

**Corporations Act 2001 (Cth)**  
**Public Company Limited by Guarantee**

**National  
State Emergency Service  
Volunteers Association**

**Constitution**

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# National State Emergency Service Volunteers Association

## Constitution

### Preliminary

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#### 1. Definitions

In this Constitution:

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

**Advisory Committee** means an advisory committee established by the Board under Clause 56.

**Associate Member** means an SES Volunteer who is accepted by the respective State/Territory VA as a member in accordance with their respective Member Regulations.

**Attending Member** means in relation to a meeting of Members, the Members present at the place of the meeting, whether represented in person or by a proxy or, where the Member is a body corporate, by Corporate Representative.

**Board** means the Directors of the Company from time to time.

**Business Day** means a day except a Saturday, Sunday or public holiday in the state or territory in which the Office of the Company is located.

**Chair or Chairperson** means the person appointed under Clause 44.

**Company** means National State Emergency Service Volunteers Association.

**Company Secretary/Treasurer** means the person appointed under Clause 46.

**Corporate Representative** means a person referred to in Clause 34(e) who is authorised in accordance with the Corporations Act by a Member which is a body corporate to act as its representative at a meeting of Members.

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

**Director** means a person who is, for the time being, a director of the Company, by virtue of being the Chairperson, the Vice Chairperson, the Company Secretary/Treasurer or a Member President including where appropriate, an alternate Director of the Company.

**Eligible Chairperson** means a person who satisfies each of the following requirements:

- (a) Who is familiar with National SES arrangements (for example, through being or having been an SES Volunteer) and ideally has previously served as a Director or a Director of a predecessor entity to the Company or who has served as a Council Member or equivalent in a State/Territory VA.
- (b) Who does not hold an Inconsistent Office.
- (c) Who may have previous chairperson experience or knowledge of the requirements of a chairperson.
- (d) Whose nomination as proposed Chairperson is approved by the Board.

**Fee** means a fee referred to in Clause 10(c) or Clause 17(a).

**Inconsistent Office** means a Directorship or senior management position in, or consultancy or similar arrangement with, a company or other legal entity that represents or is a supplier to the Company whereby appointment would be seen as being a conflict of interest by way of receiving fees or benefits from such an association.

**Independent Director** means a Director (excluding alternate directors) who is not a Member President.

**Legal Costs** of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

**Liability** of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an Officer, Director or Member Representative of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a Director, Officer, Member Representative or employee of another body corporate.

**Manuals, Policies and Procedures** means all manuals, policies, bulletins, directives, guidelines or similar documents in any form, or made available electronically or by any other medium, by the Company in any way relating to the performance, obligations, operation or management of the Company as advised, updated and replaced from time to time and whether issued before or after the commencement of this Constitution.

**Member** means a State/Territory VA or equivalent, or an Independent Director, that has agreed or applied to become a member of the Company and whose name is entered in the Register as a member of the Company.

**Member Body** means a Member which is a State/Territory VA.

**Member President** means in respect of a Member Body that one person who has been given the title of "Chair", "Chairperson" or "President" and/or is the person who is recognised as having the same designated authority and leads or heads the Member Body.

**Member Regulations** means the respective State/Territory VA regulations relating to the application for and acceptance of SES volunteers as members or Associate members (or equivalent document, by whatever name called).

**Member Representative** means one person nominated by each Member Body, who is from within that Member's Associate membership and is suitably skilled for this role, and is other than a person who is the Member President.

**National Council** means the body comprising the persons in Clause 20(a) and with the responsibilities in Clause 20(b) and 20(c).

**Notice** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**Office** means the registered office of the Company.

**Officer** means those persons appointed under Clauses 44 to 46.

**Paid Staff** means the person or persons appointed under Clause 47 to carry out the functions and roles as determined by the Board, and directed by the Chairperson, in performance of their duties in achieving the Objects of this Constitution.

**Preferential Voting System** means a voting system under which:

- (a) voters are required to place the number "1" against the candidate of their choice, known as their "first preference";
- (b) voters are then required to place subsequent numbers ("2", "3", etc.) against the other candidates listed on the ballot paper in order of preference;
- (c) the counting of first preference votes, also known as the "primary vote", takes place first. If no candidate secures an absolute majority of primary votes, then the candidate with the least number of votes is "eliminated" from the count;
- (d) the ballot papers of the eliminated candidate are examined and re-allocated amongst the remaining candidates according to the "second preference" votes (those with the number "2");
- (e) if no candidate has then secured an absolute majority of the received vote after the allocation of preferences, then the next candidate with the least number of primary votes is eliminated from the count. This preference allocation continues until there is a candidate with an absolute majority of the received votes. Where a second preference is expressed for a candidate who has already been eliminated, the voter's third or subsequent preferences are used.

**Register** means the register of Members kept by the Company pursuant to the Corporations Act or this Constitution and, where appropriate, includes any branch register.

**Regulation** means a regulation that satisfies the requirements of Clause 50(d).

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Officer** means a person who is, or has been, a Director or Officer of the Company, or a Member Representative of the Company or Paid Staff.

**Seal** means, if the Company has one, the common seal of the Company.

**SES** means State or Territory Emergency Service.

**SES Volunteer** means a person who is a volunteer of an SES.

**State/Territory VA** means a company or incorporated association whose objects are generally to represent the interests of SES Volunteers in a particular State or Territory.

**State or Territory** means that geographic or demographic area being a State or Territory (or part thereof) in the Commonwealth of Australia.

**Vice Chairperson** means the person appointed under Clause 45.

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## 2. Interpretation

Unless the context indicates a contrary intention, in this Constitution:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) A word importing the singular includes the plural (and vice versa).
- (c) A word indicating a gender includes every other gender.
- (d) If a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

- (e) The words "includes" in any form is not a word of limitation.
- (f) A reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form.
- (g) A notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law.
- (h) A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this Constitution.
- (i) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- (j) A reference to a Clause, part, schedule or attachment is a reference to a Clause, part, schedule or attachment of or to this Constitution.
- (k) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- (l) A reference to 'dollars' or '\$' means Australian dollars.
- (m) A reference to a time of day means that time of day in the place where the Office is located.
- (n) Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- (o) A term of this Constitution which has the effect of requiring anything to be done on or by a date which is not a Business day must be interpreted as if it required it to be done on or by the next Business day.

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### **3. Application of Corporations Act**

- (a) Unless the context indicates a contrary intention, in this Constitution:
  - (i) A reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company.
  - (ii) A word or phrase given a meaning in 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, unless that word or phrase is otherwise defined in this Constitution.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.

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### **4. Enforcement and Constitutional Changes**

- (a) Each Member, Director, Officer and Member Representative is bound by the terms of this Constitution.

- (b) Each Member, Director, Officer and Member Representative submits to the non-exclusive jurisdiction of the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- (c) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
  - (i) The legality, validity or enforceability in that jurisdiction of any other provision of this Constitution.
  - (ii) The legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.
- (d) The Company may not modify this Constitution until after the initial AGM of the Company.
- (e) Subject to Clause 4(d), the Company may modify this Constitution by a resolution:
  - (i) which is stated to be a "special resolution"; and
  - (ii) that is:
    - A. Passed at a general meeting of the Company in respect of which the Company has given Members at least 21 days' notice and passed by at least 75% of the votes cast by Members entitled to vote on the resolution; or
    - B. Otherwise passed in accordance with the Corporations Act or Clause 21.
- (f) A resolution to modify the Constitution referred to in Clause 4(d) takes effect:
  - (i) On the date on which the resolution is passed if it specified no later date; or
  - (ii) On a date specified in, or determined in accordance with, the resolution if the relevant date is later than the date on which the resolution is passed.

## **Nature of Company and Objects**

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### **5. Nature of Company**

- (a) The Company is a public company limited by guarantee.
- (b) The Company is established to operate as a not for profit entity.

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### **6. Objects of the Company**

- (a) The objects of the Company are:
  - (i) To provide a collective voice on issues of common interest to SES Volunteers for not fewer than two Member Bodies.



- (ii) To provide a forum and a process for coordination and collaboration in establishing a national point of view or a national course of action in relation to any multi-jurisdictional issue.
  - (iii) To assist Member Bodies to effectively represent the views of their Associate membership base pertaining to non-multi-jurisdictional matters.
  - (iv) Provide a forum and process for the consolidation and representation of the views and concerns of SES Volunteers from Members via such mechanisms as may be appropriate and to provide a collective voice on issues of common interest.
  - (v) To assist Member Bodies to:
    - A. provide tangible benefits to SES Volunteers, plus other beneficiaries as directed by the board of the relevant Member Body providing the benefit, from time to time; and
    - B. provide Public Education.
- (b) In order to pursue the above objects, the Company will:
- (i) Co-ordinate and administer matters referred to it by its Members, the relevant SES organisations in the States and Territories of Australia or other appropriate authorities.
  - (ii) Facilitate and ensure improved communications between, Member Bodies, the SES organisations in the relevant States and Territories of Australia and other appropriate authorities and/or organisations.
  - (iii) Consider and as thought appropriate facilitate and co-ordinate the continued education of Member Bodies in relation to all Company matters.
  - (iv) Seek to raise money to further the aims of the Company and secure sufficient funds for the purposes of the Company.
  - (v) Receive any funds and distribute these funds in a manner that best attains the objects of the Company.
  - (vi) Do all such things as are incidental, convenient or conducive to the attainment of all or any of the above.

## **Income and Property**

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### **7. Application of Income and Property**

- (a) Subject to Clause 7(b), the Company must apply the profits (if any) or other income and property of the Company solely towards the promotion of the objects of the Company set out in Clause 6 and no portion of it may be paid or transferred, directly or indirectly, to any Member, Director, Officer or Member Representative whether by way of dividend, bonus or otherwise.
- (b) Nothing in Clause 7(a) prevents the Company making any payment in good faith for:
  - (i) Reasonable and proper remuneration to any Member, Director, Officer or Member Representative for any services actually rendered or goods

supplied to the Company in the ordinary and usual course of business of the Company.

- (ii) The payment or reimbursement of out-of-pocket expenses reasonably incurred by a Member, Director, Officer or Members Representative in the performance of any duty as a Member, Director, Officer or Members Representative of the Company where that payment or reimbursement has been approved by the Board.
- (iii) Reasonable and proper rent or fees to a Member, Director, Officer or Member Representative for premises leased or licensed by any Member, Director, Officer or Member Representative to the Company.
- (iv) Usual professional or other charges for work done by a Director, Officer or Member Representative, or that person's firm or employer, being a solicitor, accountant or other person engaged in any profession, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service.
- (v) Interest to a Member, Director, Officer or Member Representative at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member, Director, Officer or Member Representative.
- (vi) The employment of persons for the purpose of pursuing the Objects of this Constitution.
- (vii) An amount pursuant to Clause 71.
- (viii) Any salary or wage due to an Officer as an employee of the Company where the terms of employment have been approved by the Board.
- (ix) An insurance premium in respect of a contract insuring a Member, Director, Officer or Member Representative for a liability incurred as a Member, Director, Officer or Members Representative of the Company where the Board has approved the payment of the premium.
- (x) Any payment pursuant to Clause 49(a), 49(c) or 49(d) or a payment pursuant to any agreement or deed referred to in Clause 49(e).

## **Liability of Members and Guarantee on Winding Up**

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### **8. Extent of Liability**

The liability of the Members is limited. Each Member undertakes to contribute \$2.00 to the assets of the Company if the Company is wound up at a time when that individual or entity is a Member, or within one year of the time that individual or entity ceased to be a Member for:

- (a) Payment of the Company's debts and liabilities contracted before that individual or entity ceased to be a Member.
- (b) Payment of the costs, charges and expenses of winding up the Company.
- (c) Adjustment of the rights of the contributories among themselves.

## Membership

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### 9. Members

- (a) The Members are the entities and individuals specified in the application to register the Company with their consent as a proposed member of the Company and such other individuals or entities as the Company admits to membership in accordance with this Constitution.
- (b) To be eligible for membership an entity must meet the following requirements:
  - (i) They must be a State/Territory VA or equivalent; and
  - (ii) They must be a company or entity registered under the Corporations Act, or an incorporated association under their respective State or Territory incorporated associations legislation.
- (c) To be eligible for membership an individual must be an Independent Director.

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### 10. Applications

- (a) Any State/Territory VA or equivalent can apply to become a Member.
- (b) An Independent Director can apply to be a Member.
- (c) Each applicant to become a Member must arrange for the completion, signing and deliver to the Company an application in the form which the Board determines, and pay any initial fee which the Board determines.
- (d) The Board determines in their absolute discretion whether an applicant may become a Member. The Board is not required to give any reason for the rejection of any application to become a Member.
- (e) If an application to become a Member is accepted by the Board, the Company must give written notice of the acceptance to the applicant and enter the applicant's name on the Company's register.
- (f) If an application to become a Member is rejected by the Board, the Company must give written notice of the rejection to the applicant and refund in full the fee (if any) paid by the applicant.
- (g) Failure by the Company to comply with any notice requirement in Clause 10(e) or 10(f) does not invalidate the decision regarding an application.

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### 11. Rights and Obligations

- (a) Unless this Constitution provides otherwise, all Members have the same rights.
- (b) Subject to this Constitution, each Member has the right to:
  - (i) Receive notices of any general meeting of the Company; and
  - (ii) Attend and be heard, and to have their nominated Member Representative attend and be heard, at any general meeting of the Company.

- (c) Each Member must pay any annual subscription fee in accordance with Clause 17 in the manner, at the time and at the place specified in the notice of the fee.
- (d) Each Member must otherwise comply with the provisions of this Constitution.
- (e) The rights, privileges and benefits of being a Member are personal and not transferable whether by operation of law or otherwise.

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## 12. Registers

- (a) A register of Members of the Company must be kept in accordance with the Corporations Act.
- (b) The following details must be entered in the Register in respect of each Member (if applicable):
  - (i) The full name and ACN or ABN of the Member.
  - (ii) The registered address of the Member.
  - (iii) The date on which the entry of the Member's name in the Register is made.
- (c) The Register must also show the following information, which may be kept separately from the rest of the Register:
  - (i) The name and details of each entity who stopped being a Member within the last 7 years.
  - (ii) The date on which each such entity stopped being a Member.
- (d) The Company may also keep further registers recording other information about Directors, Officers and Member Representatives that is not required to be kept under the Corporations Act.
- (e) The following details may be entered in a register referred to in Clause 12(d):
  - (i) The telephone number, facsimile number and email address (as applicable) of the Member, Director, Officer and Member Representative.
  - (ii) The State or Territory applicable to each Member, Director, Officer and Member Representative.
  - (iii) The date of last payment of the Member's annual subscription (if applicable).
  - (iv) Such other information as the Board may require.
- (f) Each Member, Director, Officer or Member Representative must notify the Company Secretary/Treasurer in writing of any change in that entity's or person's name, address, telephone or facsimile number or email address within one month after the change.

## Cessation of Membership

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### 13. Resignation of a Member

- (a) Subject to Clause 13(b), a Member may at any time resign as a Member by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.
- (b) If there is only one Member and the Member gives proper notice of resignation or on the same day all of the Members give proper notice of resignation, the notice or notices will be ineffective and the Member cannot resign until either another Member is accepted or the Company is wound up.
- (c) The Company must remove the Member's name from the Register if:
  - (i) The Member resigns;
  - (ii) The Member is a Member Body and ceases to be a State/Territory VA; or
  - (iii) The Member is an Independent Director and ceases to be a Director.
- (d) The resignation of a Member does not limit the Member's liability under this Constitution.

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### 14. Expulsion of a Member

- (a) Subject to Clause 14(b), if:
  - (i) A Member is in breach of a provision of this Constitution; or
  - (ii) Any act or omission of a Member is, in the opinion of the Board, unbecoming of a Member or prejudicial to the interests or reputation of the Company,the Company may expel the Member by a resolution of the Board.
- (b) The Company must not expel a Member pursuant to Clause 14(a) unless:
  - (i) At least 5 Business Days written notice has been given to the Member stating the date, time and place at which the question of expulsion of that Member is to be considered by the Board, and the nature of alleged event giving rise to the expulsion; and
  - (ii) The affected Member is given the opportunity of explaining to the Board, in writing, why the Member should not be expelled.
- (c) If a Member is expelled in accordance with this Clause 14, that individual or entity ceases to be a Member from the date of the resolution of the Board and their name will be removed from the Register.

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### 15. Other Cessation Events

- (a) If a Member becomes an externally-administered body corporate (within the meaning of the Corporations Act), the Company may remove the Member's name from the Register.

- (b) If a Member being an individual ceases to be a Director, the Company may remove the Member's name from the Register.

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## **16. Effect of Cessation**

- (a) A Member that ceases to be a Member:
  - (i) Remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the Member to the Company as a Member; and
  - (ii) Must pay to the Company interest at the rate the Board resolves on those amounts from the date of cessation until and including the date of payment of those amounts.
- (b) The Company may by resolution of the Board waive any or all of its rights pursuant to this Clause 16.

## **Fees and Other Payments**

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### **17. Annual Subscription**

- (a) The Company may by resolution of the Board require the payment of an annual subscription fee payable by a Member on any terms and at any times as the Board resolves in respect of each Member. For the avoidance of doubt, the annual subscription fee payable by a Member:
  - (i) May vary from year to year;
  - (ii) May be different to the annual subscription fee payable by another Member and may be payable at different times; or
  - (iii) May be nil.
- (b) The Company must give notice of annual subscription fee to the applicable Members who are required to pay the fees at least 10 Business Days before the due date for payment. The notice must specify the amount of the fee, the time or times and any place of payment and any other information as the Board resolves.
- (c) The non-receipt of a notice of a fee by, or the accidental omission to give notice of a fee to, any Member does not invalidate the fee.

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### **18. Failure to Pay Annual Subscription and/or Other Amounts**

- (a) A Member ceases to be entitled to any of the rights or privileges of membership if any annual subscription payable by the Member in accordance with Clause 17 remains unpaid for two months after it becomes payable and a notice of default is given to the Member pursuant to a resolution of the Board. However, the rights or privileges of membership may be reinstated on payment of all arrears if the Board (in its absolute discretion) so resolves.
- (b) If a Member has not paid all arrears of annual subscriptions or other arrears payable by the Member in accordance with Clause 18(a) or, if paid, the Member's rights and privileges are not reinstated by the Board in accordance with Clause 18(a), each of the following applies in respect of that Member:

- (i) The Member remains liable for all the obligations and liabilities of membership for six months after the date of notification under Clause 18(a).
- (ii) The Member ceases to be a Member and their name must be removed from the Register at the end of the six month period. Despite that cessation of membership, the former Members will remain liable for all amounts they owe to the Company that remain unpaid as at the date of cessation of membership.

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## **19. Company Payments**

- (a) A Member must pay to the Company on written demand an amount equal to all payments that the Company makes to a government or taxation authority in respect of the Member where the Company is either:
  - (i) Obligated by law to make the relevant payment; or
  - (ii) Advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxation authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to notify a Member in advance of its intention to make a payment pursuant to Clause 19(a).
- (c) An amount payable by a Member to the Company pursuant to Clause 19(a) is treated for the purposes of this Constitution as if it is a Fee properly made by the Board of which notice has been given on the date on which the written demand is given by the Company to the Member.
- (d) Nothing in this Clause 19 affects any right or remedy which any law confers on the Company.

## **National Council**

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## **20. National Council**

- (a) The National Council is to be comprised of the following:
  - (i) Directors of the Company, and
  - (ii) Member Representatives.
- (b) The National Council is responsible for the following:
  - (i) Electing the Chairperson;
  - (ii) Electing the Vice Chairperson; and
  - (iii) Electing the Company Secretary/Treasurer.
- (c) In addition to responsibilities outlined in Clause 20(b), the National Council is formed as a working group to research, review and advise on issues or projects designated by the Board and in consultation with Members and Associate members of Member Bodies as required.

- (d) All the provisions of this Constitution relating to a meeting of Members apply so far as they are capable of application and with any necessary changes to a meeting of the National Council.
- (e) In the event that a meeting of the National Council is required, that meeting of the National Council may be held on the same date and at a similar time as a Board of Directors meeting.

## **Proceedings of Members**

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### **21. Written Resolutions of Members**

- (a) While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.
- (b) A resolution in writing signed by all Members entitled to vote on the resolution is to be treated as a determination of the Members passed at a meeting of the Members duly convened and held.
- (c) A resolution in writing may consist of several documents in like form, each signed by one or more Member and if so signed it takes effect on the latest date on which a Member signs one of the documents.
- (d) If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.
- (e) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

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### **22. Calling Meetings of Members**

- (a) The Company may by resolution of the Board call a meeting of Members to be held at the time and place (including 2 or more venues using technology which gives Attending Members as a whole a reasonable opportunity to participate) and in the manner that the Board resolves.
- (b) No Member may call or arrange to hold a meeting of Members except where permitted by the Corporations Act.

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### **23. Notice of Meetings of Members**

- (a) Where the Company has called a general meeting of Members notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- (b) The notice of a general meeting must specify the place, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.
- (c) A Member may waive notice of any meeting of Members by written notice to the Company.



- (d) A Member who has not duly received notice of a meeting of Members may, before or after the meeting, notify the Company of the Members agreement to anything done or resolution passed at the meeting.
- (e) A Members attendance at a meeting of Members waives any objection which that Member may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the Member at the beginning of the meeting objects to the holding of the meeting.
- (f) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a Member does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a Member.

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## **24. Cancellation of General Meetings**

- (a) The Board may cancel a general meeting, other than a general meeting which the Board is required to convene and hold under the Corporations Act.
- (b) The Board may cancel a general meeting if notice of the cancellation is given to all Members entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in a notice of meeting.

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## **25. Business of Meetings**

Except with the approval of the Board, with the permission of the chairperson of the meeting or pursuant to the Corporations Act, no person may move at any meeting of Members:

- (a) Any resolution (except in the form set out in the notice of meeting given pursuant to Clause 23(a)); or
- (b) Any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Members to inspect or obtain.

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## **26. Quorum**

- (a) No business may be transacted at a meeting of Members except, subject to Clause 27, the election of the chairperson of the meeting unless a quorum for a meeting of a Members is present at the time when the meeting commences.
- (b) Except as otherwise set out in this Constitution a quorum shall be equal to 70% Members entitled to vote at the meeting by attendance.
- (c) In the event that the Member President of a Member Body is unable to attend a meeting of Members as the proxy of the Member, that Member may send a representative from their respective State or Territory as a substitute proxy. Should such a representative be an SES Volunteer and also a representative from the respective State/Territory VA executive committee, they will be eligible to vote and will be counted towards the numbers required to determine a quorum .
- (d) An absent Member mentioned in Clause 26(c) may vote in accordance with Clause 34(a) however a proxy so appointed will not count towards the numbers required to determine a quorum. Any such proxy will take priority over any vote submitted by a substitute representative in accordance with Clause 26(c).

- (e) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Members the meeting is dissolved unless the chairperson of the meeting or the Board adjourn the meeting to a date, time and place determined by that chairperson of the meeting or the Board.
- (f) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned meeting of Members, the meeting is dissolved.

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## **27. Chairperson of meetings of Members**

- (a) Subject to Clauses 27(b), 27(c) and 27(d) the Chairperson must chair each meeting of Members.
- (b) If at a meeting of Members:
  - (i) There is no Chairperson; or
  - (ii) The Chairperson is not present within 15 minutes after the time appointed for the commencement of a meeting of Members or is not willing to chair all or part of the meeting, the Vice Chairperson shall assume the position of chairperson for the term of the meeting.
- (c) Subject to Clause 27(b), if at a meeting of Members:
  - (i) There is no Vice Chairperson; or
  - (ii) The Vice Chairperson is not present within 15 minutes after the time appointed for the commencement of a meeting of Members or is not willing to chair all or part of the meeting, the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Member may elect one of their number, to chair that meeting.
- (d) The chairperson of a meeting of Members may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her (Acting Chair). Where an instrument of proxy appoints the chairperson of a meeting of Members as proxy for part of proceedings for which an Acting Chair has been nominated, the instrument of proxy is taken to be in favour of the Acting Chair for the relevant part of the proceedings.

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## **28. Conduct of Meetings of Members**

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson of a meeting of Members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.

- (d) The chairperson of a meeting of Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Members may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) Subject to the terms of this Constitution regarding adjournment of meetings, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of a meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.
- (g) The chairperson of a meeting of Members may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- (h) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
  - (i) Attends the meeting while under the influence of any kind of drug, or using or consuming any drug at the meeting, including any alcoholic substance.
  - (ii) Uses offensive or abusive language which is directed to any person, object or thing.
  - (iii) In the opinion of the chairperson, is not complying with the reasonable directions of the chairperson.
  - (iv) Has any audio or visual recording or broadcasting device.
  - (v) Has a placard or banner.
  - (vi) Has an article the chairperson considers to be dangerous, offensive or liable to cause disruption.
  - (vii) Behaves or threatens to behave in a dangerous, offensive or disruptive manner.
  - (viii) Refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession.
  - (ix) Is not entitled pursuant to the Corporations Act or this Constitution to attend the meeting.
  - (x) Conducts themselves in an inappropriate manner, as determined at the sole discretion of the chairperson, and not limited to the actions and behaviours stated within this Clause 28.
- (i) If the chairperson of a meeting of Members considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the chairperson may nominate a separate meeting place using any technology that gives Attending Members as a whole a reasonable opportunity to participate.
- (j) The chairperson of a meeting of Members may delegate any power conferred by this Clause 28 to any person.

- (k) Nothing contained in this Clause 28 limits the powers conferred by law on the chairperson of a meeting of Members.

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## **29. Attendance at Meeting of Members**

- (a) Subject to this Constitution, a Member who is entitled to attend and cast a vote at a meeting of Members, may attend and vote:
- (i) In person;
  - (ii) By written proxy given to another Member or Director;
  - (iii) If the Member is a Member Body, by a substitute proxy appointed in accordance with, and subject to the conditions in, Clause 29(e); or
  - (iv) If the Member is a body corporate, by Corporate Representative appointed in accordance with Clause 34(e).
- (b) The chairperson of a meeting of Members may require a person acting as a proxy or Corporate Representative, at that meeting to establish to the chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.
- (c) A Director is entitled to receive notice of and to attend all meetings of Members and is entitled to speak at those meetings.
- (d) A person requested by the Board to attend a meeting of Members, regardless of whether that person is a Member or not, is entitled to attend that meeting and, at the request of the chairperson of the meeting, is entitled to speak at that meeting.
- (e) In the event that a Member President of a Member Body is unable to attend a meeting of Members as the proxy of the Member, that Member may send a representative from their respective State/Territory VA as a substitute proxy. Should such a representative be an SES Volunteer and also a representative from the respective State/Territory VA executive committee, they will be eligible to vote and will be counted towards the numbers required to determine a quorum.
- (f) A Member Representative of a Member is entitled to attend all meetings of Members and is entitled to speak at those meetings.

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## **30. Multiple Appointments**

- (a) An appointment of a proxy of a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Members) if the Company receives a further appointment of a proxy from that Member which would result in there being more than one proxy of that Member entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Clause 30.
- (b) The appointment of a proxy for a Member is revoked by a Corporate Representative for that Member attending and taking part in a meeting of Members to which the appointment relates.

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## 31. Voting at meeting of Members

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands, unless a poll is demanded in accordance with Clause 33 and that demand is not withdrawn.
- (b) The Board may determine that Members entitled to attend and vote at a meeting of Members may vote at that meeting without an Attending Member in respect of that person being present at that meeting (and voting in this manner is referred to in this Clause 31(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Member casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Members, a direct vote cast by an eligible Member is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.
- (c) Subject to this Constitution, on a show of hands at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution, on a poll at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote for each Member that the Attending Member represents.
- (e) Subject to this Constitution, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Members on any resolution to be put at a meeting of Members each Member having a right to vote on the resolution has one vote.
- (f) An objection to a right to vote at a meeting of Members or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Clause 31(f) must be decided by the chairperson of the meeting of Members, whose decision, made in good faith, is final and conclusive.
- (g) Except where a resolution at a meeting of Members requires a special majority pursuant to the law, the resolution is passed if more votes are cast by Members entitled to vote in favour on the resolution than against it.
- (h) In the case of an equality of votes on a resolution at a meeting of Members, the chairperson of that meeting is entitled to a second or casting vote (in addition to any vote he or she may have as a proxy) on that resolution.
- (i) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Members following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

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## **32. Restrictions on Voting Rights of Members**

- (a) The authority of a proxy for a Member to speak or vote at a meeting of Members to which the authority relates is suspended while the Member is present in person at that meeting.
- (b) An Attending Member is not entitled to vote on any resolution on which any Fee or other amount due and payable to the Company in respect of that Member's membership of the Company has not been paid.
- (c) An Attending Member is not entitled to vote on a resolution at a meeting of Members where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (d) The Company must disregard any vote on a resolution at a meeting of Members purported to be cast by an Attending Member where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Clause 32(d) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

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## **33. Polls**

- (a) A poll on a resolution at a meeting of Members may be demanded by a Member only in accordance with the Corporations Act or by the chairperson of that meeting.
- (b) No poll may be demanded at a meeting of Members on the election of a chairperson of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Members for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Members must be taken in the manner and at the time and place the chairperson of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (f) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

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## **34. Proxies and Corporate Representative**

- (a) A Member who is entitled to attend and vote at a meeting of Members may appoint, in writing, another Member or Director as proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act.
- (c) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.

- (d) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Member is not filled in, the proxy of that Member is:
  - (i) The person specified by the Company in the form of proxy in the case that Member does not choose; or
  - (ii) If no person is so specified, the chairperson of that meeting.
- (e) A Member who is a body corporate may only appoint the following persons as its Corporate Representative in accordance with the Corporations Act:
  - (i) The Member President of that Member; or
  - (ii) If the Member President of that Member is unable to attend a particular meeting of Members, an SES Volunteer who is a representative from the respective State/Territory VA executive committee of that Member, but the appointment may only be made in respect of that meeting.

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### **35. Receipt of appointments**

- (a) An appointment of proxy for a meeting of Members is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Member may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Member and received by the Company if the requirements set out in the notice of meeting are complied with.

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### **36. Adjournments**

- (a) The chairperson of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.
- (b) If the chairperson of a meeting of Members exercises the right to adjourn that meeting pursuant to Clause 36(a), the chairperson may (but is not obliged to) obtain the approval of Attending Members to the adjournment.
- (c) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (d) The Company may give such notice of a meeting of Members resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a meeting of Members which is resumed after an adjournment.

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## **37. Cancellations and postponements**

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Members or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Clause 37(a) does not apply to a meeting called in accordance with the Corporations Act by Members or by the Board on the request of Members, unless those Members consent to the cancellation or postponement of the meeting.
- (c) The Company may give notice of a cancellation or postponement or change of place of a meeting of Members as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the original notice calling the meeting.

## **Directors**

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## **38. Number and Appointment of Directors**

- (a) The Board of Directors shall consist of the Officers of the Company, plus the Member Presidents of each Member Body, until otherwise determined in accordance with this Constitution.
- (b) A Director may hold up to two official positions within those stated as Officers other than:
  - (i) Being the Chairperson and Vice Chairperson; or
  - (ii) Being the Chairperson and the Company Secretary/Treasurer.
- (c) The number of Directors (not counting alternate Directors of the Company) must not be less than 3 nor more than the total of the number of Officers plus the number of Member Bodies.
- (d) Subject to Clauses 38(a) and 39(e), the Board may appoint any person as a Director.
- (e) A Director must not hold an Inconsistent Office.

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## **39. Initial Directors and Officers**

- (a) The initial Directors of the Company are those individuals named in the application to register the Company with their consent as a proposed Director of the Company and will comprise the Member Presidents of each Member Body and any Office bearers.
- (b) Subject to the other terms of this Constitution, other than Officers, an initial Director of the Company will hold office whilst ever they remain Member President of their respective State/Territory VA which remains a Member.
- (c) Subject to Clause 39(e), the Officers will be elected for a term of three years. After the initial appointments, the Officers will be elected at alternate annual general meetings



(in successive order of Chairperson, Company Secretary/Treasurer, Vice Chairperson) to retain corporate knowledge.

- (d) The initial Officers are:
  - (i) [Charlie Moir] - Chairperson;
  - (ii) [Gordon Hall] - Vice-Chairperson; and
  - (iii) [Doreen McEncroe] - Company Secretary/Treasurer.
- (e) Subject to the other terms of this Constitution, an initial Officer will hold office whilst ever they remain Member President of their respective Member Body and be elected for the following terms:
  - (i) Chairperson – until the first annual general meeting of the Company;
  - (ii) Company Secretary/Treasurer – until the second annual general meeting of the Company; and
  - (iii) Vice Chairperson – until the third annual general meeting of the Company.

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#### **40. Term of Office and Retirement of Directors**

- (a) Subject to the other provisions of this Constitution, it is intended that:
  - (i) Directors will not retire by rotation.
  - (ii) Directors who are appointed by means other than by being their respective Member President will retire from office at the close of each third annual general meeting.
  - (iii) The maximum continuous period for which a Director mentioned within Clause 40(a)(ii) may be in office will be 6 years, commencing from the date of appointment at the relevant annual general meeting.
  - (iv) For the purpose of clarification of Clause 40(a)(iii) a continuous period means where there is no break of more than 3 months in the holding of a position as Director.
- (b) A Director retiring at an annual general meeting may act as a Director until the conclusion of that meeting and is eligible for re-appointment to the extent permitted by law, and this Constitution
- (c) A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.
- (d) A Member President who resigns from that office is deemed to have given the Company irrevocable written notice of their intention to resign from office as a Director, on the same date as his or her resignation as Member President takes effect.

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#### **41. Termination of Office**

A person ceases to be a Director if:

- (a) The person is absent (either personally or by an alternate Director) from at least three consecutive Board meetings without the written consent of the Board;
- (b) The person resigns by notice in writing to the Company;
- (c) The person is removed from office pursuant to the Corporations Act;
- (d) The person becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health;
- (e) The person is not permitted to be a Director, or to manage a corporation, pursuant to the Corporations Act; or
- (f) The person's office as a Director is vacated in accordance with Clause 40(d) or 42.

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## **42. Alternate Directors**

- (a) A Director may:
  - (i) Without the need for approval of other Directors, appoint another Director; and
  - (ii) With the approval of a majority of the other Directors, appoint a person who is not a Director,as an alternate Director of that Director for any period. An alternate Director need not be a Member Representative.
- (b) The appointing Director may terminate the appointment of his or her alternate Director at any time.
- (c) A notice of appointment, or termination of appointment, of an alternate Director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company.
- (d) An alternate Director is entitled to receive notice of Board meetings and, subject to this Constitution and the Corporations Act, to attend, count in the quorum of, speak at, and vote at a Board meeting at which his or her appointing Director is not present.
- (e) Subject to this Constitution, the Corporations Act, and the instrument of appointment of an alternate Director, an alternate Director may exercise all the powers (except the power pursuant to Clause 42(a) of a Director, to the extent that that his or her appointing Director has not exercised them.
- (f) The office of an alternate Director is terminated if the appointing Director ceases to be a Director.
- (g) Subject to Clause 7, the Company is not required to pay any remuneration or benefit to an alternate Director.
- (h) An alternate Director is an officer of the Company and not an agent of his or her appointing Director.

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## 43. Interests of Directors

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
  - (i) Holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company.
  - (ii) Holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest.
  - (iii) Being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company.
  - (iv) Entering into any agreement or arrangement with the Company.
  - (v) Acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests even if the Company is a registered entity under the ACNC Act.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting, nor vote on the matter, except where permitted by the Corporations Act (including subsection 195(1A)).
- (d) If a Director has an interest in a matter, then subject to Clause 43(c), Clause 43(e) and this Constitution:
  - (i) That Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting.
  - (ii) That Director may participate in and vote on matters that relate to the interest.
  - (iii) The Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company.
  - (iv) The Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest.
  - (v) The Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed pursuant to Clause 43(b), Clause 43(d)(iv) applies only if the interest is disclosed before the transaction is entered into.

## Officers and Paid Staff

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### 44. Chairperson

- (a) Subject to Clause 38(b) and 39, nominations for the election of an Eligible Chairperson will be called from any and all Member Body Associate members. The Board will review and approve of nominations for compliance with Clause 38(b).
- (b) Upon approval by the Board of the nomination(s) pursuant to Clause 44(a), votes will be collected from each National Council member, with each entitled to one vote.
- (c) Using a Preferential Voting System, the Board may appoint an Eligible Chairperson as Chairperson, under the same terms and conditions as outlined for a Director within this Constitution.
- (d) In the event of a tied vote in Clause 44(c), the Board will determine, at their sole discretion, the appointment of the Chairperson.
- (e) A person ceases to be the Chairperson if the person ceases to be a Director.
- (f) Subject to Clause 43(c), the Chairperson must chair each Board meeting and National Council meeting.
- (g) If at a Board meeting:
  - (i) A Chairperson has not been elected pursuant to this Clause 44, or
  - (ii) The Chairperson is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting, the Vice Chairperson shall assume the position of chairperson for the term of the meeting.

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### 45. Vice Chairperson

- (a) If required, the Board may appoint a Vice Chairperson, in which case this Clause 45 will apply.
- (b) Subject to Clause 38(b) and 39 nominations for the election of a Vice Chairperson will be called from the Directors. The Board will review and approve of nominations for compliance with Clause 38(b).
- (c) Upon approval by the Board of the nomination(s) pursuant to Clause 45(b), votes will be collected from each National Council member, with each entitled to one vote.
- (d) Using a Preferential Voting System, the Board may appoint a Vice Chairperson of the Board of Directors of the Company, under the same terms and conditions as outlined for a Director within this Constitution.
- (e) In the event of a tied vote in Clause 45(c), the Board will determine, at their sole discretion, the appointment of the Vice Chairperson.
- (f) A person ceases to be the Vice Chairperson if the person ceases to be a Director.
- (g) Subject to the terms of this Constitution the Vice Chairperson shall perform all roles of the Chairperson in their absence.

- (h) If at a Board meeting:
  - (i) A Vice Chairperson has not been elected pursuant to this Clause 45; or
  - (ii) In the absence of the Chairperson and the Vice Chairperson is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting, the Directors who are or will be present at the meeting may (by majority vote) elect one of their number to chair that meeting.

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#### **46. Company Secretary/Treasurer**

- (a) Subject to Clause 38(b) and 39, nominations for the election of a Company Secretary/Treasurer will be called from any and all Member Body Associate members. The Board will review and approve of nominations for compliance with Clause 38(b).
- (b) Upon approval by the Board of the nomination(s) in Clause 46(a), votes will be collected from each National Council member with each entitled to one vote.
- (c) Using a Preferential Voting System, the Board may appoint a Company Secretary/Treasurer, under the same terms and conditions as outlined for a Director within this Constitution.
- (d) In the event of a tied vote in Clause 46(c), the Board will determine, at their sole discretion, the appointment of the Company Secretary/Treasurer.
- (e) A person ceases to be the Company Secretary/Treasurer if the person ceases to be a Director or an Associate member of a Member Body.

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#### **47. Paid Staff**

- (a) The Board may delegate any of its powers to Paid Staff of the Company for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to Paid Staff of the Company.
- (b) Paid Staff of the Company must exercise the powers delegated to them in accordance with any directions of the Board.
- (c) A person ceases to be Paid Staff if the person ceases to be an employee of the Company.
- (d) In accordance with Clause 47(a) all Paid Staff will receive clarification and direction directly from the Chairperson on all matters relevant to the exercise of any powers delegated to them. The Chairperson shall have sole and final discretion in the performance management of the Paid Staff.

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#### **48. Directors' Remuneration**

The Company will not pay or give any remuneration or other benefit in money or money's worth to any Director except, with the prior approval of the Board:

- (a) Reimbursement of out-of-pocket expenses reasonably and properly incurred by the Director in connection with Company business (including travel and accommodation expenses, or any amounts expended on or in connection with the establishment and

promotion of the Company), or payment of such amounts by the Company on the Director's behalf.

- (b) Payment of or towards insurance premiums for any Director to the extent permitted by law and this Constitution.
- (c) A fee in return for any extra services actually rendered to the Company in a professional or technical capacity (other than within his or her ordinary duties as a Director) where the amount payable does not exceed a commercially reasonable amount. The fee may be paid either by fixed sum or salary determined by the Board.

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## **49. Indemnity and Insurance**

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Clause 49(a):
  - (i) Is enforceable without the Relevant Officer having first to incur any expense or make any payment.
  - (ii) Is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company.
  - (iii) Applies to Liabilities and Legal Costs incurred both before and after this Clause became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
  - (i) Enter into, or agree to enter into; or
  - (ii) Pay, or agree to pay, a premium for, a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
  - (i) Keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed.
  - (ii) Indemnify that person against any Liability and Legal Costs of that person.
  - (iii) Make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person.
  - (iv) Keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## Powers of the Board

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### 50. General Powers of the Board of Directors

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Clause 55, a resolution passed by signing a document in accordance with Clause 59, or in accordance with a delegation of the power pursuant to Clause 47, 53 or 54. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Clause 47, 53 or 54.
- (c) If the Company is a wholly-owned subsidiary, a Director is authorised to act in the best interests of its holding company provided that the Director acts in good faith in the best interests of that holding company and the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.
- (d) The Board may (without the approval of the Members) from time to time, make, amend or repeal such regulations as it considers necessary or convenient in relation to the affairs of the Company, but no such regulation or amendment will be of any force or effect unless it is consistent with the Corporations Act and this Constitution.
- (e) All Regulations for the time being in force are binding on the Members (and, if applicable, the Directors) as if it were included in this Constitution.
- (f) Subject to clause 50(h), the Board may from time to time make, amend or repeal Manuals, Policies and Procedures.
- (g) All Manuals, Policies and Procedures so made and for the time being in force will be binding on the Company and upon each Director, Member, Member Representative, or staff of the Company.
- (h) The Board of Directors will endeavour to reach decisions by consensus, however, administrative decisions may be decided by majority vote and policy decisions must be by consensus.

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### 51. Consultation with the Member Body Associate members

- (a) Each Director that is a Member President is required to:
  - (i) Communicate regularly with the relevant Members and Associate members of Member Bodies.
  - (ii) Solicit written feedback from the Associate members of the relevant Member Bodies when required by the Board, and promptly submit a written summary of any feedback received to the Company Secretary/Treasurer or the Company Secretary/Treasurer's nominee for distribution to the Board.

- (iii) Promptly raise at a Board meeting all relevant issues otherwise notified to the Director by the relevant Members or Associate members of Member Bodies.
- (b) The Board may consult with Members and/or Associate members of Member Bodies as it sees fit, including by arranging for Members and/or Associate members of Member Bodies to give an indicative vote on a matter the Board is considering. The Board must consult with Members if this is required by a minimum of three Directors, in which case the form of consultation will be that which is reasonably required by those Directors. Votes cast by Members pursuant to a consultative process implemented under this Clause 51(b) are not binding upon the Board.
- (c) When consulting with Members and/or Associate members of Member Bodies in accordance with Clause 51(b), the Board:
  - (i) May at its discretion have regard not only to the number of votes cast for or against the matter by Members and/or Associate members of Member Bodies but also the proportion of the total Associate members within each Member Body of:
    - A. The Members and/or Associate members of Member Bodies voting for the matter.
    - B. The Members and/or Associate members of Member Bodies voting against the matter.
    - C. The Members and/or Associate members of Member Bodies abstaining from voting on the matter.
- (d) May otherwise take into account, or give particular weight to, any matter the Board considers fit when so consulting with Members and/or Associate members of Member Bodies.

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## **52. Execution of Documents**

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary/Treasurer, or another person appointed by the Board for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary/Treasurer, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

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## **53. Committees and Delegates**

- (a) The Board may delegate any of its powers to a committee of the Board (other than the Advisory Committee), a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms



(including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.

- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, Clause 55 applies with the necessary changes to meetings and resolutions of a committee of the Board.

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## **54. Attorney or Agent**

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

## **Proceedings of Directors**

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## **55. Board Meetings**

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) The Chairperson may call a Board meeting at any time. On request of the Chairperson, the Secretary/Treasurer of the Company must call a meeting of the Directors.
- (c) A majority of Directors may call a Board meeting at any time. On request of such majority, the Secretary/Treasurer of the Company must call a meeting of the Directors.
- (d) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and an alternate Director appointed by a Director on leave of absence approved by the Board. Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (e) The person convening a Board meeting must ensure that notice of the Board meeting is given to each Director at least 24 hours before the meeting or at another time determined by Board resolution.
- (f) A Director or alternate Director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.
- (g) A person who attends a Board meeting waives any objection that person and:
  - (i) If the person is a Director, any alternate Director appointed by that person; or
  - (ii) If the person is an alternate Director, the Director who appointed that person as alternate Director,

may have to a failure to give notice of the meeting.

- (h) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (i) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
  - (i) Telephone;
  - (ii) Videoconferencing;
  - (iii) Any other technology which permits each Director to communicate with every other participating Director; or
  - (iv) Any combination of these technologies.
- (j) A Director may withdraw the consent given pursuant to this Clause 55(i) in accordance with the Corporations Act.
- (k) If a Board meeting is held in 2 or more places linked together by any technology:
  - (i) A Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
  - (ii) The chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (l) Until otherwise determined by the Board, a quorum for a Board meeting is the number equal to 70% of the number of Directors holding office at the time (rounding up to nearest whole number). A quorum for a Board meeting must be present at all times during the meeting. Each individual present is counted towards a quorum in respect of each appointment as an alternate Director of another Director in addition (if applicable) to being counted as a Director.
- (m) If the number of Directors is reduced below the number necessary for a quorum of Directors, the continuing Director or Directors may act only to:
  - (i) Defer the meeting to another time and place; or
  - (ii) Convene a general meeting of the Company.
- (n) In the event that a Director who is also a Member President is unable to attend a Board meeting the Member Body of that Director may by notice in writing to the Company nominate another member from that Member Body to attend in their place with such attendance entitling that nominee to vote and to be counted in the determination of a quorum, if such a representative is from the respective State/Territory VA executive committee.
- (o) In the event that a Director is unable to attend a Board meeting they can, in writing send a proxy to another Director or the Chairperson however such proxy does not count in the determination of a quorum.

- (p) The Board may cancel a Board meeting if notice of cancellation is given to all Directors entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in notice of meeting.

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## **56. Advisory Committees**

- (a) The Board may establish one or more advisory committees to provide advice and recommendations to the Board on specified matters (among any other functions determined by the Board).
- (b) The Board may, with respect to an Advisory Committee:
  - (i) Specify in writing from time to time the terms of reference and functions of the Advisory Committee.
  - (ii) Appoint such persons as the Board considers appropriate to the Advisory Committee (including, if thought fit, one or more Directors), and remove any such person from the Advisory Committee at any time by written notice.
  - (iii) Specify the period and conditions (including as to remuneration, if any) of any such appointment to the Advisory Committee.
  - (iv) Terminate the Advisory Committee at any time.
- (c) The Board must not delegate any of its powers to an Advisory Committee, and an Advisory Committee must not exercise any powers of a Director or the Board.

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## **57. Proceedings of Committees**

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Directors or an Advisory Committee must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee or Advisory Committee are meetings and proceedings of the Board.

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## **58. Minutes**

- (a) The Board must cause minutes of all proceedings of general meetings, of Board meetings and of committees formed by the Board to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

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## **59. Resolution in Writing**

- (a) A resolution in writing signed by all Directors entitled to vote on the resolution (excluding Directors who have requested and been given leave of absence by the Board) is to be treated as a determination of the Board passed at a Board meeting duly convened and held.
- (b) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.

- (c) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

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## **60. Board Resolutions**

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Clauses 42 and 43 and this Clause 60, each Director present in person or by his or her alternate Director has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two Directors are present and entitled to vote on the resolution.

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## **61. Valid Proceedings**

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
  - (i) A defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
  - (ii) A person so appointed being disqualified or not being entitled to vote, if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Members.

## **Notices**

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## **62. Notices to Members**

- (a) The Company may give Notice to a Member by any of the following means in the Board's discretion:
  - (i) Delivering it to that Member;
  - (ii) Delivering it or sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member for that purpose;
  - (iii) Sending it to the fax number or electronic address (if any) nominated by that Member for that purpose;
  - (iv) If permitted by the Corporations Act, notifying that Member of the notice's availability by an electronic means nominated by the Member for that purpose; or

- (v) Any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Member whose address for Notices is not within Australia by air-mail, air courier, fax or electronic transmission.
- (c) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the States and Territories of Australia.
- (d) The Members/Directors are expected to meet at least twice yearly; the AGM will be a face to face meeting, however, the extra General Meeting may be by teleconference or other electronic means.

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### **63. Notice to Directors**

The Company may give Notice to a Director or alternate Director by:

- (a) Delivering it to that person;
- (b) Sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) Sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) Any other means agreed between the Company and that person.

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### **64. Notice to the Company**

A person may give Notice to the Company by:

- (a) Delivering it or sending it by post to the registered office of the Company;
- (b) Delivering it or sending it by post to a place nominated by the Company for that purpose;
- (c) Sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) Sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) Any other means permitted by the Corporations Act.

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### **65. Time of Service**

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director or an alternate director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A Notice given in accordance with Clause 62(a)(iv) is taken to be given on the day after the date on which the Member is notified that the Notice is available.

- (d) A certificate by a Director or Secretary/Treasurer to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

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## **66. Notice Requirements**

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) The classes of, and circumstances in which, Notices may be sent;
- (b) Verification (whether by encryption code or otherwise); and
- (c) The circumstances in which, and the time when, the Notice is taken to be given.

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## **Accounts, Audit and Records**

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### **67. Accounts**

The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act.

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### **68. Reports**

To the extent required by the Corporations Act or the ACNC Act (as applicable), the Board must cause the company to:

- (a) Prepare financial reports.
- (b) Prepare Director's reports.
- (c) Notify each Member/Director of the Member's right to receive reports from the Company.
- (d) Provide Members/Directors with reports, in a form and within such timeframe as may be required.

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### **69. Audit**

If required by the Corporations Act or the ACNC Act (as applicable), a registered company auditor must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act and/or the ACNC Act.

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### **70. Rights of Inspection**

Subject to the Corporations Act and/or the ACNC Act (as applicable):

- (a) The Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of a Member and a Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in general meeting.
- (b) Despite Clause 70(a), the Board may refuse access to a document where the Board (acting reasonably) considers that such access would or would be likely to cause the

Company to lose the benefit of any form of evidentiary privilege, including legal professional privilege.

## **Winding Up**

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### **71. Winding Up**

On a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must not be paid to or distributed among the Members, but must be given or transferred to:

- (a) One or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Board by resolution at or before the dissolution of the Company:
  - (i) Having object similar to the objects of the Company; and
  - (ii) Whose Constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Clause 7; or
  
- (b) If there are no bodies corporate, associations or institutions which meet the requirements of Clause 71(a), one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Board by resolution at or before dissolution of the Company, the objects of which are the promotion of charity and whose Constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Clause 7.