



HERBERT  
SMITH  
FREEHILLS

## Constitution

### Constitution

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### South Eastern Community Connect Inc



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# Constitution

**South Eastern Community Connect Inc ABN 15 350 811 422**

**An incorporated association**

## 1 Association's name

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The name of the association is South Eastern Community Connect Inc (**association**).

## 2 Association's purposes

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The association's purposes are to relieve the poverty, sickness, suffering, disability isolation or hopelessness of people in need by, without limitation, providing programs and activities including casework, parenting support, adult education programs, aged and disability services, children's services and counselling.

## 3 Association's powers

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Solely for carrying out the association's purposes, the association may exercise all of the powers of an incorporated association under the Associations Act.

## 4 Not for profit

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### 4.1 Application of the association's income and property

- (a) The association's income and property must be applied solely towards promoting the association's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any member or board member in their capacity as a member or board member.
- (c) This rule 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any board member to the extent permitted by law and these rules.

### 4.2 Payment of board members fees

No board members fees may be paid to the board members.



### 4.3 Other payments to board members

All payments to board members must be approved by the board including, but not limited to:

- (a) out-of-pocket expenses incurred by a board member in performing a duty as a board member of the association; or
- (b) a service rendered to the association by a board member in a professional or technical capacity or as an employee, other than in the capacity as a board member of the association, where:
  - (1) the provision of the service has the prior approval of the board; and
  - (2) the amount payable is not more than an amount which commercially would be reasonable payment for the service.

## 5 Membership

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### 5.1 Members

- (a) The members are:
  - (1) the persons who are members at the time of adopting this constitution;
  - (2) the board members; and
  - (3) any other persons who are admitted to membership in accordance with this rule 5.
- (b) Every applicant for membership of the association (except the initial members) must apply in the form and manner decided by the board members.
- (c) After receipt of an application for membership, the board members must consider the application and decide whether to admit or reject the applicant. The board members need not give any reason for rejecting an application.
- (d) Every member agrees to comply with these rules and support the purposes of the association set out in rule 2.

### 5.2 Subscription fee

- (a) An annual subscription fee may be decided by the board members, and notified to the members.
- (b) The board members must notify all persons entered on the register of members of the amount and time for payment of any annual subscription fee and of any alteration to the annual subscription fee. Varying amounts may be applied as decided by the board members and made available to the members in a notice or a membership policy.
- (c) Where the annual subscription fee is not received:
  - (1) after one month of the due date, the board members may issue a written reminder notice to the member; and
  - (2) after one month of the written reminder notice, the member's rights and privileges associated with that membership will be suspended, including the right to receive notices of general meetings and the right to attend and vote at general meetings.



- (d) If a member who was suspended pursuant to rule 5.2(c) has not paid an annual subscription fee for more than 2 months after the written reminder notice, the person ceases to be a member.

### 5.3 Register

The association must maintain a register of members setting out the name, address, alternate electronic or other address (if any) for receipt of notices and date membership starts and ceases.

### 5.4 Grievance procedure

- (a) Any dispute under these rules between a member and another member or between a member and the association must, unless the parties otherwise agree, be dealt with by the procedure in this rule 5.4.
- (b) Any party to a dispute between members may refer the dispute to the board for determination or mediation.
- (c) The board may, subject to rule 5.4(e) below, act as a mediator or decision maker (provided they are unbiased) or may appoint a third party as a mediator or decision maker.
- (d) If there is a dispute between the association and a member, either party may require the dispute be referred to mediation.
- (e) The mediator must be unbiased and:
  - (1) a person chosen by agreement between the parties to the dispute; or
  - (2) in the absence of agreement within 14 days of a party requiring mediation;
    - (A) in the case of a dispute between a member and another member, a person appointed by the board;
    - (B) in the case of a dispute between a member and the Association, a person who is a mediator appointed or employed by a Community Justice Centre of NSW (Department of Justice) or its successor in law.
- (f) A member can be a mediator, provided they are unbiased.
- (g) Any party to a dispute may appoint any person to act on behalf of that party.
- (h) In each dispute:
  - (1) the parties to the dispute must have a reasonable opportunity to be heard;
  - (2) due consideration must be given to any written statement submitted by a party; and
  - (3) natural justice must be accorded to the parties to the dispute throughout the process.
- (i) If the mediation process does not result in the dispute being resolved, within a reasonable time as decided by the mediator, or failing this decision, within one month of the party requiring mediation, any party to the dispute may refer the matter to an unbiased decision maker.
- (j) A determination made under this rule is final and binding on all parties to the dispute.



## 5.5 When membership ceases

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) resigns as a member by giving written notice to the association;
- (c) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with her or his creditors;
- (e) is expelled under rule 5.6; or
- (f) ceases to be a member under rule 5.2(d).

## 5.6 Disciplinary action

- (a) The board members may decide there are grounds to investigate if:
  - (1) a member has failed to comply with the rules or any procedures or policies of the association; or
  - (2) it is in the interests of the association for a member to no longer remain a member; or
  - (3) the member is not supporting the purposes of the association or by act or omission may cause detriment to the association or its reputation.
- (b) The board may refuse to deal with a complaint if it consider the complaint to be trivial or vexatious in nature.
- (c) The board may establish a sub-committee or consider the matter itself or refer the matter to a third party, provided the decision maker is unbiased.
- (d) At least two weeks before a meeting to consider the issues, the decision maker, must give the member written notice:
  - (1) stating the date, place and time of the meeting;
  - (2) setting out the grounds on which the investigation is based; and
  - (3) informing the member that she or he may attend the meeting and may give an oral or written explanation or submission.
- (e) The decision maker has 4 weeks to consider the issues and may call for further information and hearings. The decision maker may decide on the appropriate disciplinary action, if any, including a decision to expel the member. Any decision must be notified to the member within 6 weeks from the meeting referred to in rule 5.6(d).
- (f) A member who has received notice under rule 5.6(d) must not initiate a grievance procedure under rule 5.4 until the determination under this rule 5.6.
- (g) A determination by the decision maker is final and binding on all parties.

## 5.7 Rights, obligations and liabilities of members

- (a) The members have the rights set out in the Associations Act and at law, as modified, deleted, varied or added to by this constitution.



- (b) The members are required to comply with this constitution and any by-rules, regulations, codes of conduct, policies or guidelines applicable to members adopted by the board from time to time and made available to the members.
- (c) The liabilities of a member, as a member, are limited to the amount, if any, unpaid by the member in respect of any subscription or other membership fee.

## 6 Winding up

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### 6.1 Voluntary winding up

An association may be wound up voluntarily if the association so resolves by special resolution.

### 6.2 Winding up by the Secretary

- (a) The Secretary may wind up the association under a section 61A certificate (the **Certificate**).
- (b) The Secretary may issue the Certificate if:
  - (1) the association ceases operation;
  - (2) the association ceases to have 5 or more members;
  - (3) the association's board has not been able to form a quorum for 2 months; or
  - (4) the Secretary is satisfied that there is a significant public interest in winding up, or that not winding up the association may place public funds at risk.

### 6.3 Winding up by the Supreme Court

- (a) The Supreme Court of NSW may order the winding up of an association in accordance with section 63 of the Associations Act.
- (b) An application to the Supreme Court for the winding up of the association may be made by the association, a member, creditor, or the Secretary.

### 6.4 Surplus property on winding up

- (a) If, on the winding up or dissolution of the association, any property remains after satisfaction of all its debts and liabilities, and after the application of rule 7, this property must only be given or transferred to an entity that is charitable at law.
- (b) The entity referred to in rule 6.4(a) must be decided by the members of the association by special resolution at or before the time of winding up or dissolution of the association and, if the members cannot decide, by the Supreme Court of NSW.
- (c) The distribution of surplus property must be approved by the Secretary.



## 7 Deductible Gift Recipient status

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### 7.1 Application of this rule

This rule only applies if the association is a deductible gift recipient under ITAA97.

### 7.2 Gift Account

- (a) The association must maintain for its principal purposes a management account (**Gift Account**):
  - (1) to identify and record Gifts and Deductible Contributions;
  - (2) to identify and record any money received by the association because of those Gifts and Deductible Contributions; and
  - (3) that does not record any other money or property.
- (b) Receipts for Gifts or Deductible Contributions must state the:
  - (1) name and ABN of the association;
  - (2) the date and amount (or value, if property) of the Gift or Deductible Contribution;
  - (3) the name of the donor or contributors;
  - (4) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).

### 7.3 Winding up or revocation of deductible gift recipient

- (a) Upon:
  - (1) the winding up of the association; or
  - (2) the association ceasing to be deductible gift recipient under the ITAA 97,whichever is earlier, any surplus funds in the Gift Account must be transferred to an entity:
  - (3) which is charitable at law; and
  - (4) gifts to which are deductible under the ITAA 97 on the basis that it is characterised as a public benevolent institution as described in item 4.1.1 of the table in section 30-45.
- (b) The institution referred to in rule 7.3(a) must be decided by the members of the association by special resolution and, if the members cannot decide, by the Supreme Court of NSW.

## 8 Altering this constitution

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- (a) The association must not pass a special resolution altering this constitution, if, as a result, the association will cease to be a charity.



- (b) This constitution may only be altered, deleted or added to, in accordance with the Associations Act.

## 9 Accountability to members

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### 9.1 Accountability to members

- (a) The association must be accountable to the members within the terms of the law, including, as applicable, the Associations Act, the ACNC Act and this constitution.

### 9.2 Holding and calling general meetings

- (a) The association must in each calendar year convene an annual general meeting of the members within 6 months of the end of the financial year.
- (b) A general meeting (including an annual general meeting or a special general meeting) may only be called:
  - (1) by a resolution of the board; or
  - (2) by a board member under these rules; or
  - (3) as otherwise provided in the Act.

### 9.3 Notice of general meetings

- (a) At least 21 days' notice of every general meeting must be given in any manner authorised by rule 14 to each person who is at the date of the notice:
  - (1) a member entitled to vote;
  - (2) a board member; or
  - (3) the Auditor, if any.
- (b) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting;
  - (2) state the general nature of the business to be transacted at the meeting;
  - (3) state in full any proposed special resolution and state that the resolution is being proposed as a special resolution; and
  - (4) specify the manner and time for the receipt of proxies.
- (c) The non-receipt of notice of a general meeting or proxy form by any person entitled to receive notice of a general meeting does not invalidate any thing done or resolution passed at the general meeting if the non-receipt or failure occurred by accident or error.
- (d) A person's attendance at a general meeting waives any objection to a failure to give notice, or the giving of a defective notice, of the meeting.

### 9.4 Changing, postponing or adjourning general meetings

- (a) The board members may change the venue for, postpone, adjourn or cancel a general meeting if:



- (1) they reasonably consider that the meeting has become unnecessary;
  - (2) the venue would be unreasonable or impractical;
  - (3) a change is necessary in the interests of conducting the meeting efficiently; or
  - (4) a quorum is not present under rule 9.5.
- (b) No business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
  - (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
  - (d) Except as provided by rule 9.4(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **9.5 Quorum at general meetings**

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of at least 10% of members entitled to vote and be present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting the meeting stands adjourned to the day, and at the time and place, that the board decides or, if the board does not make a decision, to the same day in the next week at the same time and place.
- (d) If at the adjourned meeting under rule 9.4(c), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### **9.6 General meetings by technology**

- (a) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the members in person, to constitute a quorum constitutes a meeting of the members, provided each member can clearly and simultaneously communicate with each other.
- (b) All the provisions in these rules relating to meetings of the members apply, so far as they can and with any necessary changes, to meetings of the members by telephone or other electronic means.
- (c) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

### **9.7 Chairperson of general meetings**

- (a) The chairperson of the board must preside as chairperson at a general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.



- (b) If there is no chairperson of the board or both the conditions in rule 9.7(a) have not been met, the members present must elect another chairperson of the meeting.
- (c) A chairperson elected under rule 9.7(b) must be:
  - (1) another board member who is present and willing to act; or
  - (2) if no other board member present at the meeting is willing to act, a member who is present and willing to act.
- (d) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (e) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.

## 9.8 Decisions of the members

- (a) Subject to these rules, and to any rights or restrictions attached to any class of membership, every member has one vote.
- (b) The board may decide the manner voting is held at a meeting or, where a meeting is not required, by postal, electronic or any other means of voting.
- (c) Unless otherwise decided by the board, each member entitled to vote at a meeting of members may vote:
  - (1) in person, or where a member is a body corporate, by its representatives;
  - (2) by proxy;
  - (3) by written vote.
- (d) A proxy or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in her or his own right.
- (e) An objection to the qualification of a person to vote at a general meeting must be referred to the chairperson of the meeting, whose decision is final. A vote not disallowed by the chairperson of a meeting is valid for all purposes.
- (f) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members.

## 9.9 Voting by show of hands or ballot

- (a) A resolution put to the vote of a general meeting must be decided as the chairperson determines unless, before the vote is taken or before or immediately after the declaration of the result of the vote, a ballot (poll) is demanded by:
  - (1) the chairperson of the meeting; or
  - (2) 10% of members present.



- (b) A demand for a ballot does not prevent a general meeting continuing for the transaction of any business except the question on which the ballot has been demanded.
- (c) Unless a ballot is duly demanded, a declaration by the chairperson of a general meeting that a resolution has been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the association, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.
- (d) If a ballot is duly demanded at a general meeting, it must be taken in such manner and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the ballot is the resolution of the meeting at which the ballot was demanded.
- (e) A ballot demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (f) The demand for a ballot may be withdrawn.
- (g) A resolution of the association may be conducted by electronic ballot. Schedule 3 of the Regulation sets out how electronic ballots must be conducted.

### **9.10 Voting by proxy or representative**

- (a) A member may appoint a proxy by written notice to the association, and an incorporated member (a body corporate) may appoint a proxy or a representative, to attend a meeting and vote on behalf of the member. The proxy does not need to be a member of the association.
- (b) Unless otherwise provided in the written appointment, the appointment of a proxy or representative will give the proxy or representative the power:
  - (1) to vote on any amendment to the proposed resolutions and on any motion that the proposed resolutions not be put to the meeting or any similar motion;
  - (2) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
  - (3) to ask questions and other customary actions at a meeting.
- (c) An instrument appointing a proxy or representative may direct the manner in which the proxy or representative is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or representative is not entitled to vote on the proposed resolution except as directed in the instrument.
- (d) The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution in person or by direct vote, the person acting as proxy for the appointer is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

### **9.11 Direct voting**

- (a) The board may decide that, at any general meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' is a vote submitted by a member by giving notice to the association for or against the identified resolution.
- (b) The board may decide the procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting.



- (c) A person who has cast a direct vote is entitled to attend a meeting. If a member attempts to cast more than one vote on a particular resolution, the vote cast in person prevails over the direct vote.
- (d) The chairperson must ensure that a certificate, signed by the Public Officer, of any written votes received is available at the meeting ahead of any vote taken.

## 9.12 Written resolutions of members

- (a) A members' resolution may be passed without a meeting (unless a meeting is required under the Act or for passing a special resolution). Such a resolution is passed if all the members entitled to vote sign or agree in writing to the resolution. The resolution is taken to be passed on the date the last member signs or agrees to the resolution.

# 10 Board members

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## 10.1 Composition of board

- (a) The minimum number of board members is 5. The maximum number of board members is to be fixed by the board members, but may not be more than 9. The board members must not determine a maximum which is less than the number of board members in office at the time the determination takes effect.
- (b) The board members may appoint any individual as a board member, either to fill a casual vacancy or as an addition to the existing board members, provided:
  - (1) the number of board members does not exceed the maximum number fixed under rule 10.1(a);
  - (2) before appointing the board member, that individual signs a consent to act as a board member;
  - (3) the individual is not disqualified from managing a corporation under the *Corporations Act 2001* (Cth) nor from being a responsible entity under the ACNC Act.

## 10.2 Retirement of board members by rotation

- (a) A board member appointed by the board members under rule 10.1(b) holds office only until the conclusion of the next annual general meeting following her or his appointment.
- (b) At every annual general meeting if the number of board members (after excluding any board members appointed by the board members under rule 10.1(b) and standing for election):
  - (1) is 5 or less, then at least 2 of the remaining board members must retire from office; or
  - (2) if the number is more than 5, at least one third of those board members (to the nearest whole number) must retire from office.
- (c) No board member may hold office without re-election beyond the third annual general meeting following the meeting at which the board member was last elected or re-elected.



- (d) The board members to retire under rule 10.2(b) are those board members who wish to retire and not offer themselves for re-election, those board members required to retire under rule 10.2(c) and, so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment. As between board members who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be decided by lot.
- (e) The board members to retire under rule 10.2(b) (both as to number and identity) is decided having regard to the composition of the board at the date of the notice calling the annual general meeting. A board member is not required to retire and is not relieved from retiring because of a change in the number or identity of the board members after the date of the notice but before the meeting closes.
- (f) A board member retiring from office is eligible for re-election subject to a maximum term of 9 years, unless the maximum term is varied for a particular board member by the board members. As at the date of adoption of this constitution, the terms of the following board members are deemed to be:
  - (1) Graham Hawkes and Greg Killeen: 8 years, so may serve for a maximum of 1 further year;
  - (2) Beverley Martin: 7 years, so may serve for a maximum of 2 further years;
  - (3) Denise Wasley: 4 years, so may serve for a maximum of 5 further years; and
  - (4) Jocelyn Bell and Ian Grey: 3 years, so may serve for a maximum of 6 further years.
- (g) The retirement of a board member from office and the re-election of the board member or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.

### **10.3 Nomination of board members**

- (a) Nominations of candidates for election as board members will be called for at least 45 days prior to the annual general meeting of the association at which elections will be held unless the board members agree to accept nominations after this time.
- (b) The nominations must be:
  - (1) made in writing, signed by one member other than the candidate;
  - (2) accompanied by a short biographical statement and the written consent of the candidate (which may be endorsed on the form of nomination);
  - (3) delivered to the secretary before the date notified.

### **10.4 Register of board members**

- (a) The association must keep a register of board members, containing the following information:
  - (1) the board member's name, date of birth and residential address;
  - (2) the date on which the board member takes office; and



- (3) the date on which the board member vacates office.
- (b) The register of board members must be kept in NSW at the main premises of the association, or if the association has no premises, at the association's registered address.
- (c) Any change in the board's membership must be recorded in the register within one month after the change occurs.
- (d) The register must, at all reasonable hours, be kept available for inspection, free of charge, by any person.

## 10.5 Board positions

- (a) The board members may elect a chairperson, a deputy chairperson, a treasurer, or other positions as and when the board members decide and may decide the period for which that board member is to hold that position.
- (b) The Public Officer must be appointed in accordance with rule 11 and need not be a member of the board.

## 10.6 Removal of board members

- (a) Subject to this rule, the members may, by ordinary resolution passed at a general meeting, remove any board member.
- (b) Any request by the members for a general meeting to consider a resolution to remove a board member must be made in writing by members representing at least 5% of all members to the Public Officer and must outline the reasons for the request. A contact member must be nominated in the request together with contact details.
- (c) The board must hold a general meeting to consider the resolution within 4 months of the receipt of the request.
- (d) The board member who is the subject of a proposed special resolution under rule 10.6(a) must not take part in the board considerations referred to in rule 10.6(c) and must be given at least 6 weeks' notice of a general meeting. The board member may make a representation in writing to the chairperson (not exceeding a reasonable length) and request that the representation be notified to the members and the chairperson must send a copy of the representation to each member if received at least 28 days before the general meeting and the board member may require that it be read out at the general meeting.

## 10.7 Vacation of office

The office of a board member becomes vacant if the board member:

- (a) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Cth);
- (b) is found guilty of or convicted of an indictable offence punishable by imprisonment, whether or not a term of imprisonment is imposed;
- (c) becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) is disqualified from managing a corporation, within the meaning of the *Corporations Act 2001*;



- (e) is disqualified from being a responsible entity within the meaning of the ACNC Act;
- (f) is removed from office by special resolution of the members in accordance with rule 10.4;
- (g) fails to attend meetings of the board for at least 3 consecutive meetings or at least 4 meetings over a period of 12 months without leave of absence, unless the board members subsequently decide to grant a leave of absence;
- (h) resigns by written notice to the association.

## 10.8 Board members' interests

- (a) A board member who has a perceived or actual (direct or indirect) conflict of interest in a matter being considered by the board must, as soon as he or she becomes aware of her or his interest, disclose to the board members the nature and extent of her or his interest and the relation of the interest to the activities of the association.
- (b) A disclosure by a board member at a board meeting that the board member:
  - (1) is a member, or is in the employment, of a specified company or other body; or
  - (2) is a partner, or is in the employment, of a specified person; or
  - (3) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under rule 10.8(a).
- (c) Particulars of any disclosure made under sections 10.8(a) and 10.8(a) must be recorded by the board in the minutes of the meetings at which the disclosure was made. This may be a standing notice of disclosure.
- (d) A board member who has a perceived or actual (direct or indirect) conflict of interest in a contract, or proposed contract, with the association, or who has a perceived or actual material conflict of interest in a matter being considered by the board members, must not:
  - (1) be present while the matter is being considered; or
  - (2) take part in any decision of the board in relation to the matter; or
  - (3) vote on the matter.
- (e) A contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the board member and the association and the board member is not liable to account for profits derived from the contract, provided rules 10.8(a) and (d) have been complied with (if applicable) by the board member.
- (f) If there are not enough board members to form a quorum to consider a matter due to rule 10.8(d), any board member (including a board member with a perceived or actual (direct or indirect) conflict of interest) may call a general meeting to consider the matter.
- (g) The board members may make regulations or adopt a policy dealing with a conflict of interest, including requiring the disclosure of interests that a board member, and any person considered by the board members as related to or



associated with the board member, may have, or may be perceived to have, in any matter concerning or which may affect the association, in any way.

### **10.9 Use of information or position**

- (a) A board member must not:
  - (1) while a board member; and
  - (2) after ceasing to be a board member, knowingly or recklessly make improper use of information acquired by virtue of her or his position in the association so as to:
    - (3) gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person; or
    - (4) cause a detriment to the association.
- (b) A board member must not knowingly or recklessly make improper use of her or his position in the association so as to:
  - (1) gain, directly or indirectly, any pecuniary benefit or material advantage for himself or herself or any other person; or
  - (2) cause detriment to the association.

### **10.10 Powers and duties of board members**

- (a) The board members have the duties set out in the Associations Act and in the regulations of the ACNC Act.
- (b) The board members are responsible for managing the association's affairs and carrying out the purposes of the association in good faith and subject to the Associations Act, ACNC Act and this constitution. The board members may exercise, to the exclusion of the association in general meeting, all the association's powers which are not required, by the Associations Act or by this constitution, to be exercised by the association in general meeting.
- (c) The board members may:
  - (1) appoint or employ any person and delegate the powers, discretions and duties vested in or exercisable by the board members, on the terms the board members decide;
  - (2) subject to any contract between the association and the relevant person, remove or dismiss the person at any time, with or without cause.

### **10.11 Proceedings of the board**

- (a) The board members may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The simultaneous linking together by telephone or other electronic means of a sufficient number of the board members to constitute a quorum constitutes a meeting of the board members. All the provisions in these rules relating to meetings of the board members apply, so far as they can and with any necessary changes, to meetings of the board members by telephone or other electronic means.



- (c) A board member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the board members involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs as a result of which one or more board members cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of board members remains present, continue with the meeting.

### **10.12 Convening board meetings**

- (a) A board member may convene a meeting of the board members whenever he or she thinks a meeting is reasonably necessary.
- (b) A Public Officer must, on the requisition of a board member, convene a meeting of the board members.

### **10.13 Notice of board meetings**

- (a) Subject to this constitution, notice of a meeting of the board must be given to each person who is at the time of giving the notice a board member, except a board member on leave of absence approved by the board members.
- (b) A notice of a board meeting:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting; and
  - (4) may be given in any manner authorised by rule 14.2.
- (c) A board member may waive the requirement of notice of a meeting of board members by notifying the association to that effect in person or in any manner authorised by rule 14.3.
- (d) The non-receipt of notice of a meeting of board members by, or a failure to give notice of a meeting of board members to, a board member does not invalidate any thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) the board member has waived or waives notice of that meeting under rule 10.14(c) before or after the meeting;
  - (3) the board member has notified or notifies the secretary or chairperson of her or his agreement to that thing or resolution personally or in any manner authorised by rule 14.3; or
  - (4) the board member attended the meeting.
- (e) Attendance by a person at a meeting of board members waives any objection which that person may have to a failure to give notice of the meeting.

### **10.14 Quorum at board meetings**

- (a) No business may be transacted at a board meeting unless a quorum of board members is present at the time the business is dealt with.



- (b) A quorum consists of 4 board members.
- (c) If the number of board members in office at any time is not sufficient to constitute a quorum, or is less than the minimum number of board members fixed under these rules, the remaining board members must act as soon as possible to appoint additional board members, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### **10.15 Chairperson**

- (a) The chairperson must preside as chairperson at each board meeting if present within 10 minutes after the time appointed for the meeting and willing to act. If the chairperson is not present within 10 minutes after the time appointed for the meeting or is not willing to act, the deputy chairperson must preside as chairperson at the meeting (if present within 10 minutes after the time appointed for the meeting and willing to act).
- (b) If there is no chairperson or the conditions in rule 10.15(a) have not been met, the board members present must elect one of the board members as chairperson of the meeting.

### **10.16 Decisions of board members**

- (a) A meeting of board members at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the board members under this constitution.
- (b) Questions arising at a meeting of board members must be decided by a majority of votes cast by the board members present. Such a decision is for all purposes a decision of the board members.
- (c) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.

### **10.17 Written resolutions of board members**

- (a) A resolution is taken to have been passed by a meeting of board members if:
  - (1) all of the board members (other than any board member on leave of absence approved by the board members, any board member who disqualifies himself or herself from considering the resolution in question and any board member who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
  - (2) the board members who sign or consent to the resolution would have constituted a quorum at a meeting of board members held to consider that resolution.
- (b) A board member may consent to a resolution by:
  - (1) signing the document containing the resolution (or a copy of that document);
  - (2) giving to the association at its registered address a written notice addressed to the secretary or to the chairperson signifying assent to



the resolution and either setting out its terms or otherwise clearly identifying them; or

- (3) telephoning the secretary or the chairperson and signifying assent to the resolution and clearly identifying its terms.

## 10.18 Advisory councils

The board may establish one or more advisory councils. If so established, the composition, duties and responsibilities of any such advisory council will be set out in a policy, charter or resolution adopted by the board members.

## 10.19 Committees of the board

- (a) The board members may delegate any of their powers to one or more committees consisting of the number of board members and other individuals they think fit.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the board.
- (c) The provisions of these rules that apply to meetings and resolutions of board members apply, so far as they can and with any necessary changes, to meetings and resolutions of any committee.

## 10.20 Validity of acts

An act done by:

- (a) a person acting as a board member;
- (b) a meeting of board members; or
- (c) a committee under rule 10.19,

is not invalidated merely because of one of the following circumstances, if that circumstance was not known by the person, the board members or the committee (as applicable) when the act was done:

- (d) a defect in the appointment of the person as a board member;
- (e) the person being disqualified to be a board member or having vacated office; or
- (f) the person not being entitled to vote.

# 11 Public Officer

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## 11.1 Appointment

- (a) The board members must appoint a Public Officer to hold the position subject to the Act and carry out the duties provided in the Act and any additional duties as decided by the board members.
- (b) Before being appointed, the Public Officer must:
  - (1) consent to the appointment;
  - (2) be at least 18 years old; and
  - (3) be someone who ordinarily resides in NSW.



- (c) The Public Officer may hold any other position or office in the association but is not required to be a board member.
- (d) Rule 10.9 relating to use of information or position applies to the Public Officer as though he or she is a board member.
- (e) The Public Officer's acts are valid despite any defect in her or his appointment.
- (f) Within 28 days after taking office as Public Officer, a person must notify the Secretary in the approved form.
- (g) The Public Officer must notify the Secretary within 28 days if there is any change in the address of the Public Officer.

## 11.2 Vacation in office

- (a) The office of a Public Officer becomes vacant if the Public Officer:
  - (1) dies;
  - (2) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* (Cth);
  - (3) is found guilty of or convicted of an indictable offence punishable by imprisonment, whether or not a term of imprisonment is imposed;
  - (4) becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
  - (5) is removed from office by resolution of the board members;
  - (6) resigns by written notice to the Association; or
  - (7) ceases to ordinarily reside in NSW.
- (b) Within 14 days after vacating office, a former Public Officer of an association must ensure that all documents in her or his possession that belong to the association are delivered to a board member of the association.
- (c) The board members must appoint a new Public Officer within 28 days of the office becoming vacant and provide notice as required under the Act.

## 12 Indemnity and insurance

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### 12.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 12 apply to Indemnified Officers.

### 12.2 Indemnity

- (a) The association must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an office holder of the association.
- (b) This indemnity:
  - (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an office holder of the association; and



- (2) operates only to the extent that the loss or liability in question is not covered by insurance.

### **12.3 Insurance**

The association may, to the extent permitted by law, purchase and maintain insurance, or pay or agree to pay a premium for insurance, for any Indemnified Officer against any liability incurred by the person as an office holder of the association where the board considers it appropriate to do so.

### **12.4 Savings**

Nothing in this rule 12:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this indemnity or insurance; or
- (b) limits the capacity of the association to indemnify or provide or pay for insurance for any person to whom this rule 12 does not apply.

## **13 Financial records**

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### **13.1 Keep financial records**

- (a) The board members must keep financial records that:
  - (1) correctly record and explain the association's transactions and financial position and performance; and
  - (2) enable true and fair financial statements to be prepared as required by the Act or any other law.
- (b) The records must be retained for at least 7 years.

### **13.2 Tier 1 or Tier 2 association**

- (a) Each year the board must determine whether the association is a tier one or tier two association in accordance with the Associations Act and comply with the requirements of reporting, review and audit applicable to that tier as set out in the Associations Act.
- (b) At the time of adoption of this constitution:
  - (1) An association is Tier 1 if:
    - (A) its total revenue exceeds \$250,000; or
    - (B) its current assets (other than real property and assets capable of depreciation) are valued at over \$500,000, during the previous Financial Year.
- (c) All associations that are not Tier 1, are a Tier 2 association.
- (d) Despite rule 13.2(b), the Secretary may declare an association not to be a Tier 1 association.



## 14 Notices

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### 14.1 Notices by the association to members

The association may give notices, including a notice of general meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the electronic address (if any) nominated by the member.

### 14.2 Notices by the association to the board members

A notice may be given by the association to any board member by:

- (a) serving it personally at the board member's usual residential or business address;
- (b) sending it by post to the board member's usual residential or business address; or
- (c) by electronic means to such electronic address as the board member has supplied to the association for giving notices.

### 14.3 Notices by member or board member to the association

Subject to this constitution, a notice may be given by a member or board member to the association by:

- (a) serving it on the association at the registered address of the association;
- (b) sending it by post in a prepaid envelope to the registered address of the association; or
- (c) by electronic means to the principal electronic address of the association.

### 14.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected on the day that is give Business Days after the date it was posted.
- (b) Where a notice is sent by electronic means, the notice is taken as served at the time the email or electronic transmission is sent.
- (c) If service under rule 14.4(b) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following Business Day.

### 14.5 Other communications and documents

Rules 14.1 to 14.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

### 14.6 Notices in writing

A reference in these rules to a written notice includes a notice given by fax or electronic transmission or any other form of written communication.



## 15 Source and management of funds

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- (a) The funds of the association are to be derived from fees, subscriptions, gifts, sponsorships, donations, government grants, fundraising activities and such other sources as the board determines.
- (b) The funds must be managed as decided by the board members.
- (c) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed:
  - (1) as the board members decide; or
  - (2) failing a decision, by any 2 board members.

## 16 Records

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### 16.1 Custody of records

- (a) The board or its delegate must keep in its or their custody, or under its or their control, all records, books, documents and securities of the association.
- (b) The records of the association, as described in rule 16.1(a), must be kept in NSW at the main premises or, if the association has no premises, at the registered address of the association.

### 16.2 Minutes of meetings and minutes of resolutions

- (a) The board members must ensure accurate minutes are recorded in books kept for the purpose of:
  - (1) proceedings of general meetings, of board meetings and of committees of the board; and
  - (2) resolutions put to members, board members and committee members.
- (b) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting as an accurate record, after the board concurs the minutes are an accurate record.
- (c) The minute book must be open at all reasonable hours to inspection by any member of the association on payment of the fee determined by the board (but not exceeding the maximum fee prescribed by the Regulations).
- (d) The minute book must be kept at the same address as the register of board members being in NSW at the main premises or, if the association has no premises, at the registered address of the association.

### 16.3 Inspection of records

- (a) The documents associated with incorporation, this constitution, the trust deed of any trust of which the association is a trustee, and the minutes of general meetings, including accounting records and financial statements submitted to that general meeting, must be made available for inspection by any member who gives the chairperson, the secretary or delegate for this purpose, reasonable notice that the member wishes to inspect them.



- (b) The board must give a member a copy of anything referred to in Rule 16.3(a) within 14 days of a written request from a member and payment of any reasonable fee set by the board members.
- (c) A member (other than a board member) may apply in writing to the board to have access to:
  - (1) minutes of board meetings or meetings of committees;
  - (2) any resolutions of the board or any committee;
  - (3) records, books, relevant documents or securities of the association.
- (d) The application must state the member's purpose of the access and specify how the member will use the information.
- (e) The board must review the application at the board meeting following the receipt of the application, or if that is not practicable, at the next following board meeting. The board may request further information or written undertakings from the member as to the use of the information. The board may:
  - (1) agree to the application, subject to the association's legal and other duties (including privacy, commercial confidentiality, governance) on such terms and conditions as it considers necessary, including setting access and time limits to control any disruption or inconvenience to management or volunteer time, and may require the member to enter a confidentiality deed or deed restricting the use and disclosure, and any other conditions the board considers necessary or desirable; or
  - (2) refuse the application in its absolute discretion without the need to provide reasons, if it considers it may not be in the interests of the association, or any of the other entities referred to in the relevant documents, to allow the member access.

#### **16.4 Returning documents of the association**

Any person who has possession or control of documents that belong to the association are required to return the documents to the Public Officer within 28 days after the person ceases to be a member, or ceases to hold the position or role by virtue of which he or she had possession or control of the documents.

## **17 Common seal**

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There is no common seal. Contracts and documents of the association must be signed:

- (a) as authorised by the board members; or
- (b) by any 2 board members; or
- (c) by a board member and the Public Officer.

## 18 Definitions and interpretation

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### 18.1 Definitions

The meanings of the terms used in these rules are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ACNC Act</b>	the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
<b>Associations Act</b>	the <i>Associations Incorporation Act 2009</i> (NSW).
<b>Auditor</b>	the auditor of the association for the purposes of audit or review under the Associations Act.
<b>board</b>	the committee of management of the association.
<b>Business Day</b>	Monday to Friday inclusive, excluding New Years' Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.
<b>Commissioner</b>	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97
<b>Deductible Contribution</b>	a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the principal purpose of the association.
<b>Financial Year</b>	period of 12 months ending on 30 June.
<b>Gift</b>	a contribution of money or property as described in item 1 of the table in section 30-15 of the ITAA 97.
<b>Indemnified Officer</b>	<ol style="list-style-type: none"> <li>1 each person who is or has been a board member or Secretary of the association; and</li> <li>2 an office holder within the meaning of the Associations Act; and</li> <li>3 any former officer holder as the board members in each case decide.</li> </ol>



<b>Term</b>	<b>Meaning</b>
<b>ITAA 97</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Secretary</b>	<ol style="list-style-type: none"><li>1 the Commissioner for Fair Trading, Department of Finance, Services and Innovation; or</li><li>2 if there is no such position in the Department, the Secretary of the Department.</li></ol>
<b>NSW</b>	New South Wales, Australia
<b>Public Officer</b>	the person who is appointed as the association's Public Officer, and, until he or she is replaced by a person so appointed, includes the person who is nominated as the association's Public Officer in the association's application for registration.
<b>Regulations</b>	Associations Incorporation Regulation 2016 (NSW)

## 18.2 Interpretation

In these rules:

- (a) references to notices include formal notices of meeting and all documents and other communications from the association to its member;
- (b) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative either at the meeting or a participant by using technology as permitted under these rules;
- (d) a reference to writing and written includes printing, lithography and other ways of representing or reproducing words in a visible form; and
- (e) the singular (including defined terms) includes the plural and the plural includes the singular.

## 18.3 Headings

Headings are used for convenience only and do not affect the interpretation of these rules.



## 19 Application of the Associations Act

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### 19.1 What parts of the Associations Act apply?

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Associations Act has the same meaning as in that provision; and
- (b) subject to rule 19.1(a), an expression in a rule that has a defined meaning for the purposes of the Associations Act has the same meaning as in the Associations Act.

### 19.2 Model constitution

The provisions of these rules displace each provision of the Model constitution, except to the extent required by the Associations Act.