



## MYLI – MY COMMUNITY LIBRARY LTD

### CONSTITUTION

A public company limited by guarantee under the *Corporations Act 2001* (Cth)

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**MYLI – MY COMMUNITY LIBRARY LTD****CONSTITUTION****1 PURPOSE OF THE COMPANY**

The Company is a charitable and not-for-profit institution established and operated in Australia solely to establish and operate one or more Public Libraries to make available public library resources, services and programs aimed at meeting the needs of the community, local government, schools and other persons or institutions, so that they are supported to grow and thrive. **(Purpose).**

**2 NOT-FOR-PROFIT AND CHARITABLE NATURE OF THE COMPANY****2.1 Powers**

Solely to carry out the Purpose, the Company has all the powers of an individual and a company limited by guarantee under the Corporations Act.

**2.2 Income applied for the Purpose**

The Company's income and property:

2.2.1 must be applied solely towards the Purpose; and

2.2.2 must not be paid or given to a Member, directly or indirectly, by way of dividend, bonus or otherwise, unless permitted by clause 2.3 or 2.5.

**2.3 Permitted payments to Members**

The Company may pay a Member in good faith with prior Board approval up to a fair and reasonable amount for:

2.3.1 expenses properly incurred for the Company;

2.3.2 goods or services supplied to the Company;

2.3.3 interest on money lent to the Company; or

2.3.4 rent for premises let to the Company.

**2.4 Winding up**

Subject to clause 2.7, the Company's surplus assets, after satisfying all liabilities on wind up or dissolution:

2.4.1 must not be paid or given to current or former Members unless eligible under clause 2.5; and

2.4.2 must be paid to eligible recipients selected under clauses 2.5 and 2.6.

**2.5 Eligible recipients**

A fund, authority or institution is eligible to receive any surplus under clauses 2.4.2 and 2.7 if it:

2.5.1 has not-for-profit and charitable purposes similar to the Purpose;

- 2.5.2 prohibits its income and property from being paid to members on at least the terms of this clause 2;
- 2.5.3 is a charity registered under Relevant Laws if the Company had been;
- 2.5.4 is income tax exempt under Commonwealth taxation Laws if the Company had been; and
- 2.5.5 can receive deductible gifts under the Commonwealth taxation Laws if the Company could and on the same basis.

## 2.6 **Selection of eligible recipients**

Eligible recipients to receive any surplus referred to in clause 2.5 must be selected:

- 2.6.1 by Member special resolution;
- 2.6.2 failing clause 2.6.1, by Board resolution; and
- 2.6.3 failing clause 2.6.2, by application to the Supreme Court of Victoria.

## 2.7 **Surplus gifts**

Any surplus gifts, fundraising contributions under Commonwealth taxation Laws and money received because of those gifts or contributions, must be transferred to eligible recipients selected under clauses 2.5 and 2.6 on the earlier of:

- 2.7.1 the Company's deductible gift recipient endorsement being revoked; or
- 2.7.2 the winding up of the Company.

# 3 **MEMBERSHIP**

## 3.1 **Limited liability of Members / guarantee**

- 3.1.1 A Member's liability is limited to the guaranteed amount in clause 3.1.2.
- 3.1.2 If the Company is wound up, each Member and former Member in the previous year must contribute up to one dollar (\$1) towards:
  - (a) the Company's liabilities contracted before the Legal Person ceased to be a Member; and
  - (b) costs, charges and expenses to wind up and adjust the rights of the contributories among themselves.

## 3.2 **Classes of Members and eligibility**

- 3.2.1 The Members of the Company comprise Ordinary Members who are organisations, such as a local government, a subsidiary of a local government, companies, associations, partnerships or other incorporated or unincorporated organisations which are substantial supporters of the Company and meet any other eligibility criteria set out in Regulations.
- 3.2.2 Subject to the prior approval of an ordinary resolution of the Members, the Members of the Company may be extended to include such other voting or non-voting categories whose rights, benefits, privileges, entitlements, obligations, liabilities, eligibility and status may be determined by the Board from time to time.

**3.3 Member rights and obligations**

- 3.3.1 Ordinary Members have the right to appoint two Representatives per Ordinary Member with each Representative having one vote.
- 3.3.2 Ordinary Members and other voting Members have the right to receive notice of, participate in the requisition of, attend, speak at, vote at and join in the demand for a poll at general meetings. Voting rights of Ordinary Members are exercisable by up to two Representatives appointed by the Ordinary Member in accordance with clause 3.3.4 (and whose appointment may be withdrawn by that Member).
- 3.3.3 Non-voting Members have the right to receive notice of and attend, speak at and engage in discussion at a general meeting, but may not vote at that meeting.
- 3.3.4 Members have the right to appoint a Representative to exercise all the Member's rights. Members must comply with the procedure established by the Company for the notification and removal of Representatives and the procedures for appointment of any permitted alternates.

**3.4 Rights not transferrable**

A Member's membership rights and privileges:

- 3.4.1 apply only whilst the Legal Person is a Member; and
- 3.4.2 are personal and may not be transferred or transmitted.

This clause 3.4 does not preclude the Company from recognising the merger, amalgamation or restructure of one or more Members by operation of the law.

**3.5 No membership period or fees**

- 3.5.1 Members are not required to take any steps to renew or otherwise continue membership.
- 3.5.2 No fees are payable to the Company in order to apply for, be admitted or continue as a Member.

**3.6 Register of Members, including closure of register**

- 3.6.1 The Company must maintain a register of Members in accordance with the Corporations Act which contains the name, addresses for notices and membership start/end dates for current and recent former Members.
- 3.6.2 The Board may establish Regulations to close the register to new Members for up to 60 days per year.
- 3.6.3 The Company may maintain a database of other Member details which is separate to the register of Members.

**3.7 Change of Member details**

A Member must notify the Company if the Member's addresses for notices change within 28 days of the change.

**4 BECOMING AND CEASING TO BE A MEMBER****4.1 Admission of Members**

- 4.1.1 The Board may admit in its absolute discretion a Legal Person as Member upon application in accordance with any requirements specified in the Regulations.
- 4.1.2 The Board must consider membership applications as soon as reasonably practicable.
- 4.1.3 The Board need not provide reasons for refusing to admit a Legal Person as Member.
- 4.1.4 Successful applicants become Members when added to the register of Members.

**4.2 Resignation of Members**

- 4.2.1 A Legal Person may resign as Member by written notice to the Company.
- 4.2.2 The resignation takes effect when the Company receives the Member's notice or on a later date specified in the notice.

**4.3 Ceasing to be a Member**

A Legal Person automatically ceases to be a Member if the Legal Person:

- 4.3.1 has a debt to the Company which remains unpaid for one year or more;
- 4.3.2 ceases to be eligible to be a Member in the relevant class for 12 months or more, including failing to meet any requirements to support the Company set out in Regulations;
- 4.3.3 is wound up or deregistered or in the case of an individual, dies;
- 4.3.4 becomes insolvent, or makes any arrangement or composition with the Member's creditors generally.

**4.4 Initial Members**

The initial Members of the Company are those Legal Persons named in the application to the Australian Securities and Investments Commission to register the Company.

**5 GENERAL MEETINGS****5.1 Convening an annual general meeting**

- 5.1.1 The Board must convene an annual general meeting to be held at least once every year, and where practicable should be aligned with the Councillor election cycle under the *Local Government Act 2020* (Vic). The requirements for convening an annual general meeting may otherwise be set out in the Corporations Act or Relevant Laws.
- 5.1.2 The business of an annual general meeting is to:
  - (a) consider the Board's, financial and auditor's report;
  - (b) appoint an auditor if that office is or will become vacant;

- (c) consider any other matter required by the Corporations Act or Relevant Laws; and
- (d) consider any special business, the general nature of which is specified in the notice of meeting.

## 5.2 Convening a special general meeting

- 5.2.1 General meetings other than annual general meetings are called special general meetings.
- 5.2.2 The Board must convene and hold special general meetings of the Members if required by the Corporations Act or Relevant Laws.
- 5.2.3 The Board or 3 Directors may convene special general meetings of the Members.
- 5.2.4 The notice of special general meeting must specify the general nature of special business, unless the Corporations Act or Relevant Laws require otherwise.

## 5.3 Notice of meeting

- 5.3.1 At least 21 days' notice of any general meeting must be given specifying the meeting's place, date and time, unless the Corporations Act or Relevant Laws require or permit some other period of notice.
- 5.3.2 Notice of every general meeting must be given in writing in accordance with clause 10.6 to:
  - (a) every Director;
  - (b) every Member entitled to attend who has supplied an address for notices to the Company; and
  - (c) the Company's auditor.
- 5.3.3 No other Legal Person is entitled to receive notices of general meetings.
- 5.3.4 A general meeting and any resolution passed at the meeting is not invalid merely because of:
  - (a) the accidental omission to give notice of the meeting; or
  - (b) the non-receipt of any such notice.

## 5.4 Postponement

- 5.4.1 The Board may postpone, relocate or cancel a general meeting which it convened by giving at least 5 days' notice to the Members.
- 5.4.2 Clause 5.4.1 does not apply to a meeting requisitioned by Members or convened by the Members, by individual Directors under clause 5.2.3 or by court order.

## 5.5 Quorum

- 5.5.1 A general meeting may not transact business unless a quorum is present when the meeting proceeds to business.

5.5.2 The quorum for general meetings is the presence in person of at least one Representative from at least 75% of all Ordinary Members.

5.5.3 If a quorum is not present within 30 minutes of the time scheduled to start the general meeting:

- (a) the meeting, if requisitioned by Members, is dissolved; and
- (b) in any other case, the meeting is adjourned to such other place, date and time as the Board determines and notifies to Members (if required to do so by clause 5.7).

**5.6 Meeting chair**

5.6.1 The Chair may chair a general meeting.

5.6.2 If the Chair is not present and willing to act the Deputy Chair may chair.

5.6.3 If the Chair and Deputy Chair are not present and willing to act:

- (a) the Directors present may choose one of their number to chair the meeting; and
- (b) if no Director is present, or if all the Directors present decline to chair, the Members present must choose one of their number to chair.

5.6.4 In addition to powers conferred by law, the meeting chair may:

- (a) determine the meeting's conduct and procedures to ensure proper and orderly discussion or debate;
- (b) make rulings without putting a question to the vote, or terminate discussion or debate and require that matter to be put to a vote;
- (c) refuse to allow debate or discussion on any matter which is not ordinary or special business; and
- (d) refuse any Legal Person admission to a general meeting (including for causing offence or disruption), or expel the Legal Person from the general meeting and not permit them to return.

5.6.5 All procedural decisions by the meeting chair are final.

**5.7 Adjournment**

5.7.1 The meeting chair:

- (a) may, with the consent of any general meeting at which a quorum is present; and
- (b) must, if so directed by the meeting, adjourn the meeting to some other time or place.

5.7.2 The adjourned meeting may only transact unfinished business from the original meeting.



- 5.7.3 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as required for the original meeting. It is not otherwise necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**5.8 Voting – show of hands / poll**

- 5.8.1 Each Representative of an Ordinary Member has one vote.
- 5.8.2 By default, resolutions at general meetings must be voted on by a show of hands, including a show of hands using technology.
- 5.8.3 The meeting chair does not have a second or casting vote.
- 5.8.4 The meeting chair must declare whether resolutions were carried, carried unanimously, carried by particular majority or lost. These voting results must be minuted.
- 5.8.5 The minutes of the voting results are conclusive without the need to record the number or proportion of, or manner in which votes were cast.
- 5.8.6 A poll may be demanded by the meeting chair or at least two Members or Representatives of one or more Ordinary Members present in person and entitled to vote.
- 5.8.7 A demand for a poll must be made on or before the result being declared, and may be withdrawn.
- 5.8.8 A poll to elect a meeting chair or adjourn the meeting must be taken immediately. Polls must otherwise be taken at that meeting in the manner directed by the meeting chair.
- 5.8.9 The meeting chair must decide all voting disputes, and that decision is final.

**5.9 Proxies**

- 5.9.1 A Member (or its Representative) may appoint a proxy to act on the Member's behalf at any general meeting at which that Member may attend and vote.
- 5.9.2 A proxy must be:
- (a) a Representative, officer or employee of an Ordinary Member; or
  - (b) the Chair.
- 5.9.3 For the instrument appointing a proxy to be valid, it must be:
- (a) in writing and signed by the appointor;
  - (b) in the form complying with the Corporations Act or some other Board approved form; and
  - (c) lodged with the Company at least 48 hours before the time for holding the meeting or adjourned meeting.
- 5.9.4 A Member with voting rights may direct their proxy as to how to vote on any particular resolution by recording the direction on the instrument appointing the proxy.

- 5.9.5 A vote given according to the proxy instrument is valid despite revocation of the instrument or of the authority under which the instrument was executed, if no knowledge in writing of that fact was received by the Company before commencing the meeting or adjourned meeting at which the instrument is used.

#### 5.10 **Use of technology**

General meetings may be held at more than one place, provided that the technology that is used enables each Member present at all places the meeting is held to clearly and simultaneously communicate with every other such Member.

#### 5.11 **Circular resolution**

- 5.11.1 The Board may if it thinks fit submit any question or resolution to the vote of all Members entitled to a vote at a general meeting by circular resolution, unless the Corporations Act or Relevant Laws require a general meeting.

- 5.11.2 The Board may determine in the Regulations:

- (a) the form of the circular resolution;
- (b) the polling date;
- (c) the method for responding to the circular resolution; and
- (d) whether voting on the circular resolution is to be by secret ballot.

- 5.11.3 A resolution approved by a majority or specific majority of the Members has the same force and effect as such a resolution passed in a general meeting.

### 6 **BOARD**

#### 6.1 **Initial structure of Board**

While the Company has three or less members, the Board will comprise between 7 and 9 Directors as follows:

- 6.1.1 each Ordinary Member may appoint up to 2 Directors in accordance with clause 6.3 (**Ordinary Member Appointed Directors**); and
- 6.1.2 up to 3 further Directors may be appointed by the Board in accordance with clause 6.4 (**Independent Directors**) as long as the number of Independent Directors never exceeds the number of Ordinary Member Appointed Directors,

and so that at all times a majority of the Board will be persons with a degree of responsibility to the public within the meaning of Commonwealth taxation Laws.

#### 6.2 **Future structure of Board**

While the Company has four or more members, the Board will comprise as follows:

- 6.2.1 each Ordinary Member may appoint one Director in accordance with clause 6.3 (**Ordinary Member Appointed Directors**); and
- 6.2.2 up to 3 further Directors may be appointed by the Board in accordance with clause 6.4 (**Independent Directors**):

- (a) as long as the number of Independent Directors never exceeds the number of Ordinary Member Appointed Directors; and
- (b) so that, if possible, the total number of Directors is between 7 and 9,

and so that at all times a majority of the Board will be persons with a degree of responsibility to the public within the meaning of Commonwealth taxation Laws.

### **6.3 Appointment of Ordinary Member Appointed Directors**

- 6.3.1 Subject to this Constitution, the Corporations Act and the Relevant Laws, each Ordinary Member may appoint up to the relevant number of Directors to act as Ordinary Member Appointed Directors in accordance with clause 6.1.1 or 6.2.1.
- 6.3.2 The appointee must be a person with a degree of responsibility to the public within the meaning of Commonwealth taxation Laws, unless the Board or all Ordinary Members agree this is not required to enable the Company to comply with the requirement that at all times a majority of the Board will be persons with a degree of responsibility to the public within the meaning of Commonwealth taxation Laws.
- 6.3.3 If an Ordinary Member declines to appoint a Director, those positions may be filled until the next annual general meeting in accordance with clause 6.4 or for a longer period determined in writing by the Ordinary Member declining to appoint a Director.

### **6.4 Appointment of Independent Directors**

- 6.4.1 Subject to this Constitution, the Board must determine any other procedures or matters in relation to the selection process to appoint Independent Directors and may make Regulations for that purpose.
- 6.4.2 The Regulations pursuant to clause 6.4.1 must be consistent with the following:
  - (a) Before each annual general meeting, the Board must publicly call for Independent Director candidates who need not be Members.
  - (b) A selection committee must be established for the purpose of conducting the selection process.
  - (c) The selection committee may, but is not required to, interview all candidates for becoming an Independent Director.
  - (d) The committee must recommend candidates to be appointed as Independent Directors on the basis of their skills, background and expertise deemed necessary or desirable by the Board (including, without limitation, to complement the Ordinary Member Appointed Directors) for the effective operation of the Board.
  - (e) The committee must recommend candidates so that a majority of the Board will be persons with a degree of responsibility to the public within the meaning of Commonwealth taxation Laws.
  - (f) The Board may appoint Independent Directors after considering the recommendations from the selection committee conducting the selection process.

- (g) The meeting chair must announce the Independent Directors at the annual general meeting. Appointments take effect at the end of the annual general meeting at which the appointments are announced.

#### **6.5 Eligibility to be a Director**

A person is eligible to become a Director if he or she:

- 6.5.1 in the case of an Ordinary Member Appointed Director, is a Representative, officer or employee of an Ordinary Member, provided that Ordinary Member has no more than the relevant number of Ordinary Member Appointed Directors already on the Board in accordance with clause 6.1.1 or 6.2.1;
- 6.5.2 is over the age of 18 years;
- 6.5.3 consents in writing to become a Director;
- 6.5.4 is not prohibited, disqualified or otherwise prevented from being a Director under the Corporations Act or Relevant Laws;
- 6.5.5 has not exceeded the maximum term of office under clause 6.6; and
- 6.5.6 is not an employee of the Company.

#### **6.6 Limits on period of office as a Director**

If a Director has served 7 Years or more continuously, then the Director may finish serving their current term of office but is not eligible to be appointed as a Director for a subsequent continuous period of 2 years.

#### **6.7 Term of office of Directors**

- 6.7.1 An Ordinary Member Appointed Director holds office:
  - (a) commencing from the date the Ordinary Member resolves to appoint the person; and
  - (b) concluding either the end of the second or fourth (as determined by the Ordinary Member) annual general meeting after commencing as an Ordinary Member Appointed Director.
- 6.7.2 An Ordinary Member may appoint an Ordinary Member Appointed Director for a shorter term than under clause 6.7.1 if the Ordinary Member so determines at the time of appointment.
- 6.7.3 An Independent Director holds office:
  - (a) commencing from the date the Board resolves to appoint the person (for example, the appointment may take effect immediately after the next annual general meeting);
  - (b) concluding at the end of the second or fourth (as determined by the Board) annual general meeting after commencing as an Independent Director.
- 6.7.4 The Board may appoint an Independent Director for a shorter term than under clause 6.7.3 if the Board so determines at the time of appointment.

**6.8 Casual vacancies**

- 6.8.1 If a casual vacancy occurs for any Ordinary Member Appointed Director office, the Ordinary Member who appointed that person may appoint another eligible person in their place for the balance of the term of the original Ordinary Member Appointed Director.
- 6.8.2 If a casual vacancy occurs for any Independent Director office, the Board may appoint another eligible person in their place until the end of the next annual general meeting.
- 6.8.3 The Board may continue to act despite vacancies on the Board. However, if there are less than 4 Directors, or there is not a majority of the Board being persons with a degree of responsibility to the public within the meaning of Commonwealth taxation Laws, or the number of Independent Directors exceeds the number of Ordinary Member Appointed Directors, the Board may only:
- (a) act in the case of emergencies;
  - (b) appoint persons to fill casual vacancies; or
  - (c) convene a general meeting.

**6.9 Office bearers**

The Board may elect and remove the following office bearers from the Directors:

- 6.9.1 Chair;
- 6.9.2 Deputy Chair; and
- 6.9.3 such other office bearers with titles determined from time to time by the Board.

**6.10 Resignation of Directors**

- 6.10.1 A Director may resign as Director by written notice to the Company.
- 6.10.2 The resignation takes effect when the Company receives the Director's notice or on a later date specified in the notice.

**6.11 Ceasing to be a Director**

- 6.11.1 The Members may remove any Director in accordance with the Corporations Act.
- 6.11.2 An Ordinary Member may remove a person it has appointed as an Ordinary Member Appointed Director.
- 6.11.3 A directorship automatically ceases if the Director:
- (a) dies or is physically incapable of fulfilling their duties as a Director;
  - (b) becomes disqualified from being a Director pursuant to the Corporations Act or Relevant Laws;
  - (c) for more than 6 months is absent without Board permission from Board meetings held during that period;

- (d) becomes a bankrupt or makes any arrangement or composition with personal creditors generally; or
- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

#### 6.12 Director remuneration and reimbursement

- 6.12.1 Despite clause 2, the Independent Directors may be paid reasonable remuneration for undertaking the ordinary duties of an Independent Director. Such reasonable remuneration is inclusive of all travel and other expenses incurred by them when engaged in the Company's business, attending meetings or otherwise in carrying out the duties of an Independent Director. The Independent Directors must not otherwise be paid any other remuneration for those duties.
- 6.12.2 Ordinary Member Appointed Directors are not entitled to be remunerated for undertaking the ordinary duties of an Ordinary Member Appointed Director.
- 6.12.3 In light of clause 6.12.1, the Directors are not otherwise entitled to be reimbursed for reasonable travel and other expenses incurred by them when engaged in the Company's business, attending meetings or otherwise in carrying out the duties of a Director.
- 6.12.4 Despite clause 2, the Directors may be paid for any service rendered to the Company in a professional or technical capacity outside the scope of the Director's ordinary duties where:
  - (a) the service and amount payable is on reasonable and proper terms; and
  - (b) the provision of that service has the Board's prior approval.

#### 6.13 Initial Board

- 6.13.1 The initial Directors of the Company are those persons named in the application to the Australian Securities and Investments Commission to register the Company.
- 6.13.2 Despite clause 6.7.1(b), the initial Directors of the Company will conclude their term of office at either the 2023 or 2025 annual general meeting (as determined by the relevant Ordinary Member) but may be eligible to further serve as a Director subject to clause 6.6.

### 7 BOARD POWERS

#### 7.1 Management vests in Board

- 7.1.1 The Board is responsible for the governance, business and affairs of the Company. In addition to the specific powers conferred on the Board by this Constitution, the Board may exercise all the Company's powers which are not by the Corporations Act, Relevant Laws or this Constitution required to be exercised by the Members in general meeting.
- 7.1.2 The powers under clause 7.1.1 are subject to:
  - (a) this Constitution;
  - (b) the Corporations Act and Relevant Laws; and

- (c) such resolution, not being inconsistent with those provisions, as may be passed by the Members in general meeting.

7.1.3 A resolution under clause 7.1.2 does not invalidate any prior act of the Board which would have been valid before the resolution was passed or made.

## 7.2 **Power to delegate**

7.2.1 The Board may delegate its powers and functions in writing to:

- (a) an officer or employee of the Company; or
- (b) a committee under clause 9.

7.2.2 The Board may amend or revoke the terms of its delegation at any time.

## 7.3 **Power to appoint Chief Executive Officer**

7.3.1 The Board may appoint a Chief Executive Officer on such terms and conditions as the Board determines from time to time.

7.3.2 The Board may remove a Chief Executive Officer, subject to the terms of any agreement between the Company and the Chief Executive Officer.

7.3.3 The Chief Executive Officer is entitled to attend Board meetings and general meetings, if so directed by the Board from time to time.

7.3.4 The Chief Executive Officer will have the responsibilities determined by the Board.

## 7.4 **Power to appoint Company Secretary**

7.4.1 The Board must appoint at least one Company Secretary in accordance with the Corporations Act.

7.4.2 The Company Secretary will have the responsibilities set out in the Corporations Act and Relevant Laws.

## 7.5 **Power to make Regulations**

7.5.1 The Board may from time to time make, vary and rescind Regulations in relation to the Company.

7.5.2 The Regulations for the time being in force, and which are not inconsistent with this Constitution, are binding on Members and have full effect accordingly.

## 8 **BOARD MEETINGS**

Subject to this clause 8, the Board may meet to consider business, adjourn and otherwise regulate its meetings as it thinks fit.

### 8.1 **Number of meetings**

The Board must meet at least 5 times per year.

### 8.2 **Convening meetings**

The Company Secretary must arrange a Board meeting:

- 8.2.1 at the request of the Board;
- 8.2.2 at the request of the Chair;
- 8.2.3 on the requisition of 3 or more Directors; and
- 8.2.4 at the request of the Chief Executive Officer (or a person acting in their place) in emergencies referred to in clause 8.3.1.

### 8.3 Notice of meeting

- 8.3.1 At least 72 hours' notice of any Board meeting must be given unless the Board decides otherwise or in emergencies, including:
  - (a) a natural disaster occurring in a municipality in which the Company operates;
  - (b) the death, serious injury or the like of a Director or officer, which would affect the normal operation of the Company, or the community and cannot wait until the next scheduled meeting of the Board; or
  - (c) where a matter cannot be practicably dealt with any other time due to emerging issues, time constraints or unexpected matters.
- 8.3.2 The notice must specify the business to be transacted. The Board may only transact business of a routine nature unless notice of any other business has been given either in the notice convening the meeting or in some other notice given at least a reasonable time before the meeting.
- 8.3.3 The decision of the meeting chair as to whether business is routine is conclusive.

### 8.4 Quorum

- 8.4.1 The quorum for a Board meeting is the following number of the Directors entitled to attend and vote:

Number of Directors	Quorum
7 or less	4
8 or more	5

- 8.4.2 In addition to clause 8.4.1, a majority of Directors present must be persons with a degree of responsibility to the public within the meaning of Commonwealth taxation Laws.
- 8.4.3 A meeting at which a quorum is present may exercise all powers and discretions of the Board.
- 8.4.4 If a Board meeting is adjourned due to lack of quorum, the Chair must set a further date for the adjourned meeting.

### 8.5 Meeting chair

- 8.5.1 The Chair may chair a Board meeting.
- 8.5.2 If the Chair is absent the Deputy Chair may chair.
- 8.5.3 In the absence of the Chair and the Deputy Chair, the Directors may appoint a meeting chair from among their number.



**8.6 Voting**

- 8.6.1 Each Director present and entitled to vote at a Board meeting, including via technology, has one vote. Proxy voting and alternate Directors are not permitted.
- 8.6.2 Questions arising at a Board meeting must be decided by a majority of votes. Such a decision is for all purposes a decision of the Board.
- 8.6.3 In the event of an equality of votes the meeting chair does not have a second or casting vote.

**8.7 Use of technology**

The Board may hold a technology enabled meeting if:

- 8.7.1 all Directors (other than any Director on leave of absence) have access to the technology to be used for the meeting; and
- 8.7.2 those Directors participating by technological means can hear, or can hear and read the communications of all other participating Directors.

**8.8 Circulating resolutions**

- 8.8.1 A written resolution signed or approved by technological means (other than any Director on leave of absence) is taken to be a decision of the Board passed at a Board meeting convened and held.
- 8.8.2 The written resolution may consist of:
  - (a) several documents in the same form, each signed by one or more Directors and, such a resolution takes effect when the last Director signs such a document; or
  - (b) permanent records indicating the identity of each Director, the text of the resolution and the Director's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect when the last Director indicates their approval.

**8.9 Conflicts and personal interests**

- 8.9.1 A Director who has a material personal interest in a matter that relates to the Company's affairs must give the other Directors written notice of the interest unless the Corporations Act or Relevant Laws require otherwise.
- 8.9.2 To the maximum extent required by Law, a Director who has a material personal interest in a matter that is being considered by the Board must not be present while the matter is being considered, or vote on the matter.

**8.10 Minutes**

- 8.10.1 The Board must ensure that minutes of all proceedings of general, Board, committee meetings (and meetings of any other Board entity) are recorded in a minute book within one month after the relevant meeting is held.
- 8.10.2 The minutes must be signed by the meeting chair at which the proceedings took place or by the meeting chair of the next succeeding meeting.

- 8.10.3 Minutes entered and signed are prima facie evidence of the proceedings to which they relate.

**8.11 Validity of acts / procedural defects**

- 8.11.1 A Board act or decision will not be invalid by reason only of a defect or irregularity in connection with the election or appointment of a Director.
- 8.11.2 For entered and signed minutes, unless the contrary is proved:
- (a) the meeting is deemed to have been convened and held;
  - (b) all proceedings that are recorded in the minutes as having taken place are deemed to have taken place; and
  - (c) all appointments that are recorded in the minutes as having been made are deemed to have been validly made.

**9 COMMITTEES**

**9.1 Board's power to establish committees**

The Board may establish committees as follows:

- 9.1.1 a committee will comprise two or more committee members, of which at least one must be a Director;
- 9.1.2 the committee members otherwise need not be a Director or Member;
- 9.1.3 the committee has the purpose set out in its charter approved by the Board, and may undertake the powers and functions delegated to it by the Board; and
- 9.1.4 in the absence of any provision in the committee charter, meetings and proceedings of any committee are governed by the provisions of clause 8.

**10 ADMINISTRATION**

**10.1 Change of name**

The Members may change the Company's name by special resolution in accordance with the Corporations Act. Such a resolution authorises the Board to update all references to the Company's name in this Constitution.

**10.2 Amendment of Constitution**

- 10.2.1 The Members may amend this Constitution by special resolution in accordance with the Corporations Act and Relevant Laws.
- 10.2.2 If the Company is registered under Relevant Laws, a special resolution under clause 10.2.1 (unless it expressly provides otherwise) does not take effect if it would cause the Company to lose any entitlements to registration under Relevant Laws.

**10.3 Accounts**

The Board must cause:

10.3.1 proper accounting and other records to be kept in accordance with the requirements of the Corporations Act and Relevant Laws, and

10.3.2 financial statements to be made and laid before each annual general meeting as required by the Corporations Act and Relevant Laws.

#### 10.4 **Audits and appointment of auditor**

A properly qualified auditor must be appointed and the auditor's duties regulated in accordance with the requirements of the Corporations Act and Relevant Laws.

#### 10.5 **Records and inspection**

A Member (other than a Director) is not entitled to inspect any document of the Company, except as provided by law or authorised by the Board.

#### 10.6 **Service of notices**

10.6.1 Notices must be in writing and may be given by the Company to any Member:

- (a) in person;
- (b) by sending it by post to the Member at the Member's registered address; or
- (c) by sending it to the address, facsimile number, e-mail address or other address supplied for receiving notices.

10.6.2 A notice sent by post is deemed to have been given 6 Business Days after it was posted. A notice sent by fax, or by other electronic means, is deemed to have been given on the next business day after it was sent.

#### 10.7 **Indemnity of officers**

10.7.1 The Company indemnifies current and former Directors (**Indemnified Officer**) out of its assets against any Liability incurred by the Indemnified Officer in or arising out of:

- (a) the conduct of the Company's affairs or business; or
- (b) the discharge of the Indemnified Officer's duties.

but only to the extent that:

- (c) the Indemnified Officer has acted in good faith and is not otherwise entitled or actually indemnified by a third party;
- (d) the Company is not precluded by Law from doing so; and
- (e) the Liability is not a cost or expense for an unsuccessful application to a Court for relief under the Corporations Act, or the defence of civil or criminal proceedings where judgement is given against the Indemnified Officer or in which the Indemnified Officer is not acquitted.

10.7.2 The Company may execute any deed in favour of any Indemnified Officer to confirm the indemnities conferred by clause 10.7.1 in relation to that person.

10.7.3 Clause 10.7.1 applies whether or not any deed is executed under clause 10.7.2.

**10.8 Insurance**

- 10.8.1 The Company may pay or agree to pay premiums for directors and officers insurance to insure Indemnified Officers against any Liability incurred by the Indemnified Officer referred to in clause 10.7.
- 10.8.2 The Company may execute any deed in favour of any Indemnified Officer to take out insurance referred to in clause 10.8.1, on such terms as the Board considers appropriate.

**10.9 Seal**

- 10.9.1 The Board will determine whether or not the Company is to have a seal (known as the common seal) and, if so, will provide for the safe custody of such seal.
- 10.9.2 The seal, if any, of the Company may only be affixed to any instrument with the Board's authority.
- 10.9.3 The affixing of the seal must be attested by the signatures of persons authorised by the Board for that purpose.

**11 DEFINITIONS AND INTERPRETATION****11.1 Definitions**

In this Constitution:

**Board** means the board of Directors of the Company with a quorum to transact business;

**Business Day** means a weekday which is not a public holiday in the state or territory of the Company's registered office;

**Chair** means the Director and office bearer under clause 6.9.1;

**Company** means the company named on page 1 of this Constitution;

**Company Secretary** means a secretary appointed under clause 7.4;

**Constitution** means this constitution of the Company;

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

**Director** means a person for the time being who performs the role of director of the Company;

**Deputy Chair** means the Director and office bearer under clause 6.9.2;

**Indemnified Officer** has the meaning given in clause 10.7;

**Independent Director** means a Director appointed for the purposes of clause 6.1.2 or 6.2.2;

**Law** includes statute, regulation, legislative instrument, rules, standards, proclamation, ordinance or by-law which, by or under statute, bind a person from time to time;

**Legal Person** includes an individual person, a partnership, body corporate, government authority or agency (whether or not incorporated);

**Liability** includes cost, charge, loss, damage, expense or penalty;

**Member** means a Legal Person who is a member of the Company pursuant to clauses 3 and 4;

**Ordinary Member Appointed Director** means a Director appointed for the purposes of clause 6.1.1 or 6.2.1;

**Public Library** means a public library for the purposes of gift deductibility under Division 30 of the *Income Tax Assessment Act 1997* (Cth).

**Purpose** has the meaning given in clause 1;

**Regulations** means regulations made by the Board under clause 7.5;

**Relevant Laws** means Laws regulating the registration, reporting or governance obligations of the Company and includes:

- (a) *Australian Charities and Not-for-profits Commission Act 2012* (Cth),
- (b) *Income Tax Assessment Act 1997* (Cth); and
- (c) *Charities Act 2013* (Cth).

**Representative** of a Member means:

- (a) a proxy appointed in accordance with clause 5.9;
- (b) a representative appointed by an Ordinary Member in accordance with this Constitution; or
- (c) an attorney of the Member, whose instrument of appointment has been provided to the Company;

and includes a Representative appointed on a standing basis.

**Year**, in relation to a Director's term of office, means the period of approximately one calendar year between annual general meetings or if no annual general meeting is convened in a year a date prescribed by the Board being within 5 months of the end of the Company's financial year.

## 11.2 Interpretation

In this Constitution, unless the contrary intention appears:

- 11.2.1 the singular includes the plural and vice versa;
- 11.2.2 words importing a gender include every other gender;
- 11.2.3 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa (whether or not incorporated);
- 11.2.4 a reference to a person includes that person's executors, administrators, successors, substitutes and permitted assigns;
- 11.2.5 a reference to a document or instrument, including this Constitution, includes that document or instrument as novated, altered or replaced from time to time;

- 11.2.6 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 11.2.7 other grammatical forms of defined words or expressions have corresponding meanings;
- 11.2.8 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this Constitution; and
- 11.2.9 a Member is to be taken to be present at a general meeting if the Member is present in person or by Representative.

**11.3 Interpretation subject to Relevant Laws**

- 11.3.1 This Constitution is to be interpreted subject to the Corporations Act and the Relevant Laws. If there is any inconsistency, Relevant Laws prevail.
- 11.3.2 To the extent that Relevant Laws require this Constitution to include provisions so that the Company can hold a registration or exemption status, those provisions are taken to form part of this Constitution.
- 11.3.3 Provisions which are optional replaceable rules under the Corporations Act do not apply to the Company.