus Assets to its Members to at least the same extent as the Company; and
 - 1.1.12.3. which is also a deductible gift recipient endorsed charitable organisation under subdivision 30BA of the ITAA 97.
- 1.1.13. **General Meeting** means a meeting of Members and includes the Annual General Meeting, under clause 6.3.1.

- 1.1.14. **Gift Fund** means the account as follows: Bendigo Bank BSB: 633000
Account Number: 223492489
- 1.1.15. **ITAA 97** means the Income Tax Assessment Act 1997 (Cth).
- 1.1.16. **Member** means any person admitted to membership of the Company under clause 4.4.
- 1.1.17. **Member Present** means, in connection with a General Meeting, a Member present in person or present via the use of an electronic or telecommunications audio or audio visual device (such as by video call or phone call), by proxy at the venue or venues for the meeting designated by the Board pursuant to clauses 6.4.5.1 and 6.7.
- 1.1.18. **Principal Purpose** means the purposes for which the Company was established as described in clause 3.1.
- 1.1.19. **Registered Charity** means a charity that is registered under the ACNC Act.
- 1.1.20. **Responsible Person** has the same meaning as the Tax Ruling 95/27 Income tax: Public Funds.
- 1.1.21. **Secretary** means any person appointed to perform the duties of a secretary to the Company under clause 13 and includes an honorary secretary.
- 1.1.22. **Special Resolution** means a resolution:
- 1.1.22.1. of which notice has been given under clause 6.4.5.3, and
 - 1.1.22.2. that has been passed by at least 75% of the votes cast by Members Present and entitled to vote on the resolution.
- 1.1.23. **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.

1.2. Reading this Constitution with the Corporations Act

- 1.2.1. The replaceable rules set out in the Corporations Act do not apply to the Company.
- 1.2.2. While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts.
- 1.2.3. If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this Constitution which is inconsistent with that Act.
- 1.2.4. A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this Constitution.

1.3. Interpretation

In this Constitution:

- 1.3.1. the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- 1.3.2. 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).

2. LIABILITY OF MEMBERS

2.1. Type of company

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

2.2. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in clause 2.3.

2.3. The guarantee

If the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, each Member must contribute an amount not more than \$10 to the property of the Company where this contribution is required to pay for the:

- 2.3.1. debts and liabilities of the Company incurred before the Member stopped being a Member; or
- 2.3.2. costs of winding up.

3. CHARITABLE PURPOSES AND POWERS

3.1. Principal Purpose

The Principal Purpose of the Company is to act as the Trustee of the Geelong Advertiser Music Scholarship Trust and give effect to the object of the Trust, which is to make financial provision for a scholarship for the education and benefit of eligible citizens or residents of Australia with an instrumental talent.

3.2. Supporting Activities

The Company will seek to achieve the Principal Purpose by, without limitation, undertaking the following activities:

- 3.2.1. conducting an annual regional competition of young musicians for the reward of financial sponsorship, in accordance with rules established by the Company from the time to time (**regional competition**);
- 3.2.2. conducting an annual national competition of young musicians who are resident in Australia for the reward of financial sponsorship, in accordance with rules established by the Company from time to time (**national competition**);
- 3.2.3. soliciting donations and gifts for the purposes of the Company operating the regional competition and national competition and providing financial sponsorship to successful competitors; and
- 3.2.4. doing all such things as are incidental or conducive to the attainment of all or any objectives of the Company set out above.

3.3. Powers

Subject to clause 3.4, the Company has the following powers, which may only be used to carry out its Principal Purpose:

- 3.3.1. the powers of an individual; and
- 3.3.2. all the powers of a company limited by guarantee under the Corporations Act.

3.4. Not-for-profit

- 3.4.1. The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 3.4.2 and 19.2.
- 3.4.2. Clause 3.4.1 does not stop the Company from doing the following things, provided they are done in good faith:
 - 3.4.2.1. paying or reimbursing 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
 - 3.4.2.2. making a payment or providing a benefit to a Member in carrying out the Principal Purpose.

3.5. Amending the Constitution

- 3.5.1. Subject to clause 3.5.2, the Members may amend this Constitution by passing a Special Resolution.
- 3.5.2. The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

3.6. Governance

The Company will comply with the “governance standards”, as that term is defined in the ACNC Act.

4. MEMBERS**4.1. Membership and register of Members**

- 4.1.1. The Directors will be the only Members of the Company.
- 4.1.2. The Company must establish and maintain a register of Members. The register of Members must be kept by the Secretary and must contain:
 - 4.1.2.1. for each current Member:
 - 4.1.2.1.1. name;
 - 4.1.2.1.2. address;
 - 4.1.2.1.3. any alternative address nominated by the Member for the service of notices; and
 - 4.1.2.1.4. the date the Member was entered on to the register; and

4.1.2.2. for each person who stopped being a Member in the last 7 years:

4.1.2.2.1. name;

4.1.2.2.2. address;

4.1.2.2.3. any alternative address nominated by the Member for the service of notices; and

4.1.2.2.4. the dates the membership started and ended.

4.1.3. The Company must give current Members access to the register of Members.

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

4.2. Who can be a Member

4.2.1. A person who supports the purposes of the Company is eligible to apply to be a Member under clause 4.3.

4.3. How to apply to become a Member

A person may apply to become a Member by writing to the Secretary stating that they:

4.3.1. want to become a Member;

4.3.2. support the purposes of the Company; and

4.3.3. agree to be appointed as a director of the Company and to comply with this Constitution, including paying the guarantee under clause 2.3 if required.

4.4. Approval of membership

4.4.1. The Board must consider an application for membership within a reasonable time after the Secretary receives the application.

4.4.2. If the Board approve an application, the Secretary must as soon as possible:

4.4.2.1. enter the new Member on the register of Members; and

4.4.2.2. write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 4.5).

4.4.3. If the Board reject an application, the Secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

4.4.4. For the avoidance of doubt, the Board may approve an application even if the application does not state the matters listed in clauses 4.3.1, 4.3.2 or 4.3.3. In that case, by applying to be a Member, the applicant agrees to those 3 matters.

4.5. When a person becomes a Member

An applicant will become a Member when they are entered on the register of Members and are appointed as a director of the Company.

4.6. When a person stops being a Member

A person immediately stops being a Member if they:

- 4.6.1. no longer hold the office of Director;
- 4.6.2. die;
- 4.6.3. resign, by writing to the Secretary;
- 4.6.4. are expelled under clause 5.2;
- 4.6.5. have not responded within 3 months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

5. DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES**5.1. Dispute resolution**

5.1.1. The dispute resolution procedure in this clause applies to disputes under this Constitution between a Member or Director and:

- 5.1.1.1. 1 or more Members;
- 5.1.1.2. 1 or more Directors; or
- 5.1.1.3. the Company.

5.1.2. A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 5.2 until the disciplinary procedure is completed.

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

5.1.4. If those involved in the dispute do not resolve it under clause 5.1.3, they must within 10 days:

- 5.1.4.1. tell the Board about the dispute in writing;
- 5.1.4.2. agree or request that a mediator be appointed; and
- 5.1.4.3. attempt in good faith to settle the dispute by mediation.

5.1.5. The mediator must be:

- 5.1.5.1. chosen by agreement of those involved; or
- 5.1.5.2. where those involved do not agree:
 - 5.1.5.2.1. for disputes between Members, a person chosen by the Board; or
 - 5.1.5.2.2. 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.

- 5.1.6. A mediator chosen by the Directors under clause 5.1.5.2.1:
 - 5.1.6.1. may be a Member or former Member;
 - 5.1.6.2. must not have a personal interest in the dispute; and
 - 5.1.6.3. must not be biased towards or against anyone involved in the dispute.
- 5.1.7. When conducting the mediation, the mediator must:
 - 5.1.7.1. allow those involved a reasonable chance to be heard;
 - 5.1.7.2. allow those involved a reasonable chance to review any written statements;
 - 5.1.7.3. ensure that those involved are given natural justice; and
 - 5.1.7.4. not make a decision on the dispute.

5.2. Disciplining Members

- 5.2.1. In accordance with this clause, the Board may resolve to warn, suspend or expel a Member from the Company if the Board considers that:
 - 5.2.1.1. the Member has breached this Constitution;
 - 5.2.1.2. it is not in the best interests of the Company for the person to remain a Member; or
 - 5.2.1.3. the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 5.2.2. At least 14 days before the Board meeting at which a resolution under clause 5.2.1 will be considered, the Secretary must notify the Member in writing:
 - 5.2.2.1. that the Board are considering a resolution to warn, suspend or expel the Member;
 - 5.2.2.2. that this resolution will be considered at a Board meeting and the date of that meeting;
 - 5.2.2.3. what the Member is said to have done or not done;
 - 5.2.2.4. the nature of the resolution that has been proposed; and
 - 5.2.2.5. that the Member may provide an explanation to the Board, and details of how to do so.
- 5.2.3. Before the Board pass any resolution under clause 5.2.1, the Member must be given a chance to explain or defend themselves by:

- 5.2.3.1. sending the Board a written explanation before that Board meeting; and/or
- 5.2.3.2. speaking at the meeting.
- 5.2.4. After considering any explanation under clause 5.2.3, the Board may:
 - 5.2.4.1. take no further action;
 - 5.2.4.2. warn the Member;
 - 5.2.4.3. suspend the Member's rights as a Member for a period of no more than 12 months;
 - 5.2.4.4. expel the Member;
 - 5.2.4.5. refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause); or
 - 5.2.4.6. require the matter to be determined at a General Meeting.
- 5.2.5. The Board cannot fine a Member.
- 5.2.6. The Secretary must give written notice to the Member of the decision under clause 5.2.4 as soon as possible.
- 5.2.7. Disciplinary procedures must be completed as soon as reasonably practical.
- 5.2.8. There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

6. GENERAL MEETINGS OF MEMBERS

6.1. General Meetings called by the Board

- 6.1.1. The Board may call a General Meeting.
- 6.1.2. If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Board must:
 - 6.1.2.1. within 21 days of the Members' request, give all Members notice of a General Meeting; and
 - 6.1.2.2. hold the General Meeting within 2 months of the Members' request.
- 6.1.3. The percentage of votes that Members have (in clause 6.1.2) is to be worked out as at midnight before the Members request the meeting.
- 6.1.4. The Members who make the request for a General Meeting must:
 - 6.1.4.1. state in the request any resolution to be proposed at the meeting;

6.1.4.2. sign the request; and

6.1.4.3. give the request to the Company.

6.1.5. 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.

6.2. General Meetings called by Members

6.2.1. If the Board do not call the meeting within 21 days of being requested under clause 6.1.2, 50% or more of the Members who made the request may call and arrange to hold a General Meeting.

6.2.2. To call and hold a meeting under clause 6.2.1 the Members must:

6.2.2.1. as far as possible, follow the procedures for General Meetings set out in this Constitution;

6.2.2.2. 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

6.2.2.3. hold the General Meeting within 3 months after the request was given to the Company.

6.2.3. 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.

6.3. Annual General Meeting

6.3.1. A General Meeting, called the Annual General Meeting, must be held:

6.3.1.1. within 18 months after registration of the Company; and

6.3.1.2. after the first Annual General Meeting, at least once in every calendar year.

6.3.2. Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:

6.3.2.1. approval of minutes of the last preceding Annual General Meeting and any other General Meetings since then;

6.3.2.2. a review of the Company's activities;

6.3.2.3. a review of the Company's finances;

6.3.2.4. any auditor's report;

6.3.2.5. the election of Directors; and

6.3.2.6. the appointment and payment of auditors, if any.

6.3.3. Before or at the Annual General Meeting, the Board must give information to the Members on the Company's activities and finances during the period since the last Annual General Meeting.

- 6.3.4. The chairperson of the Annual General Meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

6.4. Notice of General Meetings

- 6.4.1. Notice of a General Meeting must be given to:
- 6.4.1.1. each Member entitled to vote at the meeting;
 - 6.4.1.2. each Director; and
 - 6.4.1.3. the auditor (if any).
- 6.4.2. Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 6.4.3. Subject to clause 6.4.4, notice of a meeting may be provided less than 21 days before the meeting if:
- 6.4.3.1. for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand; or
 - 6.4.3.2. for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 6.4.4. Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- 6.4.4.1. remove a Director;
 - 6.4.4.2. appoint a Director in order to replace a Director who was removed; or
 - 6.4.4.3. remove an auditor.
- 6.4.5. Notice of a General Meeting must include:
- 6.4.5.1. the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - 6.4.5.2. the general nature of the meeting's business;
 - 6.4.5.3. if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - 6.4.5.4. a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - 6.4.5.4.1. the proxy does not need to be a Member;
 - 6.4.5.4.2. the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and

6.4.5.4.3. the proxy form must be delivered to the Company at least 48 hours before the meeting.

6.4.6. If a General Meeting is adjourned for 1 month or more, the Members must be given new notice of the resumed meeting.

6.5. Quorum at General Meetings

6.5.1. For a General Meeting to be held, at least 2 Members or 10% of the Members (whichever is the lesser) (a quorum) must be present in person for the whole meeting. When determining whether a quorum is present, a person may only be counted once.

6.5.2. No business may be conducted at a General Meeting if a quorum is not present.

6.5.3. If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify 1 or more of those things, the meeting is adjourned to:

6.5.3.1. if the date is not specified – the same day in the next week;

6.5.3.2. if the time is not specified – the same time; and

6.5.3.3. if the place is not specified – the same place.

6.5.4. If no quorum is present at the resumed meeting within 10 minutes after the starting time set for that meeting, the meeting is cancelled.

6.6. Auditor's right to attend meetings

6.6.1. 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.

6.6.2. The Company must give the auditor (if any) any communications relating to the General Meeting that a Member is entitled to receive.

6.7. Using technology to hold meetings

6.7.1. The Company may hold a General Meeting virtually only, or at 1 or more physical venues using any technology, including any audio or audiovisual electronic means, that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.

6.7.2. A Member using this technology is taken to be present in person at the meeting.

6.8. Chairperson for General Meetings

6.8.1. The Elected Chairperson is entitled to chair General Meetings.

6.8.2. The Members Present and entitled to vote at a General Meeting may choose a Director or Member to be the chairperson for that meeting if:

6.8.2.1. there is no Elected Chairperson; or

6.8.2.2. the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or

6.8.2.3. the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

6.9. Role of the chairperson

6.9.1. The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

6.10. Adjournment of meetings

6.10.1. If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.

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

6.11. Determining whether resolution carried

The chairperson of a General Meeting may, on the basis of a show of hands, declare that a resolution has been:

6.11.1. carried;

6.11.2. carried unanimously;

6.11.3. carried by a particular majority; or

6.11.4. lost;

and an entry to that effect in the minutes of the meeting is conclusive proof of that fact.

7. MEMBERS' RESOLUTIONS AND STATEMENTS

7.1. Members' resolutions and statements

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

7.1.1.1. written notice to the Company of a resolution they propose to move at a General Meeting (**Members' Resolution**); and/or

7.1.1.2. 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**).

7.1.2. A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

7.1.3. A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.

- 7.1.4. Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 7.1.5. The percentage of votes that Members have (as described in clause 7.1.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 7.1.6. If the Company has been given notice of a Members' Resolution under clause 7.1.1.1, the resolution must be considered at the next General Meeting held not more than 2 months after the notice is given.
- 7.1.7. This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.

7.2. Company must give notice of proposed resolution or distribute statement

- 7.2.1. If the Company has been given a notice or request under clause 7.1:
 - 7.2.1.1. 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
 - 7.2.1.2. 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.
- 7.2.2. The Company does not need to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members if:
 - 7.2.2.1. it is more than 1,000 words long;
 - 7.2.2.2. the Board considers it may be defamatory;
 - 7.2.2.3. clause 7.2.1.2 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
 - 7.2.2.4. 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.

7.3. Circular resolutions of Members

- 7.3.1. Subject to clause 7.3.3, the Board may put a resolution to the Members to pass a Circular Resolution without a General Meeting being held.
- 7.3.2. 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.

- 7.3.3. Circular Resolutions cannot be used:
- 7.3.3.1. for a resolution to remove an auditor; or
 - 7.3.3.2. where the Corporations Act or this Constitution requires a meeting to be held.
- 7.3.4. A Circular Resolution is passed if all the Members entitled to vote on the resolution sign or agree to the Circular Resolution, in the manner set out in clause 7.3.5 or clause 7.3.6.
- 7.3.5. Members may sign:
- 7.3.5.1. a single document setting out the Circular Resolution and containing a statement that they agree to the resolution; or
 - 7.3.5.2. separate copies of that document, as long as the wording is the same in each copy.
- 7.3.6. The Company may send a Circular Resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

8. VOTING AT GENERAL MEETINGS

8.1. How many votes a Member has

Each Member has 1 vote.

8.2. Challenge to Member's right to vote

- 8.2.1. A Member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 8.2.2. If a challenge is made under clause 8.2.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

8.3. How voting is carried out

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

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

- 8.4.1. A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- 8.4.1.1. at least 2 Members Present; or
 - 8.4.1.2. the chairperson.
- 8.4.2. A vote in writing must be taken when and how the chairperson directs, unless clause 8.4.3 applies.
- 8.4.3. A vote in writing must be held immediately if it is demanded under clause 8.4.1:
- 8.4.3.1. for the election of a chairperson under clause 6.8.2; or
 - 8.4.3.2. to decide whether to adjourn the meeting.
- 8.4.4. A demand for a vote in writing may be withdrawn.

8.5. Appointment of proxy

- 8.5.1. A Member may appoint a proxy to attend and vote at a General Meeting on their behalf.
- 8.5.2. A proxy does not need to be a Member.
- 8.5.3. A proxy appointed to attend and vote for a Member has the same rights as the Member to:
- 8.5.3.1. speak at the meeting;
 - 8.5.3.2. vote in a vote in writing (but only to the extent allowed by the appointment); and
 - 8.5.3.3. join in to demand a vote in writing under clause 8.4.1.
- 8.5.4. An appointment of proxy (**Proxy Form**) must be signed by the Member appointing the proxy and must contain:
- 8.5.4.1. the Member's name and address;
 - 8.5.4.2. the Company's name;
 - 8.5.4.3. the proxy's name or the name of the office held by the proxy; and
 - 8.5.4.4. the meeting(s) at which the appointment may be used.
- 8.5.5. A proxy appointment may be ongoing.
- 8.5.6. Proxy Forms must be received by the Company at the address stated in the notice under clause 6.4.5.4 or at the Company's registered address at least 48 hours before a meeting.
- 8.5.7. A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.

- 8.5.8. Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- 8.5.8.1. dies;
 - 8.5.8.2. is mentally incapacitated;
 - 8.5.8.3. revokes the proxy's appointment; or
 - 8.5.8.4. revokes the authority of an agent who appointed the proxy.
- 8.5.9. A proxy appointment may specify the way the proxy must vote on a particular resolution.

8.6. Voting by proxy

- 8.6.1. 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).
- 8.6.2. When a vote in writing is held, a proxy:
- 8.6.2.1. does not need to vote, unless the proxy appointment specifies the way they must vote;
 - 8.6.2.2. if the way they must vote is specified on the Proxy Form, must vote that way; and
 - 8.6.2.3. if the proxy is also a Member or holds more than 1 proxy, may cast the votes held in different ways.

9. DIRECTORS

9.1. Number of Directors

The Company must have at least 3 and no more than 9 Directors. The Board will determine the number of current Directors of the Company.

9.2. Eligibility

- 9.2.1. A person is eligible for election as a Director if they:
- 9.2.1.1. give the Company their signed consent to act as a Director; and
 - 9.2.1.2. are not ineligible to be a director under the Corporations Act or the ACNC Act.

9.3. Election and appointment of Directors

- 9.3.1. Apart from the Directors appointed under clause 9.4, a Director will be appointed where the Members resolve to appoint a Director eligible for election in a General Meeting.
- 9.3.2. Each of the Directors must be appointed by a separate resolution, unless:
- 9.3.2.1. the Members Present have first passed a resolution that the appointments may be voted on together; and

9.3.2.2. no votes were cast against that resolution.

9.4. Vacancies

9.4.1. The Directors may (but are not obliged to) appoint a person as a Director to fill a casual vacancy or as an additional Director if that person is eligible under clause 9.2.

9.4.2. A person so appointed will hold office until the next Annual General Meeting but is then eligible, in accordance with clause 9.3, for election to occupy the position for any remaining balance of the term so that the ordinary course of rotation of Directors by retirement and election will not be disrupted as a result.

9.4.3. If the number of Directors is reduced to fewer than 3 or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to 3 (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

9.5. Election of chairperson

The Directors must elect a Director as the Company's Elected Chairperson.

9.6. Term of office

9.6.1. The term of office of a Director is 3 years excluding any term of office held in filling a casual vacancy. The expiration of that term is deemed to occur as follows:

9.6.1.1. for Wendy Jean Galloway, David Neil Fox and Daniel Jake Fullerton: at the conclusion of the first Annual General Meeting following the adoption of this constitution;

9.6.1.2. for Gary Robert Jewson, Ryan Paul Van Agtmaal and Marjorie Alberta Nicholas: at the conclusion of the second Annual General Meeting following the adoption of this constitution;

9.6.1.3. for Keith Andrew Fagg and Maria Engela McDonald: at the conclusion of the third Annual General Meeting following the adoption of this constitution;

9.6.1.4. for any other Director appointed after the adoption of this constitution: at the conclusion of the third Annual General Meeting following their appointment.

9.6.2. At the Annual General Meeting, all Directors subject for re-election shall retire but shall be eligible for re-election, subject to a review of that Director's performance at the expiration of their initial 3-year term in accordance with a review process determined by the Directors from time to time.

9.7. When a Director stops being a Director

A Director stops being a Director if they:

9.7.1. completes the term of office for which they were elected;

9.7.2. give written notice of resignation as a Director to the Company;

9.7.3. die;

- 9.7.4. are removed as a Director by a resolution of the Members;
- 9.7.5. stop being a Member;
- 9.7.6. become ineligible to be a Director under the Corporations Act or the ACNC Act.

10. POWERS OF THE BOARD

10.1. Powers of the Board

- 10.1.1. The Board is responsible for managing and directing the activities of the Company to achieve the Principal Purpose.
- 10.1.2. The Board may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by Members.
- 10.1.3. The Board must decide on the responsible financial management of the Company including:
 - 10.1.3.1. any suitable written delegations of power under clause 10.2; and
 - 10.1.3.2. how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approve, and how cash is managed.
- 10.1.4. The Board cannot remove a Director or auditor. Directors and auditors may only be removed by a Members' Resolution at a General Meeting. For the avoidance of doubt, this clause 10.1.4 does not apply to any Director who ceases to be a Director by operation of clause 9.7.

10.2. Delegation of Board powers

- 10.2.1. The Board may delegate any of their powers and functions to a sub-committee, a Director, an employee of the Company or any other person, as they consider appropriate and in accordance with applicable law, and subject to Board oversight, including:
 - 10.2.1.1. for a fixed term and task; or
 - 10.2.1.2. until the Board determines the delegation is no longer required.
- 10.2.2. Delegations pursuant to this clause 10.2 must be recorded in the Company's minute book.

10.3. Sub-committees

- 10.3.1. The Board shall approve a charter or terms of reference for each sub-committee.
- 10.3.2. The Board shall appoint the members of each sub-committee, which may include persons other than Directors.
- 10.3.3. Each sub-committee shall:

- 10.3.3.1. be managed or overseen by the Board;
- 10.3.3.2. operate subject to this Constitution;
- 10.3.3.3. comply with all resolutions of the Board; and
- 10.3.3.4. keep minutes of all meetings, provide copies of minutes of meetings to the Board and report to the Board on its activities at the request of the Board.

10.4. Payments to Directors

- 10.4.1. The Company must not pay fees to a Director for acting as a Director.
- 10.4.2. The Company may:
 - 10.4.2.1. pay or reimburse a Director for goods or services they have provided (other than as a Director) for expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or
 - 10.4.2.2. reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- 10.4.3. Any payment made under clause 10.4.2 must be approved by the Board.
- 10.4.4. The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this Constitution.

11. DUTIES OF DIRECTORS

11.1. Duties of Directors

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

- 11.1.1. 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;
- 11.1.2. to act in good faith in the best interests of the Company and to further the Principal Purpose;
- 11.1.3. not to misuse their position as a Director;
- 11.1.4. not to misuse information they gain in their role as a Director;
- 11.1.5. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 11.2;
- 11.1.6. to ensure that the financial affairs of the Company are managed responsibly; and
- 11.1.7. not to allow the Company to operate while it is insolvent.

11.2. Conflicts of interest

- 11.2.1. A Director must disclose to the other Directors the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Board (or that is proposed in a Circular Resolution).
- 11.2.2. The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 11.2.3. Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a Circular Resolution) must not, except as provided under clauses 11.2.4:
 - 11.2.3.1. be present at the meeting while the matter is being discussed; or
 - 11.2.3.2. vote on the matter.
- 11.2.4. A Director may still be present and vote if:
 - 11.2.4.1. their interest arises because they are a Member, and the other Members have the same interest;
 - 11.2.4.2. their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director (see clause 18.2);
 - 11.2.4.3. their interest relates to a payment by the Company under clause 18.1 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
 - 11.2.4.4. ASIC makes an order allowing the Director to vote on the matter; or
 - 11.2.4.5. the Directors who do not have a material personal interest in the matter pass a resolution that:
 - 11.2.4.5.1. 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
 - 11.2.4.5.2. says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

12. BOARD MEETINGS

12.1. When the Board meets

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

12.2. Calling Board meetings

- 12.2.1. A Director may call a Board meeting by giving reasonable notice to all of the other Directors.
- 12.2.2. A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

12.3. Chairperson for Board meetings

- 12.3.1. The Elected Chairperson is entitled to chair Board meetings.
- 12.3.2. The Directors at a Board meeting may choose a Director to be the chairperson for that meeting if the Elected Chairperson is:
 - 12.3.2.1. not present within 30 minutes after the starting time set for the meeting; or
 - 12.3.2.2. present but does not want to act as chairperson of the meeting.

12.4. Quorum at Board meetings

- 12.4.1. Unless the Board determines otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors.
- 12.4.2. A quorum must be present for the whole Board meeting.

12.5. Using technology to hold Board meetings

- 12.5.1. The Directors may hold Board meetings at 1 or more physical venues or virtually and by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 12.5.2. The Directors' agreement may be an ongoing one.
- 12.5.3. A Director may only withdraw their consent within a reasonable period before the meeting.

12.6. Passing Board resolutions

A Board resolution must be passed:

- 12.6.1. by a majority of the votes cast by Directors present and entitled to vote on the resolution at a duly called meeting at which a quorum is present, and shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such manner as the chairperson of the meeting may determine; or
- 12.6.2. in accordance with clause 12.7.

12.7. Circular Resolutions of the Board

- 12.7.1. The Directors may pass a Circular Resolution without a Board meeting being held.
- 12.7.2. A Circular Resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 12.7.3 or clause 12.7.4.
- 12.7.3. Each Director may sign:
 - 12.7.3.1. a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - 12.7.3.2. separate copies of that document, as long as the wording of the resolution is the same in each copy.

- 12.7.4. The Company may send a Circular Resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 12.7.5. A Circular Resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 12.7.3 or clause 12.7.4.

13. SECRETARY

13.1. Appointment and role of Secretary

- 13.1.1. The Company must have at least 1 Secretary, who may also be a Director.
- 13.1.2. A Secretary must be appointed by the Board (after giving the Company their signed consent to act as Secretary) and may be removed by the Board.
- 13.1.3. The Board must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 13.1.4. The role of the Secretary includes:
 - 13.1.4.1. maintaining a register of the Members; and
 - 13.1.4.2. maintaining the minutes and other records of General Meetings (including notices of meetings), Board meetings and Circular Resolutions.

14. MINUTES, DOCUMENTS AND RECORDS

14.1. Minutes and records

- 14.1.1. The Company must, within 1 month, make and keep the following records:
 - 14.1.1.1. minutes of proceedings and resolutions of General Meetings;
 - 14.1.1.2. minutes of Circular Resolutions of Members;
 - 14.1.1.3. a copy of a notice of each General Meeting; and
 - 14.1.1.4. a copy of a Members' Statement distributed to Members under clause 7.2.
- 14.1.2. The Company must, within 1 month, make and keep the following records:
 - 14.1.2.1. minutes of proceedings and resolutions of Board meetings (including meetings of any committees); and
 - 14.1.2.2. minutes of Circular Resolutions of the Board.
- 14.1.3. To allow Members to inspect the Company's records:
 - 14.1.3.1. the Company must give a Member access to the records set out in clause 14.1.1; and

- 14.1.3.2. the Board may authorise a Member to inspect other records of the Company, including records referred to in clause 14.1.2 and clause 14.2.1.

14.2. Financial and related records

- 14.2.1. The Company must make and keep written financial records that:
 - 14.2.1.1. correctly record and explain its transactions and financial position and performance; and
 - 14.2.1.2. enable true and fair financial statements to be prepared and to be audited.
- 14.2.2. The Company must also keep written records that correctly record its operations.
- 14.2.3. The Company must retain its records for at least 7 years.
- 14.2.4. The Board must take reasonable steps to ensure that the Company's records are kept safe.

14.3. Execution of documents

The Company may execute a document without using a common seal if the document is signed by:

- 14.3.1. 2 Directors of the Company; or
- 14.3.2. a Director and the Secretary.

14.4. Electronic Execution

- 14.4.1. Documents may be signed using:
 - 14.4.1.1. an electronic signature;
 - 14.4.1.2. an electronic communication (as that term is defined in the Electronic Transactions Act 1999 (Cth)); or
 - 14.4.1.3. a proprietary program (for example DocuSign or AdobeSign) which is applied following verification of an individual's identity

(Electronic Signature).

- 14.4.2. The use of an Electronic Signature constitutes legally effective execution of the document by the Company and will be considered conclusive as to the persons' intention to sign the agreement on behalf of the Company as if signed by that person's (or any of its duly authorised signatory's) manuscript signature.

15. BY-LAWS

15.1. By-laws

- 15.1.1. The Board may pass a resolution to make by-laws to give effect to this Constitution.

- 15.1.2. Members and Directors must comply with by-laws as if they were part of this Constitution.

16. NOTICE

16.1. What is notice

- 16.1.1. Anything written to or from the Company under any clause in this Constitution is written notice and is subject to clauses 16.2 to 16.4, unless specified otherwise.
- 16.1.2. Clauses 16.2 to 16.4 do not apply to a notice of proxy under clause 8.5.6.

16.2. Notice to the Company

Written notice or any communication under this Constitution may be given to the Company, the Directors or the Secretary by:

- 16.2.1. delivering it to the Company's registered office;
- 16.2.2. posting it to the Company's registered office or to another address chosen by the Company for notice to be provided; or
- 16.2.3. 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.

16.3. Notice to Members

- 16.3.1. Written notice or any communication under this Constitution may be given to a Member:
- 16.3.1.1. in person;
- 16.3.1.2. 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;
- 16.3.1.3. sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any); or
- 16.3.1.4. 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).
- 16.3.2. If the Company does not have an address for the Member, the Company is not required to give notice in person.

16.4. When notice is taken to be given

A notice:

- 16.4.1. delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- 16.4.2. sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;

- 16.4.3. sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- 16.4.4. given under clause 16.3.1.4 is taken to be given on the business day after the notification that the notice is available is sent.

17. FINANCIAL YEAR

The Company's financial year is from 1 January to 31 December, unless the Board passes a resolution to change the financial year.

18. INDEMNITY, INSURANCE AND ACCESS

18.1. Indemnity

- 18.1.1. 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.
- 18.1.2. In this clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- 18.1.3. In this clause, 'to the relevant extent' means:
 - 18.1.3.1. to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
 - 18.1.3.2. 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).
- 18.1.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

18.2. 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.

18.3. Directors' access to documents

- 18.3.1. A Director has a right of access to the financial records of the Company at all reasonable times.
- 18.3.2. If the Directors agree, the Company must give a Director or former Director access to:
 - 18.3.2.1. certain documents, including documents provided for or available to the Directors; and
 - 18.3.2.2. any other documents referred to in those documents.

19. WINDING UP

19.1. Surplus Assets not to be distributed to Members

If the Company is wound up or ceases to be endorsed as deductible gift recipient under subdivision 30BA of the ITAA 97 (whichever occurs first), any Surplus Assets must not be distributed to a Member or a former Member, unless that Member or former Member is an Eligible Charity.

19.2. Distribution of Surplus Assets

19.2.1. 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 or ceases to be endorsed as a deductible gift recipient under subdivision 30BA of the ITAA 97 (whichever occurs first) must be distributed to 1 or more Eligible Charities.

19.2.2. The Members must resolve by a Special Resolution which Eligible Charity or Eligible Charities will be given the Surplus Assets 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.

20. GIFT FUND

20.1. Purpose

The Company may keep and maintain the Gift Fund which shall be maintained and used for the Principal Purpose.

20.2. Not for profit

The Gift Fund will be operated on a not-for-profit basis.

20.3. Management of Gift Fund

The Directors are responsible for the day-to-day operation, management and maintenance of the Gift Fund.

20.4. Source of funds

20.4.1. The public are and will be invited to contribute to the Gift Fund for the Principal Purpose.

20.4.2. All gifts or donations of money or property that are received by the Company shall be added to the Gift Fund and used for the Principal Purpose.

20.5. Limits on use of Gift Fund

20.5.1. The Members must use the following only for the Principal Purpose:

20.5.1.1. gifts made to the Gift Fund;

20.5.1.2. any money received because of those gifts.

20.5.2. The Company must not distribute money to Members except as reimbursement for out of pocket expenses incurred on behalf of the Company or proper remuneration for administrative services.

20.6. Financial matters

- 20.6.1. No portion of the Gift Fund shall be distributed directly or indirectly to the members of the Company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.
- 20.6.2. All receipts issued by the Company for gifts received by the Gift Fund shall note the full name and Australian Business Number of the Company and the fact that the receipt is for the gift.
- 20.6.3. Reasonable costs of managing the Gift Fund may legitimately be charged to it.
- 20.6.4. If, upon the winding up or dissolution of the Gift Fund or, if the endorsement (if any) of the Company as a deductible gift recipient is revoked, there remains after satisfaction of all its debts and liabilities any surplus assets, that amount shall be transferred to 1 or more Eligible Charities, to which the following income tax deductible gifts can be made:
- 20.6.4.1. gifts of money or property for the Principal Purpose of the organisation;
 - 20.6.4.2. contributions made in relation to an eligible fundraising event held for the Principal Purpose of the organisation; or
 - 20.6.4.3. money received by the organisation because of such gifts and contributions.

20.7. Winding up

- 20.7.1. At the first occurrence of:
- 20.7.1.1. the winding up of the Gift Fund; or
 - 20.7.1.2. the Company winding up or ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the ITAA 97;
- any Surplus Assets of the Gift Fund must be transferred to 1 or more Eligible Charities as the Members decide.
- 20.7.2. Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of ITAA 97 are satisfied, a transfer under this clause must be made in accordance with those conditions.