

Constitution of National Centre for Vocational Education Research Ltd

ACN 007 967 311

Lodged with the Australian Charities and Not-for-profits Commission

This document incorporates changes agreed to at the
Extraordinary General Meeting of the Company on 20 June 2025

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CONSTITUTION OF NATIONAL CENTRE FOR VOCATIONAL EDUCATION RESEARCH LTD

ACN 007 967 311

1. PRELIMINARY

1.1 Company limited by guarantee

The Company is a public company limited by guarantee and the liability of Members is limited as provided at rule 3.3 of this Constitution.

1.2 Replaceable rules

The replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the rules set out in this Constitution.

1.3 Definitions

The following definitions apply in this Constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), as modified or amended from time to time and includes:

- (a) any regulations made under that Act; and
- (b) any requirements of the ACNC Commissioner having application to the Company.

ACNC Governance Standards means those governance standards as set out in the *Australian Charities and Not-for-Profits Commission Regulations 2022* (Cth), as modified or amended from time to time.

Advisory Committee has the meaning provided at rule 13.1(a)(ii).

Alternate Director means a person appointed as an alternate director under rule 8.10(a).

Annual Budget has the meaning provided at rule 9.5(a).

Annual General Meeting means the annual general meeting of the Company, held as required by section 250N of the Corporations Act.

Appointing Director means a Director who appoints an Alternate Director under rule 8.10(a).

Auditor means the auditor of the Company.

Australian Accounting Standards means accounting standards approved under the Corporations Act and its requirements regarding the preparation of financial statements.

Board means the Directors, from time to time, acting collectively under this Constitution.

Board Chair means the chair of a meeting of the Board.

Board Committee has the meaning provided at rule 13.1(a)(i).

Business Day means any day that is not a Saturday, Sunday or a public holiday in the place concerned.

By-Laws means any rules or procedures made by the Board for the purpose of giving effect to this Constitution.

Centre means the centres established and maintained by the Company to carry out activities for the purpose of promoting the Company's objects.

Committee means either a Board Committee or an Advisory Committee (as the case may be) established in accordance with rule 13.1(a).

Commonwealth means the Commonwealth of Australia.

Commonwealth Department means the Commonwealth department responsible for skills, vocational education and training policies and programmes, whatever its name may be from time to time.

Company means the National Centre for Vocational Education Research Ltd ACN 007 967 311, whatever its name is from time to time.

Constitution means this constitution for the Company, as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes:

- (a) any regulations made under that Act; and
- (b) any requirements of the Australian Securities and Investments Commission having application to the Company.

Director means a person who is, for the time being, a director of the Company and, where appropriate, includes an Alternate Director.

Gift means a voluntary transfer of money or property where the donor receives no material benefit or advantage.

Government Agency means a:

- (a) government or government department or other body;
- (b) governmental, semi-governmental or judicial person; or
- (c) person (whether autonomous or not) who is charged with the administration of the law.

Liability has the meaning provided at rule 10.1(b).

Main Undertaking means the main or a material part of the undertaking, assets, property or business of the Company.

Managing Director means the person appointed by the Board to the employed position of managing director of the Centre in accordance with rule 11.8.

Member means a member of the Company whose name is entered in the Register.

Members' Chair means the chair of a meeting of the Members.

Memorandum and Articles of Association means the former:

- (a) Memorandum of Association of the Company, dated 30 June 1981; and
- (b) Articles of Association of the Company dated 30 June 1981.

Month means a calendar month.

Northern Territory means the Northern Territory of Australia.

Officer has the meaning given by section 9 of the Corporations Act.

Ordinary Resolution means a resolution passed at a general meeting of the Members by a majority of the votes cast by the Members entitled to vote on the resolution.

Register means the register of members kept as required by sections 168 and 169 of the Corporations Act.

Remuneration Tribunal means the remuneration tribunal established under the *Remuneration Tribunal Act 1973* (Cth), as modified or amended from time to time.

Secretary:

- (a) means during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution; and
- (b) includes, where appropriate, any assistant or acting Secretary.

Skills Minister means a person who is, from time to time, a Minister of the Crown with responsibility for vocational education and training in any of the:

- (a) States;
- (b) Northern Territory;
- (c) Australian Capital Territory; or
- (d) Commonwealth.

Special Resolution has the meaning given by section 9 of the Corporations Act.

States means the states of:

- (a) New South Wales;
- (b) Victoria;
- (c) Queensland;
- (d) South Australia;
- (e) Western Australia; and
- (f) Tasmania.

1.4 **Interpretation**

The following rules apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply:

- (a) headings and marginal notes are for convenience only and do not affect interpretation;

- (b) a reference to:
 - (i) any legislation is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it;
- (c) a singular word includes the plural, and vice versa;
- (d) a word that suggests one gender includes the other genders;
- (e) a reference to a **rule** means a rule of this Constitution;
- (f) the word **includes** in any form is not a word of limitation;
- (g) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning. The meaning of general words is not limited by specific examples;
- (h) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (i) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it;
- (j) a reference to a power is also a reference to authority or discretion;
- (k) a reference to "\$" means the Australian dollar;
- (l) a reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form;
- (m) a word (other than a word defined in rule 1.3) which is defined by the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act; and
- (n) to the extent there is any inconsistencies between the rules of this Constitution and any sections of the Corporations Act or the ACNC Act, the relevant sections of the Corporations Act or the ACNC Act (as the case may be) will take precedence over the rules of this Constitution to the extent of any such inconsistency.

1.5 Notices

- (a) A notice is properly given by the Company to a Member or any other organisation under this Constitution if it is:
 - (i) in writing and signed on behalf of the Company (by original or printed signature);
 - (ii) addressed to:
 - (A) in respect of notices to the Member, either:
 - (aa) the Member;
 - (bb) the Skills Minister representing the Member; or
 - (cc) the government department which the Skills Minister representing the Member has portfolio responsibility for in relation to vocational education and training matters; or
 - (B) in respect of any other organisation, the organisation to whom it is to be given; and
 - (iii) either:
 - (A) delivered personally;
 - (B) sent by prepaid mail (by airmail, if the addressee is overseas) to that Member's or the relevant organisation's address; or
 - (C) sent by electronic message to the electronic address (if any) nominated by that Member or the relevant organisation.
- (b) A notice to a Member or any other organisation under this Constitution by the Company is regarded as given and received:
 - (i) if it is delivered personally:
 - (A) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (B) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
 - (ii) if it is sent by electronic message or given under section 249J(3)(c) of the Corporations Act:
 - (A) by 5.00 pm (local time in the place from which it is sent or given) on a Business Day - on that day; or
 - (B) after 5.00 pm (local time in the place from which it is sent or given) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
 - (iii) if it is sent by mail:
 - (A) within Australia - one Business Day after posting; or
 - (B) to a place outside Australia - three Business Days after posting.

- (c) A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.
- (d) If a specified period must pass after a notice is given before an action may be taken, neither:
 - (i) the day on which the notice is given; nor
 - (ii) the day on which the action is to be taken,may be counted in determining whether the required period has passed.

1.6 **Amendment procedure**

- (a) The Company may, by Special Resolution, resolve to amend or repeal this Constitution.
- (b) All previous acts and appointments legal and valid under the Memorandum and Articles of Association prior to the replacement of the Memorandum and Articles of Association will (subject to any later rules and any other legal obligations) remain legal and valid following the replacement of the Memorandum and Articles of Association.
- (c) All previous acts and appointments legal and valid under this Constitution prior to the repeal or amendment of this Constitution will (subject to any later rules and any other legal obligations) remain legal and valid following the repeal or amendment of this Constitution.

2. **OBJECTS AND POWERS**

2.1 **Objects of the Company**

The objects for which the Company is established are:

- (a) Operate as the National Vocational Education and Training (VET) Data Custodian, Collect and manage data on the national VET system, consistent with the legislative authority outlined in the National Vocational Education and Training Regulator Act 2011, the National VET Data Policy, and other policies agreed by its members, including (but not limited to) data on:
 - (i) all VET activity delivered by Australian Registered Training Organisations (RTOs), including those operating offshore
 - (ii) The funding of VET activity, and
 - (iii) the outcomes and experiences of students and employers with the VET sector.

- (b) Prepare impartial analytical and statistical reports and insights on the performance of the national VET system, including the experiences of students and employers within the VET sector
- (c) Undertake, co-ordinate and promote research as requested by Members or their representatives
- (d) Collaborate through sharing data, analysis, and insights with VET stakeholders to improve the evidence base for Australian VET.
- (e) Carry out any other functions that are incidental or conducive to the performance of the above functions.

2.2 **Powers of the Company**

The Company:

- (a) has all the powers of a company limited by guarantee under the Corporations Act; and
- (b) may do all things that are necessary, convenient or incidental to carrying out, or for the attainment of, the Company's objects. Without limitation, this includes the power:
 - (i) to acquire, hold and dispose of real property of any interest or tenure;
 - (ii) to invest any funds of the Company from time to time in such securities issued by:
 - (A) any bank;
 - (B) the Commonwealth government;
 - (C) the governments of any of the States or the Northern Territory;
 - (D) any instrumentality of such governments as the Directors think fit;
 - (iii) to vary the investments and other assets of the Company;
 - (iv) to employ, dismiss or suspend such staff as may be required for the purpose of carrying out the functions of the Company and to enter into arrangements with any employer whereby the services of officers or employees of that employer are made available to the Company;
 - (v) to seek grants and fellowships from funding organisations and authorities with respect to particular projects to be undertaken by the Company; and
 - (vi) to accept Gifts, devises and bequests made to the Company whether of real or personal property and whether upon trust or otherwise and if any such Gift, devise or bequest is subject to any trusts then to accept and carry out such trusts and (if necessary) to act as trustee of any monies or other property vested in the Company subject to trusts.

2.3 **Objects do not limit powers**

The objects in rule 2.1 do not limit the powers of the Company under the Corporations Act or otherwise.

2.4 **Application of income and property**

- (a) Subject to rules 2.4(c) and 9.6, the Company must only apply its income and assets solely towards promoting the objects of the Company as set out in rule 2.1.
- (b) Subject to rule 2.4(c), no part of the Company's income or assets may be paid, or transferred directly or indirectly by way of dividend, bonus or otherwise to Members.
- (c) This rule 2.4 does not prevent the Company from making any payments in good faith to a Member provided these payments are by way of:
 - (i) reasonable remuneration paid to a Member in return for services actually rendered or goods supplied to the Company on an arm's length basis;
 - (ii) the payment or reimbursement of expenses properly incurred by a Member on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board; or
 - (iii) reasonable and proper rent or fees paid to a Member for premises leased or licensed by any Member to the Company.

2.5 **By-Laws**

- (a) The Board may pass a resolution to make any By-Laws considered necessary or convenient.
- (b) Subject to rule 2.5(c), Members and Directors must comply with By-Laws as if the By-Laws were part of this Constitution.
- (c) If there is any inconsistency between this Constitution and any By-Laws created, the terms of this Constitution will prevail to the extent of the inconsistency.

3. **MEMBERSHIP**

3.1 **Membership of the Company**

- (a) The Members of the Company are each of the:
 - (i) States;
 - (ii) Northern Territory;
 - (iii) Australian Capital Territory; and
 - (iv) Commonwealth.
- (b) Each of the Members is to be represented by their respective Skills Minister. Each Skills Minister may, acting for and on behalf of the Member they represent, exercise that Member's rights under this Constitution.
- (c) Members are bound by this Constitution in accordance with section 140(1) of the Corporations Act.

3.2 **Rights and powers of Members**

Subject to this Constitution, all Members are entitled to:

- (a) attend and participate in meetings of the Members;
- (b) vote in the election of Directors in accordance with rules 8.2(a)(i) and 8.5; and

- (c) exercise any other rights provided to Members under:
 - (i) this Constitution;
 - (ii) any By-Laws; or
 - (iii) the Corporations Act, the ACNC Act or under any other law.

3.3 **Limited liability of Members**

- (a) Subject to rule 3.3(b), the liability of Members is limited.
- (b) If the Company is wound up, each Member undertakes to contribute to the assets of the Company up to an amount not exceeding \$50.00 for payment of the debts and liabilities of the Company, including the costs of the winding up.

3.4 **Cessation of membership**

- (a) A body politic will cease to be a Member of the Company if the body politic resigns as a Member of the Company by giving written notice to the Company.
- (b) If a body politic ceases to be a Member, the Secretary must make an appropriate entry in the Register recording the date on which the body politic ceased to be a Member.

3.5 **Membership not transferrable**

A right, privilege, or obligation which a body politic has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) expires upon cessation of their membership.

4. **GENERAL MEETINGS OF MEMBERS**

4.1 **Annual General Meeting**

The Company must hold an Annual General Meeting in accordance with the requirements of section 250N of the Corporations Act.

4.2 **Calling a meetings of Members**

- (a) A general meeting of the Members:
 - (i) may be convened at any time by the Board; and
 - (ii) must be convened by the Board when required:
 - (A) following a request made by the Members in accordance with section 249D the Corporations Act; or
 - (B) by a court order made under section 249G of the Corporations Act.
- (b) The Members may call, and arrange to hold, a general meeting of the Members in accordance with section 249F of the Corporations Act.

4.3 **Notice of meeting**

- (a) Subject to rule 4.4, at least 21 days' written notice of a general meeting of the Members must be given individually to:

- (i) each Member (whether or not the Member is entitled to vote at the meeting);
 - (ii) each Director; and
 - (iii) the Auditor.
- (b) Subject to any regulation made under section 249LA of the Corporations Act, the notice of meeting must comply with section 249L of the Corporations Act and may be given in any manner permitted by section 249J(3) of the Corporations Act.

4.4 **Short notice**

Subject to sections 249H(3) and (4) of the Corporations Act:

- (a) if the Company has elected to convene a general meeting of the Members as the Annual General Meeting, and if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

4.5 **Postponement or cancellation**

Subject to sections 249D(5) and 250N of the Corporations Act, the Board may:

- (a) postpone a general meeting of the Members;
- (b) cancel a general meeting of the Members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

4.6 **Fresh notice**

If a general meeting of the Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

4.7 **Technology**

The Company may hold a general meeting of the Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

4.8 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a general meeting of the Members.

5. **PROCEEDINGS AT GENERAL MEETINGS OF MEMBERS**

5.1 **Member present at general meeting**

If a Member has appointed a proxy or attorney to act at a general meeting of the Members, that Member is taken to be present at a meeting at which the proxy or attorney is present.

5.2 **Quorum of general meetings of Members**

- (a) The quorum for a general meeting of the Members is a majority of current Members.
- (b) Each individual present at a general meeting of the Members may only be counted once toward a quorum.
- (c) A person attending a general meeting of the Members as a proxy or attorney may be counted when determining whether or not a quorum is present.
- (d) If a Member has appointed more than one proxy or attorney only one of them may be counted towards a quorum.

5.3 **Quorum not present**

If a quorum is not present within 30 minutes after the time for which a general meeting of the Members is called:

- (a) if called as a result of a request of Members under section 249D of the Corporations Act, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

5.4 **Chairing general meetings of Members**

At every general meeting of the Members, the Members present must elect by Ordinary Resolution a Member present to be the Members' Chair.

5.5 **Attendance and participation at general meetings of Members**

- (a) Every Member has the right to attend and speak at all general meetings of the Members.
- (b) In accordance with section 249V of the Corporations Act, the Auditor has the right to:
 - (i) attend any meeting of the Members; and
 - (ii) to speak on any part of the business of the meeting which concerns the Auditor in their capacity as the Auditor.

5.6 **Adjournment**

Subject to rule 4.6, the Members' Chair of a general meeting of the Members at which a quorum is present:

- (a) may; and
- (b) must, if directed by Ordinary Resolution of the meeting, adjourn it to another time and place.

5.7 **Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

5.8 **Circular resolution of Members**

If a majority of the Members entitled to receive notice of a meeting and to vote on the resolution sign a document containing a statement that those Members are in favour of the resolution set out in the document, a resolution in those terms is passed at the time when the last Member signs.

5.9 **Additional provisions concerning circular resolutions of Members**

For the purpose of rule 5.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Members, are treated as one document;
- (b) signature of a document by the Member who appointed a proxy or attorney is not required if that proxy or attorney has signed the document in that capacity; and
- (c) an electronic message containing the text of the document expressed to have been signed by a Member that is sent to the Company is a document signed by that Member at the time of its receipt by the Company.

6. **VOTING AT GENERAL MEETING OF MEMBERS**

6.1 **Resolutions of Members**

Unless otherwise specified in this Constitution or as required by law, a resolution of the Members is passed by way of an Ordinary Resolution.

6.2 **Number of votes**

Subject to sections 250BB(1) and 250BC of the Corporations Act, at a general meeting of the Members:

- (a) each Member has one vote on a show of hands or a poll; and
- (b) a Member who is present and entitled to vote and is also a proxy or attorney of another Member:
 - (i) has one vote on a show of hands; and
 - (ii) on a poll:
 - (A) can cast one vote in their capacity as a Member; and

- (B) can cast any other votes in their capacity as a proxy or attorney of another Member. Each Member who is present by proxy or attorney shall have one vote on a poll.

6.3 **No casting vote of Members' Chair**

- (a) The Members' Chair does not have a second or casting vote.
- (b) If an equal number of votes is cast for and against a resolution at a general meeting of the Members, the matter is decided in the negative.

6.4 **Voting restrictions**

If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1) of the Corporations Act:

- (a) on a show of hands, the vote is invalid and the Company must not count it; and
- (b) on a poll, rule 6.8(b) applies.

6.5 **Decision on right to vote**

- (a) A Member may challenge a person's right to vote at a general meeting of the Members.
- (b) A challenge under rule 6.5(a) may only be made at the general meeting of the Members.
- (c) A challenge, or any other doubt as to the validity of a vote, must be decided by the Members' Chair, whose decision is final.

6.6 **Method of voting**

- (a) A resolution put to the vote at a general meeting of the Members must be decided on a show of hands unless a poll is:
 - (i) demanded under rule 6.7 either before or on declaration of the result of the vote on a show of hands; or
 - (ii) required in accordance with rule 8.5.
- (b) Unless a poll is demanded, the Members' Chair's declaration of a decision on a show of hands is final.
- (c) Where a general meeting of the Members is being facilitated through the use of technology, the technology used must enable Members to be clearly identified and counted upon the calling for a show of hands.

6.7 **Demand for a poll**

- (a) A poll may be demanded on any resolution (except a resolution concerning the election of the Members' Chair) by:
 - (i) at least two Members entitled to vote on the resolution; or
 - (ii) the Members' Chair.
- (b) The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

6.8 **When and how polls must be taken**

If a poll is demanded or required in accordance with rule 8.5:

- (a) the poll must be taken at the time and place and in the manner that the Members' Chair directs, unless the poll is required in accordance with rule 8.5 in which case the poll will occur at the time and place and in the manner determined in accordance with rule 8.5(e);
- (b) votes which sections 250BB(1) or 250BC of the Corporations Act require to be cast in a given way must be treated as cast in that way; and
- (c) the result of the poll is the resolution of the meeting at which the poll was demanded.

7. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

7.1 **Appointment of proxies**

- (a) Each Member may appoint a proxy (who is to be a natural person) to attend and act for the Member at a meeting of the Members.
- (b) An appointment of a proxy must be made by written notice to the Company that:
 - (i) complies with section 250A(1) of the Corporations Act; or
 - (ii) is in a form and mode, and is signed or otherwise authenticated by the Member, in a manner satisfactory to the Board.

7.2 **Member's attorney**

- (a) A Member may appoint an attorney to act, or appoint a proxy to act, at a general meeting of the Members.
- (b) If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

7.3 **Deposit of proxy appointment forms, authorities and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular meeting of the Members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) of the Corporations Act by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company in accordance with section 250B(3) of the Corporations Act at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

7.4 **Appointment for particular meeting, standing appointment and revocation**

- (a) A Member may appoint a proxy or attorney to act at a particular general meeting of the Members or make a standing appointment and may revoke any appointment.
- (b) A proxy or attorney may, but need not, be a Member.

7.5 **Position of proxy or attorney if Member present**

The appointment of a proxy or attorney is not revoked by the Member attending and taking part in the general meeting, but if the Member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the Member's proxy or attorney on the resolution.

7.6 **Priority of conflicting appointments of attorney**

If more than one attorney appointed by a Member is present at a general meeting of the Members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney appointed to act at that particular meeting may act to the exclusion of an attorney appointed under a standing appointment; and
- (b) subject to rule 7.6(a), an attorney appointed under a more recent appointment may act to the exclusion of an attorney appointed earlier in time.

7.7 **More than one current proxy appointments**

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than one proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

7.8 **Continuing authority**

An act done at a general meeting of the Members by a proxy, attorney or representative is valid even if, before the act is done, the relevant appointer:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

8. **DIRECTORS**

8.1 **Number of Directors**

The Company must have at least three Directors and no more than nine Directors.

8.2 **Composition of Board**

- (a) The Board is to comprise of:
 - (i) five Directors elected by the Members of Company in accordance with rule 8.5;
 - (ii) one Director nominated by the Australian Council of Trade Unions;
 - (iii) one Director nominated jointly by the:

- (A) Business Council of Australia; and
 - (B) Australian Chamber of Commerce and Industry;
 - (iv) one Director nominated by the Board on the recommendation of the Board Chair; and
 - (v) the Managing Director, who is to be a Director.
- (b) The Company in appointing persons as Directors shall seek to ensure that both male and female Directors are included on the Board.
- (c) The Company in appointing persons as Directors must seek to ensure a balanced range of skills and expertise, including experience in:
- (i) policy development;
 - (ii) public administration;
 - (iii) delivery of vocational education, both public and private; and
 - (iv) accounting or financial management and administration of a public company or charity.

8.3 Eligibility of Directors

- (a) In accordance with section 201B of the Corporations Act a Director must be an individual who is at least 18 years of age.
- (b) A person is not eligible to be a Director if the person:
- (i) is not permitted under the Corporations Act or the ACNC Act to be a director of a company; or
 - (ii) are the Auditor or a partner, director or employee of the Auditor.
- (c) A person cannot be elected or nominated as a Director unless and until the Company receives a consent to act as a Director signed by the relevant person.

8.4 Term and appointment of Directors

- (a) With the exception of:
- (i) the Managing Director;
 - (ii) any person appointed as a Director to fill a casual vacancy on the Board; and
 - (iii) any replacement Director appointed in accordance with rule 8.7(b),
- all persons elected or nominated as Directors will serve as Directors for a term of three years.
- (b) No Director (with the exception of the Managing Director) can hold office for more than three years without being subject to re-election or re-nomination.
- (c) At the close of business on the 31st day of December in each year, the Directors, whose term of appointment has expired must retire from office.
- (d) A person retiring under rule 8.4(c) may seek re-election or renomination as a Director.

- (e) The Company in a general meeting of the Members conducted prior to the 31st day of December in each year must appoint a Director, elected or nominated in accordance with rule 8.2(a), in place of the person retiring as a Director in accordance with this rule 8.4.
- (f) The Company must notify the Members of every candidate for election as a Director or Director nominee (as the case may be) at least 21 days before the relevant general meeting of the Members.
- (g) The term of the person elected or nominated as a Director in accordance with rule 8.4(e) will commence upon the retirement of the Director that the person has been elected or nominated to replace.

8.5 Election of certain Directors by the Members

- (a) Any Member may nominate a person(s), who meets the eligibility requirements at rule 8.3, as a candidate for election as a Director in accordance with rule 8.2(a)(i).
- (b) If insufficient nominations are received to fill all vacancies to be filled by an election of the Members in accordance with rule 8.2(a)(i):
 - (i) the candidates nominated are taken to be elected; and
 - (ii) any vacant positions remaining on the Board are taken to be casual vacancies.
- (c) If the number of nominations received to fill all vacancies to be filled by an election of the Members in accordance with rule 8.2(a)(i) is equal to the number of vacancies to be filled, the people nominated are taken to be elected.
- (d) If the number of nominations to fill all vacancies to be filled by an election of the Members in accordance with rule 8.2(a)(i) received exceeds the number of vacancies to be filled, a poll of the Members must be held.
- (e) Where a poll is to be conducted for the purposes of rule 8.5(d), the Members must determine by Ordinary Resolution the:
 - (i) time and place for the poll; and
 - (ii) applicable voting method for the poll.
- (f) In accordance with the voting method applied under rule 8.5(e), where a poll is conducted for the purposes of rule 8.5(d) the candidates with the greatest number of votes of the Members present will be elected to fill the vacancies.
- (g) If it is proposed that a single resolution of the Members be passed electing two or more directors, any such resolution must occur in accordance with the requirements at section 201E of the Corporations Act.

8.6 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Corporations Act or the ACNC Act (or an order made under the Corporations Act or the ACNC Act) to be a director of a company;
- (b) becomes disqualified from managing companies under the Corporations Act or the ACNC Act and is not given permission or leave to manage the Company under the Corporations Act or the ACNC Act;

- (c) is deceased, or becomes mentally incapacitated or physically or mentally incapable of performing the functions of that office;
- (d) becomes bankrupt;
- (e) is absent from 3 consecutive Board meetings without approval from the Board;
- (f) resigns by notice in writing to the Company;
- (g) is removed from office under rule 8.7; or
- (h) ceases to be eligible to act as a Director under rule 8.3.

8.7 **Removal of Director from office by Members**

- (a) Whether or not a Director's appointment was expressed to be for a specified period, the Members may by Ordinary Resolution remove a Director from office.
- (b) Where a Director is removed from office in accordance with rule 8.7, any replacement Director is to be elected or nominated in the same manner as the Director they are replacing in accordance with rule 8.2(a). Any replacement Director will hold office for the remainder of the term which the Director they replaced would have served.
- (c) In accordance with section 203E of the Corporations Act, the Directors cannot remove another Director from their office or require another Director to resign from their office.

8.8 **Too few Directors**

If the number of Directors is reduced below three, the continuing Directors may act as the Board only:

- (a) to convene a meeting of the Members;
- (b) make an appointment under rule 8.9(b) for the purpose of increasing the number of Directors to three; or
- (c) as needed to address an emergency.

8.9 **Casual vacancies of the Board**

- (a) The Board may act despite a vacancy occurring in any position on the Board.
- (b) The Board may appoint any person who is eligible under rule 8.3 to fill a position on the Board that:
 - (i) has become vacant under rule 8.6 (other than where a vacancy arises as a result of a Members resolution made in accordance with rule 8.7(a) in respect of a Director that was appointed under rules 8.2(a)(i), 8.2(a)(ii) or 8.2(a)(iii), in which case any such replacement Director is to be appointed in accordance with rule 8.7(b)); or
 - (ii) that remains vacant following an Annual General Meeting,and that person holds office for the remainder of the term which the Director they replaced would have served.

8.10 **Alternate Directors**

- (a) With the other Directors' approval, a Director may appoint an alternate to exercise some or all of the Director's powers for a specified period.
- (b) An Alternate Director is an officer of the Company and is not an agent of the Appointing Director.
- (c) An Alternate Director is entitled to notice of Directors' meetings and, if the Appointing Director is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- (d) When an Alternate Director exercises the Appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Appointing Director.
- (e) An Alternate Director has one vote for each Appointing Director for whom he or she is an alternate.
- (f) The Appointing Director may terminate the Alternate Director's appointment at any time.
- (g) An Alternate Director's appointment ends automatically when the Appointing Director ceases to be a Director.
- (h) An appointment or its termination must:
 - (i) be in writing; and
 - (ii) a copy must be given to the Company.

9. **DIRECTORS' DUTIES, INTERESTS AND REMUNERATION**

9.1 **Compliance with legal duties**

- (a) Each Director must comply with:
 - (i) their respective duties under the Corporations Act and the general law; and
 - (ii) those duties described in the ACNC Governance Standards.
- (b) Without limitation, these duties require that Directors:
 - (i) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if that individual were a Director of the Company;
 - (ii) act for a proper purpose and in good faith in the best interests of the company;
 - (iii) not misuse their position as a Director;
 - (iv) not misuse information the Director gains in their role as a Director; and
 - (v) not allow the Company to trade while it is insolvent.

9.2 **Directors' interests**

- (a) A Director, who has a material personal interest in a matter that relates to the affairs of the Company, must give the other Directors notice of that interest in accordance with the requirements for public companies under the Corporations Act (regardless of whether the Company is registered as a charity).
- (b) A disclosure of an interest under this clause must be recorded in the minutes of the meeting of Directors at which such disclosure is dealt with.
- (c) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting (or that is proposed in a circular resolution) must not:
 - (i) be present while the matter is being considered at a Directors' meeting; or
 - (ii) vote on the matter,unless permitted to do so under the Corporations Act.
- (d) A failure to comply with this rule 9.2 does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

9.3 **Director can hold other offices**

Subject to rule 9.2, a Director may:

- (a) hold any office or place of profit or employment other than that of the Auditor or any positions as a director or employee of the Auditor;
- (b) be a member of any corporation (including the Company) or partnership, other than the Auditor;
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) subject to their duties under this Constitution and otherwise at law, enter into any agreement with the Company.

9.4 **Obligation of confidentiality**

- (a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
 - (i) in the course of their duties as an Officer of the Company;
 - (ii) by a decision of either the Board or the Company in general meeting;
 - (iii) by law; or
 - (iv) for public accountability reasons, including following a request by a:
 - (A) house or committee of a parliament or legislative assembly of the Commonwealth, a State, the Northern Territory or the Australian Capital Territory; or
 - (B) an auditor-general or audit office of the Commonwealth, a State, the Northern Territory or the Australian Capital Territory.

- (b) The Company may require a Director, Secretary, Auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

9.5 **Annual Budget**

- (a) The Board must in each year prepare a proposed budget setting out all anticipated receipts and proposed expenditure required in order to carry on the Company's operations for the next financial year (**Annual Budget**).
- (b) The Annual Budget must:
 - (i) be presented to the Members at the Annual General Meeting; and
 - (ii) any resolution to approve the proposed Annual Budget must be supported by the unanimous decision of all the Members present.
- (c) The Annual Budget must be sent to every Member at least twenty one days before the Annual General Meeting.

9.6 **Directors' remuneration and expenses**

- (a) The:
 - (i) remuneration of the Directors; and
 - (ii) manner in which any such remuneration is accrued and calculated,is to be determined by the Members from time to time.
- (b) Subject to rule 9.6(c), the Company may pay a Director (in addition to any remuneration) all reasonable expenses (including travelling, accommodation and other expenses) incurred by the Director:
 - (i) in attending meetings of the Company, the Board, or a Committee;
 - (ii) on the business of the Company; or
 - (iii) in carrying out duties as a Director,upon the receipt of a valid itemised invoice in respect of such expenses.
- (c) The reimbursement of the reasonable expenses of Directors must occur in accordance with:
 - (i) any official travel determination of the Remuneration Tribunal; or
 - (ii) any determination of the Members from time to time.

9.7 **Payments to Directors with Board approval**

With the approval of the Board and in accordance with rule 9, the Company may pay to a Director:

- (a) reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity where the amount payable is approved by the Board and is on reasonable commercial terms;

- (b) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board; and
- (c) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business or reasonable rent for premises leased by the Director to the Company.

10. **INDEMNITY AND INSURANCE OF OFFICERS AND AUDITOR**

10.1 **Indemnity**

- (a) Subject to and so far as permitted by the Corporations Act and any other applicable law:
 - (i) the Company must indemnify every Officer of the Company and may indemnify its Auditor against any Liability incurred as such an Officer or Auditor, unless the Liability arises out of conduct involving a lack of good faith; and
 - (ii) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer or Auditor in defending an action for a Liability incurred as such an Officer or Auditor or in resisting or responding to actions taken by a Government Agency or a liquidator.
- (b) In this rule 10.1, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a Government Agency or a liquidator.

10.2 **Insurance**

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

10.3 **Former Officers and Auditors**

The indemnity in favour of Officers under rule 10.1 is a continuing indemnity. The indemnity applies in respect of all acts done by a person while an Officer or Auditor even though the person may not be an Officer or Auditor at the time the claim is made.

10.4 **Director's Access, Indemnity and Insurance Deed**

Subject to the Corporations Act and any other applicable law, the Company may, without limiting a person's rights under this rule 10:

- (a) enter into an agreement with; or
- (b) execute a deed in favour of,

a person who is or has been an Officer of the Company to give effect to the rights of the person under this rule 10 on any terms and conditions that the Board thinks fit.

11. **POWERS OF THE BOARD**

11.1 **Powers generally**

Except as otherwise required by the Corporations Act, any other applicable law or this Constitution, the Board:

- (a) has power to manage the business of the Company;
- (b) may engage and determine the remuneration and entitlements of the employees of the Company; and
- (c) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

11.2 **Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or
- (b) in accordance with a delegation of the power under rule 11.5.

11.3 **Executing negotiable instruments**

All cheques, promissory notes, bills of exchange and other negotiable instruments and all receipts for money paid to the Company can be executed, accepted or endorsed for and on behalf of the Company by being signed by:

- (a) two Directors; or
- (b) in such other manner as the Board may decide.

11.4 **Common seal of Company**

- (a) The Board:
 - (i) may decide whether or not the Company has a common seal; and
 - (ii) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Corporations Act.
- (b) The common seal and duplicate seal (if any) may only be used with the authority of the Board.
- (c) The Board must not authorise the use of a seal that does not comply with section 123 of the Corporations Act.
- (d) The fixing of the common seal, or any duplicate seal, to a document must be witnessed:
 - (i) by two Directors;
 - (ii) by one Director and one Secretary; or
 - (iii) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

11.5 **Power to delegate**

- (a) The Board may delegate any of its powers and functions (other than those powers and functions required by law to be dealt with by the Directors as a Board) as permitted by section 198D of the Corporations Act.
- (b) A delegation of power does not derogate from or limit the powers of the Board to act in any matter.

11.6 **Power to revoke delegation**

The Board may revoke a delegation previously made, whether or not the delegation is expressed to be for a specified period.

11.7 **Terms of delegation**

- (a) A delegation of powers under rule 11.5 may be made:
 - (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) A document of delegation may contain any provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

11.8 **Appointment and role of Managing Director**

- (a) There is to be a Managing Director.
- (b) The Board:
 - (i) is to appoint a person to the employed role of Managing Director, either for a specified term (but not for life) or without specifying a term; and
 - (ii) may determine the remuneration and entitlements for the Managing Director as an employee of the Company.
- (c) Subject to any agreement between the Company and the Managing Director and any other legal obligations, the Board may at any time remove or dismiss the Managing Director from the employment of the Company, whether or not the appointment was expressed to be for a specified term.
- (d) The Managing Director will:
 - (i) subject to eligibility requirements at rule 8.3, upon assuming the employed role of Managing Director be deemed to be a Director; and
 - (ii) cease to be a Director if the Managing Director either:
 - (A) ceases to hold the employed position of Managing Director; or
 - (B) ceases to be a Director in accordance with rule 8.6. In this instance the Managing Director will, subject to any agreement between the Company and the Managing Director and any other legal obligations, also cease to be the Managing Director.

- (e) The Board may:
 - (i) delegate any of the powers and functions of the Board (other than those powers and functions required by law to be dealt with by the Directors as a Board) to the Managing Director in accordance with rule 11.5; and
 - (ii) may revoke any such delegation of power in accordance with rule 11.6

12. **BOARD MEETINGS**

12.1 **Convening Board meetings**

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

12.2 **Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

12.3 **Use of technology**

- (a) A Board meeting may be held using any means of audio or audio-visual communication through which each Director participating can hear and be heard by each other Director participating, or in any other way permitted by section 248D of the Corporations Act.
- (b) A Board meeting held solely or partly by technology is treated as held at:
 - (i) the place at which the greatest number of the Directors present at the meeting is located; or
 - (ii) if an equal number of Directors is located in each of two or more places, at the place where the Board Chair is located.

12.4 **Chairing Board meetings**

- (a) The Members are to select by Ordinary Resolution a Director elected in accordance with rule 8.2(a)(i) to be the Board Chair.
- (b) If there is no Board Chair or the Board Chair is not present within 10 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.
- (c) The Members are to specify the term for which the Director selected under rule 12.4(a) will serve as the Board Chair.
- (d) The Members can remove the Board Chair from the position of Board Chair at any time by Ordinary Resolution.

12.5 **Quorum of Board meetings**

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is a majority of current Directors, and a quorum must be present for the whole meeting.
- (b) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending.
- (c) If a meeting is held in another way permitted by section 248D of the Corporations Act, the Board must resolve the basis on which Directors are to be treated as present.

12.6 **Majority decisions of the Board**

- (a) A resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it.
- (b) If an equal number of votes is cast for and against a resolution of the Board, the Board Chair will have a casting vote.

12.7 **Procedural rules**

- (a) The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides (including through procedures detailed in any By-Laws).
- (b) The procedural rules of the Board may, amongst other things, detail the circumstance in which observers and advisers are permitted to attend and speak at meetings of the Board.

12.8 **Circular resolutions of the Board**

- (a) The Directors may pass a resolution without a Directors' meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that the Directors are in favour of the resolution set out in the document.
- (b) A resolution made in accordance with rule 12.8(a) is taken to be passed when the last Director signs the resolution.

12.9 **Additional provisions concerning circular resolutions**

For the purpose of rule 12.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

12.10 **Valid proceedings of the Board**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a Board Committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

12.11 **Observers of the Board**

- (a) The Board may, at its discretion, permit observers to attend and speak at meetings of the Board.
- (b) In no circumstance will an observer be counted in constituting a quorum or be permitted to vote on any decision of the Board.
- (c) The Board may revoke its permission granted under rule 12.11(a) at any time.

13. **COMMITTEES**

13.1 **Establishment and operation of Committees**

- (a) The Board may establish either or both of the following:
 - (i) committees with powers delegated by the Board, comprising of only Directors (**Board Committees**); and
 - (ii) advisory committees, with no delegated powers of the Board, to advise the Board on specified matters (**Advisory Committees**).
- (b) Subject to any specific terms of the Board, the meetings and proceedings of Committees are, to the greatest extent practical, governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.
- (c) Subject to any specific terms of the Board, the members of a Committee can appoint one of their number as chair of their meetings.
- (d) The Board may, at any time and at its discretion, either:
 - (i) amend the terms of reference of a committee;
 - (ii) revoke any delegations to (in respect of a Board Committee); or
 - (iii) otherwise abolish,any Committee previously established.
- (e) The Board may remove and appoint replacement or new members of a Committee at any time.
- (f) The Board must document the formation of any Committee in the minutes of the Board.

13.2 **Board Committees**

- (a) All members of a Board Committee must be Directors.
- (b) Subject to the restrictions applying to the delegation of Board powers and functions under rule 11.7 and as otherwise permitted under section 198D of the Corporations Act, the Board may delegate any of its powers and functions to a Board Committee.

- (c) If the Board delegates any of its powers and functions to a Board Committee under rule 13.2:
 - (i) the Board may impose any restrictions or duties on the exercise of those delegated powers and functions (including by specifying those matters reserved for the Board);
 - (ii) the relevant Board Committee must comply with any restrictions or duties imposed in accordance with rule 13.2(c)(i); and
 - (iii) the delegation must be recorded in the minutes of the Board.
- (d) A Board Committee which is delegated the power and functions of the Board under rule 13.2 is not permitted to further sub-delegate these powers or functions.

13.3 **Advisory Committees**

A member of an Advisory Committee does not need to be a Director or Member.

14. **SECRETARY**

14.1 **Appointment of Secretary**

- (a) The Board:
 - (i) must appoint at least one individual who ordinarily resides in Australia; and
 - (ii) may appoint more than one individual,
to be the Secretary, either for a specified term or without specifying a term.
- (b) A person cannot be appointed as the Secretary unless and until the Company receives a consent to act as the Secretary signed by the relevant person.

14.2 **Terms and conditions of office**

- (a) A Secretary holds office on the terms (including as to remuneration and entitlements) that the Board decides.
- (b) The Board may vary any decision previously made by it in respect of a Secretary.

14.3 **Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under the Corporations Act and is not given permission or leave to manage the Company under sections 206GAB or 206G of the Corporations Act;
- (c) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) becomes bankrupt;
- (e) resigns by notice in writing to the Company; or
- (f) is removed from office under rule 14.4.

14.4 **Removal from office**

Subject to any agreement between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

15. **MINUTES**

15.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Members;
- (b) proceedings and resolutions of Board meetings and any Committee meetings (including the names of Directors present at each Board meeting and the names of those present at any Committee meeting;
- (c) resolutions passed by Members without a meeting;
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

to be prepared, signed and kept in accordance with sections 191, 192 and 251A of the Corporations Act.

15.2 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A of the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

15.3 **Inspection of minute books**

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the Corporations Act.

16. **FINANCIAL REPORTS, AUDIT AND REGISTERS**

16.1 **Financial records and accounts**

- (a) The Board must cause the Company to keep written financial records that:
 - (i) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance in accordance with any applicable Australian Accounting Standards; and
 - (ii) would enable true and fair financial statements to be prepared and audited.
- (b) The Members may direct that any bank account opened and operated in the Company's name be with a specified bank.
- (c) The accounts of the Company must be kept at the registered office of the Company or at such other place or places as determined by the Board.

16.2 **Inspecting financial records**

The Company must allow:

- (a) any Director and any person authorised by the Director as their agent;
- (b) any Member and any person authorised by the Member as their agent; and
- (c) the Auditor and any person authorised by the Auditor as their agent,

to inspect the financial records maintained in accordance with rule 16.1(a) at all reasonable times.

16.3 **Financial reporting**

The Board must cause the Company to prepare and disclose any financial reports or other reports as required under the Corporations Act or the ACNC Act.

16.4 **Audit**

- (a) The Company must appoint an auditor, in accordance with any obligations arising under the Corporations Act or the ACNC Act.
- (b) As required by the Corporations Act or the ACNC Act, as the case may be, the Board must:
 - (i) cause the Company's financial reports for each financial year to be audited; and
 - (ii) obtain an auditor's report.

16.5 **Reporting at the Annual General Meeting**

- (a) The Company must, at every Annual General Meeting, present to the Members:
 - (i) a statement of profit and loss for the Company for the preceding financial year;
 - (ii) a statement of cash flows for the Company for the preceding financial year;
 - (iii) a balance sheet providing a statement of the financial position of the Company as at the end of the preceding financial year;
 - (iv) the annual directors' report for the Company for the preceding financial year or, if the Company is registered with the ACNC, its annual information statement for the preceding financial year; and
 - (v) the audit report for the financial statements for the preceding financial year; and
 - (vi) any other type of financial statement as required by a resolution of the Members from time to time.
- (b) The financial statements and reports to be presented under rule 16.5(a) must be sent to every Member at least twenty-one days before the Annual General Meeting.
- (c) The Board must cause the financial statements to be presented under rule 16.5(a) to:

- (i) be prepared in accordance with the Corporations Act, ACNC Act and applicable Australian Accounting Standards;
- (ii) present truthfully and fairly the financial position, financial performance and cash flows of the Company, as appropriate depending on the particular financial statement; and
- (iii) be audited by the Auditor.

16.6 **Register of Members**

- (a) The Company must establish and maintain the Register.
- (b) In accordance with section 169 of the Corporations Act, the Register must contain the following information:
 - (i) the name and address of each Member;
 - (ii) the date on which the entry of the Member's name in the Register is made;
 - (iii) the name and details of each person who stopped being a Member within the last seven years; and
 - (iv) the date on which the person stopped being a Member.

17. **WINDING UP**

17.1 **Disposal of Main Undertaking**

Any sale, transfer or disposal of the Company's Main Undertaking is subject to the approval of the Members.

17.2 **Winding up**

The Company may, by Special Resolution, resolve to voluntarily wind up.

17.3 **No distribution of surplus assets to Members**

In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed amongst, the Members.

17.4 **Distribution of surplus assets**

- (a) Any surplus property remaining after satisfaction of all the Company's debts and liabilities must be paid or transferred to one or more entities in Australia, the constituent documents of which:
 - (i) require the entity to pursue charitable objects similar to those of the Company and to apply its income solely towards promoting those charitable objects; and
 - (ii) prohibit the entity from making distributions to its members, including by way of the distribution of surplus assets on winding up.

- (b) The entity selected for the purposes of rule 17.4(a) is to be determined by:
 - (i) the Board; or
 - (ii) if no such determination is made, by the liquidator of the Company subject to any court approval required by the liquidator under the Corporations Act to make such a determination.