

CONSTITUTION

of

**ANGLICAN COMMUNITY CARE LIMITED
ACN 687 435 187**

APPROVED BY MEMBERS 26/02/2025

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PART A - INTRODUCTION

1. PREAMBLE

Anglican Community Care, now trading as ac.care, evolved from an initiative of the Anglican Parish of Mount Gambier in 1986 to relieve homelessness amongst local teenagers. The founding organisation amalgamated with other local organisations and was subsequently incorporated under the Associations Incorporation Act 1985.

ac.care operates a diversity of social welfare programs across a broad area of Southern-Eastern Regional South Australia mostly within the Anglican Diocese of The Murray. These services evolved to include supporting children in residential and family based foster care, people impacted by homelessness, poverty, food and income insecurity, family and relationship disruption, socio-economic disadvantage, mental or physical disadvantage or disability, and people who are isolated and lonely. We believe that all people and communities have inherent strengths and that they are all the experts of their own lives and circumstances.

The ethics and principles of ac.care are informed by those of the Anglican Church of Australia, and at the time of adoption of this Constitution, a document known as “the ac.care way” which establishes compassion, adaptability, relationships and excellence as central to corporate culture.

ac.care has a strong and ongoing connection with the Anglican Church through the Diocese of The Murray, led by the Bishop of The Murray. The mission of the Anglican Church is the mission of Christ: to proclaim the Good News of the Kingdom; to teach, baptise and nurture new believers; to respond to human need by loving service; to transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation; to strive to safeguard the integrity of creation, and sustain and renew the life of the earth.

ac.care acknowledges the First Nations people on whose lands it operates. It seeks to engage First Nations people in all dimensions of service, leadership and governance, and actively encourages all people to walk together towards reconciliation.

ac.care is a child safe and inclusive organisation which establishes programs within communities to provide the safety, homes, sense of belonging and connection to people and resources those in need require to thrive and reach their potential.

2. DICTIONARY

In this Constitution:

Act means the *Corporations Act 2001* as amended from time to time and as it applies to the Company, and reference to a **section** is to a section of that legislation and includes any section that substantially replaces that section and deals with the same matter.

AGM or **Annual General Meeting** has its meaning in the Act.¹

Annual Budget means at any time a budget for a financial year of the Company in force under clause 79. A budget should specify in reasonable detail:

- (a) anticipated receipts (differentiating between sources of such receipts);
- (b) anticipated expenditures (differentiating between revenue expenditures of different kinds (such as repairs, maintenance and staff costs) and capital expenditures);
- (c) a cash flow projection, divided into months.

¹ An annual general meeting of the company that section 250N requires to be held.

Annual Subscription Fee means the fee determined by the Board (if any) from time to time payable by members to maintain their membership.

Association means Anglican Community Care Incorporated ABN 53 440 436 445.

Board means the Directors meeting or making decisions as Directors.

Business Day means a day other than:

- (a) a Saturday, Sunday;
- (b) a day which is a public holiday in the State of South Australia; or
- (c) a day that falls between any 22 December and the next following 3 January.

Business Hours means between the hours of 8:30am and 5pm on a Business Day.

Chairperson means at any time the chairperson of the Company having assumed that office under clause 58 or appointed to that office by the Board under clause 59.

Chief Executive Officer (CEO) means at any time a person appointed by the Board as chief executive officer of the Company and includes a person acting in that position.

Company means Anglican Community Care Limited ACN 687 435 187.

Deputy Chairperson means at any time the deputy chairperson of the Company having assumed that office under clause 58 or appointed to that office by the Board under clause 59.

Director means at any time a director of the Company.

Directors mean all or some of the Directors acting as such.

Director Identification Number or DIN means the 15-digit unique identifier given to a director (or someone who intends to become a director) who has verified their identity with the Australian Business Registry Services.

Director Nominations Committee means a committee established from time to time comprised of the individuals set out in clause 41.2, and may be combined with, or separate to, the Remuneration Committee as determined by the Board, provided that the requirements of 41.2 are met.

General Meeting means a meeting of the Members and includes any AGM.

Gift Funds means:

- (a) gifts of money or property for the principal purpose of the Company;
- (b) contributions made in relation to a fund-raising event held for the principal purpose of the Company, and
- (c) money received by the Company because of such gifts and contributions,

where 'contributions' and 'fund-raising event' has the meaning given in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

Member has the same meaning as in section 231.²

² A person is a member of a company if they:

- (a) are a member of the company on its registration; or
- (b) agree to become a member of the company after its registration and their name is entered on the register of members; or
- (c) become a member of the company under section 167 (membership arising from conversion of a company from one limited by guarantee to one limited by shares).

Remuneration Committee means a standing committee comprised of the individuals set out in clause 52.4, and may be combined with, or separate to the Director Nominations Committee as determined by the Board, provided that the requirements of 52.4 are met.

Replaceable Rule means any provision of those sections and sub-sections of the Act which are designated under section 141 as "replaceable rules" and so capable of being displaced or modified by a company's constitution.

Secretary means at any time a person appointed by the Board to perform the duties of a secretary of the Company.

Special Majority means 75% of those people entitled to vote on a resolution.

Special Resolution means a resolution requiring 75% of votes cast in favour of the resolution.

Treasurer means at any time a Director appointed by the Board to be responsible for liaising with the finance and accounting personnel and external contractors of the Company and providing (with the support of appropriate finance and accounting personnel) reports to the Board of those matters.

Subject to the above, expressions in this Constitution have the same meaning as in a provision of the Act which deals with the same matter.³

3. INTERPRETATION

In this Constitution: singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership (including their successors, substitutes and assigns) and *vice versa*; headings do not affect construction; another grammatical form of a defined word has a corresponding meaning, reference to any legislation or any provision of any legislation includes any amendment, modification, consolidation or re-enactment of the legislation or any legislative provision substituted for and all legislation and statutory instruments of and regulations issued under the legislation.

4. ABOUT⁴

This document is the Constitution of the Company.

5. REPLACEABLE RULES⁵

This Constitution displaces all the Replaceable Rules.

6. ACT⁶

Despite any other provision in this Constitution:

- 6.1 if the Act prohibits a thing being done, the thing may not be done;
- 6.2 if the Act requires a thing to be done, authority is given for that thing;
- 6.3 if a provision of this Constitution is or becomes inconsistent with the Act (other than a Replaceable Rule), that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

³ Section 9 contains many, but not all, statutory definitions.

⁴ By section 140(1), the constitution takes effect as a contract between the company, its member(s) and director(s) and secretary.

⁵ Section 134 states that a company's internal management may be governed by replaceable rules, by a constitution or by a combination of both. By section 135(2), a constitution can displace or modify a replaceable rule. Section 141 sets out a table of the replaceable rules which are replaced by this Constitution.

⁶ The Act contains many mandatory rules regulating the affairs of companies. Those rules are not reproduced or, in the main, signposted in this document. The rules of the common law and principles of equity also apply and are not now reproduced or signposted.

7. ACNC ACT⁷

Where at the time the Company is registered under the *Australian Charities and Not-for-profits Commission Act 2012 (ACNC Act)*:

- 7.1 if the ACNC Act prohibits a thing being done, the thing may not be done;
- 7.2 if the ACNC Act requires a thing to be done, authority is given for that thing;
- 7.3 if a provision of this Constitution is or becomes inconsistent with the ACNC Act, that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

PART B - THE COMPANY**8. OBJECTS⁸**

The charitable objects for which the Company is registered under the Act are to:

- 8.1 alleviate homelessness and housing insecurity;
- 8.2 strengthen communities;
- 8.3 promote or provide learning, education, training and employment;
- 8.4 relieve poverty, distress or other forms of disadvantage;
- 8.5 strengthen and support children, young people and families;
- 8.6 support Aboriginal and Torres Strait Islander peoples;
- 8.7 support people living with disability; and
- 8.8 such other services consistent with the benevolent status of the company, in response to the needs of, or the result of which will benefit disadvantaged persons, as may be determined by the Board from time to time.

9. POWERS⁹

The Company must exercise its powers only in furtherance of its objects.

10. CORPORATE STATUS

The Company is a company limited by guarantee.

⁷ Part 1.6 of Chapter 1 of the *Corporations Act 2001* modifies the application of the *Corporations Act 2001* to a company registered under the ACNC Act. See also section 45B if a 'small company limited by guarantee'.

⁸ Section 125(2) allows a constitution to set out a company's objects. However, an act of a company is not invalid merely because it is contrary to or beyond any such objects.

⁹ Section 124 grants broad powers to a company including the legal capacity and powers of an individual and all the powers of a body corporate including the power to:

- (a) issue and cancel shares in the company;
- (b) issue debentures;
- (c) grant options over unissued shares in the company;
- (d) distribute any of the company's property among the members, in kind or otherwise (unless the Company is registered under the ACNC Act);
- (e) grant a security interest in uncalled capital;
- (f) grant a circulating security interest over the company's property;
- (g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction;
- (h) do anything that it is authorised to do by any other law (including a law of a foreign country).

A company limited by guarantee does not have the power to issue shares.

11. NOT-FOR-PROFIT STATUS

The assets and income of the Company must be applied solely in furtherance of its objects and no portion may be distributed directly or indirectly to the Members, except as *bona fide* compensation for services rendered, goods supplied, or expenses incurred on behalf of the Company.

12. TAXATION STATUS

The Company may do all things necessary consistent with its objects:

- 12.1 for the income and gains of the Company to be exempt from income tax;
- 12.2 to be endorsed as a deductible gift recipient under the *Income Tax Assessment Act 1997*;
- 12.3 for the Company to qualify for any concession under any tax law of Australia or of any State or Territory of Australia.

PART C - MEMBERS**13. REGISTER OF MEMBERS¹⁰**

- 13.1 In addition to the information the Act requires,¹¹ the register of members kept by the Company under sections 168 and 169 must contain the following information about each Member:
 - 13.1.1 the date and summary reason/s why the Member's membership was cancelled; and
 - 13.1.2 the date the Member resigned.
- 13.2 The register of members may also state an electronic address to which notices from the Company may be sent to the Member.
- 13.3 From time to time, as the Board sees fit, the register of members must be audited to ensure the accuracy of the information recorded, and the continued eligibility of recorded individuals for membership.

14. MEMBER'S RIGHTS

- 14.1 A Member has right to receive notice of, and to attend, speak and vote (personally or by proxy) at all General Meetings.

15. MEMBERSHIP IS NOT TRANSFERRABLE

Membership of the Company is personal to the Member and incapable of transfer.

16. INITIAL MEMBERS

The initial Members are those persons specified in the application for registration of the Company as proposed members of the Company.¹²

17. MEMBERS

- 17.1 Any individual may become a Member if:

¹⁰ The register may be kept on computer (see section 1306). If the Company has more than 50 members the Company must include in the register an up to date index of members' names which is convenient to use and allows a member's entry in the register to be readily found. A separate index need not be included if the register itself is kept in a form that operates effectively as an index. A register of members must also show the name and details of each person who stopped being a member of the Company within the last 7 years and the date on which they stopped being a member. The Company may keep these entries separately from the rest of the register.

¹¹ Section 169(1) requires the register of members contain the member's name and address and the date on which the entry of the member's name in the register is made.

¹² Section 120(1) is to that effect.

- 17.1.1 they are 18 years of age or older;
 - 17.1.2 they support the purposes of the Company;
 - 17.1.3 they have been:
 - (a) nominated to become a Member by an existing Member of the Company; or
 - (b) recommended by the Director Nominations Committee to act as a Director of the Company within the 12 month period preceding their applying to become a Member; or
 - (c) have otherwise been offered an appointment as a Director of the Company, including being one of the initial Directors of the Company;
 - 17.1.4 they make an application for membership which is approved by the Board;
 - 17.1.5 the Board records the approval in minutes of Board meetings; and
 - 17.1.6 the Board notifies the approval to the applicant.
- 17.2 A person having resigned as a Member, may make a fresh application for membership in the usual way.

18. ANNUAL SUBSCRIPTION FEE

- 18.1 The Board may, but is not required to, set an Annual Subscription Fee.
- 18.2 If an Annual Subscription Fee is set by the Board, the Board shall determine the date on which it shall be paid in each calendar year (**Payment Date**). The period between two Payment Dates shall be a **Membership Year**.
- 18.3 Each Member must, by the Payment Date, make payment to the Company of the Annual Subscription Fee, unless such payment is excused in accordance with clause 18.5.
- 18.4 If a person becomes a Member part way through a Membership Year, the Annual Subscription Fee shall be reduced on a pro-rata basis for the remainder of that Membership Year, such fee being payable within 30 days of them becoming a Member.
- 18.5 The Board may, on a case-by-case basis, excuse a Member from having to pay an Annual Subscription Fee if it is determined that it would cause distress, financial insecurity or unfairly prejudice that Member. The Board may delegate such decisions to a confidential sub-committee who will not be required to disclose any confidential financial information of a Member seeking fee relief to the remainder of the Board.

19. SUSPENSION OF MEMBERSHIP

- 19.1 The Board may suspend the membership of a Member by so notifying the Member, if the Member:
 - 19.1.1 engages in behaviour or activity that harms or may harm the Company (including harming its reputation);
 - 19.1.2 fails to pay an Annual Subscription Fee (if not excused from having to do so); or
 - 19.1.3 violates this Constitution.
- 19.2 Suspension of a Member shall continue until the later of:
 - 19.2.1 the Member's Annual Subscription Fees are paid for the relevant period if that is the reason for their suspension;

- 19.2.2 a resolution is passed by the Board ending the suspension;
 - 19.2.3 the suspended Member's membership of the Company being terminated; or
 - 19.2.4 a period of 6 months from the date of the suspension, noting that a new period of suspension may then commence on the terms required by clause 19.1.
- 19.3 A suspended Member is not entitled to attend meetings of Members without written invitation by the Board.
- 19.4 A suspended Member is not entitled to vote at meetings of Members and shall not be included in any calculation for the quorum for such a meeting.
- 19.5 A Director who is also a Member who has been suspended is not entitled to attend or vote at meetings of the Board.

20. CANCELLATION OF MEMBERSHIP

- 20.1 The Board may cancel the membership of a Member by so notifying the Member if the Member becomes a bankrupt or otherwise an insolvent under administration.
- 20.2 The Board may cancel the membership of a Member by so notifying the Member if, in the opinion of a majority of the Directors, the Member is by reason of age, disease, illness, or physical or mental infirmity unable to substantially manage their affairs as evidenced by a certificate from a registered medical practitioner. If the Board so requires by notice to the Member and at the Company's cost, a Member must promptly submit themselves to examination by a registered medical practitioner for this purpose, and if the Member without reasonable excuse fails to so submit to examination within 20 Business Days, the Member is taken to be unable to substantially manage their affairs without need for a medical certificate as above.
- 20.3 The Board may cancel the membership of a Member by so notifying the Member if in the opinion of a majority of the Directors, the Member:
- 20.3.1 has been suspended for a period of 6 months due to failure to pay the Annual Subscription Fee and such Annual Subscription Fee remains unpaid; or
 - 20.3.2 does something that harms the Company's reputation; or
 - 20.3.3 is guilty of a wilful, material, breach of this Constitution or a policy in force under clause 84; or
 - 20.3.4 after at least 2 attempts 3 months apart cannot be located and / or contacted by the Company at their residential or electronic address as last recorded on the register of members; or
 - 20.3.5 without having given apology, does not attend (personally, by attorney or proxy) at 2 consecutive AGMs; or
 - 20.3.6 does not meet the requirements to be a Member,
- provided that:
- 20.3.7 at least 10 Business Days before the Board meets to decide the matter the Company gives the Member notice of written particulars of the alleged reasons for cessation and an opportunity to be heard or to make a written submission to the Company;
 - 20.3.8 after considering any submission by the Member, the Company notifies the Member of the decision to expel the Member.

- 20.4 If the reason for the Member's membership was by virtue of clause 17.1.3(b) or 17.1.3(c), they shall cease to be a Member immediately upon ceasing their Directorship, unless by resolution of the Board it is determined that they may remain a Member.
- 20.5 A Member dissatisfied with a decision of the Board in relation to themselves under this clause may appeal the decision to a General Meeting under clause 21.
- 20.6 A Member whose membership is cancelled under clause 20.3 may not make application for membership, nor have their membership application considered or approved by the Board for 24 months even if they are otherwise eligible for membership under this Constitution.

21. APPEALS TO A GENERAL MEETING

- 21.1 An applicant or Member dissatisfied with a decision of the Board under any of clauses 17, 18 or 20 may appeal the decision to the next General Meeting by giving notice of appeal to the Company within 10 Business Days of being notified of the Board's decision.
- 21.2 If a Member gives notice under clause 21.1:
 - 21.2.1 a decision of the Board under either clause 18 or 20 in relation to that Member is of no effect pending that next General Meeting;
 - 21.2.2 the Board's decision being appealed from under any of clauses 17, 18 or 20 must be referred to on the notice calling the next General Meeting;
 - 21.2.3 the matter must be considered at a General Meeting (which could be the Annual General Meeting) held within six months of receipt of a notice of appeal being received by the Board; and
 - 21.2.4 the decision being appealed must be confirmed or overturned at the next General Meeting, and if a motion to overturn the decision is put and fails at the General Meeting the decision is taken to be confirmed and takes immediate effect.
- 21.3 If an applicant or Member so appeals a decision, the Board may reverse its original decision at any time before notice is given for the General Meeting at which the appeal would have been put to a vote.

22. RESIGNATION BY A MEMBER

Any Member may resign membership by notice given to the Company.

23. DEATH OF A MEMBER

A person ceases to be a Member if the person dies.

24. CONTACT DETAILS OF MEMBERS

- 24.1 Every Member promptly must notify any change in their mailing or electronic address to the Company, and any such change must be promptly entered on the register of members.¹³
- 24.2 The latest mailing or electronic address in the register of members is taken to be the Member's registered address for all purposes.

¹³ Section 168(1) requires the Company maintain a register of members. Section 169(1) requires members' names and addresses be entered on that register.

PART D - GENERAL MEETINGS

25. AGM/S

Under section 250N, an AGM must be held within 5 months after the end of the financial year of the Company or such longer period as ASIC may allow under section 250P.¹⁴

26. CALLING OF A GENERAL MEETINGS¹⁵

26.1 The Board, by ordinary resolution, may call a General Meeting.

26.2 The Board must call a General Meeting on request of Members within 21 days after a request is given to the Company if section 249D so requires.¹⁶

26.3 Members may call a General Meeting if section 249E or section 249F so allows.¹⁷

27. NOTICE OF A GENERAL MEETING

27.1 Notice of a General meeting must:

27.1.1 be in writing;

27.1.2 set out the information section 249L(1) requires;¹⁸

27.1.3 if the meeting is to be held through the use of technology in multiple locations, set out the fact that this will occur and the form of technology that will be used to facilitate this;

27.1.4 be given individually to each Member entitled to vote at the meeting, and to each Director and to the auditor as section 249J(1) and section 249K(1) respectively require;

¹⁴ Section 323D(1) has a special rule for the first financial year of a company, otherwise AGMs must be held by 30 November each year.

¹⁵ Members (with at least 5% of the votes that may be cast on the resolution or at least 100 members entitled to vote at a general meeting) might also requisition a particular resolution by notice to the Company of the resolution they propose to move at a general meeting under section 249N.

A meeting must be held for a proper purpose (section 249Q) and at a reasonable time and place (section 249S). Section 249R might allow a meeting by telephone or video conference.

¹⁶ If members with at least 5% of the votes that may be cast at the general meeting (as calculated at the midnight before the request is given to the Company) provide the Company with a signed request in writing which states any resolution to be proposed at the meeting. Separate copies of the document setting out the request may be used for signing if the wording of the request is identical in each copy. The meeting is to be held no later than 2 months after the request is given to the Company.

¹⁷ Where Directors fail to call a general meeting within 21 days of being provided a request (as required by section 249D) Members with more than 50% of the votes of all the members who made a request under section 249D may call and arrange to hold a general meeting, the reasonable expenses incurred for which must be paid by the Company. Alternatively Members with 5% of the votes that may be cast at a general meeting of the company may call and arrange to hold a general meeting at their expense (rather than following the process as set out in section 249D).

¹⁸ (1) A notice of a meeting of a company's members must:

(a) set out:

(i) if there is only one location at which the members who are entitled to physically attend the meeting may do so--the date, time and place for the meeting; and

(ii) if there are 2 or more locations at which the members who are entitled to physically attend the meeting may do so--the date and time for the meeting at each location, and the main location for the meeting; and

(iii) if virtual meeting technology is to be used in holding the meeting--sufficient information to allow the members to participate in the meeting by means of the technology; and

(b) state the general nature of the meeting's business; and

(c) if a special resolution is to be proposed at the meeting--set out an intention to propose the special resolution and state the resolution; and

(d) if a member is entitled to appoint a proxy--contain a statement setting out the following information:

(i) that the member has a right to appoint a proxy;

(ii) whether or not the proxy needs to be a member of the company;

(iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

- 27.1.5 be given in a manner section 249J(3) allows;¹⁹ and
- 27.1.6 be given such number of days before the meeting as section 249H requires.²⁰
- 27.2 A notice of a General Meeting sent by post is taken to be given 5 Business Days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.
- 27.3 When a General Meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 20 Business Days or more.
- 27.4 Notice of the AGM shall be provided to the Anglican Diocese of The Murray, and the Anglican Parish of Mount Gambier who may circulate details of the meeting to their parishioners.

28. POSTPONEMENT OR CANCELLATION OF A GENERAL MEETING

- 28.1 A General Meeting may be postponed or cancelled at any time before the day of the meeting:
- 28.1.1 if called by the Board on the request of Members under clause 26.2,²¹ by those Members so notifying the Company;
- 28.1.2 if called by Members under clause 26.3,²² by those Members so notifying the Company;
- 28.1.3 if called by the Board of its own volition, by the Board as it may determine.
- 28.2 The Company must give notice of the postponement or cancellation to all persons entitled to receive notice of that General Meeting.
- 28.3 Members postponing or cancelling a General Meeting must pay the expenses of the postponement or cancellation unless the Board otherwise determines.

29. QUORUM OF A GENERAL MEETING

- 29.1 Subject to clause 29.5, the quorum for a General Meeting is 10 Members, or if there are fewer than 5 Members, then a majority of Members, rounded up to the nearest whole number shall constitute a quorum for a General Meeting, provided notice requirements have been met.
- 29.2 The quorum must be present at all times during the General Meeting (in person or via technology approved by the Board).
- 29.3 In determining whether a quorum is present, count individuals attending as attorney or proxy. However, if a Member has an attorney and proxy both in attendance, count only 1 of them. If an individual attends in 2 or more capacities for one Member (for example as both attorney and proxy), count them only once for that purpose.
- 29.4 A General Meeting that does not have a quorum present within 15 minutes after the time for the meeting set out in the notice of meeting:
- 29.4.1 is dissolved if the meeting was called on the request of Members clause 26.2 or 26.3; otherwise
- 29.4.2 is adjourned to the date, time and place the Board specifies. If the Board does not specify, the meeting is adjourned as follows:

¹⁹ Either personally, by sending it by post to the address of the member in the register of members or the alternative address (if any) nominated by the member, or electronically as set out in section 110D(1)(b),(c) and (d).

²⁰ At least twenty one days is the rule.

²¹ See section 249D.

²² See section 249E or section 249F.

- (a) where the date is not specified — the same day in the next week; and
- (b) where the time is not specified — the same time; and
- (c) where the place is not specified — the same place.

29.5 At a resumed General Meeting, the quorum is at least 3 Members. If no quorum is present at the resumed General Meeting within 30 minutes after the time for the meeting, the General Meeting is dissolved.

30. CHAIR OF A GENERAL MEETING

30.1 The chair of a General Meeting must be, in descending order of priority:

- 30.1.1 the Chairperson if present and willing; or
- 30.1.2 the Deputy Chairperson if present and willing; or
- 30.1.3 a Director elected by the Directors present at the General Meeting; or
- 30.1.4 if there is no Director willing to chair the meeting, a person elected by the Members present at the General Meeting.

30.2 If during a General Meeting the chair is unwilling to chair any part of the proceedings, the chair may withdraw during that part of the proceedings and may nominate any Member present to act as chair during that part of the proceedings. At the conclusion of the relevant part of the proceedings, the acting chair must withdraw and the initial chair resume the chair of the General Meeting.

31. OUTSIDERS AT A GENERAL MEETING

A person not a Member requested by the Board to attend a General Meeting is entitled to be present at the General Meeting and, at the request of the chair of the General Meeting, to speak at that General Meeting unless the Members by a resolution supported by 75% of the votes cast at the meeting vote to exclude or not hear from that person.

The Board may broadcast, or otherwise make available to the public the proceedings of a General Meeting.

A person not a Member but with a connection to the Company, the Anglican Diocese of The Murray or the Anglican Parish of Mount Gambier (**Observer**) may, with the Chair's consent (which shall not be unreasonably withheld), speak at a General Meeting, but only during the time set by the Board for Observer questions/comments. Observers are not permitted to speak in relation to other items, or vote on any items.

32. GENERAL CONDUCT OF A GENERAL MEETING

32.1 General Meetings may be held in multiple locations utilising technology, provided that the technology enables those participating to hear and meaningfully contribute to the meeting, and for voting to take place.

32.2 The chair of a General Meeting has conduct of the General Meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act.

32.3 The chair of a General Meeting may determine immediately before or during the General Meeting that persons attending the General Meeting should:

- a) be only the Directors, the Secretary, the auditor, the Members and persons attending as an attorney or proxy of a Member;
- b) comply with any identification or security measures, including personal searches, as the chair considers appropriate;

- c) not use a mobile phone, camera, recording or broadcasting device to record or broadcast audio, video or images at a meeting except as permitted by the chair;
- d) not possess any placard, banner or other article the chair considers may be dangerous, offensive or liable to cause disruption.

32.4 The chair may refuse a person admission to or require a person to leave and not return to, a General Meeting if the person fails to comply with a determination of the chair authorised by this clause.

32.5 Subject to the above, a Director, the Secretary, the auditor, any Member and any person attending as an attorney or proxy of a Member is each entitled to attend and be heard at any General Meeting.

32.6 The chair's determination on a procedural matter is final.

33. ADJOURNMENT OF A GENERAL MEETING

33.1 The chair must adjourn a General Meeting if Members present with a majority of votes at the General Meeting agree or direct that the chair must do so. The chair may adjourn a General Meeting with the meeting's consent on a show of hands.

33.2 A poll cannot be demanded on a resolution concerning the adjournment of a General Meeting except by the chair.²³

33.3 Only unfinished business is to be transacted at a General Meeting resumed after an adjournment.

34. BUSINESS OF A GENERAL MEETING

A General Meeting is not competent to deliberate upon or vote upon a motion for a resolution not set out in the notice of meeting, except:

34.1 a motion for a procedural resolution, for example to appoint a chair, demand a vote by poll, or to adjourn; or

34.2 as the Act (in particular section 250R) may allow or require;²⁴ or

34.3 as the chair of the General Meeting may allow as being within the general nature of the meeting's business as set out in the notice of meeting.

For the avoidance of doubt, this provision does not prevent a motion to amend a resolution set out in the notice of meeting.

35. BUSINESS OF AN ANNUAL GENERAL MEETING

35.1 The AGM of the Company shall consider all matters required by section 250R of the Act, as well as:

35.1.1 the election of the Chairperson (if required);

35.1.2 appointment of the Auditor (if required); and

35.1.3 confirmation of the Public Officer.

²³ Section 250K(2) allows the constitution to exclude a poll on an adjournment.

²⁴ Section 250R states that the business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election of directors;
- (c) the appointment of the auditor;
- (d) the fixing of the auditor's remuneration.

36. VOTING AT A GENERAL MEETING

- 36.1 At a General Meeting, each Member has one vote, both on a show of hands and a poll.
- 36.2 The chair of a General Meeting has a casting vote, and also a vote in their capacity as a Member.
- 36.3 A vote the Act requires the Company to disregard must not be counted.
- 36.4 A challenge to a right to vote at a General Meeting:
- 36.4.1 may only be made at the General Meeting; and
- 36.4.2 must be determined by the chair, whose decision is final.
- 36.5 A resolution put to the vote at a General Meeting must be decided on a show of hands unless a poll is demanded.²⁵
- 36.6 Before a vote is taken the chair must inform the General Meeting whether any proxy votes have been received, and how the proxy votes are to be cast.
- 36.7 On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 36.8 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 36.9 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 36.10 The validity of a resolution is not affected by the failure of an attorney or proxy of a Member to vote in accordance with the instructions of the Member.

37. VOTING BY ATTORNEY

Subject to the other provisions of this Constitution and the terms of the appointment, an attorney of a Member may attend and speak for the Member at a General Meeting and vote for that Member.

38. VOTING BY PROXY

- 38.1 A Member may appoint a person as their proxy to attend and speak and vote at a General Meeting.²⁶
- 38.2 The Board or the chair of a General Meeting may in any particular case allow an appointment of a proxy as valid even if it contains only some of the information required by section 250A(1) such as the member's name and address, the Company's name, the proxy's name or name of the office held by the proxy and the meeting/s at which the appointment may be used.²⁷
- 38.3 An appointment that does not contain the proxy's name or the name of the office held by the proxy is valid and taken to be in favour of the chair of the General Meeting.

²⁵ Section 250L sets out who can demand a poll, and when it may be demanded.

²⁶ Section 249X gives a member of a public company a statutory right to appoint a proxy. By section 250B, the appointment (and any relevant power of attorney) must be received by the company at least 48 hours before the meeting, or adjourned meeting. A fax to the company may be sufficient, under section 250B(3).

²⁷ See section 250A(2). By section 250A(3) an undated appointment is taken to be date on the day it is given to the Company. By section 250A(6) the appointment need not be witnessed.

- 38.4 An appointment of a proxy is not effective if the documents section 250B requires are not received by the Company at least 48 hours before the General Meeting or resumption of the General Meeting as applicable.
- 38.5 A proxy present and entitled to vote must vote in any way specified in the appointment.²⁸
- 38.6 Unless the Company has received written notice of the matter before the start or resumption of the General Meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- 38.6.1 the Member revokes the proxy's appointment;²⁹ or
- 38.6.2 the Member revokes the authority under which the proxy was appointed by an attorney of the Member.
- 38.7 Subject to section 249Y(1)(b), section 250BB and any contrary express terms of an appointment, a proxy of a Member may vote:
- 38.7.1 on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
- 38.7.2 on any procedural motion put to the meeting.

PART E - APPOINTMENT & REMOVAL OF DIRECTORS

39. QUALIFICATIONS TO BE A DIRECTOR

- 39.1 A Director must not be an employee of the Company. If a Director gains employment with the Company they immediately cease to be a Director and their position on the Board becomes vacant.
- 39.2 A Director must be a Member. Applications for Membership are to be submitted at the same time as Director consents.
- 39.3 A Director must have a DIN.
- 39.4 A Director must not be a person disqualified from managing a corporation under Part 2D.6 of the Act or other law.
- 39.5 A person must not be appointed or elected as a Director within 60 months of the later of:
- 39.5.1 being found guilty (whether or not convicted) of an offence of:
- (a) assault (including sexual assault);
 - (b) domestic violence;
 - (c) dishonesty offences (including fraud); or
 - (d) trafficking in a commercial quantity of illicit drugs;³⁰ or
- 39.5.2 the conclusion of any term of custodial sentence related to any of the offences listed in clause 39.5.1,

unless their appointment receives approval from a Special Majority vote of the Board.

²⁸ See also section 249Y(1) as to the rights of a proxy, subject to section 250BB if the proxy appointment specifies the way the proxy is to vote on a particular resolution.

²⁹ A later appointment may revoke an earlier one, under section 250A(7).

³⁰ As defined in section 4(1) of the *Controlled Substances Act 1984* (SA) or equivalent legislation.

39.6 At all times, a Director must have:

- 39.6.1 a national police clearance not more than 24 months old;
- 39.6.2 a working with children check not more than 60 months old; and
- 39.6.3 any other check or clearance as required by the Board from time to time.

A candidate for appointment as a Director must have obtained a clearance prior to taking office.

39.7 A Director must have completed such training or professional development as is required by the Board from time to time. A candidate for appointment as a Director need not have completed such training, but must complete such course within 180 days after taking office, failing which they vacate office, and the Company must cover any reasonable costs of completing that training.

39.8 If a Director fails to comply with the requirements referred to in clauses 39.1 to 39.7, or if the Board believes that a Director has failed to comply with those requirements, the Director shall be given written notice of that fact. If the Director does not rectify their non-compliance within 10 Business Days and provide evidence of that compliance to the Board in a reasonably acceptable form, they shall immediately vacate office.

40. NUMBER OF DIRECTORS

40.1 To comply with section 201A(2), the Company must have at least 3 Directors.

40.2 At any time, there must not be more than total 9 Directors.

40.3 The Board must be comprised of:

- 40.3.1 a Director also serving as Chairperson; and
- 40.3.2 a Director also serving as Deputy Chairperson; and
- 40.3.3 at least 1 and up to 7 other Directors.

41. DIRECTOR SKILLSET AND NOMINATIONS PROCESS

41.1 The Board shall, from time to time, establish a committee for the purpose of identifying, vetting and recommending individuals for appointment to the Board (**Director Nominations Committee**).

41.2 The Director Nominations Committee shall be comprised of at least two Directors (unless there are fewer than two Directors presently in office, in which case one Director may fill this role) and at least one external representative who is not a current member of the Board. If at the time the Committee is established there are no Directors fulfilling the requirements in either of clauses 41.4.1 and 41.4.2, one of the external representatives shall be a nominee of the Diocesan Council of the Anglican Diocese of The Murray, unless they decline to do so.

41.3 The role of the Director Nominations Committee will be to:

- 41.3.1 in collaboration with the Board, assess the skills mix of current Directors, strategic objectives of the Company and any skills deficiencies;
- 41.3.2 advertise for and identify appropriate candidates to fill Board vacancies;
- 41.3.3 assess the appropriateness of candidates for Board positions; and
- 41.3.4 make non-binding recommendations to the Board

41.4 In considering appointees to the Board, the Director Nominations Committee will endeavour to:

41.4.1 ensure at least one Director with a connection to the Anglican Diocese of The Murray, and if practicable, its Diocesan Council; and

41.4.2 ensure at least one Director with a connection to the Anglican Parish of Mount Gambier,

however, if it is not possible for the requirements of both 41.4.1 and 41.4.2 to be met, for as long as no Director meets the requirements in clauses 41.4.1 and 41.4.2, the Board shall invite a member of the Diocesan Council of the Anglican Diocese of The Murray (or their nominee) to attend a portion of Board Meetings as an observer. The observer shall receive a report from the Board and provide a perspective to ensure a connection to the Diocese is maintained but shall have no right to vote;

41.4.3 ensure that there is a balance of gender among Directors and diversity of Directors; and

41.4.4 have First Nations representation on the Board;

but for the avoidance of doubt, if this is not possible the positions can be filled by anyone who meets the requirements to be a Director of the Company.

42. INITIAL DIRECTORS

42.1 The initial Directors are those individuals specified in the application for registration of the Company under the Act as proposed directors of the Company.³¹

42.2 Of those initial Directors:

42.2.1 3 must retire at the first AGM held after the incorporation of the Company, but may then be appointed as a Director at that AGM, subject to clause 44; and

42.2.2 half of the remaining initial Directors (rounded up to the nearest whole number) must retire at the second AGM, but may then be appointed as a Director at that AGM, subject to clause 44;

42.2.3 the remaining initial Directors must retire at the third AGM but may then be appointed as a Director at that AGM, subject to clause 44.

42.3 The initial Directors must agree, or if they cannot agree, draw lots to determine which of them would retire at the initial AGM and second AGM.

43. APPOINTMENT OF DIRECTORS³²

43.1 An individual may only be appointed as a Director after giving the Company a signed consent to act as a director.³³

43.2 Subject to the other provisions of this Constitution, the Board may, by ordinary resolution, appoint individuals as Directors.

43.3 Subject to the other provisions of this Constitution, if a vacancy on the Board occurs, the Board may fill that vacancy by appointing a person as a Director for the remainder of the term of the vacant position.

³¹ Section 120(1) is to that effect.

³² A director must be an individual at least 18 years of age (as required by section 201B(1)) and consent in writing to act as a director (as required by section 201D(1)).

By section 205B a person appointed as a director/secretary, or ceasing to be a director/secretary, must be notified to ASIC.

Under section 201M an act done by a director may be effective even if their appointment is invalid.

³³ The Company must keep the consent. See section 201D.

- 43.4 The Board may appoint a Director in order to make up a quorum for a Board meeting even if the total number of Directors in office is not enough to make up that quorum.

44. TERM LIMIT OF DIRECTORS

- 44.1 A Director is to be appointed for a term of office of 36 months or the AGM next held after those 36 months expire, whichever is the later (unless they vacate the office in the meantime).
- 44.2 A Director shall be eligible for reappointment following their term of office.

45. SUSPENSION OF DIRECTORS

- 45.1 The Board may suspend a Director (including any member of the Executive) from their position as a Director on the following basis:
- 45.1.1 A Director will be suspended if:
- (a) They are found by an ordinary resolution of the Board to have breached a policy or code of conduct approved by the Board;
 - (b) The Board by ordinary resolution finds that they have taken an action that would damage the reputation, objects or purposes of the Company; or
 - (c) an investigation is commenced into their conduct by the Company, or the Secretary receives written notification that a Governmental department or police force is commencing an investigation into their conduct.
- 45.1.2 Any suspension must be for a specified period of time that shall not exceed three months at which point the Director must be unsuspended or referred to a General Meeting held no later than four months from the date of their suspension, at which their position as a Director is to be considered.
- 45.2 A suspended Director is not entitled to attend, speak at, or vote at any meeting of the Board during their suspension and are not counted for the purposes of quorum, however they must be provided with copies of such of the Board papers as are reasonably required to enable them to fulfill their Directors duties, and the Board must read and consider any statement they wish to have read at a meeting of the Board provided that it does not breach any confidence or contain defamatory contents.

46. REMOVAL OF DIRECTORS

- 46.1 Under section 203D, the Company has statutory power to remove any Director by resolution. In addition, the Company may by resolution remove any Director from office, provided that the Director is afforded natural justice in relation to such removal.³⁴
- 46.2 The Directors may not, in their capacity as Directors, remove a Director.³⁵

47. RESIGNATION OF A DIRECTOR

A Director may resign as a Director by notice given to the Company unless such resignation would result in the Company contravening section 201A(2).³⁶

³⁴ Notice of the intention to move the resolution must be given to the Company at least 2 months before the meeting is to be held unless the Company calls a meeting after the notice of intention is given as per section 203D(2). The Company must give the director a copy of the notice as soon as practicable after it is received and the director is entitled to put their case to members by giving a written statement for circulation or speaking to the motion at the meeting.

³⁵ Section 203E.

³⁶ Section 201A(2) requires the company to have at least 3 directors. A person who retires or resigns as a director, secretary or alternate director may themselves notify ASIC directly under section 205A.

48. LEAVE OF ABSENCE

- 48.1 The Board may, by ordinary resolution, grant a Director a leave of absence from their position as Director for a period not exceeding six months if reasonably satisfied that the Director applying for leave:
- 48.1.1 is suffering from a medical condition that would inhibit the Director from performing their duties;
 - 48.1.2 is on parental leave following the birth or adoption of a child;
 - 48.1.3 is required to be away from South Australia for an extended period for reasons of employment or cultural business; or
 - 48.1.4 is the subject of other circumstances reasonably justifying the grant of leave (such as compassionate grounds).
- 48.2 A Director who has been granted a leave of absence shall not be counted for the purpose of determining quorum for meetings of the Board.

49. VACATING THE OFFICE OF DIRECTOR

A person ceases to be a Director:

- 49.1 if and when the Act requires;³⁷
- 49.2 if and when they cease to be a Member;
- 49.3 if and when any provision of this Constitution requires;
- 49.4 if and when clause 47 permits;
- 49.5 if they wilfully or recklessly fail to give the other Directors notice of their material personal interest in a contract or prospective contract of a value of at least \$5,000.00 (before GST) made or to be made by the Company in circumstances section 191 requires such notice be given; or
- 49.6 if absent from scheduled Board meetings for 3 consecutive months or for 4 scheduled Board meetings in any 12 months without leave of absence from the Board and where the Board has not, within 10 Business Days of having been served by a Director or a Secretary a notice giving particulars of the absence, determined that leave of absence be granted.

Subject to the Act and the other provisions of this Constitution, that person is eligible for reappointment as a Director.

50. NO ALTERNATE DIRECTORS

A Director may not appoint an alternate director.

51. NO PROXY DIRECTORS

A Director may not appoint a person to vote on their behalf at any Board meeting.

³⁷ See section 203B as to disqualification by force of the Act.

PART F - DIRECTORS' REMUNERATION³⁸

52. REMUNERATION OF DIRECTORS

- 52.1 The Directors are to be paid the remuneration (if any) the Board Remuneration Committee determines by resolution.³⁹
- 52.2 Remuneration is only to be paid for Board Meetings and is not payable for any meetings or duties undertaken as part of a sub-committee unless recommended by the Board Remuneration Committee and approved by a Special Majority of the Board.
- 52.3 Remuneration is only to be paid if there are sufficient, uncommitted funds of the Company.
- 52.4 The Board Remuneration Committee shall be comprised of at least one Director and two individuals who are skilled in the area of finance and/or human resources, who shall consult relevant benchmarking guides in determining remuneration rates for Directors (if any).
- 52.5 A determination by the Board Remuneration Committee under this clause may, for example:
- 52.5.1 stipulate remuneration be payable per attendance by a Director at meetings, up to a maximum amount per Director per 12 month period;
 - 52.5.2 differentiate between remuneration to the Chairperson and / or Deputy Chairperson, as against other Directors;
 - 52.5.3 differentiate between remuneration to Directors with specialist skills, experience or expertise, or who are performing duties in excess of those expected of other Directors, as against other Directors;
 - 52.5.4 be conditional upon the Company having sufficient funds on hand to pay the remuneration when due.
- 52.6 Any remuneration of the Directors accrues from day-to-day.
- 52.7 Where remuneration is based on meeting attendance, a Director must attend and actively participate in at least 75% of the relevant meeting to receive remuneration.
- 52.8 Remuneration will never be paid for meetings that do not proceed due to lack of quorum (though travel expenses may be reimbursed).
- 52.9 The Board must disclose to Members at each Annual General Meeting and in its annual report the remuneration paid to each Director, and the number of meetings that each Director attended.

53. EXPENSES OF DIRECTORS

The Company may pay a Director's travelling and other expenses that they properly incur with prior approval of the Board:

- 53.1 in attending any Board meetings, meetings of committees, or General Meetings;
- 53.2 in connection with the Company's business.

³⁸ Part 2E.1 of the Act must be considered. See section 211 in particular.

³⁹ Under general law, a director has no right to demand remuneration. In this context, remuneration means directors' fees, not wages or salaries paid to employees who happen to also be directors. The fixing of wages and salaries is usually a matter solely for the directors. The members may be entitled to require disclosure of the directors' remuneration under section 202B.

54. D&O INSURANCE

Subject to section 199B,⁴⁰ the Company may pay a premium for a contract insuring a person who is or has been a Director against a liability incurred as a Director.

55. INDEMNITY⁴¹

55.1 To the extent permitted by law, and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person:

55.1.1 as an officer of the Company; and

55.1.2 to a person other than the Company or a related body corporate of the Company,

unless the liability arises out of conduct on the part of the officer which:

55.1.3 involves a lack of good faith;

55.1.4 involves a wilful breach of the law or dishonesty; or

55.1.5 is contrary to the Company's express instructions.

55.2 To the extent permitted by law and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company indemnifies every officer of the Company against any liability for costs and expenses incurred by the person as an officer of the Company:

55.2.1 in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

55.2.2 in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Act.

55.3 Unless the Board otherwise determines, this clause ceases to apply in favour of a person who does not to the satisfaction of the Board cooperate with the Company in investigating, defending or resolving the matter to which this clause would otherwise apply.

55.4 The Company may execute a documentary indemnity (not inconsistent with applicable law or this clause) in any form in favour of a person who is or has been an officer of the Company.

55.5 In this clause, **officer** means:

55.5.1 a Director,

55.5.2 a Secretary;

55.5.3 a senior manager (as defined in the Act);⁴² and

55.5.4 any employees of the Company as determined by the Board.

⁴⁰Section 199B prevents the Company from insuring an officer or auditor of the Company against liability (other than one for legal costs) arising out of conduct involving a wilful breach of duty in relation to the company, or a contravention of section 182 or 183 (relating to unlawful use of position or information obtained for personal gain).

⁴¹ Section 199A limits the indemnity a company may afford an officer. Section 199B limits the company's paying insurance premiums for an officer.

⁴² A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the Company's business, or who has the capacity to affect significantly the financial standing of the Company.

PART G - CHAIRPERSON AND DEPUTY CHAIRPERSON

56. CHAIRPERSON AND DEPUTY CHAIRPERSON

There must be a Chairperson and a Deputy Chairperson, unless the Company is in the process of seeking a new Chairperson and/or Deputy Chairperson.

57. QUALIFICATION FOR A CHAIRPERSON / DEPUTY CHAIRPERSON

Only a Director may be a Chairperson or Deputy Chairperson.

58. INITIAL CHAIRPERSON / DEPUTY CHAIRPERSON

58.1 If the chair of the committee of the Association as at the date of the Company's registration under the Act is an initial Director, they are the initial Chairperson. Otherwise the initial Directors must appoint one of their number as the initial Chairperson.

58.2 If the deputy chair of the committee of the Association as at the date of the Company's registration under the Act is an initial Director, they are the initial Deputy Chairperson. Otherwise the initial Directors must appoint one of their number as the initial Deputy Chairperson.

58.3 The initial Chairperson and initial Deputy Chairperson must retire from such office as Chairperson or Deputy Chairperson (as the case may be) no later than the first Board meeting after the first AGM but may be re-elected to that position. The period held in office as an Initial Chairperson or Initial Deputy Chairperson shall not be counted for the purposes of clause 59.4.

59. APPOINTMENT OF A CHAIRPERSON / DEPUTY CHAIRPERSON

59.1 Subject to clause 58, a Chairperson and Deputy Chairperson are each to be appointed by the Board from within the Directors. If more than one person nominates for the office of Chairperson or Deputy Chairperson (as applicable), the Directors may:

59.1.1 request the nominees speak on behalf of themselves as to their suitability for the office;

59.1.2 decide the appointment by secret ballot of the Directors.

59.2 If a resolution to appoint a Chairperson and Deputy Chairperson between 2 or more candidates results in a tied vote, those with the highest equal vote/s may decide the matter by the drawing of lots between themselves or by withdrawing their own candidacy or, with approval of the Board, come to some *ad hoc* arrangement as regards the office being contested.

59.3 A Chairperson and Deputy Chairperson are each to be appointed for a term of 36 months (unless removed from office earlier under clause 60.3, or if their term as a Director expires and they are not re-appointed or re-elected) or at the end of the second AGM after their appointment to the office, whichever is the later.

59.4 A Chairperson or Deputy Chairperson having served 2 consecutive terms may not be appointed the same office in which they served, unless either:

59.4.1 no other Director nominates for that office upon the Chairperson or Deputy Chairperson having served 2 consecutive terms vacating that office; or

59.4.2 24 months have elapsed since the person held the same office.

For this purpose, a period of service as chair or deputy chair of the committee of the Association is counted as holding office as Chairperson or Deputy Chairperson as applicable.

To avoid doubt, this provision does not prevent a Chairperson having served 2 consecutive terms being appointed as a Deputy Chairperson, and *vice versa*.

- 59.5 A Chairperson or Deputy Chairperson remains liable to vacate the office of Director as would any other Director.
- 59.6 If at any time a casual vacancy exists in the office of Chairperson or Deputy Chairperson, the Board must appoint promptly a Director to the office vacated.
- 59.7 If at any time no Director is willing to hold office as Chairperson or Deputy Chairperson, the functions of the office are assumed by the Board.

60. VACATING THE OFFICE OF CHAIRPERSON / DEPUTY CHAIRPERSON

A Chairperson or Deputy Chairperson vacates the office if and when:

- 60.1 clause 58.3 so requires;
- 60.2 they give written notice of resignation of the office to the other Directors or the Secretary;
- 60.3 removed by resolution of the Board after being afforded natural justice;⁴³ or
- 60.4 they cease to be a Director (disregarding a retirement as a Director and reappointment as a Director at the same General Meeting).

A Chairperson or Deputy Chairperson vacating office does not cease to be a Director for that reason.

61. APPEAL AGAINST REMOVAL OF A CHAIRPERSON / DEPUTY CHAIRPERSON

- 61.1 A Chairperson or Deputy Chairperson removed from that office by the Board may appeal the removal to a General Meeting under clause 21, with necessary changes, provided that the appeal is supported by the signatures of at least 3 Members.
- 61.2 At such General Meeting, the Company may overturn the removal.

62. FUNCTIONS OF THE CHAIRPERSON / DEPUTY CHAIRPERSON

- 62.1 A Chairperson has the functions of chairing Board meetings and General Meetings.
- 62.2 A Deputy Chairperson is to assist or stand in for the Chairperson in the Chairperson's separate functions:
 - 62.2.1 if, as, and to the extent the Chairperson requests or is unable to act in those functions; or
 - 62.2.2 if and so long as the office of Chairperson is vacant.

PART H - BOARD MEETINGS

63. BOARD MEETINGS

- 63.1 Subject to the Act and this Constitution, the Directors may meet together, adjourn and regulate their meetings as they think fit.⁴⁴
- 63.2 Any Director may call a Board meeting.
- 63.3 The Secretary must call a Board meeting, if requested by a Director in writing.
- 63.4 Scheduled Board meetings are to be determined by the Board in or about May of the previous financial year, it being expected the Board would meet (in person or by the use of technology)

⁴³ Section 195 would usually prevent the person being present for consideration or voting as a director on that resolution.

⁴⁴ Section 248D may allow a meeting by telephone, or by video conference.

at least 4 times per financial year. A scheduled meeting may be cancelled with unanimous consent of Directors in office if there is insufficient business for that meeting.

64. NOTICE OF A BOARD MEETING

Unless all Directors entitled to vote at the Board meeting agree otherwise, a person calling a Board meeting must give to each Director individually a notice of meeting that:

- 64.1 sets out the place, date and time for the Board meeting (and, if the Board meeting is to be held in 2 or more places, the technology that will be used to facilitate this);⁴⁵
- 64.2 states the general nature of the Board meeting's business;
- 64.3 is accompanied by relevant information so far as reasonably available (if not already given to the Director); and
- 64.4 is given at least 5 Business Days before the Board meeting (or such other period as all the Directors in office may as a matter of general policy otherwise determine).

Attendance by a Director at a Board meeting waives any objection such Director might have for a failure to give notice of that Board meeting.

65. CHAIR OF A BOARD MEETING

- 65.1 The chair of a Board Meeting must be, in descending order of priority:
 - 65.1.1 the Chairperson if present and willing to chair the Board Meeting; or
 - 65.1.2 the Deputy Chairperson if present and willing to chair the Board Meeting; or
 - 65.1.3 a Director elected by the Directors present at the Board.
- 65.2 If during a Board Meeting the chair is unwilling or unable to chair any part of the proceedings, the chair may withdraw during that part of the proceedings and may nominate any Director present to act as chair during that part of the proceedings. At the conclusion of the relevant part of the proceedings, the acting chair must withdraw and the initial chair resume the chair of the Board Meeting.

66. QUORUM OF A BOARD MEETING

- 66.1 Unless the Board otherwise determines, the quorum for a Board meeting is a majority in number of Directors then in office (excluding any Director granted a leave of absence by resolution of the Board).
- 66.2 A quorum must be present at all times during the Board meeting.
- 66.3 Except as section 195(1A) may allow, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be counted in assessing the minimum number of Directors necessary to constitute a quorum while such matter is being considered.

67. DECLARATION OF MATERIAL PERSONAL INTEREST⁴⁶

- 67.1 A Director's material personal interest in a matter that relates to the affairs of the Company must be notified to the other Directors if section 191 so requires.⁴⁷

⁴⁵ It being presumed that a Board meeting would be held in-person, at the Company's principal business office, and at a time convenient to most Directors.

⁴⁶ Sections 191-194 of the Act do not apply to Companies registered under the ACNC Act to which the ACNC Governance Standards instead apply.

⁴⁷ Section 191(1) sets out the circumstances of mandatory disclosure of interests, subject to exceptions in section 191(2).

- 67.2 The Secretary must maintain a register of standing conflicts of interest and have that register available at each Board meeting.⁴⁸

68. VOTING AT A BOARD MEETING

- 68.1 Except as section 195(1A) may allow, 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 or vote on the matter. Directors with a conflict of interest of this kind must leave the room for such discussions and voting unless invited by the other members of the Board to answer questions relating to the topic under discussion but must then leave the room after that questioning has concluded.
- 68.2 Subject to clause 68.1:
- 68.2.1 each Director has 1 vote;
 - 68.2.2 a resolution of the Directors must be passed by a majority of the votes cast by Directors on the resolution;
 - 68.2.3 the chair of a Board meeting has a casting vote if necessary in addition to the vote they have as a Director.

69. DIRECTOR'S INTERESTS

Subject to section 208⁴⁹ and clause 83, a Director and an entity in which a Director has a personal interest may in any capacity:

- 69.1 enter into any contract or arrangement with the Company;
- 69.2 be appointed to and hold any office or place of profit under the Company, other than the office of auditor; and
- 69.3 act in a professional capacity, other than as auditor, for the Company,

and may receive and retain for their own benefit any remuneration, profits or benefits as if they were not a Director.

Note: The making of a contract may however, result in the Director ceasing to meet requirements of a Member and so vacating the office of Director.

70. CIRCULATING RESOLUTIONS OF DIRECTORS

- 70.1 The Directors may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution (and being not less than the number required for a quorum at a Board meeting) either:
- 70.1.1 sign a document containing a statement that they are in favour of the resolution set out in the document; and / or
 - 70.1.2 if the proposed resolution is stated in, or attached to, an email sent to the Director, the Director sends a reply email to the sender agreeing to that resolution, which reply email states or has attached the text of the resolution.
- 70.2 The resolution must be provided to the Directors by the Chairperson.
- 70.3 All Directors must ensure that each other Director is included in all correspondence relating to the resolution.

⁴⁸ Section 192 allows a director to give to the other directors a standing notice of personal interest.

⁴⁹ Section 208 states that in order for the Company to give a financial benefit to a related party the Company must obtain the approval of Members as set out in sections 217-221 and give the benefit within 15 months after approval or the giving of the benefit must fall within an exception set out in sections 210-216.

- 70.4 The resolution is passed when the last Director required to make up a majority signs, or sends the reply email, unless clause 70.5 applies.
- 70.5 If three Directors request in writing (including by email) that the resolution that is being proposed be passed at a meeting prior to the resolution being passed by a majority of Directors, it must only be passed at a meeting of Directors (held in person or by the use of technology).
- 70.6 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. Separate emails may be sent for agreement of Directors if the wording of the resolution is identical in each email.
- 70.7 A document or email referred to in this clause must be sent to every Director who is entitled to vote on the resolution.

PART I - BOARD'S POWERS

71. EXECUTIVE POWER⁵⁰

- 71.1 Subject to clause 74, the business of the Company is to be managed by or under the direction of the Board.
- 71.2 Subject to clause 74, the Board may exercise all the powers of the Company except any powers the Act or this Constitution requires the Company to exercise in General Meeting.
- 71.3 If less than a quorum of Directors is then in office, the Director/s remaining may exercise all the powers and duties of the Board pending the appointment of additional Directors.

72. DELEGATION OF POWERS⁵¹

- 72.1 As section 198D allows, the Board may delegate any of its powers to one or more Directors, a Board sub-committee (including a fluctuating body of persons) or employees of the Company.⁵²
- 72.2 A delegation of powers by the Board:
- 72.2.1 may authorise the delegate to sub-delegate all or any of the powers vested in the delegate;
- 72.2.2 may be concurrent with, or to the exclusion of, the exercise by the Board of those powers.
- 72.3 A delegate must exercise the powers delegated in accordance with any directions given by the Board.⁵³ Such directions may include that a decision, or kind/s of decision, of the delegate is not effective unless approved by a resolution of the Board.

⁵⁰ By section 127(1) a contract or other document need not be executed under common seal. Outsiders dealing with the company may be entitled under section 128 to assume certain matters internal to the company.

In exercising any of their powers, each director must have regard to their fiduciary duty to the company, their common law duties to the company and their statutory duties to the company. The most significant statutory duties are in section 180 (care and diligence), section 181 (good faith), section 182 (use of position), section 183 (use of information) and section 588G (prevention of insolvent trading), although if the Company is registered under the ACNC Act the duties under sections 180-183 are replaced by the ACNC Governance Rules.

This provision means that generally the directors, and not the members, have the decision how and when the company should exercise its various powers, such as to engage or dismiss staff, acquire premises, borrow money and grant security. Only if there are no directors capable of acting, or the Act specifically requires approval of the members, would the members have the decision, absent other rule in the constitution.

Some statutory powers are vested solely in the directors, such as to appoint an administrator under section 436A.

The directors cannot exercise their powers while the company is under administration (section 437C) or being wound up in insolvency or by the Court (section 471A).

⁵¹ Section 190 may make directors liable for the exercise of a power by their delegate.

⁵² The delegation must be recorded in the company's minute book.

⁵³ Section 198D(2).

- 72.4 At any time, the Board may modify or revoke a delegation.
- 72.5 A committee may be comprised of such persons from within or outside the Company as the Board may think appropriate.
- 72.6 The Board should appoint the members of any committees annually, or as desired to fill any casual vacancy.
- 72.7 The Board may remove any person from a committee for just cause.

73. DIRECTOR PORTFOLIOS

Without limiting clause 72, the Board may vest in a particular Director or Directors an area of responsibility, such as, for example, community engagement or liaison with other Indigenous organisations in a particular field.

PART J - OTHER OFFICERS

74. CHIEF EXECUTIVE OFFICER

- 74.1 The Board may appoint an individual to the office of Chief Executive Officer (**CEO**) of the Company for the period, and on the terms (including as to remuneration), as the Board sees fit.
- 74.2 A CEO must not be a Director. If a CEO is appointed as a Director, the CEO vacates the office of CEO and *vice versa*.
- 74.3 The Board may revoke or vary an appointment of a CEO, subject to any agreement made between the CEO and the Company.
- 74.4 The Board may delegate to a CEO any of the powers the Board can exercise.
- 74.5 The Board may modify or revoke a delegation of powers on the CEO, subject to any agreement made between the CEO and the Company.
- 74.6 The CEO may attend and speak at Board meetings only at the Board's invitation.

75. SECRETARY⁵⁴

- 75.1 At all times, the Company must have at least 1 Secretary.⁵⁵
- 75.2 The initial Secretary is that person specified in the application for registration of the Company as the proposed Secretary.⁵⁶
- 75.3 A Secretary (other than the initial Secretary) is appointed by the Board.⁵⁷
- 75.4 Absent other appointment, the CEO would also be the Secretary.
- 75.5 An individual may only be appointed as a Secretary after giving the Company a signed consent to act as a secretary.⁵⁸

⁵⁴ A secretary is subject to many of the same statutory duties as apply to directors and, in addition, has particular administrative duties under section 188(1). A secretary must be an individual of at least 18 years of age (section 204B(1)). By section 204E an act done by a secretary may be valid even if their appointment is invalid. A person being appointed or ceasing to act as a secretary must be notified to ASIC under section 205B.

Some of the requirements do not apply where a company is registered under the ACNC Act. See for more information <https://asic.gov.au/for-business/running-a-company/charities-registered-with-the-acnc/corporations-act-provisions-that-no-longer-apply-to-charities-registered-with-the-acnc/>.

⁵⁵ Section 204A(2).

⁵⁶ Section 120(1) is to that effect. For any other appointment, under section 204D a secretary is to be appointed by the directors.

⁵⁷ Section 204D.

⁵⁸ The Company must keep the consent. See section 204C.

- 75.6 A Secretary holds office on the terms and conditions (including as to remuneration) that the Board determines. Otherwise, a Secretary is subject to removal by the Board at any time.
- 75.7 A Secretary must ensure the Company does not contravene any provisions of the Act specified in section 188(1).⁵⁹
- 75.8 A Secretary also has the following functions (subject to such directions as the Board may give to the Secretary) in so far as at the time not vested by the Board in the CEO or other person in the employ of the Company:
- 75.8.1 have custody and safekeeping of the common seal (if any);
 - 75.8.2 keep in safe custody all documents and records belonging to the Company;
 - 75.8.3 issue notices calling Board meetings or General Meetings;
 - 75.8.4 cause correct minutes to be kept of all Board meetings, committee meetings and General Meetings;
 - 75.8.5 (in so far as not required by law to be provided by a person appointed under clause 76) preparing such statements, reports, returns or other written information as the Act or any law requires the Company lodge with government.
 - 75.8.6 receive and answer correspondence and notices to the Company;
 - 75.8.7 supervise the handling of money by or for the Company, and the keeping of financial records;
 - 75.8.8 issue receipts for moneys received, and keep a correct account of all receipts and expenditure;
 - 75.8.9 report on the apparent financial position of the Company at or to each scheduled Board meeting;
 - 75.8.10 prepare draft financial year financial statements;
 - 75.8.11 liaise with the auditor of the Company;
 - 75.8.12 such other functions (if any) as the Board may at the time vest in the Secretary.
- 75.9 A Secretary (as such) may attend and speak at Board meetings only at the Board's invitation.

76. PUBLIC OFFICER

- 76.1 A public officer or similar corporate representative a law requires of the Company must be appointed by, and is subject to removal by, the Board. Absent other appointment, the Secretary has that role.
- 76.2 A public officer or similar corporate representative has those functions and powers required by the law for which appointed by the Board.

77. AUDITOR

At all times after 1 month after the Company's registration under the Act, the Company must have an auditor unless exempted under section 301(3).⁶⁰

⁵⁹ It is important that a Secretary is aware of section 188 and the other sections referred to in section 188(1) as it is a civil penalty provision and there are penalties for non-compliance with obligations under the Act. The contents of that section have not been reproduced within this Constitution but can be covered in governance training.

⁶⁰ Section 301(3) sets out the circumstances in which a Company Limited by guarantee may have its financial report reviewed rather than audited, noting however that reporting obligations are different for Companies registered under the ACNC Act. See also Division 6 of Part 2M.4 of the Act about appointment and removal of auditors.

78. TREASURER OR CFO

- 78.1 At any time, the Board may appoint a person as treasurer or chief financial officer of the Company with such functions, powers and duties as may be agreed between the Company and the person.
- 78.2 A person appointed under this clause is subject to such directions as the Board may give to the person.
- 78.3 Subject to any contract in place, the Board may revoke or vary an appointment of a treasurer or chief financial officer and may remove them from office.

PART K - COMMERCIAL TRANSACTIONS⁶¹**79. FINANCIAL YEAR**

The Company's financial year ends on 30 June.

80. BANK ACCOUNT OPERATION

A debiting of the Company's bank account (disregarding customary charges imposed by the bank) must be authorised by a direction (in hard copy or over the internet) signed or otherwise authorised by at least:

- 80.1 1 of the Chairperson, Deputy Chairperson, Secretary or CEO; plus
- 80.2 1 other of the above persons, or 1 other person appointed by the Board for that purpose.

81. ANNUAL BUDGETS

- 81.1 At all times, the Company must have an Annual Budget approved by the Board as recorded in minutes of Board meetings.
- 81.2 The Board may modify an Annual Budget at any time. Anything approved by the Board outside an Annual Budget modifies the Annual Budget to that extent.
- 81.3 In or about June of each year, the CEO (or if none is in office, the Secretary) must give to the Board a draft Annual Budget for the next financial year.
- 81.4 The Board should aim to approve a final Annual Budget for a next financial year no later than August of that financial year.
- 81.5 If on 1 July of any year the Board have not approved an Annual Budget for that financial year, the last Annual Budget carries over to that financial year until the Board approves a replacement Annual Budget.

82. MANAGEMENT REPORTS

Not less frequently than once every three months, management must give to each Director individually a report of the Company's operations in the preceding month(s) and that addresses or includes:

- 82.1 any matter that the Board has previously directed be included; and
- 82.2 a statement of financial performance (including cash flows) of that preceding month(s) and of the financial year up to the end of that preceding month showing the actual, budget and variance amounts.

⁶¹ Parts 2M.1 to 2M.3 of the Act do not apply if the Company is registered under the ACNC Act.

83. RELATED PARTY TRANSACTIONS

The Company may not make a contract with a Member, or an entity a Member controls (within the meaning of section 50AA)⁶² for any goods or services to be provided to the Company:

- 83.1 for expenditure by the Company of more than \$5,000.00 (before GST) (counting any series of related contracts as one); or
- 83.2 if the contract lasts or may be extended to more than total 12 months, except with prior consent of the Board.

PART L - POLICIES**84. POLICIES**

- 84.1 To the extent not inconsistent with this Constitution or the Act, the Board by Special Resolution of votes cast, may adopt and have implemented policies as to:
 - 84.1.1 the functioning of the Board;
 - 84.1.2 the conduct of a Director (as such);
 - 84.1.3 the roles and conduct of other officers;
 - 84.1.4 the roles and functioning of any committees; and / or
 - 84.1.5 business rules of the Company.
- 84.2 Each Director, Secretary and Member must conform to a policy so adopted and published by the Board, in so far as applicable to their respective powers and duties.
- 84.3 Any policy in force may be modified or repealed:
 - 84.3.1 by Special Resolution of votes cast in relation to that policy; or
 - 84.3.2 by resolution of a General Meeting.

PART M - RECORDS**85. MINUTES**

The Company must keep minute books of General Meetings, Board meetings, resolutions passed by the Directors without a meeting as section 251A requires.

86. RECORDS TO BE KEPT

The Company must keep financial and other records as section 286⁶³ or other law requires and for the period of time section 286 or other law requires.

87. DIRECTOR'S RIGHT OF ACCESS

- 87.1 A Director may, whilst in office, inspect and take copies:

⁶² Section 50AA sets out the circumstances in which one entity would be considered an associated entity of another entity. Where these circumstances occur clause 86 of this Constitution would apply.

⁶³ The Company is required to keep written financial records that correctly record and explain its transactions and financial position and performance and would enable true and fair financial statements to be prepared and audited. The financial records must be retained for 7 years after the transactions covered by the records are completed.

- 87.1.1 of the financial records of the Company as section 290(1) allows;⁶⁴ and
- 87.1.2 of the books of the Company (other than financial records) as section 198F(1) allows⁶⁵

for the sole purpose of discharging their duties as a Director, or defending any claim brought against them in their capacity as a Director, provided this is done in accordance with any policy or agreement the Director is party to, the subject of which is Director access to Company books and records.

- 87.2 A person who ceased to be a Director may inspect and take copies of the books (including financial records) of the Company:
- 87.2.1 as section 198F(2) allows; and / or
- 87.2.2 as a contract made between the person and the Company may allow; and / or
- 87.2.3 as a resolution of the Board may in any particular case allow.

88. MEMBER'S RIGHT OF ACCESS⁶⁶

A Member has no right to inspect books of the Company except as may be authorised by:

- 88.1 a resolution of the Board;
- 88.2 a resolution passed at a General Meeting; or
- 88.3 the Act, other law, or by a court having jurisdiction to do so.

PART N - OTHER MATTERS

89. CIRCUMSTANCES NOT PROVIDED FOR

In any circumstances in which this Constitution is silent, incapable of taking effect or being implemented according to its strict provisions, the Board may determine what action may be taken to ensure the effective administration and objects of the Company.

90. REGISTERED OFFICE

The registered office of the Company must be at the principal business office of the Secretary.

91. THE SEAL

If the Company has a common seal:⁶⁷

- 91.1 the seal must be kept in the custody of the Secretary or other person approved by the Board;

⁶⁴ Directors have a right of access to the financial records at all reasonable times and may make copies of the records unless a court orders otherwise. A Director may apply to the Court for an order that another person may inspect the financial records on the director's behalf.

⁶⁵ Directors have a right to inspect the books of the company at all reasonable times for the purpose of a legal proceeding to which the person is a party, or that the person proposes in good faith to bring or that the person has reason to believe will be brought against them. This right continues for 7 years after the person ceases to be a director of the Company and includes a right to make copies. The Company cannot refuse access as set out in section 198F(4).

⁶⁶ Section 247A allows a member to apply to the Court for an order to inspect the books. By section 173(1), any person has a right to inspect the register of members, and register of debenture holders, but subject to section 177, which prohibits the information obtained from being used to contact or sent material to the person or disclose information of that kind knowing that the information is likely to be used to contact or send material to the person. By section 251B a member has a right to inspect the minutes of meetings of members and resolutions of members passed without a meeting.

⁶⁷ Under section 123(1) a company may, but need not, have a common seal. If a company does have a common seal it must include the company name and its ACN (unless the ACN is included in the company name) or where the last 9 digits of the company's ABN are identical to its ACN the company may instead include its ABN.

91.2 the signatures of the 2 persons approved by the Board for that purpose shall attest the fixing of the seal to a document. Unless the Board otherwise determines, 1 of those persons must be the Chairperson or Deputy Chairperson.

92. MAKING AND EXECUTION OF CONTRACTS

The Company may execute a document under the common seal (if any) or in any other way section 126⁶⁸ or 127⁶⁹ of the Act or any other law may permit.

93. ANNUAL FINANCIAL REPORTS

The Company must prepare and give to the Members such financial reports as the Act requires.

94. DISPUTE RESOLUTION

94.1 This clause applies to disputes between the Company, any Members (as such) or any Directors (as such) or any combination of them.

94.2 The parties to the dispute must meet promptly in-person at the registered office of the Company and discuss the matter in dispute, and, if possible, resolve the dispute within 10 Business Days after the dispute comes to the attention of all of the parties.

94.3 If the parties to the dispute are unable to resolve the dispute at the meeting, those parties may choose to meet and discuss the dispute before an independent third person agreed to by those parties. If they are unable to decide upon an independent third person, an appropriate person will be nominated by the Law Society of South Australia.

94.4 The rules of natural justice must be observed in any dispute between the Company and any Member, Director, Secretary, CEO or employee of the Company.

95. NOTICES⁷⁰

95.1 The Company may give to a Member or former Member a notice required under this Constitution or the Act:

95.1.1 by hand delivery to that person; or

95.1.2 by post to the address for the person in the register of members or an alternative address (if any) nominated by the person; or

95.1.3 by fax to the fax number or by email to electronic address (if any) nominated by the person; or

95.1.4 by any other means the Act permits.

95.2 A notice sent by post is taken to be given 5 Business Days after it is posted. A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.

95.3 A certificate in writing signed by a Director or Secretary that a notice or its envelope or wrapper was addressed, stamped and was posted is sufficient evidence of posting.

96. GUARANTEE BY A MEMBER ON A LIQUIDATION

Every Member agrees to contribute up to \$10.00 to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after the Member ceases to be a

⁶⁸ An individual may act on behalf of the company with express or implied authority to make, vary, ratify or discharge a contract or execute a document including a deed.

⁶⁹ This section requires that where a common seal is not used the document be signed by either 2 Directors or a Director and the Secretary. If a common seal is fixed to a document the fixing of the seal is to be witnessed by 2 Directors or a Director and the Secretary.

⁷⁰ Section 109X sets out the ways a person may give notice to the company including by post to the company's registered office, by personal deliver to a Director of the company, or to a liquidator, administrator or restructuring practitioner where one has been appointed.

Member, for payment of the debts and liabilities of the Company (contracted before the Member ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

97. WINDING UP

- 97.1 If at any time the Company was registered under the *Australian Charities and Not-for-profits Commission Act 2012* and the Company is wound up:
- 97.1.1 any surplus assets (including Gift Funds) received as a deductible gift must not be distributed to a Member or a former Member;
- 97.1.2 subject to the Act and any other applicable legislation, and any court order, any surplus assets (including Gift Funds) that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose/s in clause 8; and
- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company;
- 97.1.3 the decision as to the charity or charities to be given the surplus assets (including Gift Funds) must be made by a special resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.
- 97.2 If clause 97.1 does not apply and the Company is wound up, the liquidator may with the sanction of a special resolution of the Members:
- 97.2.1 divide among the Members in kind all or any of the surplus assets and for that purpose determine how the liquidator will carry out the division between the Members, but may not require a Member to accept anything in respect of which there is any liability; and / or
- 97.2.2 vest all or any of the surplus assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.
- 97.3 In this clause, **surplus assets** mean any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.
- 97.4 If the Company ceases to be a *Deductible Gift Recipient* for the purposes of the *Income Tax Assessment Act 1997* (Cth), it must transfer any surplus Gift Funds to one or more charities:
- 97.4.1 with charitable purpose(s) similar to, or inclusive of, the purpose/s in clause 8 to which income deductible gifts can be made, and
- 97.4.2 which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.

98. AMENDMENT OF THIS CONSTITUTION

- 98.1 This Constitution may be amended by Special Resolution of the Members in a General Meeting.

The undersigned (being each person specified in the application for the Company's registration under the Act as a person who consents to become a Member) agree to the above as the terms of the constitution of the Company.

DATED

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SCHEDULE 1

CONSENT TO ACT AS DIRECTOR
Anglican Community Care Limited
ACN 687 435 187

To : Anglican Community Care Limited (**Company**)
ACN 687 435 187
70-72 White Avenue
Compton SA 5290
Australia

Dear Sir/Madam

1. CONSENT TO ACT AS DIRECTOR

I hereby consent to act as Director of the Company, effective from the date of this document, and provide the following information:

Full Name:

Former Name (if any):

Residential Address:

Date of Birth:

Place of Birth:

I confirm that I am eligible to be appointed as a Director under the terms of the Company's Constitution and hold a Director Identification Number.

Dated _____ 20

SCHEDULE 2

MEMBERSHIP APPLICATION FORM

Anglican Community Care Limited
ACN 687 435 187

Full Name: _____

Address: _____

E-mail (optional) : _____

I write to apply for membership of Anglican Community Care Limited ACN 687 435 187 (**Company**).

I confirm that:

1. I meet the membership criteria listed in the Company's Constitution;
2. I have read the constitution of the Company and agree to be bound by its terms if I am approved to become a member of the Company;
3. I agree to pay the Annual Subscription Fee (if any);
4. I understand that if the Company is wound up, I must contribute up to \$10.00 for the debts and liabilities of the Company while I am a member or within 12 months after I cease to be a member.

I prefer to receive correspondence by (tick one or both. If neither is ticked, notices will be sent to the postal address provided):

Post E-mail

Signed

Dated

SCHEDULE 3

APPOINTMENT OF A PROXY

**Anglican Community Care Limited
ACN 687 435 187**

I, _____ (full name of member)

of _____ (address of member)

am a member of Anglican Community Care Limited.

I appoint _____ (full name of proxy)

of _____ (address of proxy)

as my proxy to vote on my behalf at the meeting of the Company (annual general meeting or other general meeting, as the case may be) to be held on / / (insert date of meeting) and at any adjournment of that meeting.

Tick this box if this is a standing appointment

Additional instructions
to the proxy holder
(optional): _____

Signature of member
appointing proxy _____

Date _____

Please return your completed form to the company **at least 48 hours before** the meeting.

NOTE: for more about proxies see clause 38.