



**NATIONAL EMPLOYMENT SERVICES
ASSOCIATION LIMITED**

A.C.N. 079 065 428

Constitution

CORPORATIONS ACT

COMPANY LIMITED BY GUARANTEE

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Constitution of NATIONAL EMPLOYMENT SERVICES ASSOCIATION LIMITED

PART A – MEMORANDUM

1. The name of the Company is ‘**NATIONAL EMPLOYMENT SERVICES ASSOCIATION LIMITED**’ (hereinafter called the ‘**Association**’)
2. The objects for which the Association is established are:
 - (a) To promote and advance the interests of the members of the Association.
 - (b) To facilitate the provision of high quality services to jobseekers particularly unemployed jobseekers, and employers.
 - (c) To develop, investigate, assess and provide any service (‘Membership Service’) or product (‘Membership Product’) to any or all members of the Association including but not limited to providing industry services, education, training and information services, and acting as a professional association for providers of employment services.
 - (d) To negotiate for, and/or facilitate the acquisition of or improve the provision of any Membership Service or Membership Product.
 - (e) To render services of all kinds including without limitation management services and consulting services to any or all the members of the Association in connection with or in relation to the provision of any Membership Service or Membership Product.
 - (f) To market and promote any Membership Service or Membership Product.
 - (g) To educate or train members or staff of any or all the members of the Association.
 - (h) To receive commissions or any other monies for and on behalf of any or all members of the Association.
 - (i) Generally to do all such acts, matters and things to enter and make such arrangements as are incidental or conducive to the attainment of any of the objects of the Association.

- (j) To exercise any of the powers referred to in Section 161(1) of the Corporations Law unless the exercise would be inconsistent with any of the other provisions of this Constitution.
3. Notwithstanding the generality of the objects of the Association as set out in Clause 2 the Association shall not amalgamate with, become a member of, or support with its funds any company corporation society association or organisation which does not prohibit the distribution of its income and property amongst its members except to the extent provided in Clause 4 of this Memorandum or to any lesser extent.
- 4.
- (a) The income and property of the Association however derived will be applied solely towards the promotion of the objects of the Association as set out in this Constitution, and no portion of the income or the property of the Association will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to members of the Association.
- (b) Nothing in this Constitution shall prevent the payment in good faith:
- Of out of pocket expenses incurred by a director in the performance of any duty as Director of the Association where the amount payable is approved by the Board of the Association.
 - For any service rendered to the Association by a director in a professional or technical capacity, other than in the capacity as director, where the provision of the service has the prior approval of the Board of the Association and where the amount payable is approved by the Board of the Association and is not more than an amount which commercially would be reasonable payment for the service; or
 - Of any remuneration of a director (but always subject to the Law) where the terms of remuneration have been approved by the directors of the Association in circumstances where the financial benefit is reasonable having regard to the Association's circumstances and the circumstances of the director (including the responsibilities involved in the position held).
 - Of insurance premiums to the extent permitted by law; and
 - Of indemnification to the extent permitted by law and this Constitution.
5. The liability of members is limited.
6. Every member of the Association undertakes to contribute to the property of the Association in the event of the same being wound up while he is a member or within one year after he, she or it ceases to be a member for payment of the debts and liabilities of the Association contracted before he, she or it ceased to be a member and of the costs charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required not exceeding fifty (\$50) dollars.

7.

- (a) Where on the winding up of the Gift Fund, the Association or the dissolution of the Association, there is a surplus of assets in the Gift Fund or the Association after satisfying all of the Association's liabilities and expenses, the surplus will not be paid or distributed to the members of the Association but will be given or transferred to such other institution or company which has the same features as those described in Clause 4.
- (b) Such institution or company will be determined by the members of the Association on or before the time of such winding up or dissolution. Failing such a determination, the institution or company shall be determined by application to the Supreme Court of Victoria.

PART B – GENERAL ARTICLES AND OPERATION OF THE ASSOCIATION

1. INTERPRETATION

- 1.1.** The heading and table of contents shall be ignored in the interpretation of these Articles and unless there is something in the subject or context inconsistent:

'the Law' means the Corporations Act 2001.

'the Association' means National Employment Services Association Limited.

'the Board' means the Board of Directors of the Association.

'Constitution' means Part A (Memorandum) and Part B (General Articles and Operation of the Association) of this document, as amended from time to time.

'Officers' means the Chairperson, Directors and Secretary.

'the Articles' means the Articles of Association as amended from time to time pursuant to the provision of the relevant legislation.

'Member' means a full member who is a person registered in the records of the Association as a member of the Association and is a fully paid up member. Where the Board creates a membership category pursuant to Part B and Article 2.6, then the conditions of that membership category shall apply.

'Representative' means a representative of a member appointed from time to time pursuant to Article 2.7.

'person' includes a corporation (including any statutory corporation), the Governments of the Commonwealth of Australia, any State or Territory and any instrumentality of these Governments.

'the Rules' means the Rules (if any) of the Association made in accordance with the Articles and in force for the time being.

'the Secretary' means the Secretary appointed by the Board pursuant to the Articles and, where the context reasonably permits, shall include any Acting Secretary or assistant secretary appointed by the Board.

'financial year' means the period from the first day of July in any year to the thirtieth day of June in the following year inclusive.

'in writing' and **'written'** include printing lithography and other modes of reproducing or representing words in a visible form.

- 1.2.** Words importing the singular number only include the plural and vice versa.
- 1.3.** Words importing one gender only include the other genders.
- 1.4.** Unless the context otherwise requires the expressions which are defined in the Law in force on the date of incorporation of the Association shall except for those expressions defined above have the same meaning when used in these regulations.

2. MEMBERSHIP

2.1 *Subscribers*

The original subscribers to the Memorandum and the Articles of the Association were the initial members of the Association.

2.2 *Application for Membership*

2.2.1 Membership will be open to all eligible organisations or individuals.

Membership eligibility criteria for each class of member will be determined by the Board from time to time.

2.2.2 An application for membership of the Association

(a) shall be made in writing in a form approved by the Board from time to time;

(b) shall be lodged with the Secretary of the Association; and

(c) shall be accompanied by the Joining Fee (if any) and Annual Subscription Fee (if any) as determined by the Board from time to time.

2.2.3 An application shall be referred to the next meeting of the Board after receipt of the application for a decision as to whether or not the application should be accepted or rejected.

2.2.4 If the Board resolves to accept such application, then the Secretary shall, as soon as reasonably practicable, notify the applicant in writing that he she or it is approved for membership of the Association and request payment within 28 days of the receipt of the notification of the amount payable under these Articles as the annual subscription.

2.2.5 The Board may decline any application for membership and is not bound to give any reasons why the application was not accepted.

2.3 The Secretary shall, upon payment of the amount referred to in sub-clause 2.2.5 enter the applicant's name in the register of members kept by him and upon the name being so registered, the applicant shall become a member of the Association.

2.4

2.4.1 The Board may issue Rules, a Professional Charter and/or a Code of Practice and amend them from time to time.

2.4.2 Members shall be bound by the Rules, Professional Charter and Code of Practice issued from time to time.

Classes of Membership

- 2.5** After 31 October 2005 there shall be, subject to Article 2.6, one Class of Membership.
- 2.6** The Board may establish other membership categories as it deems necessary. In particular, the Board may bestow associate membership upon persons or corporations committed to the objects of the Association as defined in the Constitution subject to payment of any fee prescribed by the Board and provided that associate membership shall not allow for any right of audience, address or voting at any meeting of the Association's members nor election to the Board.

Member's Representative

- 2.7** A member who is a corporation appoint in writing (which appointment may be altered from time to time by giving written notice to the Association) a natural person to represent such member and subject to these Articles that person alone shall be able to represent, act as and exercise the membership rights of such member.

Joining Fee

- 2.8** The Board shall determine from time to time the Joining Fee payable by each member on joining the Association.

Annual Subscription

- 2.9.1** The Board shall determine from time to time:
- (a) the annual subscription fee payable by each member for each financial year and the date upon which it is payable.
- 2.9.2** A part year subscription fee of 50% of the annual membership fee shall apply to members joining the Association in the second half of the membership year. This reduction shall not apply to members re-joining the Association.
- 2.9.3** The membership year will begin on 1 July and shall close on 30 June in each year.

2.10 Membership Register

- 2.10.1** The Association Secretary will maintain a Register of Members of the Association at the registered office. The Register of Members may be in written or electronic form, as deemed most appropriate by the Board.
- 2.10.2** When an applicant has been accepted for membership the Secretary will cause the member's name to be entered in the Register of Members and will send to the member written notice of the acceptance.
- 2.10.3** The address of a member in that Register will be the address of the member for the purpose of service of any notices to members.
- 2.10.4** The rights of any member will not be transferable.

Resignation

- 2.11.1** A member of the Association who has paid all monies due and payable to the Association may resign from the Association by giving notice in writing to the Secretary of such resignation and upon the receipt by the Secretary of such notice the member shall cease to be a member.
- 2.11.2** The Secretary shall make in the register of members an entry recording the date on which the member by whom the notice was given, ceased to be a member.
- 2.11.3** A member resigning during the membership year shall not be entitled to any refund of the annual subscription fee.

Membership Termination and Discipline

- 2.12.1** Subject to these rules, the Board may by resolution
- (a) expel a member from the Association
 - (b) suspend a member from membership of the Association for a specified period; or
 - (c) penalise a member (including by way of a fine)
- if the Board is of the opinion that the member
- (i) has refused or neglected to comply with these Articles; or
 - (ii) has been guilty of conduct unbecoming a member or prejudicial to the interest of the Association
- 2.12.2** A resolution of the Board under Article 2.12.1 where the member exercises a right to appeal to the Association under this Article does not take effect unless the Association confirms the resolution in accordance with these Articles.
- 2.12.3** Where the Board passes a resolution under Article 2.12.1, the Secretary shall, as soon as practicable, cause to be served on the member by pre-paid post a notice in writing setting out the resolution of the Board and the grounds on which it is based and informing the member that the member may within 21 days from the date of mailing of the notice lodge with the Secretary a notice to the effect that the member wishes to appeal to the Association in general meeting against the resolution.
- 2.12.4** Where the Secretary receives a notice of appeal from a member within the time stipulated he or she shall notify the Board and the resolution of the Board shall be referred to the next general meeting of the Association as a motion on the following basis:
- (a) the Board may forward to members before the meeting, details of the grounds for the resolution and the reasons for the passing of the resolution;

- (b) the member may forward to members details of the member's appeal; and if at the general meeting -
- (c) two-thirds of the members present and voting, vote against the confirmation of the resolution, the resolution is revoked; and
- (d) in any other case, the resolution is confirmed.

Cessation of Membership

2.13 A member shall cease to be a member

- (a) if the member is a corporation and ceases to exist
- (b) if the member has not paid any membership subscription before the expiration of three months following the due date
- (c) if the member has not paid any fees for services rendered to the member by the Association within three months following a written demand for payment
- (d) if the member has not paid any fine payable by the member to the Association within three months of being called upon by the Secretary to do so and if the Board shall resolve that the member shall no longer be a member of the Association.

Effect of Resignation, Cessation or Termination of Membership

2.14 A member who has resigned or had its membership terminated or ceased to be a member shall

- (a) not be entitled to any rights and privileges of a member
- (b) remain liable for and shall pay the Association all monies whatsoever for which at the time of it ceasing to be a member it was liable to the Association.

3. GENERAL MEETINGS

Annual General Meetings

- 3.1.1 The Association shall each calendar year, and within 5 months after the end of its financial year (ie within the period from 1 July to 30 November) convene an Annual General Meeting of its members.
- 3.1.2 The Annual General Meeting shall be held on such day and at such place as the Board determines.
- 3.1.3 The Annual General Meeting shall be specified as such in the notice convening it.

- 3.1.4 The following business shall be attended to at the Annual General Meeting:
- (a) confirmation of the minutes of the last preceding Annual General Meeting
 - (b) reports from the Board upon the transactions of the Association during the last preceding financial year
 - (c) receipt of advice of the election of members of the Board
 - (d) any other matter required by the Law.
- 3.1.5 The Annual General Meeting shall be in addition to any other general meetings that may be held in the same year.

Special General Meeting

- 3.2.1 All general meetings other than the Annual General Meeting shall be called special general meetings.

Methods of Convening of Special General Meetings

- 3.2.2 Any Director may whenever he or she thinks fit convene a Special General Meeting of the Association's Members.
- 3.2.3 The Directors must convene a meeting of the Association's members of the request of members in accordance with section 249D of the Law. The members may convene a meeting of the Association's members in accordance with sections 249E and 249F of the Law.
- 3.2.4 The requisition for a special general meeting shall state the motions to be put to the meeting and shall be signed by the member, or by a Representative (if the member is a corporation) making the requisition and be sent to the registered office of the Association and may consist of several documents in a like form, each signed by one or more of the members making the requisition.
- 3.2.5 If the Directors do not cause a special general meeting to be held within one month after the date on which the requisition is delivered to the Association, the members making the requisition, or any of them, may convene a special general meeting to be held not later than three months after that date.
- 3.2.6 A special general meeting convened by members in pursuance of these rules shall be convened in the same manner as nearly as possible as those meetings convened by the Board and all reasonable expenses incurred in convening the meeting shall be refunded by the Association to the persons incurring the expenses.

Notices of Motions

- 3.2.7 A member desiring to put any motions before a meeting may give notice of those motions in writing to the Secretary, who shall subject to the notice having been received in sufficient time for it to be, include those motions in the motion paper for the next general meeting after the receipt of the notice.

Notices of Meetings

- 3.3.1 The Secretary of the Association shall, subject to the provisions of the Law relating to agreements for shorter notice, at least 21 days before the date fixed for holding a general meeting of the Association, cause to be sent to each member or each Representative of the member:
- (a) a notice stating the place, date and time of the meeting; and
 - (b) a motion paper in the form approved by the Board from time to time including the motions which the Board has resolved to put to the meeting, the motions contained in any requisition for the meeting, and motions received pursuant to Article 3.2.7.

Motions Permitted

- 3.3.2 No motions other than procedural motions and those set out in the motion paper accompanying the notice convening the meeting shall be put to the meeting and no amendments to such motions shall be allowed.

General Meeting Procedure

- 3.4.1 No item of business shall be transacted at the general meeting unless a quorum of members entitled under these rules to vote is present during the time when the meeting is considering that item.

Quorum

- 3.4.2 Eight members who between them are resident, present in person (being members entitled under these Articles to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting. A member shall be deemed to be personally present if represented by its Representative or if he, she or it shall have delivered to the Secretary prior to the commencement of the meeting a completed motion paper.
- 3.4.3 If within half an hour after the appointed time for the commencement of a general meeting and at any time during a meeting, a quorum is not present, the meeting shall be dissolved.

Chairperson

- 3.4.4 The Chairperson, shall preside as Chairperson at each general meeting of the Association.
- 3.4.5 If the Chairperson is absent from a general meeting, the members present shall elect one of their number to preside as Chairperson at the Meeting.

Voting

- 3.4.6 All votes shall be given personally, by a Representative or by lodgment of a completed motion paper with the Secretary prior to the meeting and no proxy votes shall be allowed.
- 3.4.7 Upon any questions arising at a general meeting of the Association, each representative has one vote only.
- 3.4.8 A member's representative or representatives shall not be entitled to vote at any general meeting unless all monies due and payable by the member to the Association have been paid, other than any monies which have become due and payable within two months prior to the date of the relevant meeting.
- 3.4.9 A question arising at a general meeting of the Association shall be determined on a show of hands which expression shall include votes cast by motion papers lodged with the Secretary pursuant to Article 3.4.6 and unless before or on the declaration of the show of hands a poll is demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, and an entry to that effect in the Minute Book of the Association is evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.
- 3.4.10 In the case of an equality of voting on question, the Chairperson of the meeting shall not be entitled to exercise a second or casting vote.
- 3.4.11 If at a meeting a poll on any question is demanded by three members or by Representatives of not less than three members, it shall be taken at that meeting in such manner as the Chairperson may direct and the resolution of the poll shall be deemed to be a resolution of the meeting on that question.
- 3.4.12 A poll that is demanded on the election of a Chairperson or on a question of an adjournment shall be taken forthwith and a poll that is demanded on any other question shall be taken at such time before the close of the meeting as the Chairperson may direct.

4. COMPOSITION OF THE BOARD

- 4.1** There will be a Board of the Association to manage the affairs of the Association.

Subject to the transitional provisions in Article 4.11, the Board shall be not less than 6 up to a maximum 9 Directors.

- 4.2** Subject to these Articles the Board shall comprise:

- 6 Directors elected by members
- and any director appointed by the Board pursuant to any other Article.

- 4.3** The Board may appoint up to an additional three (3) Directors which may be described as “additional Directors” or “Board co-optees”. Such Directors need not be members of the Association.
- 4.4** Subject to Article 7.13 the position of Chairperson will be elected by the Board from its members present at the first meeting of the Board after the Annual General Meeting of the Association. A Chairperson's term shall be for two (2) years. No Chairperson may (as Chairperson):
- 4.4.1 serve more than two consecutive terms of two (2) years; or
- 4.4.2 be a Chairperson for more than a total of four (4) consecutive years.
- 4.4A** The Board may terminate the appointment of a Chairperson in that capacity by majority resolution. However, any such termination does not terminate the appointment of that person as a Director, who shall be subject inter alia to the provisions of Articles 4.7.1 and 6.1.
- 4.5** The following persons shall be the Directors from the date of incorporation to the close of the first annual general meeting of the Association or such earlier date as resolved by the Directors:
- Philip Connell
 - James Davidson
 - Michelle Greig
 - Vu Nguyen
 - Peter Richardson
 - Sally Sinclair
 - David Thompson
 - Paul Veith

Term of Office

- 4.6.1 Subject to the transitional provisions in Article 4.11, Directors elected by the Association shall hold office for a term of three (3) years, subject to Article 4.7. The term of office of a Director shall commence immediately after the close of the Annual General Meeting of the Association at which he or she was elected and shall end at the close of the third Annual General Meeting of the Association after that at which he or she was elected.

Rotation

- 4.7.1 At each Annual General Meeting the following Directors shall retire:
- (a) Those Directors who have been in office for three (3) years or until the third Annual General Meeting following such Directors' appointment (which ever is the longer).
- (b) Any director appointed by the board pursuant to Article 4.3 or 6.1 who is not an Independent Chairperson.

- (c) If the Secretary shall not have received sufficient nomination of persons eligible for election to the Board so as to maintain the constitution of the Board specified in Article 4.2 then the provisions of Article 6.1 shall apply subsequent to the next Annual General Meeting.
- (d) Any Independent Chairperson whose term has expired pursuant to Article 7.13.2(c).

4.7.2 Any retiring Director shall be eligible for re-election to the Board subject to Article 4.7.3 and the proviso that no Director shall be entitled to serve as a director for more than three (3) terms of three (3) years or a total of nine (9) years.

4.7.3 If a Director has served for 9 continuous years (in total) as a director, then that Director is not eligible for re-election or to be co-opted until one year has lapsed after the date the vacancy has occurred pursuant to Article 6.4.2. i.e. at the next Annual General Meeting. For the purposes of this Article and Article 6.4.2, the calculation of the period of 9 years' service includes all periods of service irrespective of the dates of service.

4.7.4 This Article 4.7 is subject to the transitional provisions in Article 4.11.

Nominations

4.8.1 Nominations for election to the Board shall be in writing in the manner prescribed by the Board from time to time and shall be forwarded to the Secretary by the date determined by the Board. Nominations shall be accompanied by the written consent of the person nominated and a biographical note of the person nominated of not more than 100 words.

Eligibility

4.9.1 Only a person who is a member or a Representative of a member shall be eligible for election to the Board. For the avoidance of doubt, this does not apply to a person appointed pursuant to Article 4.3 (in the case of a Board co-optee) or Article 7.13.1 (in the case of a person appointed to the position of Independent Chairperson).

4.9.2 No staff member or person employed (part time or full time) by the Association is eligible to be a Director of the Association.

4.9.3 If a Director becomes a staff member or person employed (part time or full time) by the Association, then he or she immediately ceases to be a Director of the Association.

Election

4.10.1 If the nominations of candidates by members are only as many as the number of positions of the Board then those candidates shall be deemed elected.

- 4.10.2 On or before 31 July of each year, the Secretary shall issue ballot papers for the election of as many directors as shall retire at the following Annual General Meeting pursuant to Article 4.6 and 4.7 but subject to Article 4.10.1 and each ballot paper shall set out the surnames (followed by the Christian names or initials) in alphabetical order of the Members nominated for election to the Board and not automatically elected pursuant to Article 4.10.1. Each member shall be issued with one ballot paper. The Ballot papers, biographical notes and instructions for voting shall be posted to every member within seven days of the issue of the ballot papers. The method of voting shall be such as is prescribed by the Board from time to time. The ballots shall close at 4 o'clock in the afternoon on the last day of August in each year.
- 4.10.3 In relation to the election of Directors, only paid up members shall be entitled to vote in the ballot for such elections.
- 4.10.4 The Board shall appoint an independent returning officer. Each candidate shall be entitled to nominate one scrutineer to scrutinise the taking of the ballot. If no candidate so nominates then the Chairperson shall nominate at least one scrutineer.
- 4.10.5 The returning officer after counting the votes shall certify in writing to the Chairperson at the Annual General Meeting the result of the ballot and the Chairperson shall declare elected candidates in accordance with such certification.
- 4.10.6 If two or more candidates receive the same number of votes then the returning officer shall decide by ballot of chance which candidate is to be elected.
- 4.10.7 The decision of the returning officer shall be final and binding in respect of all matters affecting the election.
- 4.10.8 Notwithstanding anything to the contrary contained herein the Board shall be entitled to direct that the election of Directors to take effect from the close of the first Annual General Meeting of the Association be brought forward to take effect from such earlier date as the Directors may determine and the balloting process for such election shall also be brought forward provided that the time between the close of nominations and the close of ballot shall be as would normally apply. The directors so elected shall hold office from such date as is determined by the Board but for purposes of Articles 4.6 and 4.7 shall be deemed to have taken office as from the close of the first Annual General Meeting of the Association.

4.11 Transitional Provisions in relation to Board elections and appointments for the 2008 and 2009 years.

4.11.1 In relation to the 2008 year election of Directors of the Association:

- (a) Four (4) Directors shall retire;
- (b) Three (3) Directors shall be elected;
- (c) of the three (3) Directors elected, one (1) Director elected shall be appointed to serve a term of three (3) years and the other two (2) Directors elected shall be appointed to serve terms of two (2) years;
- (d) the Director who receives the most votes in the election shall be the Director who is appointed to serve term of three (3) years. If there is an equality of votes, then the returning officer shall decide by ballot of chance which Director is so appointed for the three (3) year term.

4.11.2 In relation to the 2009 year election of directors of the Association:

- (a) the four (4) Directors who did not retire at the 2008 elections shall retire;
- (b) three (3) Directors shall be elected;
- (c) of the three (3) Directors elected, two (2) Directors shall be appointed to serve a term of three (3) years and the remaining Director shall be appointed for a term of two (2) years.
- (d) The two (2) Directors who receive the most votes in the election shall be the Director who is appointed to serve term of three (3) years. If there are more than two Directors receiving the same number of votes then the returning officer shall decide by ballot of chance which two (2) Directors are so appointed for the three (3) year term.

4.11.3 For the avoidance of doubt, the provisions of Article 4.7.1 and 4.7.2 have the affect that:

- (a) the board of 8 members elected in 2007 shall be reduced by one at each of the 2008 and 2009 elections, so that after the 2009 elections, the board is reduced to six.
- (b) For the 2010 election, two (2) Directors shall retire, being the two (2) directors from the 2008 elections who were appointed for a 2 year term; and there shall be two (2) vacancies to be filled by the 2010 election.
- (c) For the 2011 election 2 Directors shall retire, being the Director appointed for the three (3) year term in the 2008 elections and the Director appointed for two (2) years in the 2009 elections, and there shall be two (2) vacancies to be filled by the 2011 elections.
- (d) Thereafter, two (2) Directors shall retire each year, with two (2) vacancies.

5. POWERS OF THE BOARD

- 5.1** Subject to the Constitution, the Management of the business and the control of the finances and affairs of the Association shall be vested in the Board which may exercise all such powers and do all such things as may be exercised or done by the Association as are not by these Articles or by the Law expressly directed or required to be exercised or done by the Association in a general meeting.
- 5.2** Except as required by law the Board shall not be bound by any resolution of a general meeting.

Rules

- 5.3.1 The Board shall have power to make, alter and repeal from time to time such rules as it may think fit for the proper conduct and management of the Association subject only to the Law and the Constitution.
- 5.3.2 The Secretary shall notify each member of any rules made and of any alteration of or amendment to any rule so made by the Board within thirty days of that happening.

Attorneys

- 5.4** The Board may from time to time appoint any one or more of its members to act as attorneys for such purposes as it shall determine and upon such conditions it may determine.

Cheques, Receipts, etc.

- 5.5** All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Association shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two persons appointed by the Board for the purpose or in any other way from time to time determined by the Board for the purpose.

Committees, Councils and Working Parties

- 5.6** The Board may appoint committees, councils or working parties and may fix the quorum thereof and may delegate any of its powers to such committees, councils or working parties and make rules for regulating the proceedings of the committees, councils or working parties.
- 5.7** The Board will appoint the chairperson of each committee, council or working party.

Validity

- 5.8** All acts done by any meeting of the Board or committee or by any person as a member of the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or of the committee or person acting as aforesaid or that member of the Board or any of them were disqualified from so acting, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board or the relevant committee.

6. BOARD VACANCIES

- 6.1** In addition to any appointment that may be made by the Board pursuant to article 4.3, if a vacancy occurs, the Board may at any time and time to time, appoint a new Director to fill any casual vacancy. Any such appointee shall hold office until the close of the next ensuing Annual General Meeting of the Association.
- 6.2** The Board may act for any purpose notwithstanding the occurrence of any vacancy amongst the Directors.

Resignation

- 6.3** A Director of the Board may resign by posting a notice of his or her intention to resign to the registered office of the Association or lodging such notice at the said office and the registration shall have effect upon the expiration of thirty days after the date of posting such notice or the date on which the notice is lodged at the registered office of the Association or upon its earlier acceptance by the Board.

Termination

- 6.4** The office of a Director of the Board shall be vacated
- 6.4.1 immediately:
- (a) if he or she resigns his or her office by notice in writing to the Association
 - (b) if he or she be absent from two consecutive meetings of the Board without approval from the Board for leave of absence in writing
 - (c) if he or she becomes an insolvent under administration
 - (d) if he or she becomes prohibited from being a director of a company by reason of any order made under the Law
 - (e) if he or she 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
 - (f) if he or she is directly or indirectly interested in any contract or proposed contract with the Association provided, however, that a Director shall not vacate his or her office by reason of his or her being a member of any corporation which has entered or proposes to enter into contract with the Association if he or she shall have declared the nature of his or her interest in the manner required by the Law
 - (g) where a director has been elected as a member and the director ceases to be a member of the Association
 - (h) where a director has been elected as a member and is a Representative of a member, and that member ceases to be a member of the Association (except where the director immediately becomes the Representative of another member of the Association)

- 6.4.2 in the case where a director has served for a total of 9 continuous years (including periods served as a Board co-optee), then at the next Annual General Meeting.

Dismissal of Board

- 6.5.1 In the event that at a duly convened general meeting held prior to the 1 May in the relevant year at least 50 percent of the members' representatives entitled to vote (present or not) vote in favour of a motion of no confidence in the Board, then the Secretary shall within one calendar month of the date of such resolution by notice in writing to all member call for nominations for a ballot for an election in relation to all Directors positions on the Board.
- 6.5.2 The procedure for nomination and balloting shall be in accordance with Articles 4.8, 4.9 and 4.10 except that:
- (a) The closing date for nomination shall be one month from the date on which the notice calling for nominations is posted to the members; and
 - (b) Ballot papers shall be posted to members within one month of the date that nominations close; and
 - (c) The ballot shall close at 4.00 pm on that date which is one calendar month from the date on which ballot papers are posted to members; and
 - (d) The declaration of those elected shall be made by the returning officer within 14 days of the close of the ballot by notice in writing to all members.
- 6.5.3 The term of office of the Directors so elected shall commence at 9.00 a.m. on that date which is one calendar month from the date of such declaration and notwithstanding anything to the contrary contained in these Articles the term of office of the Directors who hold office immediately prior to that time shall terminate at that time.
- 6.5.4 Notwithstanding anything to the contrary contained in these Articles in the event that a ballot pursuant to Article 6.6.1 takes place within the three (3) calendar months preceding the 14 September in any year then the normal annual ballot due to be held in that year shall not be held and the Directors elected by the ballot pursuant to Article 6.6.1 shall be deemed to have been declared elected to office at the next Annual General Meeting. In any other case such Directors shall be deemed to have been declared elected to office at the annual general meeting next preceding the ballot.

7. BOARD MEETINGS

- 7.1** The Board shall meet at least once in each financial year and may meet so often and at such time or times and at such places as it may from time to time determine. In default of the Board nominating the time and place of any such meeting the Secretary shall determine the same and notify the Directors.
- 7.2** The Secretary shall convene a Board Meeting if directed to do so by the Chairperson or by any three Directors.

Quorum

- 7.3.1 At all meetings of the Board except those at which a resolution under Article 6.4 is to be put to the Board, the following shall represent a quorum:

Where at the time of the scheduled commencement of any meeting of the Board;

- (a) the Board consists of ten or nine or eight Directors (which number includes elected Directors and Board co-optees), then 5 Directors shall represent a quorum.
- (b) the Board consists of seven or six Directors (which number includes elected Directors and Board co-optees), then 4 Directors shall represent a quorum.

- 7.3.2 In the event of a quorum not being present within half an hour of the time appointed the Chairperson shall postpone the meeting to such date time and place as may be considered to be suitable.

Chairperson of Board Meetings

- 7.4** The Chairperson at any meeting of the Board shall be the chairperson of the Association or if at any meeting the Chairperson is not present within 10 minutes after the time appointed for holding the meeting then the Board shall elect a Chairperson from the Members of the Board present and the Chairperson so elected may perform all the duties and exercise the discretion of the Chairperson.
- 7.5** At all meetings of the Board the Chairperson's ruling shall be final in all matters of order and practice.

Adjournment

- 7.6** The Board may by resolution from time to time adjourn its meetings to such a place and time as the Board may think fit. Business on the agenda for any Board meeting which has not been completed or dealt with at such meeting may be at any such adjourned meeting.

Voting

- 7.7** Subject to this Article questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the members of the Board shall for all purposes be deemed a determination of the Board. Each Director including the Chairperson shall have one vote.

7.8 A Directors shall not be entitled to be present or vote in relation to any matter involving negotiations or a dispute with any Union or Association of which such Director is a member.

7.9 A Director shall not vote in respect of any contract or proposed contract with the Association in which he or she is interested or any matter arising from it and if he or she does so vote his or her vote shall not be counted.

Resolution in Writing

7.10 A resolution in writing signed by all the members of the Board for the time being entitled to receive notice of a meeting of the Board shall be a valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more members of the Board including a facsimile of any such signed form of resolution.

Mode of Meeting of Directors

7.11.1 The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

7.11.2 The directors are to be treated as present together when in communication by telephone or other means of audio, visual or audio visual communication if each of the directors participating in the communication is able to understand each of the other participating directors.

Minutes

7.12 Minutes of the proceedings of the Board shall be recorded by the Secretary in a Minutes Book kept for the purpose. The Minutes be verified at the next succeeding Board Meeting and signed by the Chairperson of that meeting. When signed the minutes shall be prima facie evidence of the facts stated therein.

Election of Chairperson

7.13 Independent Chairperson

Notwithstanding anything contained in these Articles:

7.13.1 The Board may appoint a Board co-optee as Chairperson to act as an independent Chairperson (“Independent Chairperson”).

7.13.2 If an Independent Chairperson is appointed then:

- (a) that person is thereby appointed as a member of the Board;
- (b) the date of appointment shall be as specified by the Board;
- (c) the Independent Chairperson’s term will expire at the end of the second Annual General Meeting after his or her initial appointment as Independent Chairperson.
- (d) for the avoidance of doubt Article 6.4 applies.

7.13.3 The Board may terminate the appointment of the Independent Chairperson in that capacity by majority resolution. However, any such termination does not terminate the appointment of that person as a Director, who shall be subject inter alia to the provisions of Articles 4.7.1 and 6.1.

7.14 DELETED

Directors' Conflict of Interest

7.15.1 Subject to the Law no Director shall be disqualified by his office from contracting or entering into any arrangement with the Association either as vendor, purchaser or otherwise, nor shall any such contract or arrangement or any contract or arrangement entered into by or on behalf of the Association in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Association for any profit realized by any such contract or agreement, by reason of such Director holding that office or of the fiduciary relation thereby established, but every Director shall observe the provisions of Section 191 of the Law relating to the disclosure of the interest of Directors in contracts or proposed contracts with the Association or of any office or property held by Directors which might create duties or interests in conflict with their duties or interests as Directors as if the Association were a proprietary company.

7.15.2 Subject to the Law, a Director shall not as a Director or be present at a meeting of Directors vote in respect of any contract or arrangement in which such Director is interested in the manner described in Article 7.15.1 being considered at that meeting.

7.15.3 A Director who is interested in any contract or arrangement as aforesaid may notwithstanding such interest attest the execution by the Association of any document evidencing or otherwise connected with such contract or arrangement.

8. SECRETARY

8.1 There shall be a Secretary of the Association who shall be appointed by the Board for such term at such salary and upon such conditions as the Board may from time to time think fit. The Board shall have the power at any time to revoke any such appointment and to take a fresh appointment. For the avoidance of doubt, the Secretary may be a Board member.

8.2 The Board may at any time as the occasion may require appoint and dismiss an Acting Secretary or an Assistant Secretary.

8.3 The Secretary shall perform such functions as he or she may from time to time be directed by the Board to perform.

9. CHIEF EXECUTIVE OFFICER

9.1.1 The Board may appoint a chief executive officer or any other office of employment under the Company (other than auditor) for a period (but not for life) and on the terms that it thinks fit.

9.1.2 DELETED

9.1.3 Subject to the terms of an agreement entered into between the Company and the chief executive officer, the directors may remove or dismiss the chief executive officer at any time.

Termination of appointment of chief executive officer

9.2 DELETED

Remuneration of chief executive officer

9.3 Subject to the terms of any agreement entered into between the Company and a chief executive officer the chief executive officer is entitled to receive the remuneration determined by the directors.

Powers of chief executive officer

9.4 *Subject* to the terms of any agreement between the Association and the chief executive officer:

9.4.1 The directors may entrust to and confer on a chief executive officer any of the powers exercisable by them on the terms and conditions and with the restrictions determined by the directors.

9.4.2 The powers conferred on a chief executive officer may be conferred on terms that they are to be exercised either concurrently with or to the exclusion of the directors' own powers.

9.4.3 The directors may revoke, withdraw, alter, or vary from time to time all or any of the powers of a chief executive officer.

10. REGISTERED OFFICE

The office of the Association shall be at such place as the Board may from time to time determine.

11. SEAL

11.1 The Association may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words "Common Seal" are engraved.

11.2 If the Association has a seal the Directors shall provide for the safe custody of the Seal.

11.3 The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.

- 11.4** The Association may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
- (a) two Directors; or
 - (b) one Director and one Secretary; or
 - (c) one Director and another person appointed by the Directors for that purpose.
- The signature of such persons may be affixed to the document by manual, autographic or mechanical means.
- 11.5** The Association may execute a document without using a seal if the document is signed by:
- (a) two Directors; or
 - (b) one Director and one Secretary; or
 - (c) one Director and another person appointed by the Directors for that purpose.
- 11.6** A facsimile signature may not be affixed to a document unless the auditors, internal auditors or bankers of the Association have reported to the Board in writing that the document may be sealed in that manner.

12. NOTICES

- 12.1** A notice may be given by the Company to any member either:
- (a) by serving it on him personally;
 - (b) by sending it by post to him at his address as shown in the register of members or the address supplied by him to the Company for the giving of notices to him;
 - (a) by sending it by facsimile transmission to a facsimile number supplied by the member to the Company for the giving of notices to the member.
- 12.2** Where a notice is sent by post, services of the notice shall be deemed effective by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice to a member, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 12.3** Where a notice is sent by facsimile, service of the notice shall be deemed to be effected on receipt by the Company of a transmission report confirming successful transmission.
- 12.4** A notice may be given by the Company to joint members by giving notice to the joint member first named in the register of members.

13. INDEMNITY OF OFFICERS

Costs and Expenses

13.1 To the extent permitted by the Law:

- (a) the Association indemnifies every person who is or has been an Officer of the Association or of a wholly-owned subsidiary of the Association against any liability for costs and expenses incurred by that person in defending any proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the Law; and
- (b) the Association indemnifies every person who is or has been an Officer of the Association or of a wholly-owned subsidiary of the Association against any liability incurred by the person, as an Officer of the Association or of a wholly-owned subsidiary of the Association, to another person (other than the Association or a related body corporate of the Association) unless the liability arises out of conduct involving a lack of good faith.

Insurance Premiums

13.2 The Association 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 Association or of a subsidiary of the Association against a liability:

- (a) incurred by the person in his capacity as an Officer of the Association or a subsidiary of the Association or in the course of acting in connection with the affairs of the Association or a subsidiary of the Association or otherwise arising out of the Officer's holding such office PROVIDED THAT the liability does not arise out of conduct involving a willful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 or 183 of the Law; or
- (b) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.

Definitions

13.3 In Articles 13.1 and 13.2:

- (a) the term "proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his capacity as such an Officer or in the course of acting in connection with the affairs of the Association or a wholly-owned subsidiary (in Article 13.1) or subsidiary (in Article 13.2) of the Association or otherwise arising out of the Officer's holding such office (including proceedings alleging that he was guilty of negligence, default, breach of trust or breach of duty in relation to the Association or a wholly-owned subsidiary (in Article 13.1) or subsidiary (in Article 13.2) of the Association); and
- (b) the term "Officer" has the meaning given to that term in Section 9 of the Law.

14. AUDIT

- 14.1** A registered company auditor must be appointed.
- 14.2** The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Law.

15. DIVIDENDS AND RESERVES

No payment of dividends or other distributions to members shall be made.

16. GIFT FUND

- 16.1** The Company shall establish one or more Gift Funds for the purpose of receiving donations in order to carry out and administer the objects of the Association as described in this Constitution.
- 16.2** All gifts of money made to the Association and all income received by the Association as gifts or donations from any member of the public or from any other source are to be deposited to one or more separate bank accounts operated by the Association and, in the books of account of the Association, credited to one or more separate accounts. For the purposes of this Constitution, any such bank account will be referred to as "The NESAs Gift Fund Bank Account" and such accounts in the books of account of the Association will be referred to as "the Gift Fund Account".
- 16.3** All gifts or donations of a non-monetary nature or type must be specifically identified on a gift register and all such items must in the books of account of the Association be credited to the Gift Fund Account.
- 16.4** A receipt must be given by the Association to the donor of all gifts or donations, whether of a monetary or non-monetary nature. The receipt must show the following items:
- (a) Name of the Association;
 - (b) The ACN or ABN of the Association;
 - (c) (i) if the gift or donation is of a monetary nature, the quantum of money received; or
(ii) if the gift or donation is of a non-monetary nature, a full and accurate description of the item or items the subject of the gift or donation; and
 - (d) a statement that the receipt is for a gift.
- 16.5** The funds standing to the credit of the Gift Fund Account must be used solely in pursuance of the purposes of the Gift Fund. Detailed records are to be maintained of all amounts debited to the Gift Fund Account.
- 16.6** All income and property received by the Association from all sources other than from gifts or donations from the public or from any other source such as government grants, funds from sponsors, proceeds of raffles, fundraising activities and the like are to be credited to such other accounts in the books of account of the Association and under no circumstances shall any such income be credited to the Gift Fund Account.

17. WINDING UP

Procedure

17.1 The Association may be dissolved by a special resolution of members at a meeting of the Association members.

Contribution of Members on Winding Up

17.2 Every member of the Association undertakes to contribute to the assets of the Association in the event of the Association being wound up while he or she is a member, or within one year of ceasing to be a member such amount as may be required not exceeding twenty dollars (\$20.00), for the payment of the debts and liabilities of the Association contracted whilst the member or past member as the case may be was a member of the Association, and the costs charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

Distribution of Property on Revocation of Endorsement

17.3

17.3.1 Where on the withdrawal or revocation of any endorsement given by the Commissioner of Taxation of the Association's status as a tax deductible gift recipient under Subdivision 30-B of the Tax Act, any surplus assets or property of the Gift Fund shall not form part of the Association's assets or property but must be given or transferred to such other institution or company which has all of the following features:

- (a) It has been approved under Sub-Division 30-B of the Tax Act as a body which may receive donations of money and/or property with such donations being deductible from the taxable income of the donor; and
- (b) It has similar objects to those described in Clause 2 of Part A hereof; and
- (c) It is an institution or body which prohibits the distribution of income, profits or assets to its members; and
- (d) It has gained approval to be recognized as a body whose income is exempt from taxation.

17.3.2 Such institution or company will be determined by the members of the Association within three (3) months of the Association's receipt of formal written notification from the Commissioner of the withdrawal or revocation of endorsement. Failing such a determination, the institution or company shall be determined by application to the Supreme Court in Victoria.

Distribution of Property on Winding Up

17.4

17.4.1 Where on the winding up of the Gift Fund, the Association, or the dissolution of the Association, there is a surplus of assets in the Gift Fund or the Association after satisfying all of the Association's liabilities and expenses, the surplus will not be paid or distributed to members of the Association but will be given or transferred to such other institution or company which has the same features as those described in Article 17.3.1 (a) to (d).

17.4.2 Such institution or company will be determined by the members of the Association on or before the time of such winding up or dissolution. Failing such a determination, the institution or company shall be determined by application to the Supreme Court in Victoria.

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