Constitution

of the

Estonian Cultural Foundation in Australia, Limited

(ECFA)

Eesti Kultuuri Sihtasutus Austraalias.

ACN 091 457 911

Adopted on 20 March 2022
Amended at the Annual General Meeting on 16 November 2025
Amended at the Annual General Meeting on 18 October 2026

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Preliminary

1. Name of the Company

The Name of the Company is the Estonian Cultural Foundation in Australia (ECFA) Limited, Eesti Kultuuri Sihtasutus Austraalias.

2. Type of Company

The Company is a not-for-profit public Company Limited by Guarantee, which is established to be, and to continue as, a charity.

3. Limited Liability of Members.

The liability of Members is limited to the amount of the guarantee in Rule 4.

4. The Guarantee

Each Member must contribute an amount not more than $10 (the guarantee) to the property of the Company if the Company is wound up, Rule 73, while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

(a) debts and liabilities of the Company incurred before the member stopped being a member;

or

(b) costs of winding up the Company.

5. Definitions

In this constitution, words and phrases have the meaning and interpretation set out in Rules 75 and 76.

Charitable purpose and powers

6. Object

The Company's objects are:

(a) to promote literature, design, crafts, performing arts, radio, TV, moveable cultural heritage, music, community arts, video, visual arts, and film, which are of Estonian origin or deal with Estonian subject matter;

(b) to advance any purposes that are secondary or ancillary to the object in the above paragraph.

7. Powers of the Board

7.1. Powers generally

Subject to Rule 8, the Company can only exercise the powers in section 124(1) of the **Corporations Act** to:

(a) carry out its object(s) set out in Rule 6;

and

(b) do all things incidental or convenient in relation to the attainment of an object set out in Rule 6.

7.2. Exercise of powers

A power of the Board can be exercised only by Directors' resolution.

8. Not-for-profit

8.1. The Company must not distribute any income or assets directly or indirectly to its Members, or Directors, except as provided in Rule 74.

8.2. Rule 8.1 does not stop the Company from doing the following things, provided they are done in good faith:

(a) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company,

or

(b) making a payment to a Member in carrying out the Company's charitable purpose(s).

9. Amending the Constitution

9.1. The Members may amend this Constitution by passing a **Special Resolution**.

9.2. The constitution will be available to Members on request to the Board.

Members

10. Rights of Members

10.1. Members have the following rights:

(a) the Constitution will be available to Members, and to those intending to become Members, on request to the Board;

(b) to amend the Constitution (by a Special Resolution) in Rule 9;

(c) to remove a Director (by a resolution of Members) in Rule 23.4;

(d) to access the Register of Members in Rules 11.4 and 11.5;

and

(e) any other rights of Members in this Constitution.

11. Membership and Register of Members

11.1. The maximum number of Members is unlimited unless varied by the Company in By-Laws.

11.2. The Members of the Company are:

(a) the Initial Members,

and

(b) any other person that the Directors allow to be a Member, in accordance with this Constitution.

11.3. The Company must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary.

11.4. The Company must give current Members access to the Register of Members.

11.5. Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

12. Who can be a Member

12.1. A person who supports the objects of the Company is eligible to apply to be a Member of the Company under Rule 13.

12.2. In this clause, 'person' means: an individual with Australian citizenship.

13. How to apply to become a Member

13.1. The Board will determine the requirement for an application for membership which may be set out in the relevant By-laws.

13.2. A person, as defined in Rule 12.2 may apply to become a Member of the Company by completing the relevant application form as approved by the by the Board from time to time.

14. Membership Fee

14.1. The Members shall pay any entrance fee and/or annual membership fee or subscription in such amount and at such time(s) as determined by the Board from time to time.

14.2. The Board may suspend a Member's rights in this Constitution if the Member fails to pay the fees in Rule 14.1 within 3 months after being due.

15. Membership Approval Process

15.1. The Directors must consider an application for membership within a reasonable time.

15.2. If the Directors reject an application, the Secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

15.3. If the Directors approve an application, the Secretary must as soon as possible:

(a) enter the new Member on the Register of Members (refer to Rule 11.3);

and

(b) write to the applicant to tell them that their application was approved, and the date that their membership started and the required payment of their membership fee if any.

16. When a person becomes a Member

16.1. Other than existing Members, an applicant will become a Member when they are entered on the Company's Register of Members.

17. When a person stops being a Member

17.1. A Member may resign their membership at any time by giving the Company notice in writing to that effect.

17.2. A person immediately stops being a member if they:

(a) resign, by writing to the Secretary;

(b) die;

(c) are expelled Rule 19. Disciplining Members;

(d) have not paid the fees in Rule 14.1 for 3 years;

(e) have not paid fees in Rule 14.1 for 3 years, their membership shall be cancelled.

Dispute Resolution and Disciplinary Procedures

18. Dispute Resolution

18.1. The dispute resolution procedure, in this clause, applies to disputes (disagreements) under this Constitution between a Member or Director and:

(a) one or more Members;

(b) one or more Directors;

or

(c) the Company.

18.2. A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure Rule 19, until the disciplinary procedure is completed.

18.3. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

18.4. If those involved in the dispute do not resolve it within the timeframe set out in Rule 18.3, they must within 10 days:

(a) tell the Directors about the dispute in writing;

(b) agree or request that a mediator be appointed,

and

(c) attempt in good faith to settle the dispute by mediation.

18.5. The mediator must:

(a) be chosen by agreement of those involved;

or

(b) where those involved do not agree:

(i) for disputes between Members, a person chosen by the Directors;

or

(ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office;

(iii) disputes within NSW may be referred to a community justice centre for mediation in accordance with the provisions of the Community Justice Centres Act 1983.

18.6. A mediator chosen by the Directors under Rule 18.5(b)(i),

(a) may be a Member or former Member of the Company;

(b) must not have a personal interest in the dispute;

and

(c) must not be biased towards or against anyone involved in the dispute.

18.7. When conducting the mediation, the mediator must:

(a) allow those involved a reasonable chance to be heard;

(b) allow those involved a reasonable chance to review any written statements;

(c) ensure that those involved are given natural justice

and

(d) not make a decision on the dispute.

18.8. Subject to the relevant mediation rules, if a Member is involved in a dispute, the Member may choose to bring a support person to accompany them or a lawyer to represent them at the mediation.

19. Disciplining Members

19.1. In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:

(a) the Member has breached this Constitution;

or

(b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.

19.2. At least 14 days before the Directors' meeting at which a resolution Rule 19.1 will be considered, the Secretary must notify the Member in writing:

(a) that the Directors are considering a resolution to warn, suspend or expel the Member;

(b) that this resolution will be considered at a Directors' meeting and the date of that meeting;

(c) what the Member is said to have done or not done;

(d) the nature of the resolution that has been proposed;

and

(e) that the Member may provide an explanation to the Directors, and details of how to do so.

19.3. Before the Directors pass any resolution Rule 19, the Member must be given a chance to explain or defend themselves by:

(a) sending the Directors a written explanation before that Directors' meeting;

and/or

(b) speaking at the meeting at which the Member may choose to bring a support person to accompany them or a lawyer to represent them.

19.4. After considering any explanation Rule 19, the Directors may:

(a) take no further action;

(b) warn the Member;

(c) suspend the Member's rights as a Member for a period of no more than 12 months;

(d) expel the Member;

(e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made Rule 19;

or

(f) require the matter to be determined at a General Meeting.

19.5. The Directors cannot fine a Member.

19.6. The Secretary must give written notice to the Member of the decision Rule 19.4 as soon as possible.

19.7. Disciplinary procedures must be completed as soon as reasonably practical.

19.8. There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

General Meetings of Members

20. General Meeting called by Directors

20.1. The Directors may call a **General Meeting**.

20.2. If members with at least 20% of the votes that may be cast at a **General Meeting** make a written request to the Company for a **General Meeting** to be held, the Directors must within 21 days of the Members' request, give all Members notice of a **General Meeting** and hold the **General Meeting** within 2 months of the Members' request.

20.3. The percentage of votes that Members have under Rule 20.2, is to be worked out as at midnight before the Members request the meeting.

20.4. The Members who make the request for **General Meeting** must:

(a) state in the request any resolution to be proposed at the meeting;

(b) sign the request;

and

(c) give the request to the Company.

20.5. Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

21. General Meeting called by Members

21.1. If the Directors do not call the meeting within 21 days of being requested Rule 20.2, 50% or more of the Members who made the request may call and arrange to hold a **General Meeting**.

21.2. To call and hold a meeting Rule 21.1, the Members must:

(a) as far as possible, follow the procedures for the General Meeting set out in this Constitution;

(b) call the meeting using the list of Members on the Company's Register of Members register, which the Company must provide to the Members making the request at no cost;

and

(c) hold the **General Meeting** within three months after the request was given to the **Company**.

21.3. The **Company** must pay the Members who request the General Meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

22. Annual General Meeting

22.1. An **Annual General Meeting** is routinely held in the last quarter of each calendar year.

22.2. Every current Member has the right to attend meetings.

22.3. Every Member must have a currently paid membership in order to have the right to vote at the meeting.

22.4. Every Director has the right to attend and speak at all meetings of Members.

22.5. An **Annual General Meeting**, must be held:

(a) within 18 months after registration of the Company;

and

(b) after the first **Annual General Meeting**, at least once in every calendar year.

22.6. Even if these items are not set out in the notice of meeting, the business of an **Annual General Meeting** must include:

(a) a review of the Company's activities;

(b) a review of the Company's finances;

(c) any auditor's report (if any);

(d) the election of Directors in accordance with Rule 40 and Rule 42;

and

(e) the appointment and payment of auditors (if required).

22.7. Before or at the **Annual General Meeting**, the Directors must give information to the members on the Company's activities and finances during the period since the last **Annual General Meeting**.

22.8. The Chairperson of the **Annual General Meeting** must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

23. Notice of General Meeting

23.1. Notice of an **Annual General Meeting** must be given to:

(a) each Member entitled to vote at the meeting;

(b) each Director;

and

(c) the auditor (if any).

23.2. Notice of an **Annual General Meeting** must be provided in writing (including via electronic means) to the Members, at least 21 days before the meeting.

23.3. Subject to Rule 23.4, notice of a meeting may be provided less than 21 days before the meeting if:

(a) for an **Annual General Meeting**, all the Members entitled to attend and vote at the **Annual General Meeting** agree beforehand;

or

(b) for any other **General Meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

23.4. Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

(a) remove a Director;

(b) appoint a Director in order to replace a Director who was removed;

or

(c) remove an auditor.

23.5. Notice of a **General Meeting** must include:

(a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);

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

(c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;

(d) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:

(i) the proxy must be a Member of the Company;

(ii) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting;

and

(iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.

23.6. If a **General Meeting** is adjourned (put off) for one month or more, the Members must be given new notice of the resumed meeting.

24. Quorum at a General Meeting

24.1. For the **General Meeting** to be held, at least five (5) Members (a quorum) must be present (in person, by proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy of more than one Member).

24.2. No business may be conducted at a **General Meeting** if a quorum is not present.

24.3. If there is no quorum present within 30 minutes after the starting time stated in the notice of a **General Meeting**, the **General Meeting** is adjourned to the date, time and place that the Chairperson specifies. If the Chairperson does not specify one or more of those things, the meeting is adjourned to:

(a) if the date is not specified – the same day in the next week;

(b) if the time is not specified – the same time;

and

(c) if the place is not specified – the same place.

24.4. If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

25. Auditor's Right to Attend Annual General Meeting

25.1. The auditor (if any) is entitled to attend any **General Meeting** and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

25.2. The Company must give the auditor (if any) any communications relating to the **General Meeting** that a Member of the Company is entitled to receive.

26. Using Technology to hold Meetings

26.1. The Company may hold a **General Meeting** at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.

26.2. Anyone using this technology is taken to be present in person at the meeting.

27. Chairperson at General Meetings

27.1. The elected **Chairperson** in accordance with Rule 41 is entitled to chair the General Meetings.

27.2. The Members present and entitled to vote at the **General Meeting** may choose a Director or Member to be the Chairperson for that meeting if:

(a) there is no elected Chairperson;

or

(b) the elected Chairperson is not present within 30 minutes after the starting time set for the meeting;

or

(c) the elected Chairperson is present but says they do not wish to act as Chairperson of the meeting.

28. Role of the Chairperson for General Meeting

28.1. The Chairperson is responsible for the conduct of the **General Meeting**, and for this purpose must give Members and the auditor (if any), a reasonable opportunity to make comments and ask questions.

28.2. The Chairperson does not have a casting vote.

29. Adjournment of Meetings

29.1. If a quorum is present, the **General Meeting** must be adjourned if a majority of **Members** present direct the Chairperson to adjourn it.

29.2. Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' Resolutions and Statements

30. Members' Resolutions and Statements

30.1. Members with at least 5% of the votes that may be cast on a resolution may give:

(a) written notice to the Company of a resolution they propose to move at a **General Meeting** (Members' resolution);

and/or

(b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at the **General Meeting** (Members' statement).

30.2. A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

30.3. A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.

30.4. Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.

30.5. The percentage of votes that Members have under Rule 30.1, is to be worked out as at midnight before the request or notice is given to the Company.

30.6. If the Company has been given notice of a Members' resolution pursuant to Rule 30.1(a), the resolution must be considered at the next **General Meeting held** more than two months after the notice is given.

30.7. This clause does not limit any other right that a Member has to propose a resolution at a **General Meeting**.

31. Company must give notice of proposed resolution or distribute statement

31.1. Subject to Rule 31.2, if the Company has been given a notice or request under Rule 30:

(a) in time to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, it must do so at the Company's cost;

or

(b) too late to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members' resolution or a copy of the Members' statement.

31.2. At the relevant **General Meeting**, the Members may pass a resolution that the Company will pay the expenses as in Rule 31.1(b).

31.3. The **Company** does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Members if:

(a) it is more than 1,000 words long;

(b) the Directors consider it may be defamatory;

(c) in the case that Rule 31.1(b) applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' resolution or a copy of the Members' statement to Members;

or

(d) in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a **General Meeting** or is otherwise not a valid resolution able to be put to the Members.

32. Circular Resolutions of Members

32.1. Subject to Rule 32.3, the Directors may put a resolution to the Members to pass a resolution without a **General Meeting** being held (a circular resolution).

32.2. The Directors may notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.

32.3. Circular resolutions cannot be used:

(a) for a resolution to remove an auditor, appoint a Director or remove a Director;

(b) for passing a **Special Resolution**;

or

(c) where the **Corporations Act** or this Constitution requires a meeting to be held.

32.4. A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in Rule 32.5 and Rule 32.6.

32.5. Members may sign:

(a) a single document setting out the circular resolution and containing a statement that they agree to the resolution;

or

(b) separate copies of that document, as long as the wording is the same in each copy.

32.6. The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

32.7. The Secretary will maintain a record of the resolution and results and note the activity in the agenda for the coming Annual General Meeting.

Voting at Annual General Meetings

33. How many votes a Member has.

33.1. Each member has one vote.

34. Challenge to Member's right to vote.

34.1. A Member or the Chairperson may only challenge a person's right to vote at an **Annual General Meeting** at that meeting.

34.2. If a challenge is made Rule 34.1, the Chairperson must decide whether or not the person may vote. The Chairperson's decision is final.

35. How voting is carried out.

35.1. Voting must be conducted and decided by:

(a) a show of hands;

(b) a vote in writing;

or

(c) another method chosen by the Chairperson that is fair and reasonable in the circumstances.

35.2. Before a vote is taken, the Chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

35.3. On a show of hands, the Chairperson's decision is conclusive evidence of the result of the vote.

35.4. The Chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

36. When and how a vote in writing must be held

36.1. A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

(a) at least five **Members** present;

(b) **Members** present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded);

or

(c) the Chairperson.

36.2. A vote in writing must be taken when and how the Chairperson directs, unless Rule 36.3 applies.

36.3. A vote in writing must be held immediately if it is demanded under Rule 36.1

(a) for the election of a Chairperson pursuant to Rule 27.2;

or

(b) to decide whether to adjourn the meeting.

36.4. A demand for a vote in writing may be withdrawn.

37. Appointment of Proxy

37.1. A Member may appoint a proxy to attend and vote at an **Annual General Meeting** on their behalf.

37.2. A proxy must be a Member of the Company.

37.3. A proxy appointed to attend and vote for a Member has the same rights as the Member to:

(a) speak at the meeting;

(b) vote in a vote in writing (but only to the extent allowed by the appointment);

and

(c) join in to demand a vote in writing Rule 36.1 .

37.4. An appointment of proxy (proxy form) must be signed by the Member appointing the proxy and must contain:

(a) the Member's name and address;

(b) the Company's name;

(c) the proxy's name or the name of the office held by the proxy;

(d) the meeting(s) at which the appointment may be used;

(e) the specific way the proxy must vote on a particular resolution which is stated as an item on the meeting agenda, For/Against/Abstain. (Directed proxy);

(f) the Members written approval, where applicable, that the proxy may vote as he/she sees fit. (Undirected proxy).

37.5. No Member, including the Chairperson, can hold more than four (4) undirected proxies.

37.6. Proxy forms must be received by the Company at the address stated in the notice Rule 23.5(d) or at the Company's registered address at least 48 hours before a meeting.

37.7. The Chairperson must table the directed proxy votes according to written instructions received from the Member.

37.8. The Chairperson must state how many of the proxies, have written approval from the Member, to vote as he/she sees fit.

37.9. A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.

37.10. Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:

(a) has died;

(b) is mentally incapacitated;

(c) revokes the proxy's appointment;

or

(d) revokes the authority of a representative or agent who appointed the proxy.

37.11. A proxy appointment may specify the way the proxy must vote on a particular resolution which has been cast, or provide written approval for the proxy to vote in a way he/she sees fit.

38. Voting by Proxy

38.1. A proxy is entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).

38.2. When a vote in writing is held, a proxy:

(a) does not need to vote, unless the proxy appointment specifies the way they must vote;

(b) if the way they must vote is specified on the proxy form, must vote that way;

and

(c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

Directors

39. Composition of Board of Directors

39.1. The Board of Directors shall comprise up a minimum of five (5) and a maximum of nine (9) members.

39.2. The Chairperson; Deputy Chairperson; Secretary and Treasurer of the Board of Directors of the Company shall be nominated and appointed by the Board of Directors of the Company.

40. Election and Appointment of Directors

40.1. Apart from the Directors appointed Rule 40.5, the Members may elect a Director by passing a resolution passed in a **General Meeting**.

40.2. Each of the Directors must be elected by a separate resolution, unless:

(i) the Members have first passed a resolution that the elections may be voted on together;

and

(ii) no votes were cast against that resolution.

40.3. A person is eligible for election as a Director of the Company if they:

(a) are a Member of the Company for a minimum of 12 months prior to the election;

and

(b) have submitted a Nomination Form for appointment to the Board of Directors of ECFA.

(c) are seconded by a Member who is entitled to vote (unless the person was previously elected as a Director at a **General Meeting** and has been a Director since that meeting).

40.4. Prior to the **General Meeting** the nominated Director(s) will be asked to provide written confirmation that they are able to provide the following consent, should they be appointed as a Director.

(a) consent to act as a Company Director by signing the Declaration for Responsible Persons, confirming they are not disqualified under Governance Standard 4, or ineligible to be a Director under the **Corporations Act** or the **ACNC Act**.

40.5. The Directors may appoint a person as a Director to fill a casual vacancy or as an additional Director if that person:

(a) is a Member of the Company;

(b) gives the Company a signed consent to act as a Director of the Company;

and

(c) is not ineligible to be a Director under the **Corporations Act** or the **ACNC Act**.

40.6. If the number of Directors is reduced to fewer than five (5) or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to 5 (or higher if required for a quorum) or calling a **General Meeting**, but for no other purpose.

41. Election of Chairperson

41.1. The Directors of the Board must elect a Director as the Company's elected Chairperson.

41.2. The Chairperson may be removed by the Directors.

41.3. The Chairperson acts in matters of Board agreement.

41.4. The Chairperson is responsible for:

(a) ensuring the governance systems and processes of the Company are in place;

(b) coordinating effective management of the company;

(c) facilitating meetings;

(d) representing the company.

42. Term of Office of Directors

42.1. The Directors shall each hold office for a period of three (3) years and shall be eligible for re-election subject to these rules.

42.2. Where a Director is required to retire, under this clause, the Director will remain an officeholder of the company until the **Annual General Meeting** that immediately following completion of their three (3) year term. At that same **Annual General Meeting** the retiring Director may stand for re-election if nominated.

42.3. At each **Annual General Meeting**:

(a) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire;

and

(b) at least one-third of the remaining Directors must retire.

42.4. The Directors who must retire at each **Annual General Meeting** under Rule 42.3(b) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.

42.5. Other than a Director appointed Rule 40.3, a Director's term of office starts at the end of the **Annual General Meeting** at which they are elected and ends at the end of the Annual General Meeting at which they retire.

42.6. Each Director must retire at least once every three years.

42.7. A Director who retires under Rule 42.3 may nominate for election or re-election, subject to Rule 42.8.

42.8. A Director who has held office for a continuous period of nine (9) years or more may only be re-appointed or re-elected by a Special Resolution at the **Annual General Meeting**.

43. When a Director's Position Becomes Vacant

43.1. A Director stops being a Director if they:

(a) give written notice of resignation as a Director to the Company;

(b) are removed as a Director by a resolution of the Members;

(c) stop being a Member of the Company;

(d) are absent for three (3) consecutive Directors' meetings without approval from the Directors;

(e) become ineligible to be a Director of the Company under the **Corporations Act** or the **ACNC Act**;

(f) die;

or

(g) become of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to metal health.

Powers of Directors

44. Powers of Directors

44.1. The Directors are responsible for managing and directing the activities of the Company to achieve the object and purpose(s) of the Company, Rule 6.

44.2. The Directors may use all the powers of the Company except for powers that, under the **Corporations Act** or this Constitution, may only be used by Members.

44.3. A Director has a right of access to the financial records of the Company at all reasonable times. Refer to Rule 71, Directors' access to documents.

44.4. The Directors must decide on the responsible financial management of the Company including:

(a) any suitable written delegations of power Rule 45;

(b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved and documented.

44.5. The Directors cannot remove a Director or auditor.

44.6. Directors and auditors may only be removed by a members' resolution at a **General Meeting**.

45. Delegation of Directors' Powers

45.1. The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.

45.2. The delegation must be recorded in the Company's minute book, which may be in a digital format.

46. Payments to Directors

46.1. All Directors, of the Board of Directors, work in a voluntary capacity.

46.2. The Company does not allow payment of fees to a Director for acting as a Director.

46.3. The Company may:

(i) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done;

or

(ii) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.

46.4. Any payment made under Rule 46.3, must be approved by the Directors.

46.5. The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this constitution Rule 70, Insurance.

47. Execution of Documents

47.1. The Company may execute a document if the document is signed by two authorised Directors of the Company or a Director and the Secretary.

Duties of Directors

48. Duties of Directors

48.1. The Directors are responsible for governing the Company and must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance, **Standard 5,** Duties of a Responsible Person, of the regulations made under the **ACNC Act** which are:

(a) Exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;

(b) Act honestly, fairly and in the best interests of the Company and to further the charitable purpose(s) of the Company set out in: Rule 6;

(c) Not to misuse their position as a Director;

(d) Not to misuse information they gain in their role as a Director;

(e) To disclose any perceived or actual material conflicts of interest in the manner set out in Rule 49;

(f) To ensure that the financial affairs of the Company are managed responsibly;

(g) Not to allow the Company to operate while it is insolvent.

49. Conflicts of Interest

49.1. A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

(a) to the other Directors;

or

(b) if all of the Directors have the same conflict of interest, to the Members at the next **General Meeting**, or at an earlier time if reasonable to do so.

49.2. The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting or Register of Interests as the Board of Directors see fit.

49.3. Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided Rule 49.4:

(a) be present at the meeting while the matter is being discussed;

or

(b) vote on the matter.

49.4. A Director may still be present and vote if:

(a) their interest arises because they are a Member of the Company, and the other Members have the same interest;

(b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company, Rule 70, Insurance;

(c) their interest relates to a payment by the Company Rule 69, Indemnity, or any contract relating to an indemnity that is allowed under the Corporations Act;

(d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter;

or

(e) the Directors who do not have a material personal interest in the matter pass a resolution that:

(i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company;

and

(ii) states that those Directors are satisfied that the interest should not stop the director from voting or being present.

Directors' Meetings

50. Record of Director's Meetings

50.1. The Directors may decide how often, where and when they meet.

50.2. The Board must ensure the record of Board meetings includes:

(a) Names of Directors present and apologies;

(b) Agenda progress and outcomes;

(c) Record of Correspondence;

(d) Treasurer's report;

(e) Proceedings and resolutions of Board meetings;

and

(f) Circular Resolutions, Rule 58, which are passed by Directors using email, without a Board meeting.

51. Calling of Director's Meetings

51.1. A Director may at any time request the Secretary to convene a Board meeting by giving reasonable notice to all the other Directors.

51.2. A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

52. Chairperson for Director's Meetings

52.1. The **elected Chairperson** is entitled to chair Directors' meetings.

52.2. The Directors at a Directors' meeting may choose a Director to be the Chairperson for that meeting if the **elected Chairperson** is:

(a) not present within 30 minutes after the starting time set for the meeting;

or

(b) present but does not want to act as Chairperson of the meeting.

53. Quorum at Director's Meetings

53.1. Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority, five (5) Directors must be present. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and to be heard by all others.

53.2. A quorum must be present for the whole Directors' meeting.

54. Appointment and Role of Secretary

54.1. The Company must have a Secretary who is also a Director.

54.2. A Secretary must be appointed by the Directors and may be removed by the Directors.

54.3. The Directors must decide the terms and conditions under which the Secretary is appointed.

54.4. The Secretary is responsible for:

(a) Maintaining a register of the Company's members;

(b) Maintaining notices of meetings, the minutes at Director's meetings; circular resolutions, and other records of General Meetings;

(c) Preparation of meeting agendas;

and

(d) Creating and maintaining appropriate forms.

55. Appointment and Role of Treasurer

55.1. The Company must have a responsible person in the role of Company Treasurer, who is a member of the Board of Directors.

55.2. A Company Treasurer must be appointed by the Directors and may be removed by the Directors.

55.3. The Directors must decide the terms and conditions under which the Treasurer is appointed.

55.4. The Treasurer is responsible for providing financial reports to the Directors of the Board; and the Treasurer's role includes:

(a) Oversight of the Company's financial administration;

(b) Correctly recording and explaining the charitable Companies Limited by Guarantee (CLG's) financial position and performance;

(c) Providing financial planning and budgeting;

(d) Financial record keeping: account books, cash books, receipts, bank statements, tax records, details of grant payments and investment reports;

(e) Providing financial reports which include fiscal year, date prepared, all income and expenses;

(f) Ensuring financial statements are prepared, audited and reviewed;

and

(g) Providing advice on fundraising.

56. Using Technology to hold Director's Meetings

56.1. The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.

56.2. The Directors' agreement may be a standing (ongoing) one.

56.3. A Director may only withdraw their consent within a reasonable period before the meeting.

57. Passing Directors' Resolutions

57.1. Subject to Rule 58, a Directors' resolution must be passed by a majority of the votes cast by Directors present at the Director's meeting and entitled to vote on the resolution.

58. Circular Resolutions of Directors

58.1. The Directors may pass a circular resolution without a Directors' meeting being held by using email.

58.2. A Director may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

58.3. Each Director may indicate agreement or disagreement on the email document setting out the resolution.

58.4. A circular resolution is passed if the majority of Directors entitled to vote on the resolution agree to the resolution in the reply email.

58.5. The circular resolution must be included in the agenda of the following board meeting.

Minutes and Records

59. Minutes and Records

59.1. The Company must, within one month, make and keep the following records:

(a) minutes of proceedings and resolutions of **General Meetings**;

(b) minutes of circular resolutions of Members;

(c) a copy of a notice of each **General Meeting**;

and

(d) a copy of a Members' statement distributed to Members under Rule 31.

59.2. The Company must, within one month, make and keep the following records:

(a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees);

and

(b) circular resolutions of Directors.

59.3. The Directors to allow Members to inspect the Company's records:

(a) the Company must give a Member access to the records of the General Meeting set out in Rule 59.1;

(b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in Rule 59.1 and Rule 61.1.

59.4. The Directors must ensure that minutes of a **General Meeting** or a Directors' meeting are signed within a reasonable time after the meeting by:

(a) the Chairperson of the meeting;

or

(b) the Chairperson of the next meeting.

59.5. The Directors must ensure that minutes of the passing of a circular resolution (of members or Directors) are signed by a Director within a reasonable time after the resolution is passed.

Financial Management

60. Company's Financial Year

60.1. The Company's financial year is from: 1st July to 30 June the following year.

61. Financial and Related Records

61.1. The Company must make and keep written financial records that:

(a) correctly record and explain its transactions and financial position and performance;

and

(b) enable true and fair financial statements to be prepared and to be audited.

61.2. The Company must also keep written records that correctly record its operations.

61.3. The Company must retain its records for at least 7 years.

61.4. The Directors must take reasonable steps to ensure that the Company's records are kept safe.

62. Audit

62.1. Unless excluded by the Law from being required to have the financial report audited, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor if any are regulated by the **Corporations Act**.

63. Financial Reporting

63.1. If required by Part 2M.3 of the Corporations Act, the Board must cause the Company to prepare a financial report and a Directors' report that comply with that Part and must report to Members in accordance with s314 of the Law, i.e. annual financial reporting to members; no later than the deadline set by s315 of the Law, i.e. specific deadline for providing s314.

64. Inspection of Financial Records and Books

64.1. A Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by a resolution of Members.

By-Laws

65. By-laws, Rules and Regulations

65.1. The Board will have power from time to time to make such by-laws, rules and regulations not inconsistent with the constitution as in the opinion of the Board are necessary for the responsible governance, proper control, administration and management of the Company's operations, finances, affairs, interests, effects and property as to the contributions, duties, obligations and responsibilities of the Members and to amend or rescind from time to time any such by-laws, rules and regulations.

65.2. The Directors may pass a resolution to make by-laws to give effect to this constitution.

65.3. Members and Directors must comply with by-laws as if they were part of this Constitution.

Notice

65.4. What is Notice . . .

65.5. Anything written to or from the Company under any clause in this constitution is written notice, unless specified otherwise.

65.6. Rules 67 and 68 do not apply to a notice of proxy under Rule 37.6.

66. Notice to the Company

66.1. Written notice or any communication under this constitution may be given to the Company, the Directors or the Secretary by:

(a) delivering it to the Company's registered office;

(b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;

(c) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address;

or

(d) sending it to the fax number notified by the Company to the Members as the Company's fax number.

67. Notice to Members

67.1. Written notice or any communication under this constitution may be given to a Member:

(a) in person;

(b) by posting it to, or leaving it at the address of the Member in the register of members or an alternative address (if any) nominated by the Member for service of notices;

(c) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);

(d) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any);

or

(e) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).

67.2. If the Company does not have an address for the Member, the Company is not required to give notice in person.

68. When Notice is Taken to be Given

68.1. A notice:

(a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered ;

(b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;

(c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent;

and

(d) given under Rule 68.2, is taken to be given on the business day after the notification that the notice is available is sent.

Indemnity, Insurance and Access

69. Indemnity

69.1. The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.

69.2. In this clause, ‘officer’ means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.

69.3. In this clause, ‘to the relevant extent’ means:

(a) to the extent that the Company is not precluded by law (including the **Corporations** Act) from doing so;

and

(b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

69.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

70. Insurance

70.1. To the extent permitted by law (including the **Corporations Act**), and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

71. Directors’ access to documents

71.1. A Director has a right of access to the financial records of the Company at all reasonable times.

71.2. If the Directors agree, the Company must give a Director or former Director access to:

(a) certain documents, including documents provided for or available to the Directors;

and

(b) any other documents referred to in those documents.

Winding up

72. Surplus Assets are Not to be Distributed to Members

72.1. If the Company is wound up, any surplus assets must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is a charity described in Rule 74.1.

73. Distribution of Surplus Assets

73.1. Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more charities:

(a) with charitable purpose(s) similar to, or inclusive of the Company's object and purpose(s), Rule 6;

(b) which have a governing document which requires its income and property to be applied in promoting its objects;

(c) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the Company;

and

(d) if the Company is endorsed as a deductible gift recipient, which must be endorsed by the Australian Taxation Office to be income tax exempt and to have deductible fit recipient status.

73.2. The decision as to the charity or charities to be given the surplus assets must be made by a **Special Resolution** of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

Definitions and Interpretation

74. Definitions

In this constitution:

ACNC means the Australian Charities and Not-for-profits Commission

ACNC Act means the Australian Charities and Not-for-profits Commission Act 2012 (Cth)

ACNC Governance Standards the Australian Charities and Not-for-profits Commission Act 2012 (Cth)

Standard 1 Purposes and not-for-profit nature of a registered entity

Standard 2 Accountability to members

Standard 3 Compliance with Australian laws

Standard 4 Suitability of responsible persons

Standard 5 Duties of responsible persons

ACNC Regulations 2013 (Cth) provide detailed requirements in relation to the ACNC Register, financial reporting and Governance Standards.

AIS Annual Information Statement

ASIC means Australian Securities and investments Commission

ACNC Australian Charities and Not-for-profits Commission

ASIC Australian Securities and Investments Commission

ATO means Australian Taxation Office

Board means Directors, collectively acting as the Board of Directors

Chairperson a Director elected as Chairperson by the Directors of the Company

CLG Companies Limited by Guarantee

Constitution the Constitution is a contract between the Company and each member, the Company and each Director, the Company and the Company Secretary and Treasurer and each other member

Community Justice Centres Act 1983, No 127 NSW, for the purpose of providing mediation services

Company means the Company named above

Corporations Act means the Corporations Act 2001 (Cth)

Deputy Chairperson a Director elected by the Directors to provide support to the Chairperson

Director the name given to the people who are members of a Board of Directors

General meeting means a meeting of members and includes the annual general meeting

Initial member means a person who is named in the application for registration of the Company, with their consent, as a proposed member of the Company

Law means the Corporations Act 2001 (Cth)

Member means a person whose name is entered in the register as a Member of the Company

Member present means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting

Not-for-profit organisation any group (usually set up for a community or social purpose) that directs its profits back into the purpose of the group, rather than distributing the profits to the individuals involved in the group

Object a statement about the purpose for which the Company is established

Officer officers such as Chairperson, deputy Chairperson, Treasurer and Secretary are appointed by the Directors

Power Corporations Act 2001 Section 124 and Company Registration, power includes an authority, Section 1.5.1. Under the Corporations Act, companies have all of the powers of an individual and some additional powers relevant to companies. Clause 7 ensures that these powers can only be used to achieve its charitable purpose(s). Your constitution must have a

clause like this to limit the powers of the company to what it needs to carry out its purpose(s)

Proxies: Directed proxy where the Member appointing the proxy gives written instructions for the proxy to exercise a vote in a specific way on Meeting Agenda items, i.e. For/Against/Abstain. **Undirected proxy** where the Member appointing the proxy gives approval for the proxy to vote as he/she sees fit

Register means the register of Members kept as required by the Law

Registered charity means a charity that is registered under the ACNC Act

Responsible Person ACNC term that refers to those responsible for governing the charity

Rules the rules in this Constitution, which are based on the Corporations Act, provide guidance to Directors and Members on how the affairs of the Company must be managed

Secretary a Director whose role on the Board of Directors is to maintain company documentation and records, provide safe keeping of all official contracts and company records

Special resolution has the meaning given by Law and means a resolution:

i. of which notice has been given under Rule 23.5(c), and

ii. that has been passed by at least 50% of the votes cast by members present and entitled to vote on the resolution

Surplus assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up

Treasurer a Director or Responsible Person whose role on Board of Directors is to provide financial information to support decision-making

Reading this Constitution with the Corporations Act 2001 (Commonwealth)

75. In this Constitution

75.1. The replaceable rules set out in the **Corporations Act** do not apply to the Company.

75.2. While the Company is a registered charity, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

75.3. If the Company is not a registered charity (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

75.4. A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this **constitution.**

76. Interpretation

76.1. In this constitution:

(a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;

and

(b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).