

COUNCIL ON THE AGEING (WESTERN AUSTRALIA) INC.

An Incorporated Association

ABN 79 970 893 100

CONSTITUTION

COTA



WESTERN AUSTRALIA

for older Australians

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COUNCIL ON THE AGEING (Western Australia) Inc.

An Incorporated Association

ABN 79 970 893 100

CONSTITUTION

1. Name

The name of the incorporated association is Council on the Ageing WA Inc. (Council).

2. Definitions and Interpretation

2.1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

Act means the Associations Incorporation Act 2015 (WA) and any regulations made under that statute;

Annual General Meeting means the annual general meeting of the Council convened under clause 8.1;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia;

Chair means the Director appointed to the office of Chair of the Council from time to time;

Commissioner means the person designated as the Commissioner from time to time under section 153 of the Act;

Board means the board of the Council referred to in clause 12.1;

Constitution means this constitution as amended, supplemented or replaced from time to time;

convene means to call together for a formal meeting;

Deputy Chair means the Director appointed to the office of Deputy Chair of the Council from time to time;

Director means a person elected or otherwise appointed to the Board from time to time;

Financial Records includes:

- a) Invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers;
- b) Documents of prime entry; and
- c) Working papers and other documents needed to explain:
 - i. The methods by which financial statements are prepared; and
 - ii. Adjustments to be made in preparing financial statements;

Financial Report means a financial report of a tier 2 association or tier 3 association (as defined in the Act) prepared in accordance with Part 5 of the Act and which consists of:

- a) The Financial Statements for the relevant Financial Year;
- b) The notes to the Financial Statements; and
- c) The Board's declaration about the Financial Statements and notes;

Financial Statements means financial statements prepared in accordance with Division 3 of the Act;

Financial Year has the meaning given in clause 20.4;

General Meeting means a meeting of the Members that all Members are entitled to receive notice of and attend;

Member means a member of the Council entered in the Register;

Membership Fee has the meaning given in clause 5.6

Objects means the objects of the Council as set out in clause 3(a);

Ordinary Resolution means a resolution of the Council passed by a majority of Members Present and eligible to vote on the resolution;

Poll means voting conducted in written form (as opposed to a show of hands);

Present means, in connection with a meeting, a Member being present in person or by proxy, attorney or Representative, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, providing the pre-requisites for a valid meeting at different venues are observed;

Register means the register of Members of the Council referred to in clause 7.1;

Representative means a natural person nominated by an organisation in accordance with clause 5.7;

Secretary means the individual appointed to the office of secretary of the Council from time to time;

Special Resolution has the meaning given in clause 9.2(b); and

Term has the meaning given in clause 15.2.

2.2 Interpretation

In this Constitution, unless the context requires otherwise:

- a) The singular includes the plural and vice versa;
- b) A gender includes the other genders;
- c) Headings are used for convenience only and do not affect the interpretation of this Agreement;
- d) Other grammatical forms of a defined word or expression have a corresponding meaning;
- e) A reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;

- f) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- g) "Person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- h) "Month" means calendar month and "year" means 12 consecutive months;
- i) A reference to all or any part of a statute, clause, regulation or ordinance (statute) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- j) "Include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- k) A reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (defunct body) is to the agency or body that performs most closely the powers or functions of the defunct body; and
- l) Any expression in a provision of this Constitution that relates to a particular provision of the Act has the same meaning as in that provision of the Act.

2.3 Compliance with the Act

This Constitution is subject to the Act, which overrides any clause in this Constitution that is inconsistent with or not permitted by the Act.

2.4 Transitional

Everything done under this Constitution continues to have the same operation and effect after the adoption of any successor Constitution as if properly done under that Constitution.

3. Objects and Powers of the Council

- a) The objects of the Council are to:
 - i. Provide assistance and relief to older Western Australians, including those who are experiencing poverty, sickness, suffering, distress, misfortune, disability or helplessness;
 - ii. Advance the rights, needs and interests of older Western Australians in all their diversity, giving priority to those most disadvantaged or in need of help;
 - iii. Provide advocacy and leadership on behalf of and for older people to inform and influence policy as well as the services affecting them;
 - iv. Collaborate and/or partner with seniors' organisations, service providers, government at all levels and the business sector to improve the health, safety and well-being outcomes of older people;
 - v. Develop and deliver programs and services that benefit and empower older Western Australians; and
 - vi. Support and promote research into matters concerning older people.

- b) The Council has all the powers of an incorporated association under the Act. The Council may only use its powers to do:
 - i. Anything which it considers will advance or achieve the Objects; and
 - ii. All other things that are incidental to carrying out the Objects

4. Not for Profit

- a) All property and income of the Council must be applied solely towards promoting the Objects, and no part of the Council's property or income may be paid or otherwise distributed, directly or indirectly to any Member, except in good faith in promoting the Objects.
- b) A payment may only be made (directly or indirectly) to a Member out of the funds of the Council if it is a payment of:
 - i. Reasonable remuneration to the Member for services provided to the Council or reasonable compensation for goods supplied to the Council in the ordinary course of business;
 - ii. Interest on money borrowed from a Member by the Council, at a rate not exceeding the cash rate published from time to time by the Reserve Bank of Australia;
 - iii. Reasonable rent to the Member for any premises leased by the Member to the Council; or
 - iv. The reimbursement of reasonable expenses properly incurred by a Member on behalf of the Council.

5. Membership of the Council

5.1 Number of Members

The minimum number of Members is six (6).

5.2 Membership Rights

A Member has all the rights provided to Members under this Constitution, including (but not limited to) the right to:

- a) Receive notices from the Council;
- b) Attend, request the convening of and vote at all General Meetings; and
- c) Be elected or appointed to the Board and any sub-committees of the Council

5.3 Eligibility for Membership

- a) Any person (which includes both individuals and organisations) that supports the Objects is eligible to apply for approval as a Member.
- b) The Board may also nominate an individual for approval as an Honorary Life Member under clause 5.5.

- c) Subject to the Act, and without derogating from the rights of existing Members, the Board may from time to time create additional classes of associate membership of the Council and determine the eligibility criteria, rights and obligations of those associate members (Associate Members).

5.4 Applying for Membership

- a) Every application for membership of the Council must be:
 - i. In a form approved by the Board for that purpose and signed by the applicant; and
 - ii. Submitted to the Council in any other way approved by the Board.
- b) Subject to clause 5.4(e), the Board (or such other person who the Board has delegated authority) will consider membership applications and in its absolute discretion may approve or reject an application, without giving reasons. The Board (or such other person who the Board has delegated authority) may require the applicant to supply evidence of eligibility for membership.
- c) If the Board or its delegate approves the membership application, the Secretary must:
 - i. Notify the applicant and request payment of any applicable Membership Fee;
 - ii. Where the applicant is an organisation, request that the applicant appoint its Representative under clause 5.7;
 - iii. As soon as is practicable, enter the person's name in the Register.
- d) An applicant whose membership application has been approved will not become a Member until:
 - i. The Council has received payment of any required Membership Fee; and
 - ii. The applicant's details are entered in the Register in accordance with clause 7.1.
- e) If the Board's delegate determines that an application for membership should be rejected, that application must be considered by the Board before it is formally rejected. The Board may approve or reject any such application in its discretion, without giving reasons. In the event the Board rejects that application, the applicant must be notified

5.5 Honorary Life Members

- a) The Board may resolve to nominate an individual to be considered for approval as an Honorary Life Member.
- b) If the Board passes a resolution under clause 5.5(a), at the next Annual General Meeting if the Members pass an Ordinary Resolution approving the individual as an Honorary Life Member, then subject to clause 5.4(d), that individual will be approved as an Honorary Life Member.
- c) An Honorary Life Member has all the rights of a Member under this Constitution but is not required to pay any Membership Fee.

5.6 Membership Fees

- a) The Membership Fees for each class of Member, as determined by Board from time to time, must be paid in the manner and by the date directed by the Board from time to time.
- b) If any amount owing under this clause 5.6 remains unpaid for a period of 90 days after it falls due, unless otherwise determined by the Board, the Member will automatically lose its right to vote at a General Meeting until such time as the outstanding Membership Fees are paid.

5.7 Representatives where the Member is an Organisation

- a) A Member that is an organisation may by written notice to the Secretary appoint an individual (who need not be a Member) to act as its Representative at General Meetings in all matters, subject to the Act and subject to any restrictions on the Representative's powers imposed by the Member.
- b) A Member that is an organisation can revoke the appointment of its Representative at any time by written notice to the Secretary.
- c) The Board may in its discretion reject the appointment of a Representative at any time, if it believes on reasonable grounds that it is in the interests of the Council to do so.
- d) Subject to this Constitution, the Representative of the Member:
 - i. Is entitled to exercise at a General Meeting all the powers which its appointing Member could exercise if it were a natural person; and
 - ii. Is entitled to be counted towards a quorum on the basis that the Member will be deemed Present at a General Meeting by its Representative

5.8 Liability of Members

- a) The liability of Members is limited to payment of their Membership Fees in accordance with clause 5.6.
- b) A Member is not liable, by reason of their membership, for the liabilities of the Council or the cost of winding up the Council. For the avoidance of doubt, this clause does not apply to liabilities incurred by or on behalf of the Council by the Member before the incorporation of the Council

5.9 No Transfer of Membership

A right, privilege or obligation of a person by reason of their membership:

- a) Is not capable of being transferred or transmitted to another person; and
- b) Terminates upon the cessation of membership

6. Ceasing to be a Member

6.1 When a Member ceases to be a Member

A Member will cease to be a Member:

- a) If the Member resigns by notice in writing to the Council;
- b) If their membership is revoked in accordance with clause 6.2;
- c) Where the Member is an individual, if the Member dies; or
- d) Where the Member is an organisation, if it is wound up, dissolved, deregistered or otherwise ceases to be an organization.

6.2 Revocation of Membership

- a) Subject to this clause 6.2, the Board may at a Board meeting resolve to revoke a Member's membership if in its opinion:
 - i. The Member's status or conduct is detrimental to the interests of the Council, including (without limitation) if the Member has brought the Council into disrepute;
 - ii. The Member has failed to comply with this Constitution or any By-Laws of the Council; or
 - iii. The Member no longer meets the applicable criteria for membership in clause 5.3.
- b) At least 21 days before the Board meeting referred to in clause 6.2(a) (**Revocation Meeting**), the Secretary must give written notice to the Member:
 - i. Of the proposed revocation of membership and the reasons for that proposed revocation;
 - ii. Of the date, time and place of the Revocation Meeting;
 - iii. Informing the Member that the Member or its Representative (if applicable) may attend the Revocation Meeting and will be given a full and fair opportunity to make oral and written submissions to the Board.
- c) At the Revocation Meeting, the Board must:
 - i. Give the Member or its Representative a full and fair opportunity to make oral submissions and must give reasonable consideration to any written submissions; and
 - ii. Determine whether the Member's membership should be revoked.

7. Register of Members

7.1 Maintaining the Register of Members

- a) The Board or any person authorised by the Board must keep and maintain a Register in accordance with section 53 of the Act, containing:
 - i. The name and residential, postal or email address of each Member and its Representative(s);
 - ii. The class of membership of each Member (if applicable);
 - iii. The date on which each Member's name was entered into the Register;

- iv. The name and date of appointment of each Representative; and
 - v. The date on which that person ceased to be a Member.
- b) Any change in the membership of the Council must be recorded in the Register within 28 days.

7.2 Inspecting and Copying the Register

- a) The Register is available for inspection free of charge by any current Member upon written request to the CEO.
- b) Subject to the Act:
- i. A Member may make a copy of entries in the Register;
 - ii. A Member may apply in writing to the Board for a copy of the Register and the Board may in its discretion require the Member to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Council; and
 - iii. The Board may charge a reasonable fee for providing a copy of the Register.
- c) A Member must not use or disclose any information in the Register for any purpose other than a purpose that:
- i. Is directly connected with the affairs of the Council; or
 - ii. Relates to the administration of the Act.

8. General Meetings

8.1 Annual General Meetings

The Council must hold an Annual General Meeting at the place, date and time determined by the Board once in each calendar year. The Annual General Meeting must be held no later than 6 months after the end of each Financial Year, except where the Commissioner has allowed for a longer period under the Act.

8.2 Business at Annual General Meeting

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

- a) Reviewing the Council's activities and finances since the last preceding Annual General Meeting;
- b) Confirming the minutes of the last preceding Annual General Meeting and of any other General Meeting held since the last preceding Annual General Meeting;
- c) Receiving and considering:
 - i. The Board's annual report on the Council's activities during the preceding Financial Year;
 - ii. The Financial Statements, the Financial Report or the auditor's report of the Council as may be required under the Act;
- d) Electing Directors in accordance with clause 15.3;

- e) Where relevant, appointing an auditor or reviewer in accordance with the Act; and
- f) Transacting any other business which under this Constitution or the Act may properly be brought before the meeting.

8.3 Special General Meetings

- a) The Board or the Chair may at any time convene a General Meeting of the Members, or of any class of Members.
- b) The Board must convene a General Meeting of Members if it receives a request to do so which meets the following requirements:
 - i. The request is made by Members who in aggregate are entitled to cast 20% of the votes at a General Meeting; and
 - ii. The request is in writing, signed by all the Members making the request, and states the business to be conducted at the General Meeting; and
 - iii. The request is lodged with the CEO or the Chair.
- c) On receipt of a request from Members under clause 8.3(b), the Board must:
 - i. Give all Members 21 days' notice of the General Meeting; and
 - ii. Hold the General Meeting within 2 months of the date of the request.
- d) Subject to the Act, the Board may cancel or postpone any General Meeting or change its venue by giving notice to all persons to whom the notice of the original meeting was given, but may not cancel a General Meeting which was called or requested by Members, without the prior written consent of those Members.

8.4 Notice of General Meetings

- a) Notice of every General Meeting must be given in the manner authorised by clause 19.1 to every Member and Director, to any reviewer or auditor of the Council and any other person authorised by the Board.
- b) Notice of General Meetings must be provided to Members at least 21 clear days before the date of the General Meeting.

8.5 Content of General Meetings

The Notice of the General Meeting must:

- a) Specify the place, date and time for the General Meeting (and, if the meeting is to be held in two or more places in accordance with clause 8.7, the technology that will be used to facilitate this);
- b) State the general nature of the business to be transacted at the General Meeting;
- c) If a Special Resolution is to be proposed at the General Meeting, set out an intention to propose the Special Resolution and state the wording of the resolution; and
- d) Contain a statement of each Member's right to appoint an individual to act as their proxy in accordance with clause 9.1(d).

8.6 Failure to Give Notice

Any resolution passed at a General Meeting is not invalidated by:

- a) The accidental omission to give notice of a General Meeting to any Member or non-receipt of that notice by a Member; or
- b) The accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument by a Member.

8.7 Use of Technology

- a) The Council may hold a General Meeting (including an Annual General Meeting) as a virtual or hybrid meeting using any technology that gives Members a reasonable opportunity to participate, provided that arrangements are made at each venue for the recording of all votes cast.
- b) The General Meeting is taken to be held where the Chair conducts the General Meeting. All proceedings conducted in accordance with this clause 8.7 are as valid as if conducted at a single gathering of a quorum of those entitled to be Present.

8.8 Quorum

- a) No business may be transacted at a General Meeting unless a quorum of Members is Present at the time when the meeting proceeds to business.
- b) Except as otherwise provided in this Constitution, a quorum constitutes 5 Members Present.

8.9 If a Quorum is not Present

If a quorum is **not present** within 15 minutes after the time appointed for the General Meeting in the notice:

- a) Where the meeting is convened on the requisition of Members, the meeting must be automatically dissolved; or
- b) In any other case:
 - i. The meeting stands adjourned to a day and at a time and place as the Board decides or, if no decision is made by the Board, to the same day in two weeks at the same time and place; and
 - ii. If no quorum is Present at the resumed meeting within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

8.10 Adjournments

- a) The Chair may, and must if directed to do so by the General Meeting, adjourn a General Meeting from time to time and from place to place.
- b) Only business left unfinished at a meeting which was adjourned may be transacted at a meeting resumed after an adjournment.
- c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.
- d) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting. In all other cases it is not necessary to give notice of the adjourned meeting.

9. Voting at General Meetings

9.1 Voting Rights

- a) At General Meetings each Member entitled to attend and vote in accordance with this Constitution:
 - i. Has one vote on a show of hands or on a poll; and
 - ii. May attend and vote in person or by proxy, or attorney and, where the Member is an organisation, by a Representative.
- b) Each person Present at the General Meeting who represents more than one Member, either personally, by proxy, attorney or as Representative, has 1 vote on a show of hands.
- c) Any Member whose Membership Fees are outstanding in accordance with clause 5.6 may not exercise its right to vote at a General Meeting.
- d) A Member may appoint an individual who need not be a Member as their proxy to attend and vote at General Meetings on behalf of the Member.

9.2 Member's Resolutions

- a) A resolution put to the vote at a General Meeting must be decided by an Ordinary Resolution, except where it is required by this Constitution or otherwise by law that the resolution be a Special Resolution.
- b) A Special Resolution is a resolution passed by the Council at a General Meeting in accordance with section 51 of the Act by the votes of not less than three-fourths of the Members who validly cast a vote at the General Meeting.
- c) A resolution put to the vote at a General Meeting must be decided on a show of hands unless a poll is demanded in accordance with clause 9.3.
- d) Before a vote is taken, the Chair must inform the General Meeting whether any proxy votes have been received and how the proxy votes are to be cast on the resolution.
- e) In the case of an equality of votes on a show of hands or on a poll, the Chair has a casting vote, in addition to any vote that the Chair may otherwise be entitled.
- f) A declaration by the Chair that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting is conclusive evidence of that fact. Neither the Chair nor the minutes of the meeting need to state the number or proportion of the votes recorded in favour or against the resolution.

9.3 Voting by Poll

- a) A poll may be demanded by:
 - i. The Chair; or
 - ii. At least 3 Members Present entitled to vote on the resolution.
- b) A poll may be demanded:
 - i. Before a vote is taken; or
 - ii. Before or immediately after the voting results on a show of hands are declared.
- c) A demand for a poll may be withdrawn.

- d) Subject to clause 9.3(e), if a poll is demanded, it is to be taken in the manner and at the time the Chair directs.
- e) A poll demanded on the question of adjournment must be taken immediately.
- f) The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.
- g) A demand for a poll does not prevent a General Meeting from proceeding with any other business.

9.4 Objection to Qualification to Vote

- a) An objection to a person's right to vote at a General Meeting:
 - i. May only be raised at the General Meeting or adjourned meeting at which the vote objected to is tendered; and
 - ii. Must be determined by the Chair of the meeting, whose decision is final.
- b) A vote allowed after an objection is valid for all purposes.

9.5 Direct Voting

- a) The Board may determine that, at any General Meeting or class meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to vote by direct vote in respect of that resolution. A direct vote includes a vote delivered to the Council by post or any other means approved by the Board, subject to compliance with the Act.
- b) Where clause 9.5(a) applies, the notice of meeting must indicate that direct voting is available at the relevant meeting or on particular resolutions.
- c) The Board may prescribe procedures in relation to direct voting, including (without limitation):
 - i. Specifying the form, method and timing of casting a direct vote at a meeting for the vote to be valid; and
 - ii. The circumstances in which a direct vote may be withdrawn by the Member or deemed withdrawn.

10. Minutes and Records

Subject to the Act, the Board must cause:

- a) Minutes to be made of all General Meetings, all meetings of the Board and all resolutions passed by the Board without a meeting; and
- b) Provision to be made for the custody of books and securities of the Association.

11. Resolving Disputes

11.1 Application of Disputes Procedure

The disputes procedure set out in this clause applies to disputes under or relating to this Constitution between:

- a) A Member and another Member or Members; and
- b) A Member or Members and the Council.

11.2 Disputes Procedure

- a) The parties to the dispute must attempt to resolve the dispute (in person or by telephone, email, or any other means of communication) within 14 days after the dispute comes to the attention of all of the parties. In the case of a dispute involving the Council, the Chair or another Director nominated by the Chair will represent the Council.
- b) If the parties are unable to resolve the dispute within the 28 day period specified in clause 11.2(a), either party may initiate the dispute resolution procedure by giving a written notice to the Chair identifying the parties to the dispute and the subject of the dispute.
- c) Within 28 days of receipt of a notice under clause 11.2(b), a Board meeting must be convened to determine the dispute.
- d) The Chair must give the parties to the dispute at least 7 days' prior written notice of the Board meeting, informing them that they may attend the meeting (in person or via telephone, video conferencing or any other available means of instant communication) and make oral or written submissions (or both).
- e) At the Board meeting, the Board must:
 - i. Give each party to the dispute, or the party's Representative, a full and fair opportunity to make oral or written submissions and must give reasonable consideration to any submissions; and
 - ii. Determine the dispute, or if it thinks appropriate, refer the dispute to an alternative dispute resolution process.
- f) Written notice of the Board's decision regarding the dispute must be given to all parties to the dispute within 7 days after the Board meeting.
- g) Following the Board's decision, any party to the dispute may request the dispute to be referred to mediation by notice to the Chair within 14 days of receipt of the notice under clause 11.2(f).

11.3 Mediation

- a) Where a dispute is referred to mediation under this Constitution, a mediator who is eligible in accordance with this clause 11.3(a) must be appointed by:
 - i. Agreement between the parties to the dispute within 28 days of the referral; or
 - ii. The Board, if the parties fail to agree on the mediator within the period specified in clause 11.3(a)(i).

- b) The person appointed as mediator may be a Member or former Member, but must not have any personal interest in the subject matter of the dispute, or be biased in favour of or against any party to the mediation.
- c) The mediation must be commenced within 28 days after the mediator has been appointed and must be concluded within 1 month after the mediator has been appointed, unless otherwise agreed between the parties to the dispute.
- d) The mediator's costs are to be paid by the party or parties to the mediation that requested the appointment of the mediator.
- e) Each party must meet its own costs of and in connection with the mediation.
- f) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation and must comply with requests by the mediator, including requests to provide evidence, attend meetings and pay the mediator's fees.
- g) Unless otherwise agreed between the parties, the parties must exchange written statements of the issues that are in dispute between them and supply copies to the mediator at least 5 days before the mediation session.
- h) The mediator, in conducting the mediation, must:
 - i. Give the parties to the mediation process every opportunity to be heard;
 - ii. Allow due consideration by all parties of any written statement submitted by any party; and
 - iii. Ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- i) The mediator must not determine the dispute.
- j) The mediation must be confidential and without prejudice.
- k) If the mediation process does not result in the dispute being resolved, the parties may apply to the State Administrative Tribunal (or any other appropriate body) to determine the dispute in accordance with the Act or otherwise at law.

11.4 If Dispute Resolution Results in Decision to Suspend or Expel being Revoked

If a disputes procedure under this clause 11 takes place concerning the revocation of a Member's membership and the result of the disputes procedure is that the Member's membership is reinstated, that revocation decision does not affect the validity of any decision made at a Board meeting or General Meeting during the period in which the Member's membership was purported to be revoked.

12. Board

12.1 The Board

- a) The Board will comprise a minimum of 5 Directors and such maximum number as the Board may determine from time to time.
- b) At the first Board meeting after each Annual General Meeting, the Board will resolve to appoint Directors to hold the positions of:
 - i. Chair; and
 - ii. Deputy Chair.
- c) The Board may (but is not obliged to) resolve to appoint an individual (who need not be a Director) to the position of Secretary.

12.2 Powers of the Board

The Board is responsible for managing the business of the Council and may exercise all powers of the Council which are not required by the Act or this Constitution to be exercised by the Council in a General Meeting.

12.3 Payments to Directors

- a) The Council must not pay fees to a Director for acting as a Director.
- b) Clause 12.3(a) does not apply to any payments approved by the Members or for out-of-pocket travel and accommodation expenses properly incurred in connection with the performance of the Director's functions, including (but not limited to) attending Board meetings and General Meetings.

13. Responsibilities of Directors

13.1 Responsibilities of Directors and Declaring Interests

- a) Each Director must exercise his or her powers and discharge his or her duties as Director in accordance with the Act and all applicable laws.
- b) A Director who has a material personal interest in a matter which is or will be considered at a Board meeting must, to the extent required by the Act:
 - i. As soon as the Director becomes aware of the interest, disclose to the Board the nature and extent of the interest and how the interest relates to the activity of the Council;
 - ii. Not be present while the matter is being considered at the Board meeting or vote on the matter; and
 - iii. Ensure the nature and extent of the interest and how the interest relates to the activity of the Council is disclosed at the next General Meeting.

- c) Clause 13.1(b) does not apply to any material personal interest that:
 - i. Exists only because the Director:
 - A) Is an employee of the Council;
 - B) Is a member of a class of persons for whose benefit the Council is established; or
 - ii. The Director has in common with all, or a substantial proportion of, the Members.

13.2 Chair

- a) Subject to this clause 13.2, the Chair will act as the chair of Board meetings and General Meetings.
- b) Where a meeting is held and the Chair is not present or declines to act as chair, the Deputy Chair must chair the relevant meeting, or if the Deputy Chair is not present or declines to act as chair, the Directors present must elect one of their number to chair the relevant meeting.
- c) In this Constitution, references to the Chair include any person who is appointed to chair a meeting under clause 13.2(b). In relation to that meeting, references to the Chairperson in this Constitution include a reference to that person.

14. Chief Executive Officer

- a) The Board will appoint a person to the office of Chief Executive Officer (CEO) on such terms and conditions as determined by the Board.
- b) The CEO is an ex-officio member of the Board, but is not a Director and has no right to vote at a meeting of the Board.

15. Election or Appointment of Directors

15.1 Eligibility

Any person may become a Director either:

- a) By election at an Annual General Meeting in accordance with clause 15.3;
- b) By appointment of the Board to fill a casual vacancy in accordance with clause 16.2.

15.2 Terms of Office

- a) The term of office of a Director (Term):
 - i. Begins when he or she is elected at an Annual General Meeting under clause 15.3 or is appointed to fill a casual vacancy under clause 16.2; and
 - ii. Ends at the conclusion of the third Annual General Meeting after his or her appointment or otherwise under clause 16.1.
- b) Subject to clause 15.2(c), at the expiration of their Term, a Director may stand for re-election in accordance with clause 15.3.

- c) An Elected Director who has held office for 3 consecutive Terms since first being elected by Members may only be re-appointed as a Director where the Board unanimously agrees that there is a need for the continuing service of that Elected Director in which case the Board may re-appoint that Director for a further period ceasing at the next Annual General Meeting.

15.3 Election of Directors

- a) Subject to the Act, the Council may by resolution appoint or remove a Director from the Board.
- b) A person is eligible for election to the Board as a Director in accordance with clause 15.3 only if they:
 - i. Are aged 18 or over;
 - ii. Are a Member or a Representative;
 - iii. Are not disqualified from being an office holder of the Board under sections 39 and 40 of the Act or any other legislation which applies to the Council; and
 - iv. Satisfy any eligibility requirements determined by the Board from time to time.

16. Resignation and Removal from Office

16.1 Vacancy on Board

A Director's Term ends and that office becomes vacant if the Director:

- a) Resigns by notice in writing delivered to the Council;
- b) Dies;
- c) Ceases to meet the applicable eligibility criteria;
- d) Becomes physically or mentally incapable of performing the Director's duties and the Board resolves that his or her office be vacated for that reason;
- e) Is the subject of a resolution passed by Members terminating his or her appointment as a Director.

16.2 Filling Casual Vacancies

- a) The Board may resolve to appoint a person who is eligible to act as a Director at any time to the Board where:
 - i. There is a vacancy on the Board under clause 16.1;
 - ii. A position was not filled at the Annual General Meeting; or
 - iii. The Board otherwise determines in its discretion it is in the Association's best interests to appoint that person to the Board.
- b) An individual appointed to the Board under clause 16.2(a) holds office until the conclusion of the next Annual General Meeting, and is eligible for re-election or re-appointment (as applicable) to the Board subject to this Constitution.

16.3 Return of Books and Records

- a) As soon as practicable after a Director's Term ends, that person (or if the Director has died, their personal representative) must deliver to the Board all books, records and documents of the Council in his or her possession, whether in hard copy or electronic format.
- b) The Board may require the outgoing Director to certify in writing that, having complied with clause 16.3(a), he or she has destroyed all remaining electronic copies of books, records and documents of the Council.

17. Board Proceedings

17.1 Calling and Holding Board Meetings

- a) Subject to the Act, the Directors may decide how often, where and when they meet.
- b) The Board may adjourn and otherwise regulate its meetings as it thinks fit.
- c) A Director may call a Board meeting by giving reasonable notice to all other Directors in writing or by any other means of communication that has previously been agreed to by all the Directors.
- d) The Directors may hold a meeting (and that meeting will be deemed to be validly constituted) using any technology or medium that gives each of the Directors a reasonable opportunity to hear and participate in the meeting.

17.2 Quorum

- a) At a Board meeting, the number of Directors whose presence is necessary to constitute a quorum is a majority of Directors.
- b) If any office on the Board becomes vacant, the remaining Directors may act but, if the total number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, the Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or for the purpose of convening a General Meeting.

17.3 Board Resolutions

- a) Subject to this Constitution, a resolution of the Board must be passed by a majority of the votes of Directors present and entitled to vote on the resolution.
- b) Each Director has one vote.
- c) In case of an equality of votes, the Chair has a second or casting vote in addition to his or her deliberative vote (if any).

17.4 Resolutions Without a Meeting

- a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution:
 - i. Sign a document (or separate identical copies of a document) containing a statement that they are in favour of the resolution set out in the document; or
 - ii. Confirm by email or any other means approved by the Board that they are in favour of the resolution, in accordance with any policies adopted by the Board for this purpose.

- b) The resolution is passed when the last Director signs the document under clause 17.4(a)(i) or otherwise confirms that he or she is in favour of the resolution under clause 17.4(a)(ii).

17.5 Bylaws

The Board has the power to make by-laws regulating the establishment, organisation and conduct of the Council, provided such by-laws are not inconsistent with this Constitution or the Act.

17.6 Acts Valid Despite Defective Appointment

Subject to the Act, any act done at any Board meeting by any person acting as a Director, even if it is later discovered that there was some defect in the appointment of any such Director or that the Director was not eligible for election under clause 15.1, is valid as if the Director had been duly appointed and was qualified to be a Director.

17.7 Sub-Committees

The Board may create sub-committees as it sees fit, consisting of such Members, Directors or other persons who are not Members as the Board thinks fit and may delegate such powers to a sub-committee other than the power of delegation.

18. Execution of Documents

- a) The Council may validly execute a document (including a deed) if the document is signed:
 - i. By two Directors;
 - ii. Or, otherwise in accordance with the Act.
- b) The Council need not have or use a common seal to execute documents or deeds.
- c) Clause 18(a) does not limit the Board's ability to authorise a person who is not a Director to execute a document for and on behalf of the Council.

19. Notices

19.1 How Notice to be Given

All notices, including notices of meeting, may be given by the Council to any Member by:

- a) Serving it on the Member personally;
- b) Sending it by post to the Member's nominated address;
- c) Sending it by email to an email address nominated by the Member, or by any other electronic means nominated by the Member; or
- d) Giving it by any other means permitted or contemplated by the Act.

19.2 When Notice is Given

A notice is deemed to be given by the Council and received by the Member:

- a) If delivered in person, when delivered to the Member;
- b) If posted, at 9.00 am on the third (seventh, if sent to or from an address in another country) day after the date of posting, whether delivered or not;
- c) If sent by email, 2 hours after the time the email is sent to the Member's nominated email address, as recorded on the Council's email system, unless the Council receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered;

But, if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

20. Funds and Accounts

20.1 Control of Funds

- a) The Board is responsible for expenditure of the funds of the Council and may authorise any other person to expend the funds of the Council within specified limits and any expenditure above those limits must be approved or ratified by the Board.
- b) The funds of the Council must be kept in an account or accounts in the name of the Council in a financial institution determined by the Board and are to be used to do:
 - i. Anything which it considers will advance or achieve the Objects; and
 - ii. All other things that are incidental to carrying out the Objects.
- c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Council are to be executed by:
 - i. Any 2 Directors; or
 - ii. Any person or persons authorised by the Board, within the expenditure limits set by the Board.
- d) All electronic payments by the Council are to be made or authorised by:
 - i. The Board; or
 - ii. Any person or persons authorised by the Board;

Within, the expenditure limits specified by the Board.

20.2 Source of Funds

The Council may derive funds in any way permitted by the Act.

20.3 Financial Reporting, Audit and review

The Board must cause the Council to comply with all financial reporting obligations imposed on it under the Act or any other applicable legislation including by maintaining Financial Records as required by the Act.

20.4 Financial Year

The Financial Year of the Council is the 12 month period starting on 1 July.

20.5 Inspection of records

- a) Subject to the Act and to this Constitution, the Board must determine whether and on what terms the books, records and other documents of the Council will be open to the inspection of Members other than Directors.
- b) A Member other than a Director does not have the right to inspect any document of the Council except as provided by the Act, or otherwise as authorised by the Board or by the Council in General Meeting.

21. Indemnity and Insurance

21.1 Definition

In this clause **Officer** has the meaning given in section 3 of the Act.

21.2 Council may Indemnify Officers

To the full extent permitted by law and without limiting the powers of the Council, the Council may indemnify any person who is or has been an Officer of the Council against all losses, liabilities, damages, costs, charges and expenses of any kind incurred by the Officer as an Officer of the Council.

21.3 Documentary Indemnity and Insurance Policy

To the extent permitted by the Act and any applicable law and without limiting the powers of the Council, the Board may authorise the Council to, and the Council may, enter into any:

- a) Documentary indemnity in favour of; or
- b) Insurance policy for the benefit of,

A person who is, or has been, an Officer of the Council, which indemnity or insurance policy may be in such terms as the Board approves and, in particular, may apply to acts or omissions prior to or after the time of entering into the indemnity or policy.

22. Affiliation and Membership of Other Similar Organisations

- a) The Council may in a General Meeting determine to affiliate with or become a member of, or to accept affiliation or membership of, any organisation (including any regional or international association) having similar or like interests to the Council.
- b) If the Council becomes a member of another organisation in accordance with clause 22(a), the Board will nominate a Member or employee to represent the Council.

23. Winding up, Cancellation and Distribution of Surplus Property

- a) For the purposes of this clause Surplus Property has the meaning given in section 3 of the Act.
- b) Subject to the Act, the Council may cease its activities and be wound up or cancelled in accordance with a Special Resolution.
- c) Upon the winding up or cancellation of the Council, any Surplus Property (including Gift Funds) will not be paid to or distributed among the Members, but will be distributed to one or more organisations listed in section 24(1) of the Act with objects similar to the Objects and which are deductible gift recipients within the meaning of the Tax Act.

24. Variation or Amendment of Constitution

This Constitution may be varied, amended or rescinded from time to time by Special Resolution in accordance with Division 2 of Part 3 of the Act.

