

CONSTITUTION OF INDUSTRY SKILLS  
ADVISORY COUNCIL NORTHERN TERRITORY  
LIMITED

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ACN: 623 396 725

ABN: 56 535 070 401

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## CONSTITUTION OF INDUSTRY SKILLS ADVISORY COUNCIL NORTHERN TERRITORY LIMITED

### 1. PRELIMINARY

#### 1.1 Name of the company

The name of the company is Industry Skills Advisory Council Northern Territory Ltd (the **company**).

#### 1.2 Type of company

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

#### 1.3 Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 1.4.

#### 1.4 The guarantee

Each member must contribute an amount not more than \$10 (the guarantee) to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

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

#### 1.5 Definitions

In this constitution:

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

**company** means the company referred to in clause 1.1,

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

**elected chairperson** means a person elected by the directors to be the company's chairperson under clause 8.5,

**general meeting** means a meeting of members and includes the annual general meeting, under clause 5.3(a),

**initial member** means a person who is named in the application for registration of the company, with their consent, as a proposed member of the company,

**member present** means, in connection with a general meeting, a member present in person or by representative at the venue or venues for the meeting,

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

**special resolution** means a resolution:

- (a) of which notice has been given under clause 5.4(d)(iii), and
- (b) that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and

**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.

## **1.6 Reading this constitution with the Corporations Act**

- (a) The replaceable rules set out in the Corporations Act do not apply to the company.
- (b) 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.
- (c) 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.
- (d) 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.

## **1.7 Interpretation**

In this constitution:

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

## **2. CHARITABLE PURPOSES AND POWERS**

### **2.1 Object**

- (a) The company's object is to pursue the following charitable purpose(s):
  - (i) To act as the principal voice of industries and industry sectors on issues related to vocational education and training and developing a skilled workforce.
  - (ii) To Act as a focal point to reflect the skill needs and priorities of businesses and employers.
  - (iii) Support industry managed and led development, implementation and continuous improvement of high quality, nationally recognised training products and services.
  - (iv) To advise Governments on education and training needs and priorities for funding consistent with economic, industry, employers and individuals current and future development needs.
  - (v) To assist business and employers meet their workforce skills needs through providing skills advice, and assistance with access to nationally recognised training, development and implementation of workforce plans.
  - (vi) Initiate, conduct or assist in research activities, to identify current and future training, workforce development and labour market needs and to analyse key trends across industry sectors.
  - (vii) Promote the benefits of vocational education and training skills needs and the functions of the company to business and industry.
  - (viii) To operate as an industry consulting body in providing consultancy services to industries and industry sectors in relation these charitable purposes of the company.
  - (ix) Do all such other things as are incidental or conducive to the objects contained in this clause.
- (b) The company will not deliver training and will make its best endeavours not to be perceived to deliver training.

## **2.2 Powers**

Solely for the purpose of carrying out its purpose(s) set out in clause 2.1, and subject to clause 2.4 and any restrictions under the Corporations Act, the company has all of the powers of a natural person including, without limitation, the power to:

- (a) acquire, hold and dispense of real or personal property,
- (b) open and operate accounts with financial institutions,
- (c) invest its money in any security in which monies may lawfully be invested,
- (d) raise and borrow money on the terms and in the manner it considers appropriate,
- (e) secure repayment of money raised or borrowed, or the payment of a debt or liability,
- (f) appoint agents to transact on its behalf,
- (g) enter into any other contract it considers necessary or desirable, and
- (h) use 'trading as' provisions to use acronyms or other related names such as ISAC.

## **2.3 Registration**

The company will be registered for GST and hold an ABN.

## **2.4 Not-for-profit**

- (a) The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 2.4(b) and 20.2.
- (b) Clause 2.4(a) does not stop the company from doing the following things, provided they are done in good faith:
  - (i) 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
  - (ii) making a payment to a member in carrying out the company's charitable purpose(s).

## **2.5 Amending the constitution**

- (a) Subject to clause 2.5(b), the members may amend this constitution by passing a special resolution.
- (b) The members must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.

# **3. MEMBERS**

## **3.1 Membership and register of members**

- (a) The members of the company are:
  - (i) initial members, and
  - (ii) any other person that the directors allow to be a member, in accordance with this constitution.
- (b) The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
  - (i) for each current member:
    - (A) name
    - (B) address

- (C) any alternative address nominated by the member for the service of notices, and
  - (D) date the member was entered on to the register.
- (ii) for each person who stopped being a member in the last 7 years:
  - (A) name
  - (B) address
  - (C) any alternative address nominated by the member for the service of notices, and
  - (D) dates the membership started and ended.
- (c) The company must give current members access to the register of members.
- (d) Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.
- (e) A right of membership of the company is not capable of being transferred or transmitted to another person, entity or organisation.

### **3.2 Who can be a member**

Membership of the company shall be open under clause 3.3 to individuals who possess relevant experience, skills and knowledge and are supportive of the purposes of the company.

### **3.3 How to apply to become a member**

A person may apply to become a member of the company by submitting an application for membership to the secretary, in a form approved by the directors, stating that they:

- (a) want to become a member
- (b) support the purpose(s) of the company, and
- (c) agree to comply with the company's constitution, including paying the guarantee under clause 1.4 if required.

### **3.4 Directors decide whether to approve membership**

- (a) The directors must consider an application for membership, through the establishment of a nominations committee that will make recommendations for the directors' approval, within a reasonable time after the secretary receives the application.
- (b) If the directors approve an application, the secretary must as soon as possible:
  - (i) enter the new member on the register of members, and
  - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 3.5).
- (c) If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- (d) If an application is rejected, the applicant may appeal against the decision by giving notice to the secretary within 14 days after being advised of the rejection.
- (e) If an applicant gives notice of an appeal against the rejection of his or her application, the directors must reconsider the application at the next directors' meeting after receipt of the notice of appeal.



- (f) If after reconsidering an application the directors reaffirm their decision to reject the application, the decision is final.
- (g) For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 3.3(a), 3.3(b) or 3.3(c). In that case, by applying to be a member, the applicant agrees to those three matters.

### **3.5 When a person becomes a member**

Other than initial members, an applicant will become a member when they are entered on the register of members. A member is not eligible to vote until 10 working days after the relevant application has been accepted.

### **3.6 When a person stops being a member**

A person immediately stops being a member if they:

- (a) die, or their whereabouts are unknown for a period of 6 months,
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member),
- (c) resign, by writing to the secretary,
- (d) are expelled under clause 4.2, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## **4. DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES**

### **4.1 Dispute resolution**

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
  - (i) one or more members,
  - (ii) one or more directors, or
  - (iii) the company.
- (b) A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 4.2 until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under clause 4.1(c), they must within 10 days hold another meeting in the presence of a mediator.
- (e) The mediator must:
  - (i) be chosen by agreement of those involved, or
  - (ii) where those involved do not agree:
    - (A) for disputes between members, a person chosen by the directors, or
    - (B) 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.
- (f) A mediator chosen by the directors under clause 4.1(e)(ii)(A):
  - (i) may be a member or former member of the company,

- (ii) must not have a personal interest in the dispute, and
  - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
- (i) allow those involved a reasonable chance to be heard,
  - (ii) allow those involved a reasonable chance to review any written statements,
  - (iii) ensure that those involved are given natural justice, and
  - (iv) not make a decision on the dispute.
- (h) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (i) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute otherwise at law.

#### **4.2 Disciplining members**

- (a) In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the company if the directors consider that:
- (i) the member has breached this constitution, or
  - (ii) the member's behaviour is causing, has caused, or is likely to cause harm to the company.
- (b) At least 30 days before the directors' meeting at which a resolution under clause 4.2(a) will be considered, the secretary must notify the member in writing:
- (i) that the directors are considering a resolution to warn, suspend or expel the member,
  - (ii) that this resolution will be considered at a directors' meeting and the date of that meeting,
  - (iii) what the member is said to have done or not done,
  - (iv) the nature of the resolution that has been proposed, and
  - (v) that the member may provide an explanation to the directors, and details of how to do so.
- (c) Before the directors pass any resolution under clause 4.2(a), the member must be given a reasonable chance to explain or defend themselves by:
- (i) sending the directors a written explanation before that directors' meeting, and/or
  - (ii) speaking at the meeting.
- (d) After considering any explanation under clause 4.2(c), the directors may:
- (i) take no further action
  - (ii) warn the member
  - (iii) suspend the member's rights as a member for a specified period of time
  - (iv) expel the member
  - (v) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (vi) require the matter to be determined at a general meeting,

- (e) The directors cannot fine a member.
- (f) The secretary must give written notice to the member of the decision under clause 4.2(d), and the reason for it, as soon as possible.
- (g) Subject to the following subclauses, a decision to suspend or expel a member takes effect 14 days after the day on which notice of the decision is given to the member.
- (h) A member who is suspended or expelled under this clause 4.2 may appeal against that suspension or expulsion by giving notice to the secretary within 14 days after receipt of the directors' decision.
- (i) The appeal must be considered at a general meeting of the company and the member must be afforded a reasonable opportunity to be heard at the meeting or to make representations in writing prior to the meeting for circulation at the meeting.
- (j) The members present at the general meeting must, by resolution, either confirm or set aside the decision of the directors to suspend or expel the member.
- (k) If the member appeals under clause 4.2(h), the member is not suspended or does not cease to be a member until the decision of the directors to suspend or expel him or her is confirmed by a resolution of the members.
- (l) Disciplinary procedures must be completed as soon as reasonably practical.
- (m) 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.

## **5. GENERAL MEETINGS OF MEMBERS**

### **5.1 General meetings called by directors**

- (a) The directors may call a general meeting.
- (b) The directors must, within 30 days after the secretary receives a notice under clause 4.2(h), convene a special general meeting to deal with the appeal to which the notice relates. If the directors fail to convene a special general meeting in this time, the appeal against the decision of the directors is upheld.
- (c) If half the number of members constituting a quorum for a general meeting make a written request for a special general meeting, the directors must, within 30 days, convene a special general meeting for the purposes specified in that request.
- (d) The members who make the request for a general meeting must:
  - (i) state in the request any resolution to be proposed at the meeting,
  - (ii) sign the request, and
  - (iii) give the request to the company.
- (e) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### **5.2 General meetings called by members**

- (a) If the directors do not call the meeting within 30 days of being requested under clause 5.1(c), the members who made the request may call and arrange to hold a general meeting, called a special general meeting, as if they were the directors.
- (b) To call and hold a meeting under clause 5.2(a) the members must:
  - (i) as far as possible, follow the procedures for general meetings set out in this constitution,

- (ii) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost, and
  - (iii) hold the general meeting within three months after the request was given to the company.
- (c) The company must pay the members who request the special general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

### **5.3 Annual general meeting**

- (a) A general meeting, called the annual general meeting, must be held:
- (i) within 18 months after registration of the company, and
  - (ii) after the first annual general meeting, at least once in every calendar year within 5 months after the end of the company's financial year.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (i) a review of the company's activities,
  - (ii) a review of the company's finances,
  - (iii) any auditor's report,
  - (iv) the election of directors, and
  - (v) the appointment and payment of auditors, if any.
- (c) The order of business for each annual general meeting is as follows:
- (i) first – the consideration of the accounts and reports of the company,
  - (ii) second – the election of any new board members, and
  - (iii) third - any other business requiring consideration by the company at the meeting.
- (d) Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.
- (e) 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.

### **5.4 Notice of general meetings**

- (a) Notice of a general meetings and special general meetings must be given to:
- (i) each member entitled to vote at the meeting,
  - (ii) each director, and
  - (iii) the auditor (if any).
- (b) Notice of a general meeting must be provided in writing at least 30 days before the meeting.
- (c) Notice of a special general meeting must be provided in writing at least 30 days before the meeting.
- (d) Notice of a general meeting must include:

- (i) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this),
  - (ii) the general nature of the meeting's business, and
  - (iii) if applicable, that a special resolution is to be proposed and the words of the proposed resolution.
- (e) If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

#### **5.5 Quorum at general meetings**

- (a) For a general meeting to be held, at least half of the members plus 1 member must be present in person (a quorum) for the whole meeting.
- (b) No business may be conducted at a general meeting if a quorum is not present.
- (c) With the exception of clause 5.5(e) below, if there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
  - (i) if the date is not specified – the same day in the next week,
  - (ii) if the time is not specified – the same time, and
  - (iii) if the place is not specified – the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.
- (e) For a meeting convened under clause 4.2(h), the members who are present in person may proceed with hearing the appeal for which the meeting is convened.

#### **5.6 Auditor's right to attend meetings**

- (a) 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.
- (b) 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.

#### **5.7 Using technology to hold meetings**

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

#### **5.8 Chairperson for general meetings**

- (a) The elected chairperson is entitled to chair general meetings.
- (b) If the chairperson is absent from a meeting, the vice-chairperson must preside at that meeting.
- (c) 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 the chairperson and the vice-chairperson are both absent.
- (d) The directors present at a directors' meeting may choose a director to be the chairperson of that meeting if the chairperson and vice-chairperson are both absent.

**5.9 Role of the chairperson**

- (a) 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)).
- (b) The chairperson has a casting vote.

**5.10 Adjournment of meetings**

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

**6. MEMBERS' RESOLUTIONS AND STATEMENTS****6.1 Members' resolutions and statements**

- (a) Members may give:
  - (i) written notice to the company of a resolution they propose to move at a general meeting (members' resolution), and/or
  - (ii) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- (b) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- (c) A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- (d) Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- (e) If the company has been given notice of a members' resolution under clause 6.1(a)(i), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- (f) This clause does not limit any other right that a member has to propose a resolution at a general meeting.

**6.2 Company must give notice of proposed resolution or distribute statement**

- (a) If the company has been given a notice or request under clause 6.1:
  - (i) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost, or
  - (ii) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.
- (b) The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (i) it is more than 1,000 words long,
- (ii) the directors consider it may be defamatory,
- (iii) clause 6.2(a)(ii) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
- (iv) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

### **6.3 Circular resolutions of members**

- (a) Subject to clause 6.3(c), the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- (b) The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- (c) Circular resolutions cannot be used:
  - (i) for a resolution to remove an auditor, appoint a director or remove a director,
  - (ii) for passing a special resolution, or
  - (iii) where the Corporations Act or this constitution requires a meeting to be held.
- (d) A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 6.3(e) or clause 6.3(f).
- (e) Members may sign:
  - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (f) The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **7. VOTING AT GENERAL MEETINGS**

### **7.1 How many votes a member has**

- (a) Subject to subclause 7.1(b), each member has one vote at general meetings of the company.
- (b) At a general meeting:
  - (i) an ordinary resolution put to the vote is decided by a majority of votes made in person; and
  - (ii) a special resolution put to the vote is passed if three-quarters of the members who are present in person vote in favour of the resolution.

### **7.2 How voting is carried out**

- (a) Voting must be conducted and decided by:
  - (i) a show of hands; or

- (ii) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- (b) On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- (c) A poll may be demanded by the chairperson or by three or more members present in person.
- (d) If demanded, a poll must be taken immediately and in the manner the chairperson decides.
- (e) 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 except in the case of a poll.

## **8. DIRECTORS**

### **8.1 Number of directors**

- (a) The company must have at least five and no more than nine directors.
- (b) The directors consist of:
  - (i) a chairperson (who is **the independent representative**);
  - (ii) a vice-chairperson (who represents industry);
  - (iii) a secretary (who represents industry);
  - (iv) a treasurer (who represents industry);
  - (v) one further representative of industry;
  - (vi) four further representatives of industry or professional representatives (optional).
- (c) The directors may appoint the General Manager or any one member of any subcommittee established by the directors to be the company's public officer.

### **8.2 Election and appointment of directors**

- (a) The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the company.
- (b) Apart from the initial directors and directors appointed under clause 8.2(g), the members may elect a director by a resolution passed in a general meeting.
- (c) Each of the directors must be appointed by a separate resolution, unless:
  - (i) the members present have first passed a resolution that the appointments may be voted on together, and
  - (ii) no votes were cast against that resolution.
- (d) Subject to clause 8.2(e), a person is eligible for election as a director of the company if they:
  - (i) are a member of the company,
  - (ii) are nominated in writing by two members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting),
  - (iii) give the company their signed consent to act as a director of the company, and
  - (iv) are not ineligible to be a director under the Corporations Act or the ACNC Act.



- (e) The independent representative shall be elected as a director of the company by the directors.
- (f) The nomination referred to in clause 8.2(d)(ii) must be signed by the nominator, a seconder and the nominee and received by the secretary not less than seven days before the date of the next annual general meeting.
- (g) The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
  - (i) is a member of the company,
  - (ii) gives the company their signed consent to act as a director of the company, and
  - (iii) is not ineligible to be a director under the Corporations Act or the ACNC Act.
- (h) If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

### **8.3 Election by default**

- (a) If the number of persons nominated for election as directors does not exceed the number of vacancies to be filled, the chairperson must declare the persons to be duly elected as directors at the next annual general meeting.
- (b) If vacancies remain after the declaration under clause 8.3(a), additional nominations of directors may be accepted from the floor of the annual general meeting.
- (c) If nominations from the floor do not exceed the number of remaining vacancies, the chairperson must declare those persons to be duly elected as directors.
- (d) If the nominations from the floor are less than the number of remaining vacancies, the unfilled vacancies are taken to be casual vacancies and must be filled by the new directors in accordance with clause 8.2(g).

### **8.4 Election by ballot**

- (a) If the number of nominations exceeds the number of vacancies, ballots for those position must be conducted.
- (b) The ballot must be conducted in a manner determined from time to time by resolution at a general meeting.
- (c) The members chosen by ballot must be declared by the chairperson to be duly elected as directors.

### **8.5 Election of chairperson**

The directors must elect the independent representative as the company's elected chairperson and a further director as the company's vice-chairperson.

### **8.6 Term of office**

- (a) At each annual general meeting:
  - (i) any director appointed by the directors to fill a casual vacancy or as an additional director must retire,
  - (ii) subject to (c) the office of each director becomes vacant and elections for new directors must be held, and

- (iii) the chairperson must preside at the annual general meeting until a new independent representative is elected as chairperson.
- (b) Other than a director appointed under clause 8.2(g), 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.
- (c) Each director must retire at least once every three years.
- (d) A director who retires under clause 8.6(a) may nominate for election or re-election.
- (e) A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution.

### **8.7 When a director stops being a director**

A director stops being a director if they:

- (a) give written notice of resignation as a director to the company,
- (b) die or are rendered permanently incapable of performing the duties of office by mental or physical ill-health,
- (c) are removed as a director by a resolution of the members,
- (d) stop being a member of the company,
- (e) are absent for 3 consecutive directors' meetings without approval from the directors,
- (f) are absent for 3 directors' meetings in the same financial year without tendering an apology to the chairperson, or
- (g) become ineligible to be a director of the company under the Corporations Act or the ACNC Act,

and in this event, the remaining directors may appoint a person to fill the vacancy in accordance with clause 8.2(g).

## **9. POWERS OF DIRECTORS**

### **9.1 Powers of directors**

- (a) The directors are responsible for managing and directing the activities of the company to achieve the purposes set out in clause 2.1.
- (b) The business of the company must be managed by or under the direction of the directors.
- (c) The directors may appoint and remove staff.
- (d) The directors may establish one or more subcommittees consisting of the members of the company the directors consider appropriate.
- (e) The directors may establish one or more subcommittees consisting of members of the company and invited experts.
- (f) The directors must establish and maintain an Industry Advisory Group to represent industry and ensure the Group operates under agreed terms of reference as approved by the directors.
- (g) The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- (h) The directors must decide on the responsible financial management of the company including:
  - (i) any suitable written delegations of power under clause 9.2, and

- (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (i) The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

## **9.2 Delegation of directors' powers**

- (a) The directors may delegate to a committee or subcommittee or staff any of their powers and functions other than:
  - (i) this power of delegation; or
  - (ii) a duty imposed on the director by law.
- (b) The delegation must be in writing and may be subject to the conditions and limitations the directors consider appropriate.
- (c) The delegation must be recorded in the company's minute book.

## **9.3 Payments to directors**

- (a) The company must not pay fees to a director for acting as a director.
- (b) The company may:
  - (i) 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
  - (ii) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- (c) Any payment made under clause 9.3(b) must be approved by the directors.
- (d) The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

## **9.4 Execution of documents**

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

- (a) two directors of the company, or
- (b) a director and the secretary.

# **10. DUTIES OF DIRECTORS**

## **10.1 Duties of directors**

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company,
- (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 2.1,
- (c) not to misuse their position as a director,
- (d) not to misuse information they gain in their role as a director,

- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 10.2,
- (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.

## **10.2 Conflicts of interest**

- (a) 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):
  - (i) to the other directors, or
  - (ii) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- (c) 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 clauses 10.2(d):
  - (i) be present at the meeting while the matter is being discussed, or
  - (ii) vote on the matter.
- (d) A director may still be present and vote if:
  - (i) their interest arises because they are a member of the company, and the other members have the same interest,
  - (ii) 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 19.2),
  - (iii) their interest relates to a payment by the company under clause 19.1 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act,
  - (iv) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
  - (v) the directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) 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
    - (B) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## **11. DIRECTORS' MEETINGS**

### **11.1 When the directors meet**

The directors may decide how often, where and when they meet, but must meet not less than 4 times in each financial year.

### **11.2 Calling directors' meetings**

- (a) The chairperson or a majority of directors, may at any time convene a special meeting of the directors.

- (b) A special meeting of the directors may be convened to deal with an appeal under clauses 4.2(h).

### **11.3 Chairperson for directors' meetings**

- (a) The elected chairperson is entitled to chair directors' meetings.
- (b) The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:
  - (i) not present within 30 minutes after the starting time set for the meeting, or
  - (ii) present but does not want to act as chairperson of the meeting.

### **11.4 Quorum at directors' meetings**

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

### **11.5 Voting at directors' meetings**

Each director present at the meeting has a deliberative vote.

### **11.6 Using technology to hold directors' meetings**

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

### **11.7 Passing directors' resolutions**

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### **11.8 Circular resolutions of directors**

- (a) The directors may pass a circular resolution without a directors' meeting being held.
- (b) 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 11.8(c) or clause 11.8(d).
- (c) Each director may sign:
  - (i) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) 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.
- (e) A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 11.8(c) or clause 11.8(d).

## **12. SECRETARY**

### **12.1 Appointment of secretary**

- (a) The company must have at least one secretary, who must also be a director.

- (b) 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.
- (c) The directors must decide the terms and conditions under which the secretary is appointed.

## **12.2 Role of secretary**

The role of the secretary includes:

- (a) coordinating the correspondence of the company,
- (b) maintaining a register of the company's members,
- (c) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions,
- (d) unless the members resolve otherwise at a general meeting, maintaining custody of all books, documents, records and registers of the company, other than those required by this Constitution to be in the custody of the treasurer, and
- (e) performing any other duties imposed by this Constitution on the secretary.

## **13. TREASURER**

### **13.1 Appointment and role of treasurer**

- (a) The company must have at least one treasurer, who must also be a director.
- (b) A treasurer 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.
- (c) The directors must decide the terms and conditions under which the treasurer is appointed.
- (d) The treasurer may delegate the General Manager to:
  - (i) receive all monies paid to or received by the company and issue receipts for those monies in the name of the company, and
  - (ii) pay all monies received into the account of the company within 5 working days after receipt.
- (e) The treasurer must:
  - (i) make any payments authorised by the voting members of the company or by general meeting of the company from the company's funds, and
  - (ii) ensure payments made by him or her and at least one other director or by any two other directors authorised by the directors.
- (f) The treasurer must ensure the accounting records of the company are kept in accordance with the Corporations Act and the ACNC Act.
- (g) The treasurer must coordinate the preparation of the company's annual statement of accounts.
- (h) If directed to do so by the chairperson, the treasurer must, unless delegation to the General Manager has been agreed by the directors, submit to the directors a report, balance sheet or financial statement in accordance with that direction.
- (i) The treasurer is, unless delegation to the General Manager has been agreed by the directors, to maintain custody of all securities, books and documents of a financial nature and accounting records of the company.

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## **14. GENERAL MANAGER**

### **14.1 Appointment and role of General Manager**

- (a) The company must have a General Manager, who must not also be a director.
- (b) A General Manager must be a member of the company and be appointed by the directors (after giving the company their signed consent to act as General Manager of the company).
- (c) A General Manager may be removed and replaced by the directors.

## **15. MINUTES AND RECORDS**

### **15.1 Minutes and records**

- (a) The company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of general meetings,
  - (ii) minutes of circular resolutions of members,
  - (iii) a copy of a notice of each general meeting, and
  - (iv) a copy of a members' statement distributed to members under clause 6.3.
- (b) The company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (ii) minutes of circular resolutions of directors.
- (c) To allow members to inspect the company's records:
  - (i) the company must give a member access to the records set out in clause 15.1(a), and
  - (ii) the directors may authorise a member to inspect other records of the company, including records referred to in clause 15.1(b) and clause 15.2(a).
- (d) The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
  - (i) the chairperson of the meeting, or
  - (ii) the chairperson of the next meeting.
- (e) The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

### **15.2 Financial and related records**

- (a) The company must make and keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance, and
  - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The company must also keep written records that correctly record its operations.
- (c) The company must retain its records for at least 7 years.
- (d) The directors must take reasonable steps to ensure that the company's records are kept safe.
- (e) The company must give a member access to the records set out in clause 15.2(a).

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**16. BY-LAWS****16.1 Directors**

The directors may pass a resolution to make by-laws to give effect to this constitution.

**16.2 Compliance with by-laws**

Members and directors must comply with by-laws as if they were part of this constitution.

**17. NOTICE****17.1 What is notice**

Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 17.2 to 17.4, unless specified otherwise.

**17.2 Notice to the company**

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

- (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.

**17.3 Notice to members**

- (a) Written notice or any communication under this constitution may be given to a member:
  - (i) in person,
  - (ii) 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,
  - (iii) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any),
  - (iv) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
  - (v) 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).
- (b) If the company does not have an address for the member, the company is not required to give notice in person.

**17.4 When notice is taken to be given**

A notice:

- (a) delivered in person, or left at a 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 17.3(a)(v) is taken to be given on the business day after the notification that the notice is available is sent.

## **18. FINANCIAL MANAGEMENT**

### **18.1 Company's financial year**

The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

### **18.2 Funds and accounts**

- (a) The company must open an account with a financial institution from which all expenditure of the company is made and into which all of the company's revenue is deposited.
- (b) Subject to any restrictions imposed by the company at a general meeting, the directors may approve expenditure on behalf of the company within the limits of the budget.
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by:
  - (i) the General Manager, and
  - (ii) the Treasurer or another director.
- (d) All funds of the company must be deposited into the financial account of the company no later than 5 working days after receipt or as soon as practicable after that day.
- (e) With the approval of the directors, the General Manager may maintain a cash float provided that all money paid from or paid into the float is accurately recorded at the time of the transaction.

## **19. INDEMNITY, INSURANCE AND ACCESS**

### **19.1 Indemnity**

- (a) 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.
- (b) In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- (c) In this clause, 'to the relevant extent' means:
  - (i) to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
  - (ii) 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).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

### **19.2 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.

### **19.3 Directors' access to documents**

- (a) A director has a right of access to the financial records of the company at all reasonable times.
- (b) If the directors agree, the company must give a director or former director access to:
  - (i) certain documents, including documents provided for or available to the directors, and
  - (ii) any other documents referred to in those documents.

## **20. WINDING UP**

### **20.1 Surplus assets not to be distributed to members**

If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is a charity described in clause 20.2(a).

### **20.2 Distribution of surplus assets**

- (a) 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:
  - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 2.1, and
  - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.
- (b) 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.

## **21. COMMON SEAL**

### **21.1 Use of common seal**

The common seal of the company must not be used without the express authority of the directors and every use of that common seal must be recorded by the secretary.

### **21.2 Witnesses**

The affixing of the common seal of the company must be witnessed by any two of the following:

- (a) the chairperson,
- (b) the secretary, and
- (c) the treasurer.

### **21.3 Custody of the secretary or another person nominated by directors**

The common seal of the company must be kept in the custody of the secretary or another person the directors from time to time nominate.