



# Constitution of Australian Evaluation Society Limited

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

Passed by a Resolution of Members, 26 July 2023

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## A. Introduction

### 1. Replaceable Rules Excluded

1.1 The replaceable rules contained in the Act do not apply to the Company.

### 2. Definitions and Interpretation

#### 2.1. Definitions

In this Constitution:

“Act” means the Corporations Act 2001 (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it;

“Association” means the Australasian Evaluation Society Inc. (A0011253D) which was registered on 14 October 1986 and deregistered on 27 Jul 2016.

"board" means the board of directors of the Company;

“business day” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;

“Company” means the Australian Evaluation Society Limited;

“directors” means the directors for the time being of the Company or the directors assembled as a board, including the directors whose titles are President, Vice President and Treasurer;

"financial year" means the year ending 30 June;

"in writing" includes correspondence by postal services, facsimile or email;

“Maximum Continuous Period” means the term limit for Directors set out in clause 25.3;

“member” means a member however described, of the Company; in a category as determined by the board and whose annual subscription is paid up;

“ordinary members” include Fellows;

"postal ballot" includes an electronic ballot paper that is sent via email;

“secretary” means the person holding office under this Constitution as secretary of the Company or, if no such person holds that office, the public officer of the Company, as defined in the relevant legislation;

"region" means any geographic area recognised by the board as having sufficient members to enable the furtherance of the society's objects within the States and Territories of Australia;

#### 2.2 Interpretation

##### 2.2.1 Reference to:

- (a) one gender includes the others;
- (b) the singular includes the plural and the plural includes the singular; and
- (c) a person includes a body corporate.

- 2.2.2 Except so far as the contrary intention appears in this Constitution:
- (a) an expression has in this Constitution the same meaning as in the Act; and
  - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- 2.2.3 "Including" and similar expressions are not words of limitation.
- 2.2.4 Headings and any table of contents or index are for convenience only and do not form part of this Constitution or affect its interpretation.

## Preamble

*The Australian Evaluation Society (AES) began in 1987 as a professional body to provide services to members. After it moved its office from the ACT to Victoria in 2011, the AES was required to change its registration. The AES changed from an association registered in the ACT to a Company Limited by Guarantee.*

*The AES aims to be inclusive of the diverse communities that make up its membership. It aims to be inclusive of members' nations, backgrounds, genders and abilities. One way that this inclusiveness is implemented is that the AES board at any given time, shall include, to the extent available, representatives of the groups that make up the AES community and have representation from Aboriginal and Torres Strait Islander, and other Indigenous members.*

*The AES recognises the unique position and contribution of Indigenous peoples in Australia, New Zealand and the many nation-states of the wider Australasian-Pacific region. To that end, as a society, and in a spirit of partnership and mutual respect, the AES supports and affirms the rights of Indigenous peoples as outlined United Nations Declaration on the Rights of Indigenous Peoples.*

## 3. Objects

Within the States and Territories of Australia:

- Establish and promote ethics and standards in evaluation practice;
- Encourage advances in the theory and practice of evaluation;
- Provide education and training related to evaluation;
- Provide forums for networking, professional development and the discussion of ideas;
- Increase understanding of evaluation and advocate for quality evaluation;
- Be inclusive of indigenous and all cultural perspectives;
- Have governance systems that reflect and incorporate best practice;
- Provide a forum that allows the diverse voices of the community to be heard. The voices to include those who commission the evaluations, those who carry them out and the evaluands;
- Undertake other activities consistent with the objects; and
- Take over the funds and other assets and liabilities of the Association.

## 4. Powers

- 4.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 4.2 Despite Rule 4.1, the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company.

## 5. Application of Income and Property

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company and all expenditure must be in accordance with policies and procedures laid down by the board and must be in accordance with all applicable laws of Australia, including, without limitation, any such laws relating to the application of income and property, where the Company has a tax exempt or equivalent status.

## 6. No Distribution to Members

- 6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company.
- 6.2 Provided they are made in accordance with policies and procedures laid down by the board, Rule 6.1 does not prevent:
  - 6.2.1 the payment in good faith of remuneration to any officer, servant or member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
  - 6.2.2 the payment of interest at a rate not exceeding 12% per annum on money borrowed from any member of the Company;
  - 6.2.3 the payment of reasonable and proper rent by the Company to a member of the Company for premises leased by the member to the Company;
  - 6.2.4 the reimbursement of expenses properly incurred by any member on behalf of the Company; or
  - 6.2.5 tokens of appreciation being given to speakers at seminars or workshop presenters

## 7. Limited Liability

- 7.1 The liability of the members is limited.

## 8. Guarantee

- 8.1 Every member of the Company undertakes to contribute an amount not exceeding \$1.00 to the property of the Company in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required for payment
  - 8.1.1 of the debts and liabilities of the Company (contracted before the member ceases to be a member);
  - 8.1.2 of the costs, charges and expenses of winding up; and
  - 8.1.3 for the adjustment of the rights of the contributories among themselves.

## B. Membership

### 9. Number of Members

9.1 The number of members for which the Company proposes to be registered is unlimited.

### 10. Membership Upon Registration of Company

10.1 The persons who register the Company and such other persons as the board may admit to membership in accordance with this Constitution shall be members of the Company.

10.2 If the funds and assets of the Association become the absolute property of the Company after registration of the Company every person who:

10.2.1 is a member of the Association at the date of registration; or

10.2.2 within two months after registration agrees in writing to become a member of the Company must be admitted by the board as a member of the Company in the nearest equivalent category of membership to that held by the member in the Association.

### 11. Categories of Membership

11.1 The categories of membership are:

11.1.1 ordinary members;

11.1.2 Fellows;

11.1.3 organisational members; and

11.1.4 any other category as may be created from time to time by the board

11.2 Categories or sub-categories of members and the qualifications for membership may be removed or created from time to time by the board.

### 12. Application for membership

12.1 An application by a person or organisation for membership of the Company-

12.1.1 must be made in writing or through the Company website in the form approved by the board;

12.1.2 be lodged with the secretary of the Company; and

12.1.3 be accompanied by the membership fees in the amount set by the board; and

12.1.4 be accompanied by any other documents or evidence as to qualification for the type of membership applied for which the board requires.

### 13. Qualification and admission to membership

13.1 A person is qualified to be an ordinary member if—

13.1.1 he or she supports the objects of the Company; and



- 13.1.2 agrees to abide by the ethics and guidelines, as amended from time to time; and any other standard the board see fit, such as, without limitation, any governance, environment, dispute resolution, or other standards, guidelines or procedures adopted by the board from time to time.
- 13.2 An organisation is qualified to be a member if:
  - 13.2.1 it supports the objects of the Company;
  - 13.2.2 agrees to abide by the ethics and guidelines for the Ethical Conduct of Evaluations (as amended from time to time); and
  - 13.2.3 otherwise satisfies the criteria for membership of an organisation as determined by the board.
- 13.3 The membership fees, the form of application and the process for approval of an application for membership shall be determined by the board.

## 14. Notification by Members

- 14.1 Each member must promptly notify the secretary in writing of any change in their qualification to be a member of the Company.
- 14.2 Each Organisational Member must promptly notify the secretary in writing of any change in the person nominated as its nominated representative.
- 14.3 A person nominated as the new representative of an organisational member must consent to the nomination in writing.

## 15. Membership transferable

- 15.1 A membership of the Company can be transferred from a member to another person.
- 15.2 Using the form approved by the board, the member nominates the proposed transferee (who signs the form to indicate their acceptance of the nomination).
- 15.3 As soon as is practicable after receiving an application for transfer of membership, the secretary must refer the application to the board which must decide whether to approve or to reject the transfer.
- 15.4 If the transfer of membership is accepted by the board or its delegate:
  - 15.4.1 the secretary shall as soon as practicable notify the person to whom membership is to be transferred of that approval; and
  - 15.4.2 the new member then enjoys the same rights, privileges and obligations that the outgoing member enjoyed.
- 15.5 The board may in their discretion and without assigning any reason decline to accept the transfer of membership.
- 15.6 If the board rejects the transfer of membership the member ceasing their membership with the Company is not entitled to a refund of any membership fees and is deemed to have resigned from membership in accordance with Rule 19.
- 15.7 Rules 15.4 – 15.6 above apply all necessary changes to an organisational membership.

## 16. Register of members

- 16.1 A register of members of the Company must be kept in accordance with the Act.
- 16.2 The following must be entered in the register of members in respect of each member:
- 16.2.1 the full name of the member;
  - 16.2.2 the residential address, facsimile number and electronic mail address, if any, of the member;
  - 16.2.3 the category of membership;
  - 16.2.4 the date of admission to and cessation of membership;
  - 16.2.5 the date of last payment of the member's annual subscription;
  - 16.2.6 in the case of an Organisational Member, the full name, address, facsimile number and electronic mail address, if any, of its nominated representative; and
  - 16.2.7 such other information as the board requires.
- 16.3 Each member and nominated representative must notify the secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within 1 month after the change.

## 17. Fees

- 17.1 Any fees payable by members must be the amount determined by the board.
- 17.2 The fees are payable at such times and in such manner as the board may from time to time determine.

## 18. Resignation of membership

- 18.1 A member is not entitled to resign from membership of the Company except in accordance with this rule.
- 18.2 A member who has paid all amounts payable by the member to the Company may resign from membership of the Company by first giving notice (of not less than 1 month or, if the board has determined a shorter period, that shorter period) in writing to the secretary of the member's intention to resign and, at the end of the period of notice, the member ceases to be a member.

## 19. Cessation of membership

- 19.1 A member ceases to be a member of the Company if the person or organisation:
- 19.1.1 dies; or, in the case of an organisation, is wound up or is otherwise dissolved or deregistered;
  - 19.1.2 resigns from membership of the Company; or
  - 19.1.3 is expelled from the Company.
- 19.2 A member ceases to be a member of the Company if that person or organisation:
- 19.2.1 fails to pay their annual fees for a period of 2 calendar months after they become due;

- 19.2.2 the Company has given the member a notice requiring such payment within 14 days; and
- 19.2.3 at the expiration of the period of 14 days the fees remain unpaid.
- 19.3 A member who pays all arrears of fees may have his, her or its membership reinstated at the discretion of the board. Unless members have continuous membership they are not eligible for certain awards and categories of membership, however, the board may exercise its discretion in their favour.

## 20. Disciplining of members

- 20.1 If the board is of the opinion that a member:
  - 20.1.1 has persistently refused or neglected to comply with a provision of this Constitution; or
  - 20.1.2 has persistently and wilfully acted in a manner prejudicial to the interests of the Company or its Code of Ethics; or
  - 20.1.3 or has acted in a manner unbecoming of a member;
    - the board may
      - 20.1.3.1 expel the member from the Company; or
      - 20.1.3.2 suspend the member from the rights and privileges of membership of the Company for a specified period; or
      - 20.1.3.3 censure the member; and/or
      - 20.1.3.4 require the member to take action to remedy the breach, failure or omission by the member.
- 20.2 A resolution of the board under Rule 20.1 is of no effect unless the board, at a meeting held not earlier than 14 days and not later than 28 days after service on the member of a notice under Rule 20.3, confirms the resolution in accordance with this section.
- 20.3 If the board passes a resolution under Rule 20.1 the secretary must, as soon as practicable, serve a written notice on the member:
  - 20.3.1 setting out the allegations against the member, the resolution of the board and the grounds on which it is based; and
  - 20.3.2 stating that the member may address the board at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice; and
  - 20.3.3 stating the date, place and time of that meeting; and
  - 20.3.4 informing the member that the member may do either or both of the following:
    - 20.3.4.1 attend and speak at that meeting;
    - 20.3.4.2 submit to the board at or before the date of that meeting written representations relating to the resolution.
- 20.4 At a meeting of the board mentioned in Rule 20.2, the board must:
  - 20.4.1 give to the member mentioned in subsection Rule 20.1 an opportunity to make oral representations; and
  - 20.4.2 give due consideration to any written representations submitted to the board by that member at or before the meeting; and

- 20.4.3 by resolution decide whether to confirm or to revoke the resolution of the board made under subsection 20.1.
- 20.5 If the board confirms a resolution under Rule 20.4, the secretary must, within 7 days after that confirmation, by written notice inform the member of that confirmation and of the member's right of appeal under Rule 21.
- 20.6 A resolution confirmed by the board under Rule 20.4, does not take effect—
  - 20.6.1 until the end of the period within which the member is entitled to appeal against the resolution if the member does not exercise the right of appeal within that period; or
  - 20.6.2 if within that period the member exercises the right of appeal—unless and until the Company confirms the resolution in accordance with Rule 21.
- 20.7 If any member ceases to be a member under Rule 20.1, the directors may reinstate the member and restore the name of that member to the register of members upon and subject to any terms and conditions they see fit.

## 21. Right of appeal of disciplined member

- 21.1 A member may appeal to the Company in a general meeting against a resolution of the board that is confirmed under Rule 20.1 within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- 21.2 On receipt of a notice under sub-paragraph 1 above, the secretary must notify the board which must call a general meeting of the Company to be held within 21 days after the date when the secretary received the notice or as soon as possible after that date.
- 21.3 At a general meeting of the Company called under sub-paragraph 2 above:
  - 21.3.1 no business other than the question of the appeal may be transacted; and
  - 21.3.2 the board and the member must be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
  - 21.3.3 the members present must vote by secret ballot on the question of whether the resolution made under Rule 20.4 should be confirmed or revoked.
  - 21.3.4 The meeting may by a two thirds majority of those present and voting either confirm or revoke the resolution of the board.

## 22. Effect of Cessation of Membership

- 22.1 If any member ceases to be a member under this Constitution, the member remains liable to pay to the Company any money owing to the Company on any account and for any sum not exceeding \$1 for which the member is liable under Rule 8 of this Constitution.

## C. Appointment of Directors

### 23. Number of directors

- 23.1 The Board will have up to nine Directors comprising:
- 23.1.1 six Directors elected by the Members who will be **Elected Directors**; and
  - 23.1.2 up to three Directors appointed by the Board who will be **Appointed Directors**.
- 23.2 The Company must have at least three Directors.
- 23.3 Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors is reduced to fewer than three Directors, in which case the continuing Directors may act only:
- 23.3.1 to appoint Directors for the purpose of increasing the number of Directors to three or higher;
  - 23.3.2 to convene a General Meeting; or
  - 23.3.3 in an emergency.
- 23.4 The Board will use its best endeavours to ensure that at least two Directors are First Nations people.
- 23.5 A Director is not permitted to appoint an alternate director.

### 24. Eligibility of Directors

- 24.1 A person is eligible for election or appointment as a Director if they:
- 24.1.1 are over the age of 18 years;
  - 24.1.2 give their signed consent to act as a Director;
  - 24.1.3 are not ineligible to be a Director under law, including the Act; and
  - 24.1.4 are not an employee of the Company.
- 24.2 An Elected Director must be a Member or a nominated representative of an organisational member.

### 25. Appointment of Appointed Directors

- 25.1 The Board may appoint up to three Appointed Directors.
- 25.2 An Appointed Director is appointed upon such terms and conditions as the Board determines from time to time.
- 25.3 An Appointed Director will have the experience, perspectives, capabilities or skills that the Board considers desirable.

### 26 Term of office for Directors

- 26.1 The term of office of an Elected Director commences at the conclusion of the Annual General Meeting at which their election is declared or announced and ends at the conclusion of the second following Annual General Meeting.

- 26.2 If eligible, a retiring Elected Director may be re-elected as an Elected Director.
- 26.3 The term of office of an Appointed Director will be for a period of up to two years as determined by the Board.
- 26.4 If eligible, an Appointed Director whose term expires may be re-appointed as an Appointed Director.
- 26.5 The **Maximum Continuous Period** that a Director may serve as a Director is as follows:
  - 26.5.1 an Elected Director may serve up to three (3) consecutive terms; and
  - 26.5.2 no Director may serve more than six (6) consecutive years.
- 26.6 A person who has held office as a Director for the Maximum Continuous Period is eligible for re-election or reappointment as a Director after the expiration of a period 18 months from the date that the person last held office as a Director.
- 26.7 The Maximum Continuous Period does not include any period of a person's appointment to fill a casual vacancy under Rule 26.8.
- 26.8 If a casual vacancy in the position of an Elected Director occurs, the Board may appoint an eligible individual to fill the Elected Director vacancy until the conclusion of the predecessor's term.

## 27. Election of Elected Directors

- 27.1 The Board may make By-laws consistent with the constitution regarding the procedures for the and the nomination process and conduct of elections for Elected Directors.
- 27.2 Prior to an annual general meeting, the Board will give notice to the members of the number of Elected Director vacancies that may be filled and invite nominations for election as Elected Directors.
- 27.3 Nominations of candidates, who must be members or nominated representatives of organisational members, for election as Elected Directors:
  - 27.3.1 must be made in writing, signed by two members of the Company and accompanied by the written consent of the candidate (which may be endorsed on the nomination form); and
  - 27.3.2 must be delivered to the returning officer appointed by the board by such a date as determined by the returning officer.
- 27.4 If there are more candidates for election than there are vacant positions to be filled, then a ballot will be conducted in accordance with the By-laws set by the Board. The timing of the ballot shall be such that the outcome of the election can be declared at the annual general meeting.
- 27.5 If there are the same number or fewer candidates for election than there are vacant positions to be filled then the candidates will be declared elected at the annual general meeting.
- 27.6 Any unfilled positions as a result of an insufficient number of candidates shall be deemed casual vacancies which the Board may fill in accordance with clause 26.8.

## 28. Office Bearers

- 28.1 The Board will elect from amongst the Directors the following Office Bearers, each of whom must be a member or a nominated representative of an organisational member:
- 28.1.1 the President;
  - 28.1.2 the Vice President; and
  - 28.1.3 the Treasurer.
- 28.2 The Board will determine the period for which a Director holds a role as an Office Bearer.
- 28.3 The Office Bearers will have such powers and duties as specified in this constitution, as required by law and as determined by the Board from time to time.
- 28.4 A Director is not to hold a role as an Office Bearer beyond the date of their retirement or removal as a Director.

## 29. Secretary

- 29.1 The secretary will:
- 29.1.1 be appointed by the board;
  - 29.1.2 carry out the duties and responsibilities of secretary as outlined in the Act, this Constitution, and any other legislation or regulation applicable to the Company;
  - 29.1.3 not be a Director; and
  - 29.1.4 hold office on the terms and conditions (including as to remuneration) that the Board determines from time to time.

## D. Powers of Directors

### 30. Validation of Acts of Directors and Secretaries

- 30.1 The acts of a Director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- 30.2 Where a person whose office as Director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated

### 31. General Business Management

- 31.1 The board, subject to the Act, this Constitution, and to any resolution passed by the Company in general meeting:
- 31.1.1 controls and manages the affairs of the Company; and
  - 31.1.2 may exercise all powers and functions that may be exercised by the Company other than those powers and functions that are required by this Constitution to be exercised by the Company in general meeting; and

- 31.1.3 has power to perform all acts and do all things that appear to the board to be necessary or desirable for the proper management of the affairs of the Company.
- 31.2 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the board which would have been valid if that rule or resolution had not been made or passed.
- 31.3 The board may pay all expenses incurred in promoting and forming the Company.

## 32. Borrowing Powers

- 32.1 Without limiting the generality of Rule 31, but subject to Rule 4.2, the board may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

## 33. Appointment of Attorney

- 33.1 The board may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 33.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the board sees fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

## 34. Board to Appoint

- 34.1 The board may appoint any person, not being a director, to the position of chief executive officer for the period and on the terms (including as to remuneration) the board sees fit.

## 35. Not a Member of the board

- 35.1 The chief executive officer is not a member of the board of the Company but may attend meetings of the board at its discretion.

## 36. Powers of chief executive officer

- 36.1 The board may, upon terms and conditions and with any restrictions they see fit, confer on an chief executive officer any of the powers that the board can exercise.

## 37. Withdrawal of Appointment or Powers

- 37.1 The board may revoke or vary:
  - 37.1.1 an appointment; or
  - 37.1.2 any of the powers conferred on an chief executive officer.



## 38. Temporary Appointments

- 38.1 If an chief executive officer becomes incapable of acting in that capacity the board may appoint any other person, not being a director, to act temporarily as chief executive officer.

## 39. Delegation by board to committee

- 39.1 The board may, by instrument in writing, delegate to one or more committees (consisting of the member or members of the board that the board considers appropriate) the exercise of such of the functions of the board as are specified in the instrument, other than:
- 39.1.1 this power of delegation; and
  - 39.1.2 a function which is a function imposed on the board by the Act, or by resolution of the Company in general meeting.
- 39.2 A function, the exercise of which has been delegated to a committee under this Constitution may, while the delegation remains unrevoked, be exercised from time to time by the committee in accordance with the terms of the delegation.
- 39.3 A delegation under this Constitution may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.
- 39.4 Any act or thing done or suffered by a committee acting in the exercise of a delegation under this Constitution has the same force and effect as it would have if it had been done or suffered by the board.
- 39.5 The board may, in writing, revoke wholly or in part any delegation under this section.
- 39.6 A committee may meet and adjourn as it considers appropriate.

## 40. Delegation of powers to a committee

- 40.1 The board may delegate any of their powers to a committee of directors.
- 40.2 A committee must exercise the powers delegated to it in accordance with any directions of the board. The effect of the committee exercising a power in this way is the same as if the board exercised it.
- 40.3 The meetings and proceedings of any committee consisting of two or more directors are governed by the provisions in this Constitution regulating the meetings and proceedings of the directors.
- 40.4 The board may at its discretion set up task forces, advisory committees and other groups to assist with carrying out the work of the Company.

## E. Removal and resignation of directors

### 41. Removal of directors

- 41.1 Subject to the Act the Company may by resolution remove a director from office.
- 41.2 The Company may by ordinary resolution of which special notice has been given remove any director before the expiration of her or his term of office and may by ordinary resolution appoint another person in her or his stead. The person so appointed must hold office until the next Annual General Meeting but must be eligible for re-election in accordance with the rules for election of directors.

### 42. Resignation of director

- 42.1 A director may resign as a director of the Company by giving a written notice to that effect to the Company at its registered office.

### 43. Vacation of Office of director

- 43.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act or this constitution, the office of a director becomes vacant if the director:
- 43.1.1 becomes bankrupt or suspends payment or compounds with his or her creditors;
  - 43.1.2 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;
  - 43.1.3 is absent without the consent of the board from three consecutive meetings;
  - 43.1.4 is an Elected Director and ceases to be a member of the Company or the nominated representative of an organisational member;
  - 43.1.5 becomes prohibited from being a director under or by reason of any order made under the Act;
  - 43.1.6 is removed by resolution in accordance with Rule 41;
  - 43.1.7 resigns from office in accordance with Rule 42; or
  - 43.1.8 dies.

## F. Remuneration of directors

### 44. Remuneration for directors

- 44.1 Any director may receive any remuneration for his or her services in his or her capacity as a director of the Company as authorised by the board from time to time.

### 45. Directors' Expenses

- 45.1 Despite Rule 6.2 the Company may pay the directors' travelling and other expenses that they properly incur:

- 45.1.1 in attending directors' meetings or any meetings of committees of directors;
- 45.1.2 in attending any general meetings of the Company; and 3 in connection with the Company's business.

45.2 The board must approve all payments the Company makes to its directors.

## 46. Financial Benefit

46.1 To the extent, if any, required by the Act, a director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.

## 47. Treasurer

47.1 The treasurer of the Company must—

- 47.1.1 collect and receive all amounts owing to the Company and make all payments authorised by the Company; and
- 47.1.2 keep correct accounts and books showing the financial affairs of the Company with full details of all receipts and expenditure connected with the activities of the Company, as required by any applicable laws.

# G. Indemnity and Insurance

## 48. Meaning of "Officer"

48.1 For the purposes of Rules 49, 50, 51 and 52, officer means a director, a secretary or chief executive officer.

## 49. Indemnity

49.1 To the extent permitted by the Act, the Company indemnifies:

- 49.1.1 every person who is or has been an officer of the Company; and
- 49.1.2 where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

49.2 against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be).

## 50. Insurance

50.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- 50.1.1 conduct involving a wilful breach of duty in relation to the Company; or
- 50.1.2 a contravention of section 182 or 183 of the Act.

50.2 In the case of a director, any premium paid under this rule is not remuneration for the purpose of Rule 44.

## 51. Director Voting on Contract of Insurance

51.1 Despite anything in this Constitution, a director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

## 52. Liability

52.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

## 53. Rights of Inspection

53.1 The board may authorise a member to inspect the books of the Company.

53.2 Unless otherwise provided by law or authorised by the board a member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolution of members passed without meetings.

## 54. Confidential Information

54.1 Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

## 55. Board meetings

55.1 Unless otherwise provided for in these rules or the Act, the directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they see fit.

55.2 The board must meet three times in each calendar year at the place and time that the board may decide.

55.3 Additional meetings of the board may be convened at the request in writing of three members of the board.

## 56. Notice of Meeting

56.1 Reasonable notice of every board meeting must be given to each director except that it is not necessary to give notice of a meeting of the board to any director who:

56.1.1 has been given special leave of absence; or

- 56.1.2 is absent and has not left a means of contact such as by electronic mail, facsimile or telephone at which he or she may be given notice.
- 56.2 Any notice of a meeting of directors may be given in writing, by facsimile, telephone, electronic mail or any other means of communication.
- 56.3 Notice of a meeting given under Rule 56 must specify the general nature of the business to be transacted at the meeting.
- 56.4 At meetings of the board:
  - 56.4.1 the president or in the absence of the president, the vice-president presides; or
  - 56.4.2 if the president and the vice-president are absent—1 of the remaining members of the board may be chosen by the directors present to preside.

## H. Directors' meetings

### 57. Circulating Resolutions

- 57.1 The board may pass a resolution without a board meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left a facsimile number at which he or she may be given notice) sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- 57.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- 57.3 The resolution is passed when the last director signs.
- 57.4 A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this Rule 56 must be treated as a document in writing signed by that director.

### 58. Technology Meeting of directors

- 58.1 A board meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.
- 58.2 If a board meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- 58.3 The following provisions apply to a technology meeting:
  - 58.3.1 each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
  - 58.3.2 at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 58.4 If the secretary is not present at a technology meeting one of the directors present must take minutes of the meeting.

- 58.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 58.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

## 59. Quorum of directors

- 59.1 The quorum for a meeting of the Board shall be the number that is a majority of the Directors currently in office.
- 59.2 No business may be transacted by the board unless a quorum is present and if within half an hour after the time appointed for the meeting a quorum is not present the meeting stands adjourned to a place and time within 2 weeks, time to be decided.
- 59.3 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.

## 60. Voting and decisions

- 60.1 Questions arising at a meeting of the board or of any committee appointed by the board are decided by a majority of the votes of members of the board or committee present at the meeting.
- 60.2 Each member present at a meeting of the board or of any committee appointed by the board (including the person presiding at the meeting) is entitled to 1 vote.
- 60.3 In the event of an equality of votes on any question, the person presiding the Board meeting or committee meeting does not have a casting vote and the motion is recorded as failed.

# I. Meetings of Members

## 61. Circulating resolutions

- 61.1 This Rule 61.1 applies to resolutions which the Act, or this Constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 61.2 The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 61.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- 61.4 The resolution is passed when the last member signs.
- 61.5 If the Company receives by facsimile transmission copy of a document referred to in this Rule 61 it is entitled to assume that the copy is a true copy.

## 62. Calling of general meetings

- 62.1 A general meeting, to be called the annual general meeting, must be held at least once in every financial year in accordance with the Act.
- 62.2 In addition to the annual general meeting the board may at its discretion call a general meeting of the Company.
- 62.3 The board must, on the requisition in writing of not less than 5% of the total number of members, call a general meeting of the Company.
- 62.4 A requisition of members for a general meeting:
- 62.4.1 must state the purpose or purposes of the meeting; and
  - 62.4.2 must be signed by the members making the requisition; and
  - 62.4.3 must be lodged with the Company; and
  - 62.4.4 may consist of several documents in a similar form, each signed by 1 or more of the members making the requisition.
- 62.5 If the board fails to call a general meeting within 1 month after the date when a requisition of members for the meeting is lodged with the secretary, any 1 or more of the members who made the requisition may call a general meeting to be held not later than 3 months after that date.

## J. Notice of General meetings

### 63. Amount of Notice of Meeting

- 63.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

### 64. Persons entitled to notice of general meeting

- 64.1 Written notice of a meeting of the Company's members must be given to:
- 64.1.1 each member entitled to vote at the meeting;
  - 64.1.2 each director; and
  - 64.1.3 the Company's auditor.
- 64.2 No other person is entitled to receive notice of general meetings.

### 65. How notice is given

- 65.1 The Company may give the notice of meeting to a member:
- 65.1.1 personally;
  - 65.1.2 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

- 65.1.3 by sending it to the facsimile number or electronic address (if any) nominated by the member.

## 66. When notice is given

- 66.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 66.2 Except as provided by Rule 65.3, a notice of meeting sent by facsimile, or other electronic means, is taken to be given, if sent before 5 p.m. on a business day at the place of receipt, on the day it is sent, and otherwise on the next business day at the place of receipt.
- 66.3 Service by facsimile or electronic mail is not effective if:
- 66.3.1 in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
  - 66.3.2 in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
  - 66.3.3 in either case the addressee notifies the Company that the notice was not fully received in a legible form within 3 hours after the transmission ends or by 12 noon on the business day on which it would otherwise be treated as given, whichever is later.
- 66.4 A certificate signed by any director, secretary or other officer of the Company that the notice was given in accordance with this Rule 65 is conclusive evidence that the notice was given.

## 67. Period of notice

- 67.1 Subject to the Act and this Constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

## 68. Contents of notice

- 68.1 A notice of a general meeting must:
- 68.1.1 set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used);
  - 68.1.2 state the general nature of the meeting's business;
  - 68.1.3 if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
  - 68.1.4 contain a statement setting out the following information:
    - 68.1.4.1 that the member has a right to appoint a proxy; and
    - 68.1.4.2 that the proxy need not be a member of the Company.

## 69. Notice of adjourned meeting

- 69.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.



## 70. Accidental omission to give notice

- 70.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

## 71. Postponement of General Meeting

- 71.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 71.2 Whenever any meeting is postponed (as distinct from being adjourned under Rule 69 or Rule 75) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

## 72. Technology

- 72.1 The Company may hold a meeting of its members at 2 or more venues (including in 2 or more countries) using any technology that gives the members as a whole a reasonable opportunity to participate, including without limitation by video, conference phone, VOIP or other technology.

## 73. General meetings—procedure and quorum

- 73.1 No item of business may be transacted at a general meeting unless a quorum of members is present during the meeting. 73.2 35 members present in person or by proxy (who are entitled under this Constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- 73.2 In determining whether a quorum is present, individuals attending as proxies or corporate representatives are counted. If an individual is attending both as a member and as a proxy or body corporate representative, the individual is counted only once.
- 73.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- 73.3.1 where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
- 73.3.2 in any other case, the meeting is adjourned to the date, time and place the board specifies and if the board does not specify 1 or more of those things, the meeting is adjourned to:
- 73.3.2.1 if the date is not specified – the same day in the next week;
- 73.3.2.2 if the time is not specified – the same time; and
- 73.3.2.3 if the place is not specified – the same place.
- 73.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved. For the purposes of this resumed meeting a quorum must be 30 members entitled under this Constitution to vote at a general meeting.

## 74. Chair at general meetings

- 74.1 The President, or in the absence of the President, the Vice-president, presides as chair at each general meeting of the Company.
- 74.2 If the President and Vice-President are absent from a general meeting, the members present must elect one of their number to preside at the meeting.

## 75. Adjournment

- 75.1 The person presiding at a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 75.2 If a general meeting is adjourned for 14 days or more, the secretary must give written or oral notice of the adjourned meeting to each member of the Company stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 75.3 Except as provided in Rules 75.1 and 75.2, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

## K. Proxies and Body Corporate Representatives

### 76. Who can appoint a proxy

- 76.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting. That attendance must be in Australia.

### 77. Rights of Proxies

- 77.1 A proxy appointed to attend and vote for a member has the same rights as the member:
  - 77.1.1 to speak at the meeting;
  - 77.1.2 to vote (but only to the extent allowed by the appointment); and
  - 77.1.3 to join in a demand for a poll.
- 77.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- 77.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
- 77.4 A proxy may be revoked at any time by notice in writing to the Company.

## 78. The proxy form

## 79. When a proxy form must be sent to all members

- 79.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
- 79.1.1 if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
  - 79.1.2 otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

## 80. Appointing a Proxy

- 80.1 An appointment of a proxy is valid if it is signed by the member making the appointment and contains the following information:
- 80.1.1 the member's name and address;
  - 80.1.2 the Company's name;
  - 80.1.3 the proxy's name or the name of the office held by the proxy; and
  - 80.1.4 the meetings at which the appointment may be used.
- 80.2 An appointment of a proxy may be a standing one.
- 80.3 An undated appointment is taken to have been dated on the day it is given to the Company.
- 80.4 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
- 80.4.1 the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - 80.4.2 if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
  - 80.4.3 if the proxy is the chair – the proxy must vote on a poll, and must vote that way;
  - 80.4.4 if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way. If a proxy is also a member, this Rule 80 does not affect the way that the person can cast any votes the person holds as a member.
- 80.5 An appointment does not have to be witnessed.
- 80.6 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

## 81. Form of proxy sent out by Company

- 81.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:

- 81.1.1 enable the member to specify the manner in which the proxy must vote in respect of a particular transaction; and
- 81.1.2 leave a blank for the member to fill in the name of the person primarily appointed as proxy.
- 81.2 The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.
- 81.3 Despite Rule 81.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

**Australian Evaluation Society Limited**

I/We, of , being a

member/members of the above named Company, appoint of or, in his or her absence, of as my/our proxy to vote for me/us on my/our behalf at the \*annual general/\*general meeting of the Company to be held on and at any adjournment of that meeting.

† This form is to be used \*in favour of/\*against the resolution.

Signed on

\* Strike out whichever is not desired.

† To be inserted if desired.

## 82. Receipt of Proxy Documents

- 82.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 24 hours before the meeting:
  - 82.1.1 the proxy's appointment; and
  - 82.1.2 if the appointment is signed by the appointor's attorney – the authority under which the appointment was signed or a certified copy of the authority.
- 82.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 82.3 The Company receives an appointment or authority when it is received at any of the following:
  - 82.3.1 the Company's registered office;
  - 82.3.2 a facsimile number at the Company's registered office; or
  - 82.3.3 a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting.

## 83. An ineffective proxy

- 83.1 An appointment of a proxy is ineffective if:
  - 83.1.1 a requirement (if any) in the notice of meeting that:

- 83.1.1.1 the transmission be verified in a way specified in the notice; or
  - 83.1.1.2 the proxy produce the appointment and authority (if any) at the meeting;
- is not complied with.

## 84. Validity of proxy vote

- 84.1 A proxy must be given to a member who is entitled to vote.
- 84.2 A vote cast by a proxy is valid although, before the proxy votes:
  - 84.2.1 the appointing member dies;
  - 84.2.2 the member is mentally incapacitated;
  - 84.2.3 the member revokes the proxy's appointment; or
  - 84.2.4 the member revokes the authority under which the proxy was appointed by a 3rd party;

unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

## 85. Corporate Representative

- 85.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
  - 85.1.1 at meetings of the Company's members;
  - 85.1.2 at meetings of creditors or debenture holders; or
  - 85.1.3 relating to resolutions to be passed without meetings.
- 85.2 The appointment may be a standing one.
- 85.3 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 85.4 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- 85.5 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

## 86. Attorney of a member

- 86.1 An attorney for a member may do whatever the member could do personally as a member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of the authority must be produced to the Company at least 24 hours before the meeting, in the same way as the appointment of a proxy.

## L. Voting at meetings of members

### 87. How vote may be exercised

- 87.1 Subject to Rules 88 and 89 at any general meeting of members, each ordinary member and each life member present has 1 vote on a show of hands and on a poll.
- 87.2 The vote may be exercised in person or by proxy, body corporate representative or attorney.

### 88. Voting disqualification

- 88.1 A member is not entitled to vote at a general meeting if:
- 88.1.1 the annual subscription of the member; or
  - 88.1.2 in the case of a person who is a nominated representative, the annual subscription of the organisational member for which he or she is the nominated representative;
- is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

### 89. Objections to right to vote

- 89.1 A challenge to a right to vote at a meeting of members:
- 89.1.1 may only be made at the meeting; and
  - 89.1.2 must be determined by the chair, whose decision is final.
- 89.2 A vote not disallowed following the challenge is valid for all purposes.

### 90. How voting is carried out

- 90.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.
- 90.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

### 91. Matters on which a poll may be demanded

- 91.1 A poll may be demanded on any resolution.
- 91.2 A demand for a poll may be withdrawn.

### 92. When a poll is effectively demanded

- 92.1 At a meeting of the Company's members, a poll may be demanded by:
- 92.1.1 at least 3 members entitled to vote on the resolution; or
  - 92.1.2 the chair.

92.2 The poll may be demanded:

92.2.1 before a vote is taken;

92.2.2 before the voting results on a show of hands are declared; or

92.2.3 immediately after the voting results on a show of hands are declared.

### 93. When and how polls must be taken

93.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

93.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

93.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

93.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

### 94. Chair's casting vote

94.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.

94.2 The chair has a discretion both as to use of the casting vote and as to the way in which it is used.

### 95. Annual General Meeting—calling of

95.1 The annual general meeting of the Company must, subject to the Act and this Constitution, be called on the date and at the place and time that the board considers appropriate.

### 96. Annual General meeting – business at

96.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

96.1.1 to confirm the minutes of the last annual general meeting and of any general meeting held since that meeting;

96.1.2 the consideration of the annual financial report, directors' report and auditor's report;

96.1.3 to announce members of the board, including office-bearers, by declaring the candidate who has received the most votes for each position from the postal ballot preceding the annual general meeting;

96.1.4 the appointment of the auditor (as in Rule 99); and

96.1.5 the fixing of the auditor's remuneration.

96.2 All other business transacted at an annual general meeting and all other business transacted at any other general meeting is special business.

- 96.3 The business of the annual general meeting also includes any other business which under this Constitution or the Act ought to be transacted at an annual general meeting.
- 96.4 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 96.5 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## 97. Resolutions proposed by members

- 97.1 A member may not at any meeting move any resolution relating to special business unless:
  - 97.1.1 the member has given not less than 30 business days' notice in writing of the member's intention to move an ordinary resolution or 2 months' notice in writing of the member's intention to move a special resolution at the meeting by leaving the notice and a signed copy of the resolution at the registered office of the Company; or
  - 97.1.2 the resolution has previously been approved by the board.
- 97.2 Upon receiving a notice referred to in Rule 65 the secretary must:
  - 97.2.1 if the notice convening the meeting has already been sent, immediately notify the members of the proposed resolution; or
  - 97.2.2 otherwise include notice of the proposed resolution in the notice convening the meeting.

## M. Minutes

### 98. Minutes to be kept

- 98.1 The board must keep minute books in which they record within 1 month:
  - 98.1.1 proceedings and resolutions of meetings of the Company's members;
  - 98.1.2 proceedings and resolutions of board meetings (including meetings of a committee of directors or other committees established by the board);
  - 98.1.3 resolutions passed by members or the board without a meeting.
- 98.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
  - 98.2.1 the chair of the meeting; or
  - 98.2.2 the chair of the next meeting.
- 98.3 The board must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 98.4 Without limiting Rule 98.1 the directors must record in the minute books:



- 98.4.1 all appointments of officers and executive employees;
- 98.4.2 the names of the directors and alternate directors present at all meetings of directors and the Company;
- 98.4.3 in the case of a technology meeting the nature of the technology; and
- 98.4.4 all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

## **N. Accounts, Audit and Records**

### **99. Accounts**

- 99.1 The directors must cause proper accounting and other records, as required by applicable laws from time to time, to be kept in accordance with the Act.
- 99.2 The directors must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

### **100. Auditor and audits**

- 100.1 A registered Company auditor must be appointed.
- 100.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act and conform to recognised professional standards of accounting and auditing entities.
- 100.3 Financial audits must be conducted on a timetable planned and disclosed to members by the board, and conducted and reported in accordance with recognised professional standards of Accounting and Auditing entities.

## **O. Execution of Documents**

### **101. Common Seal**

- 101.1 The Company may, but need not, have a common seal.

### **102. Use of Common Seal**

- 102.1 If the Company has a common seal the board must provide for its safe custody.
- 102.2 The common seal may not be fixed to any document except by the authority of a resolution of the board or of a committee of the board duly authorised by the board.
- 102.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:

- 102.3.1 two (2) directors of the Company; or
- 102.3.2 a director and a secretary of the Company.

### 103. Execution of documents without common seal

- 103.1 The Company may execute a document without using a common seal if the document is signed by:
  - 103.1.1 directors of the Company; or
  - 103.1.2 a director and a secretary of the Company.

### 104. Execution of document as a deed

- 104.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Rule 102 or 103.

### 105. Execution – General

- 105.1 The same person may not sign in the dual capacities of director and secretary.
- 105.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this Constitution as to execution despite his or her interest.
- 105.3 Rules 102 and 103 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

## P. Inadvertent Omissions

### 106. Formalities omitted

- 106.1 If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the board that the omission has directly prejudiced any member financially. The decision of the board is final and binding on all members.

## Q. Alterations to the Constitution

### 107. Alterations to the Constitution

- 107.1 If the Company is approved as a public benevolent institution by the Australian Taxation Office, the Australian Taxation Office must be notified in writing of any alterations to this Constitution.

## R. Mediation

### 108. Mediation

In the event that a dispute shall arise between the directors or between the directors and a member or between the members or between the Company and a member concerning the affairs of the Company and such dispute is not resolved between the parties by good faith negotiations between them, within thirty (30) days, the parties must attempt to resolve the dispute by mediation as follows:

- 108.1 Either party may start mediation by serving a mediation notice on the other.
- 108.2 The notice must state that a dispute has arisen and identify what is in dispute.
- 108.3 The parties must jointly appoint a Mediator. If the parties fail to agree on the appointment a Mediator within 7 days of service of the notice, a Mediator shall be appointed by the secretary for the time being of the Law Institute of Victoria upon application of either party.
- 108.4 The parties must comply with the instructions of the Mediator about the conduct of the mediation, execute any written agreements that the Mediator may reasonably require and make a genuine and determined effort to resolve the dispute.
- 108.5 If the dispute is not resolved within 14 days after the Mediator is appointed, or any extended period that the parties may agree in writing, then the mediation ceases.
- 108.6 The directors and members must, as far as is reasonably practicable, and provided to do so is not in breach of the law, maintain the status quo concerning the affairs of the Company while the mediation process is taking place.
- 108.7 No court or arbitration proceedings may be instituted while the mediation process is taking place unless the status quo concerning the affairs of the Company is not able to be maintained.
- 108.8 Each party must pay an equal share of the costs of the mediator and otherwise shall bear their own costs relating to the mediation process.
- 108.9 If the dispute is resolved the parties shall sign an agreement incorporating the terms of the settlement and this agreement shall be binding on the parties.
- 108.10 The mediation procedure is confidential and written statements prepared by the Mediator or for a party and any representations or discussions between the parties and between the parties and the Mediator before or during the mediation procedure cannot be used in any court or arbitration proceedings. The Mediator shall destroy any notes or records taken during the mediation at the end of the mediation.

## S. Winding Up

### 109. Winding Up

- 109.1 Every Member of the Company undertakes to contribute to the assets of the Company in the event of it being wound up while that Member is a Member, or within one year of that Member ceasing to be a Member, such amount as may be required not exceeding twenty dollars for the payment of the debts and liabilities of the Company contracted before ceasing to be a Member and to the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.
- 109.2 Where, on the winding-up or dissolution of the Company, there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus shall not be paid to or distributed amongst the Members but shall be given or transferred to some other institution having similar objects to those described in this Constitution situate within the Commonwealth of Australia and which:
- 109.2.1 is required by its Constitution to apply its profits or income in promoting its objects;
  - 109.2.2 is prohibited from paying any profits or dividends to its Members to the same extent as set out in this Constitution; and
  - 109.2.3 is itself exempt from income tax.
- 109.3 That institution shall be determined by the board prior to the dissolution of the Company or failing such determination, by application to an appropriate Court.

### 110. Transitional arrangements

- 110.1 Upon the adoption of the amendments to this constitution at the July 2023 special general meeting, the elected Ordinary Board members and the elected office-bearers will become the Elected Directors with their terms to be as set out below.
- 110.2 In conjunction with the 2023 annual general meeting:
- 110.2.1 the Elected Directors who were the appointed vice president and treasurer will retire. If eligible, they may be nominated for re-election;
  - 110.2.2 Elections will be held for the three vacant Elected Director positions. The persons receiving the highest and second highest number of votes will serve as Elected Directors for a two (2) year term (i.e. until the conclusion of the 2025 annual general meeting) and the person receiving the third highest number of votes will serve a one (1) year term (i.e. until the conclusion of the 2024 annual general meeting).
- 110.3 In conjunction with the 2024 annual general meeting:
- 110.3.1 The Elected Director who was the elected Ordinary Board member last elected at the 2021 annual general meeting will retire, and If eligible, they may be nominated for re-election;
  - 110.3.2 The Elected Director who was the elected Ordinary Board member last elected at the 2022 annual general meeting will retire, and if eligible, they may be nominated for re-election;

- 110.3.3 The Elected Director last elected at the 2023 annual general meeting and serving a one year term will retire and if eligible, they may be nominated for re-election;
  - 110.3.4 Elections will be held for three vacant Elected Director positions and the persons elected will serve two (2) year terms (i.e. until the conclusion of the 2026 annual general meeting).
- 110.4 In conjunction with the 2025 annual general meeting:
- 110.4.1 The Elected Director who was the elected president at the 2022 annual general meeting will retire. If eligible, they may be nominated for re-election;
  - 110.4.2 The Elected Directors last elected at the 2023 annual general meeting will retire and if eligible, they may be nominated for re-election;
  - 110.4.3 Elections will be held for three vacant Elected Director positions and the persons elected will serve two (2) year terms (i.e. until the conclusion of the 2027 annual general meeting).
- 110.5 Any terms served immediately prior to the adoption of the amendments to this constitution at the July 2023 special general meeting will not count in determining the Maximum Continuous Period.
- 110.6 Upon the adoption of the amendments to this constitution at the July 2023 special general meeting, the appointed Ordinary Board member will become an Appointed Director and serve out the remainder of their term, but if otherwise eligible, may be re-appointed.
- 110.7 Upon the adoption of the amendments to this constitution at the July 2023 special general meeting, the office bearers will continue in these roles until the first board meeting following the special general meeting. At that board meeting, the board will elect the office bearers in accordance with clause 28.