



# Constitution

National Employment Services Association Limited

ACN: 079 065 428

A company limited by guarantee

Constitution incorporated 8 October 1997 and replaced 27 June 2025

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## **1 Name**

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The name of the Company is National Employment Services Association Limited (the **Company**).

## **2 Purpose and powers**

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- (a) The Company is a not-for-profit public company limited by guarantee and is eligible to be a Charity.
- (b) The Purposes of the Company are to advance education in the employment and related services sector and to advance social or public welfare through the wellbeing of unemployed, disadvantaged and marginalised people through economic and social inclusion and participation.
- (c) To achieve its Purposes, the Company will:
  - (i) advocate and represent the interests of members to government and other key stakeholders;
  - (ii) work with government, members and other key stakeholders to co-design policies, services, and training responsive to the needs and aspirations of disadvantaged people;
  - (iii) build capability to provide high-quality support services to economically and socially disadvantaged people through research, training and information dissemination; and
  - (iv) gather and share information to raise the profile of issues impacting economically and socially disadvantaged people and promote best practice and continuous improvement.
- (d) Solely to carry out the Purpose, the Company may exercise all of the powers of an individual and a company under the Act.

## **3 Not-for-profit**

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- (a) The income and property of the Company must be applied solely towards the Purpose.
- (b) No part of the income or property of the Company may be paid or transferred directly or indirectly to members or directors by way of dividend, bonus or other profit distribution in their capacity as members or directors.
- (c) Clauses 3(a)-3(b) do not stop the Company from making a payment:
  - (i) to a member for goods or services provided or expenses properly incurred at fair and reasonable rates or rates more favourable to the Company;
  - (ii) to a member in carrying out the Company's Purpose;
  - (iii) of premiums for insurance indemnifying directors to the extent allowed for by law and this Constitution; or
  - (iv) with the prior approval of the Board, to a director:

- (A) 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
- (B) as reimbursement for reasonable out-of-pocket expenses properly incurred in performing a duty as director.

## **4 Membership**

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### **4.1 General**

The minimum number of members is one.

### **4.2 Eligibility**

To be eligible for membership, an organisation or an individual must:

- (a) be committed to the Purpose;
- (b) agree to comply with this Constitution and the Company's Code of Conduct, and any other rules set by the Board from time to time;
- (c) meet the eligibility requirements determined by the Board from time to time; and
- (d) meet the requirements for the relevant membership class (if any).

### **4.3 Membership classes**

- (a) The Board may, in its sole discretion, establish such membership classes, including non-voting membership classes, as it deems fit.
- (b) The eligibility criteria, rights and obligations of members in each membership class will be determined by the Board.
- (c) The Board may amend membership classes by resolution passed by 75% of all directors to:
  - (i) establish or abolish a membership class;
  - (ii) vary the eligibility criteria of a membership class; or
  - (iii) vary or cancel the rights or obligations of a membership class (including voting rights).
- (d) If a person:
  - (i) is part of a membership class that is abolished; or
  - (ii) no longer meets the eligibility criteria for their membership class for any reason (including due to the Board varying the eligibility criteria for their membership class);

the Board may, at the Board's discretion, transfer the membership of that person to a different membership class.

#### **4.4 Application**

- (a) An application for membership must be made by submitting a correctly completed membership application form (as approved by the Board) to the Secretary.
- (b) An applicant must pay the annual membership fee determined by the Board (if any). If an applicant applies for membership after 30 September, the Board may request the payment of a joining fee pursuant to clause 4.6(b).
- (c) An applicant must agree in writing to contribute the Guaranteed Amount in accordance with clause 18.1 and to comply with the Company's Code of Conduct.

#### **4.5 Admission**

- (a) The Board must consider and resolve whether to accept or decline each application for membership within a reasonable time.
- (b) A decision to accept or decline an application for membership must be made by 75% of all directors.
- (c) The Board may accept or decline an application in its sole discretion and is not required to disclose the reason(s) for its decision.
- (d) If the Board accepts an application, the Secretary must, as soon as possible:
  - (i) enter the applicant's details into the Register, subject to the payment of the joining fee (if any); and
  - (ii) notify the applicant in writing of the date their membership commenced.
- (e) If the Board declines an application, the Secretary must notify the applicant in writing of the rejection as soon as possible.
- (f) A person becomes a member when their name is entered into the Register.

#### **4.6 Joining fee and annual membership fee**

- (a) The Board may determine the amount of the annual membership fee from time to time.
- (b) The Board may determine that any new member who joins after 30 September must, for that year, pay a joining fee equal to:
  - (i) the full annual membership fee;
  - (ii) a pro rata annual membership fee based on the remaining part of the year; or
  - (iii) a fixed amount determined from time to time by the Board.

- (c) The annual membership fee is due and payable by 30 August each year.
- (d) The rights of a member (including the right to vote) who has not paid the annual membership fee or joining fee by the due date (as relevant) are suspended until it is paid.
- (e) Subject to clause 4.6(f) if a member does not pay their annual membership fee or joining fee within 60 days of receiving a notice of payment from the Company, the member is deemed to have resigned their membership.
- (f) In exceptional circumstances the Board may, in its sole discretion, grant an extension of 30 days.

#### **4.7 Register of members**

- (a) The Secretary must maintain the Register.
- (b) The Register must contain:
  - (i) for each current member – the member's name, address, membership class (if any) and date of admission to membership; and
  - (ii) for each person who ceased to be a member in the past seven years – the person's name, date of admission to membership and date on which the person stopped being a member.
- (c) The Secretary may keep former member entries separately from current member entries.
- (d) Notices may be served on a member at their address in the Register.
- (e) The Company must give members access to the Register in accordance with the Act.
- (f) Information that is accessed from the Register must only be used in accordance with the Act.

#### **4.8 Ceasing to be a member**

- (a) A person ceases to be a member on:
  - (i) resignation in writing;
  - (ii) failing to satisfy the relevant eligibility requirements for the member's membership class (if any) and the membership not being transferred to another membership class;
  - (iii) expulsion in accordance with clause 4.9;
  - (iv) deemed resignation in accordance with clause 4.6(e);
  - (v) the Board deeming, in its sole discretion, the member to be an untraceable member because the member has not responded to correspondence within 60 days;

- (vi) in the case of an individual:
  - (A) death;
  - (B) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
  - (C) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health; or
- (vii) in the case of a body corporate:
  - (A) being dissolved or otherwise ceasing to exist;
  - (B) having a liquidator or provisional liquidator appointed to it; or
  - (C) being insolvent.
- (b) A member whose membership is terminated will be liable for all monies due by that member to the Company in addition to any sum not exceeding the Guaranteed Amount for which the member is liable under this Constitution.
- (c) A person who ceases to be a member is not entitled to a refund or partial refund of any joining fee or annual membership fee.
- (d) There will be no liability for any loss or injury suffered by a member as a result of any decision made in good faith to remove a member from the Register under this clause.
- (e) Any person who for any reason ceases to be a member must not represent themselves in any manner as being a member.

#### **4.9 Discipline of members**

- (a) The Board may take disciplinary action against a member in accordance with this rule 4.9 if it considers there are sufficient grounds to do so.
- (b) The grounds upon which the Board may take disciplinary action against a member include, without limitation:
  - (i) non-compliance with this Constitution;
  - (ii) breach of the Company's Code of Conduct ; and
  - (iii) engagement in conduct prejudicial to the Company.
- (c) The Board may not resolve to suspend or expel a member outside of a Board meeting.
- (d) If the Board intends to consider a resolution to suspend or expel a member, it must notify the member in writing at least seven days prior to the relevant Board meeting:
  - (i) of the date, place and time of the meeting where the resolution will be considered;

- (ii) of the intended resolution and the grounds on which it is based; and
  - (iii) that they may attend the meeting and give an oral or written explanation or submission before the resolution is voted on.
- (e) After considering any oral or written explanation or submission, the Board may resolve to:
  - (i) take no further action;
  - (ii) warn the member;
  - (iii) suspend the member's rights for up to 12 months;
  - (iv) expel the member;
  - (v) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause); or
  - (vi) require the matter to be determined at a general meeting.

#### **4.10 Official Member representative**

- (a) A body corporate member must appoint an individual as its Official representative. The appointment may be a standing one.
- (b) An Official representative must agree in writing to comply with the Company's Code of Conduct.
- (c) An Official representative may exercise any and all powers of the body corporate member unless the appointment specifies otherwise.
- (d) The appointment may be made by reference to a position held.
- (e) A member may appoint more than one Official representative but only one Official representative:
  - (i) may exercise the body corporate member's powers at any one time; and
  - (ii) may be counted for the purposes of determining a quorum.

#### **4.11 Liability of members**

The liability of a member is limited to the Guaranteed Amount, being \$20.

### **5 General meetings**

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Any general meeting of the Company, other than the annual general meeting, is a special general meeting.

#### **5.1 Convening general meetings**

- (a) The Board may call a general meeting.

- (b) Members with at least 5% of the votes that may be cast at a general meeting may request that the Board convenes a special general meeting (referred to as a “**Request**” for the purpose of this clause 5).
- (c) The Request must:
  - (i) be in writing;
  - (ii) be delivered to the Company; and
  - (iii) include any resolution to be proposed at the meeting.
- (d) Unless the Request includes a proposed resolution that:
  - (i) would be in conflict with the Constitution, the Act or any applicable law;
  - (ii) is beyond the legal powers of the Company or of the members; or
  - (iii) is inconsistent with the Purpose;

the Board must give all members notice of the special general meeting within 21 days of the Request and hold the special general meeting within two months of the Request.
- (e) If the Board is required by clause 5.1(d) to call a special general meeting and does not do so within 21 days of a Request:
  - (i) 50% or more of the members who made the Request may call a special general meeting; and
  - (ii) the Company must pay the members who made the Request any reasonable expenses they incur because the Board did not call and hold the special general meeting.
- (f) To call and hold a special general meeting under clause 5.1(e), the members must:
  - (i) as far as possible, follow the special general meeting procedures in this Constitution; and
  - (ii) hold the special general meeting within three months after making the Request.
- (g) Any special general meeting that is held following a Request:
  - (i) must only consider the resolution proposed within the Request; and
  - (ii) may not consider any other business.

## 5.2 Changes to general meeting arrangements

- (a) The Board may change the venue for, postpone or cancel a general meeting called under clause 5.1(a).
- (b) If a change is made under clause 5.2(a):
  - (i) notice of the change must be given to all persons entitled to receive notices of a general meeting under this Constitution;

- (ii) a notice of postponement must specify the date, time and place to which the general meeting has been postponed; and
- (iii) clause 5.5 does not apply to the notice.
- (c) The only business that may be transacted at a general meeting which is postponed is the business specified in the original notice convening the meeting.

### **5.3 Entitlement to receive notice**

Notice of a general meeting:

- (a) must be given to every member and director; and
- (b) may be given to any auditor appointed for the Company and in office at the time.

### **5.4 Notice of general meetings**

- (a) A notice of general meeting must:
  - (i) be in writing;
  - (ii) state the place, day and time of the meeting;
  - (iii) provide details of any technology that will be used to facilitate the meeting;
  - (iv) state the general nature of the business to be transacted at the meeting;
  - (v) state the wording of any special resolution to be considered (and state that it is proposed as a special resolution); and
- (b) The information under clause 6.5 must be included in the notice or any proxy form approved by the Board.
- (c) Any proxy form approved by the Board must be attached to the notice.

### **5.5 Timing of notice**

- (a) Subject to clause 5.5(b), at least 21 days' notice must be given of a general meeting.
- (b) Shorter notice may be given of a general meeting (other than a meeting to consider a resolution to remove a director or auditor) if:
  - (i) in the case of an annual general meeting – all the members entitled to attend and vote agree beforehand; and
  - (ii) in the case of any other special general meeting – members with at least 95% of the votes that may be cast at the meeting agree beforehand.

## **5.6 Annual general meeting**

- (a) The Board must hold an annual general meeting at least once in each calendar year and within five months after the end of its financial year.
- (b) The business of an annual general meeting may include any of the following (even if not stated in the notice of meeting):
  - (i) the annual financial statements and any auditor's report;
  - (ii) the appointment of directors; and
  - (iii) the appointment and remuneration of any auditor.

## **5.7 Chairperson of general meetings**

- (a) The Chair (or Independent Chair, as the case may be) will preside as chairperson at every general meeting.
- (b) If there is no Chair or they are not present within 15 minutes of the commencement time or they are unable or unwilling to act as chairperson for all or part of the meeting, the following may preside as chairperson (in order of precedence):
  - (i) a director chosen by a majority of the directors present;
  - (ii) the only director present; or
  - (iii) a member chosen by a majority of the members present.

## **5.8 Quorum for general meetings**

- (a) No business may be transacted at a general meeting (other than electing a chairperson or adjourning the meeting) unless a quorum is present at the time the business is dealt with.
- (b) A quorum for a general meeting is five members present for the whole meeting.
- (c) If a quorum is not present within 30 minutes of the commencement time, then:
  - (i) if the meeting was called by or at the request of members, the meeting will dissolve;
  - (ii) otherwise:
    - (A) the meeting stands adjourned to the day, time and place determined by the Board (or if no determination is made by the Board, to the same day, time and place in the following week); and
    - (B) if at the resumption of the meeting a quorum is not present within 30 minutes of the commencement time, the meeting will dissolve.

- (d) When determining a quorum:
  - (i) only one proxy or Official representative may be counted for each member;
  - (ii) no individual may be counted more than once (for example, an individual who is present as both a member in their own right and as a proxy can only be counted once); and
  - (iii) a suspended member must not be counted.

## **5.9 Adjournment of general meetings**

- (a) The chairperson may (and must if directed by a majority of the members present and entitled to vote) adjourn a general meeting or any business, motion or discussion being considered or remaining to be considered.
- (b) A meeting adjourned under this clause 5.9 is adjourned to the day, time and place determined by the Board (or if no determination is made by the Board, to the same day, time and place in the following week).
- (c) It is not necessary to give any notice of an adjournment, or of the business to be transacted at any adjourned meeting, unless a meeting is adjourned for one month or more.
- (d) Only unfinished business may be transacted at a general meeting resumed after an adjournment.

## **5.10 Auditor's rights**

- (a) Any auditor appointed by the Company and in office at the time of a general meeting is entitled to:
  - (i) attend the general meeting; and
  - (ii) be heard at the general meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (b) The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at a general meeting.

# **6 Voting at general meetings**

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## **6.1 Voting rights**

Each member at a general meeting has one vote (provided they are not suspended) regardless of whether the vote is conducted on a show of hands or voices or by poll.

## **6.2 Method of voting**

- (a) Voting will occur by show of hands or voices or such other method as the chairperson determines, unless a poll is demanded and not withdrawn.

- (b) A poll can be demanded by five members at any time prior to a vote, or immediately after the declaration of a result of a vote conducted by means other than a poll.
- (c) A poll must be taken in the manner directed by the chairperson.
- (d) A poll demanded on the election of the chairperson or on a question of adjournment must be taken immediately.
- (e) A member may vote in person or by technology.

### **6.3 Decisions of the members**

- (a) Questions arising for determination (other than a special resolution) will be decided by a majority of votes cast (unless otherwise provided in this Constitution).
- (b) The chairperson has a deliberative vote. If the votes cast on a motion are equal, the chairperson will also have a casting vote.
- (c) A declaration by the chairperson that a motion has been carried or lost on a show of hands or voices is conclusive evidence of the fact (unless a poll is demanded).
- (d) An objection to the right of a person to vote may only be raised at the meeting at which the vote objected to is given or tendered. Any objection must be referred to the chairperson, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

### **6.4 Seconding**

A motion must be seconded in order to be put to a vote.

### **6.5 Proxies**

- (a) A member may appoint a proxy to act on their behalf at one or more general meetings.
- (b) A proxy may exercise any and all of the rights of the appointing member, subject to clause 6.5(c) and any directions or limitations specified in the proxy appointment.
- (c) A proxy cannot speak and vote for an appointing member while that member is present at the meeting.
- (d) A proxy must be another member or an Official representative.
- (e) Subject to clause 6.5(f), a member must not hold more than two proxy votes.
- (f) The chairperson of a general meeting may hold unlimited directed proxy votes.
- (g) To be valid, a proxy appointment must be:
  - (i) written and signed by the appointing member in a form substantially similar to that in Schedule A; and

- (ii) given to the Company at least 48 hours before the meeting, by delivery to the Company at its registered address or at another address (including an electronic address) specified in the notice of the meeting.
- (h) A proxy vote is valid even if the appointing member revokes the appointment, or ceases to be a member, provided that the chairperson was not aware of the revocation or cessation of membership at the time of the meeting.

## **6.6 Use of virtual meeting technology in general meetings**

- (a) The Company may hold its general meetings using any virtual meeting technology that is agreed to by the Board.
- (b) The use of any virtual meeting technology must give participants a reasonable opportunity to participate, including a reasonable opportunity to exercise a right to speak.
- (c) The Board's agreement may be a standing one.
- (d) A person who attends a general meeting by technology is deemed to be present in person at the meeting.
- (e) A member participating through the use of virtual meeting technology:
  - (i) must be given the opportunity to participate in a vote in real time; and
  - (ii) may, in the sole discretion of the Board, be given the opportunity to record a vote in advance of the meeting, in which case the voter may elect to vote in real time or in advance.
- (f) A document that is required or permitted to be tabled at a general meeting using virtual meeting technology is taken to have been tabled if it is:
  - (i) given to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) before the meeting; or
  - (ii) made accessible to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) during the meeting.

## **7 Dispute resolution**

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- (a) The parties to a dispute under this Constitution, being a member or director and:
  - (i) one or more members;
  - (ii) one or more directors; or
  - (iii) the Company;
 must attempt to resolve the matter between themselves within 14 days of being made aware of the dispute.

- (b) The Company, a member or director must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 4.9 until the disciplinary procedure is completed.
- (c) If the parties cannot resolve the dispute within 14 days, they must:
  - (i) notify the Company;
  - (ii) agree or request that a mediator be appointed; and
  - (iii) attempt in good faith to settle the dispute by mediation.
- (d) The mediator must:
  - (i) be a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (A) for disputes between members – a person chosen by the Board; and
    - (B) for all other disputes – a person chosen by the chair of Resolution Institute, or the chair's designated representative.
- (e) A mediator chosen pursuant to clause 7(d)(ii):
  - (i) must be a professionally accredited mediator;
  - (ii) must not be a current or former member;
  - (iii) must not have a personal interest in the dispute; and
  - (iv) must not be biased towards or against anyone involved in the dispute.
- (f) When conducting the mediation, the mediator must allow those involved a reasonable chance to be heard and to review any written statements.
- (g) The mediator must not determine the dispute.
- (h) A member or a director must not commence a formal legal proceeding (except for interlocutory relief) in relation to a dispute under this Constitution unless and until they have complied with this dispute resolution procedure.

## 8 Appointment and removal of directors

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### 8.1 Number and composition of directors

- (a) At all times, the Company must have at least three and no more than ten directors.
- (b) The Board will comprise:
  - (i) six directors elected by the members in accordance with clause 8.3 (**Elected Director**);
  - (ii) up to three directors appointed by the Board in accordance with clause 8.5 (**Appointed Director**); and
  - (iii) any Independent Chair appointed pursuant to clause 12.1(b)(i).

## 8.2 Eligibility

- (a) Any individual committed to the Purpose is eligible to be a director (and is referred to as an **“Eligible Person”** throughout this Constitution) provided:
  - (i) the individual is a member or an Official representative;
  - (ii) the individual has consented in writing to be a director;
  - (iii) the individual is not an employee of the Company; and
  - (iv) the individual is not ineligible to be a director under the Act or disqualified by the Commissioner of the ACNC from being a responsible person of a Charity (if the Company is a Charity).
- (b) Clause 8.2(a)(i) does not apply to Appointed Directors.

## 8.3 Elected Directors

- (a) Elections for vacant Elected Director positions must be held in accordance with clauses 8.3(c)-8.3(h) and 8.4 or a by-election in accordance with clause 8.6.
- (b) Pursuant to clause 4.6(d), only paid up members are eligible to vote.
- (c) The results of an election held in accordance with this clause 8.3 must be announced at the annual general meeting immediately following the election.
- (d) Elections will be held online via an electronic voting platform.
- (e) Nominations for vacant Elected Director positions must:
  - (i) be made in writing in the manner prescribed by the Board;
  - (ii) include a biographical note of not more than 400 words setting out information regarding any previous board experience and governance roles held;
  - (iii) be accompanied by a written consent to become a director; and
  - (iv) include any other information prescribed by the Board.
- (f) Nominations must be submitted to the Secretary by 4 pm on 14 July
- (g) If the Board determines (in its sole discretion) that a nominee meets the eligibility criteria in clause 8.2 and has complied with the nomination requirements in clauses 8.3(c)-(f), the nominee will become an approved candidate.
- (h) If:
  - (i) the number of approved candidates is equal to the number of vacant Elected Director positions, the chairperson must declare each of those approved candidates as elected; and
  - (ii) the number of approved candidates is less than or greater than the number of vacant Elected Director positions – a ballot must be held in accordance with clause 8.4.

## **8.4 Ballot**

- (a) If a ballot is required for an Elected Director, the Secretary will issue one ballot paper (together with any biographical notes) with instructions for voting to each member entitled to vote on or before 31 July. Ballot papers may be issued electronically.
- (b) The ballot paper must set out the surnames (followed by the Christian names or initials) in alphabetical order for each approved candidate.
- (c) Voting will be held online via an electronic voting platform.
- (d) The Board must appoint an independent returning officer.
- (e) Each approved candidate may appoint one scrutineer to scrutinise the taking of the ballot.
- (f) If a scrutineer is not appointed by any approved candidate, the chairperson must nominate at least one scrutineer.
- (g) Ballots will close at 4pm on 31 August.
- (h) The returning officer must count the votes after the ballots close. The candidates who receive the most votes will be elected. If two or more candidates receive the same number of votes then the returning officer will decide by ballot of chance which candidate is to be elected.
- (i) The decision of the returning officer shall be final and binding in respect of all matters affecting the election.
- (j) The returning officer must provide the written, certified result to the chairperson at the annual general meeting. The chairperson must declare that result at the annual general meeting.

## **8.5 Directors appointed by the Board**

The Board may, by ordinary resolution:

- (a) appoint Appointed Directors; and
- (b) appoint an Eligible Person as an Independent Chair pursuant to clause 12.1(b)(i), in which case that individual will also be appointed as a director.

## **8.6 By-elections for Elected Directors**

- (a) The Board must call a by-election for vacant Elected Director positions in accordance with clause 8.6(c) if, at any time at least three months before an annual general meeting the number of Elected Directors is less than four.
- (b) The Board may, in its sole discretion, call a by-election for vacant Elected Director positions in accordance with clause 8.6(c) if, at any time less than three months before an annual general meeting the number of Elected Directors is less than four.

- (c) The by-election must be held in accordance with clauses 8.3(c)-8.3(h) and 8.4 save that:
  - (i) clause 8.3(c) and 8.4(j) is deleted;
  - (ii) the nomination submission date in clause 8.3(f) is to be determined by the Board (**by-election nomination submission date**);
  - (iii) the Secretary must issue ballot papers pursuant to clause 8.4(a) two weeks after the by-election nomination submission date (**ballot papers issue date**);
  - (iv) under clause 8.4(g), ballots will close one month after the ballot papers issue date;
  - (v) the members must be notified in writing of the results of the by-election; and
  - (vi) the results of a by-election held under this clause must be announced at the annual general meeting immediately following the by-election.

## 8.7 Term of office

- (a) The term of office of an Elected Director elected by members:
  - (i) is three years;
  - (ii) commences:
    - (A) at the end of the annual general meeting at which the results are declared; or
    - (B) by-election at which the results are notified to the members; and
  - (iii) expires at the end of the third annual general meeting following the election or by-election.
- (b) The term of office of an Appointed Director appointed by the Board:
  - (i) is three years (unless a different period is specified in the resolution);
  - (ii) commences on the date of appointment; and
  - (iii) expires at the conclusion of the third year following their appointment (or at the end of the period specified in the resolution).
- (c) The term of office of an Independent Chair as director:
  - (i) is two years (unless a different period is specified in the Board resolution);
  - (ii) commences on the date of appointment; and

- (iii) expires at the conclusion of the second year following their appointment (or at the end of the period specified in the Board resolution).
- (d) A director who has served continuously for nine years or more must retire for one year before being eligible for re-election or re-appointment.

## **8.8 Ceasing to be a director**

- (a) An individual stops being a director, and a casual vacancy is created, if they:
  - (i) resign by written notice to the Company;
  - (ii) are an Official representative and the member they represent:
    - (A) notifies the Company that the director is no longer an Official representative; or
    - (B) ceases to be a member;
  - (iii) become an employee of the Company;
  - (iv) are removed by members under the Act;
  - (v) are absent without leave of the Board under clause 8.9 from:
    - (A) three consecutive Board meetings; or
    - (B) four Board meetings over twelve months;
  - (vi) die, or become subject to a court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness;
  - (vii) are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as though required by the Act; or
  - (viii) become ineligible to be a director under the Act or the ACNC Legislation (if the Company is a Charity).
- (b) Clause 8.8(a)(ii) does not apply to Appointed Directors.

## **8.9 Leave of absence**

- (a) Directors are entitled to request a leave of absence from Board meetings for a maximum period of three months, subject to approval by the Board.
- (b) Leave of absence requests must be made in writing to the Board and cannot be granted retrospectively, unless there are extenuating circumstances (as agreed by the Board from time to time) which warrant a retrospective approval.
- (c) The Board will consider any request for a leave of absence at its next scheduled meeting, unless there are extenuating circumstances (as agreed by the Board from time to time).
- (d) A director on an approved leave of absence:

- (i) is not counted for the purpose of forming a quorum in accordance with clause 9.3 or passing resolutions without meetings in accordance with clause 9.7;
- (ii) will be recorded in Board meeting minutes as a director on an approved leave of absence;
- (iii) will receive minutes of Board meetings or general meetings; and
- (iv) will be recorded as being on an approved leave of absence in the Company's annual report.

#### **8.10 Insufficient directors**

If the number of directors is insufficient to constitute a quorum or less than the minimum number fixed under clause 8.1, the remaining directors may, except in an emergency, act only to:

- (a) increase the number of directors to a number sufficient to constitute a quorum or meet that minimum number; or
- (b) convene a general meeting of the Company.

#### **8.11 Defects in appointment of directors**

An act done by, or with the participation of, a person acting as a director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting or taking the relevant step.

### **9 Board decision making**

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#### **9.1 Convening Board meetings**

- (a) A director may convene or ask the Secretary to convene a Board meeting.
- (b) The Board must meet as often as the directors deem it necessary to carry out their role.

#### **9.2 Notice of Board meetings**

- (a) Written notice of Board meetings must be given to every director at least 48 hours prior to the meeting (unless the Board unanimously waives this requirement).
- (b) A notice of a Board meeting:
  - (i) must specify the place, day and time of the meeting;
  - (ii) must provide details of any technology that will be used to facilitate the meeting; and

- (iii) does not need to specify the nature of the business to be transacted at the meeting.

### **9.3 Quorum for Board meetings**

- (a) No business may be transacted at any Board meeting unless a quorum is present.
- (b) A quorum of directors for Board meetings is a majority of the total number of directors.
- (c) A director on a leave of absence approved by the Board should not be included when calculating the total number of directors for the purposes of this clause 9.3.

### **9.4 Use of virtual technology in Board meetings**

- (a) The Board may hold its meetings using any virtual meeting technology that is agreed to by the Board.
- (b) The use of any virtual meeting technology must provide the directors with a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.
- (c) The Board's agreement may be a standing one.
- (d) A director who attends by technology is deemed to be present in person at the meeting.
- (e) A director participating through the use of virtual meeting technology:
  - (i) must be given the opportunity to participate in a vote in real time; and
  - (ii) may, in the sole discretion of the Board, be given the opportunity to record a vote in advance of the meeting, in which case the director may elect to vote in real time or in advance.
- (f) A document that is required or permitted to be tabled at a meeting using virtual meeting technology is taken to have been tabled if it is:
  - (i) given to the directors entitled to attend the meeting (whether physically or using virtual meeting technology) before the meeting; or
  - (ii) made accessible to the directors entitled to attend the meeting (whether physically or using virtual meeting technology) during the meeting.

### **9.5 Chairperson of Board meetings**

- (a) The Chair (or Independent Chair as the case may be) will preside as chairperson at Board meetings.
- (b) If there is no Chair or they are not present within 15 minutes after the commencement time or they are unable or unwilling to act as chairperson

for all or part of the meeting, then the directors present may elect a director to be chairperson of the meeting or part of it.

## **9.6 Decisions of the Board**

- (a) A question arising at a Board meeting is to be decided by a majority of votes of directors present and entitled to vote.
- (b) The chairperson has a deliberative vote. If the votes cast on a motion are equal, the chairperson will also have a casting vote.

## **9.7 Resolutions without meetings**

- (a) A Board resolution may be passed without a meeting if 75% of the directors entitled to vote on the resolution sign a notice stating that they are in favour of the resolution.
- (b) The resolution is passed at the time when the last director necessary to constitute a 75% majority in favour of the resolution signs.
- (c) For the purpose of this clause:
  - (i) the notice must include the wording of the resolution;
  - (ii) the notice may be distributed by any means;
  - (iii) separate copies of the notice may be signed; and
  - (iv) the resolution fails if it has not achieved a 75% majority in favour within ten business days after the notice was given.
- (d) Resolutions without meetings must be recorded in the minutes of the next Board meeting.

# **10 Directors' powers and duties**

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## **10.1 Powers of the Board**

- (a) The directors are responsible for managing the business of the Company and furthering the Purpose.
- (b) The directors may exercise all the powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the members.
- (c) The Board cannot remove a director or an auditor.
- (d) The Board may delegate any of its powers to one or more directors, the Chief Executive Officer, a committee, an employee or any other person.
- (e) The Board may specify terms of the delegation (including the power to further delegate) and revoke a delegation.

## **10.2 Duties of directors**

Directors must comply with any duties imposed on them by the Act. If the Company is a Charity, the directors must also comply with governance standard 5 of the ACNC Legislation.

## **10.3 Establishment of committees**

- (a) The Board may establish committees.
- (b) A committee may include, or be comprised of, non-directors.
- (c) The meetings and proceedings of committees are:
  - (i) subject to any terms of reference and/or delegation; and
  - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

## **10.4 By-laws**

- (a) The Board may make regulations or by-laws not inconsistent with this Constitution for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter by-laws or regulations as it sees fit.

# **11 Directors' interests**

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## **11.1 Conflicts of interest**

- (a) A director must disclose the nature and extent of any perceived or actual material conflict of interest to the other directors (or the members if the other directors share that conflict).
- (b) A director who has a material personal interest in a matter that is being considered by the Board:
  - (i) must not be present while the matter is being considered at a Board meeting; or
  - (ii) vote on the matter;unless permitted by clause 11.1(c).
- (c) Provided the Board approves and it is permitted by law, a director may be present or vote if:
  - (i) the interest arises because the director is a member and the other members have the same interest;
  - (ii) the interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as an officer of the Company;

- (iii) the interest relates to any payment by the Company under clause 13 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity;
- (iv) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter;
- (v) the interest relates to a contract the Company is proposing to enter into that:
  - (A) is subject to approval by the members; and
  - (B) will not impose any obligation on the Company if it is not approved by the members;
- (vi) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (A) 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
  - (B) states that those directors are satisfied that the interest should not stop the director from voting or being present; or
- (vii) the interest arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 13.

## **11.2 Permissible conduct**

Provided a director complies with clause 11.1, the director may:

- (a) hold any other position in the Company, except that of an employee or auditor;
- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind, subject to clause 12.3(b);
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) sign or participate in the execution of a document by or on behalf of the Company; and
- (g) do any of the above despite the fiduciary relationship of the director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the director; and
  - (ii) without affecting the validity of any contract or arrangement.

**12.1 Chair or Independent Chair**

- (a) The Board may appoint:
- (b) a Chair from among the Directors; or
  - (i) an Eligible Person to be an Independent Chair (in which case they will also be appointed as a director).
- (c) The term of office of a Chair or Independent Chair:
  - (i) is two years (unless a different period is specified in the resolution);
  - (ii) commences on the date of appointment; and
  - (iii) expires on the earlier of:
    - (A) the conclusion of the second year following their appointment (or at the end of the period specified in the resolution); or
    - (B) the individual ceasing to be a director.
- (d) A Chair or Independent Chair may be appointed for successive terms provided that a Chair must not hold office for more than four consecutive years.
- (e) The Board may remove or suspend a Chair or Independent Chair by resolution passed at a Board meeting provided:
  - (i) the resolution is passed by not less than two-thirds of the directors present; and
  - (ii) at least 21 days' notice in writing of the resolution has been given to the Secretary and to the person who is the subject of the resolution.
- (f) If the Board removes a Chair or Independent Chair, that person will remain as a director until their term of office as a director expires pursuant to clause 8.6.

**12.2 Secretary**

- (a) The Board must appoint at least one Secretary, who may also be a director.
- (b) The Secretary is to be appointed on such terms and conditions as the Board deems fit.
- (c) A person may not be appointed as Secretary unless the person:
  - (i) consents in writing to being appointed as Secretary;
  - (ii) is at least 18 years of age; and
  - (iii) is a resident in Australia.

- (d) The Board may suspend or remove a Secretary.
- (e) The position of Secretary must not remain vacant for more than 14 days.

### **12.3 Chief Executive Officer**

- (a) The Board may appoint a Chief Executive Officer for a term, at the remuneration and on the conditions that it deems fit.
- (b) The Chief Executive Officer may not be a director.
- (c) Subject to any contract between the Company and the Chief Executive Officer, the Board may remove the Chief Executive Officer at any time, with or without cause.
- (d) The Chief Executive Officer may attend and speak at all Board meetings and general meetings, but may not vote.
- (e) The Board may:
  - (i) confer powers, discretions and duties on the Chief Executive Officer as it sees fit;
  - (ii) withdraw, suspend or vary any powers, discretions and duties conferred; and
  - (iii) authorise the Chief Executive Officer to delegate all or any of the powers, discretions and duties conferred.
- (f) An act done by a person acting as Chief Executive Officer is not invalidated merely because of:
  - (i) a defect in their appointment as Chief Executive Officer; or
  - (ii) the person being disqualified from being Chief Executive Officer; if that circumstance was not known by the person when the act was done.

## **13 Indemnities and insurance**

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- (a) The Company indemnifies every present and past director and executive officer of the Company to the full extent permitted by law against all losses and liabilities incurred as a result of their position as an officer of the Company.
- (b) This indemnity:
  - (i) is a continuing obligation and is enforceable even if the person has ceased to be an officer of the Company; and
  - (ii) is not subject to any requirement to first incur an expense or make a payment.
- (c) The Company may, to the extent permitted by law, pay or agree to pay a premium in respect of a contract insuring its officers.
- (d) Nothing in this clause 13 limits the Company's ability to indemnify or pay for insurance for any person not expressly covered by this clause.

**14.1 Minutes and records**

- (a) The Board must ensure that:
  - (i) minutes of all general meetings, Board meetings and committee meetings; and
  - (ii) records of resolutions passed by members, the Board and committees without a meeting;are recorded and kept with the Company's records as soon as practicable (being no later than one month after the meeting or passing of the resolution).
- (b) The Company must ensure that minutes of a Board meeting or general meeting are signed within a reasonable time by the chairperson of the meeting or of the next meeting.

**14.2 Members' access to Company records**

The Company must give members access to Company records as required by the Act.

**14.3 Common seal**

The Company does not have a common seal.

**14.4 Execution of documents**

The Company may execute documents by the signature of:

- (a) two directors;
- (b) one director and the Secretary; or
- (c) such other persons appointed by the Board for that purpose.

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**15 Records, accounting and audit**

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**15.1 Accounts and other records of the Company**

- (a) The Board must:
  - (i) ensure that proper financial records are kept in accordance with all legal and regulatory requirements;
  - (ii) ensure that records of its operations are kept; and
  - (iii) take reasonable steps to ensure that the Company's records are kept safe.
- (b) The Company must retain its records for at least seven years.

## **15.2 Audit**

- (a) If required by law, the Company must appoint and remunerate an auditor.
- (b) Any auditor is entitled to attend any general meeting and be heard by the members on any business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The Company must give any auditor all communications relating to a general meeting that members are entitled to receive.

## **15.3 Financial year**

The financial year will begin on 1 July and end on 30 June, unless the Board passes a resolution to change the financial year.

## **16 Amending this Constitution**

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- (a) The Company may only alter this Constitution by special resolution in accordance with the Act.
- (b) If the Company is a Charity, the members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer be a Charity

## **17 Notices**

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- (a) Subject to clause 17(b), notices can be served on members, directors or the Company personally or by post, email or other electronic means.
- (b) The Company must ensure that it complies with any election or request made by a member under the Act in relation to the service of notices.
- (c) Notices are deemed to be received:
  - (i) in the case of a properly addressed and posted notice – five business days after the date of posting; and
  - (ii) in the case of a notice sent by email or other electronic means – at the time of sending.
- (d) The non-receipt of notice or a failure to give notice for a meeting does not invalidate any thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) the individual waives notice before or after the meeting (including by attending the meeting); or
  - (iii) the individual notifies the Company of their agreement to that thing or resolution before or after the meeting.
- (e) In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be disregarded.

**18.1      Contribution of a member on winding up**

If required, each member must contribute an amount (not more than the Guaranteed Amount) to the assets of the Company if it is wound up while they are a member, or within one year of the member ceasing to be a member, for the:

- (a)      payment of the debts and liabilities of the Company incurred before they ceased to be a member; and/or
- (b)      costs, charges and expenses of winding up.

**18.2      Distribution of assets on winding up or revocation of endorsement**

- (a)      If the Company is a Deductible Gift Recipient, any DGR gifts must be deposited in a separate bank account or otherwise identified so that they can be distinguished from the Company's other assets.
- (b)      If the Company is a Deductible Gift Recipient and:
  - (i)      is wound up; or
  - (ii)     ceases to be endorsed as a Deductible Gift Recipient;any DGR gifts remaining after satisfying the Company's liabilities and expenses must be transferred to a fund, authority or institution with charitable purposes similar to the Purpose that is endorsed as a Deductible Gift Recipient.
- (c)      If on the winding up or dissolution of the Company there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus:
  - (i)      must not be paid or distributed to a member in their capacity as a member; and
  - (ii)     must be given or transferred to an entity (or entities) which:
    - (A)     has a similar purpose (or charitable purpose if the Company is a Charity) to the Purpose; and
    - (B)     prohibits the distribution of income, profit and assets to its members in their capacity as members.
- (d)      The members must decide before any winding up or dissolution which entity (or entities) will receive a distribution under clause 18.2(a). If the members fail to decide, the matter must be determined by application to the Supreme Court in the State of Victoria.

## 19.1 Definitions

In this Constitution:

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

**ACNC Legislation** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth) and *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* (Cth).

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

**auditor** may mean a reviewer, if permitted by the Act or the ACNC Legislation (as relevant).

**Board** means the group of individuals that are responsible for the governance, strategy and management of the Company.

**business day** means a day that is not a Saturday, Sunday or public holiday in the State of Victoria.

**Chair** means the person appointed to the position of Chair under clause 12.1(a).

**Charity** means a charity registered under the ACNC Legislation.

**chairperson** means the person chairing a meeting.

**Deductible Gift Recipient** means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 1997.

**DGR Gifts** means:

- (a) gifts of money or property for the Purpose received during any time that the Company is endorsed as a Deductible Gift Recipient;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 1997 in relation to a fundraising event (as defined by section 995-1 of the ITAA 1997) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
- (c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.

**general meeting** means a meeting of members and includes an annual general meeting and a special general meeting).

**Guaranteed Amount** means the amount set out in clause 4.11.

**member** means a person whose name is entered in the Register as a member of the Company in accordance with clause 4.7.

**Official representative** means a person appointed to represent a corporate member in accordance with clause 4.10.

**Office Bearer** means the Chair, Independent Chair (if any), and Secretary.

**person** includes a natural person and a corporation within the meaning of section 57A of the Act.

**Purpose** means the purpose set out in clause 2(b).

**Register** means the register of members under the Act.

**Resolution Institute** means the Resolution Institute (ACN 008 651 232).

**special resolution** means a member resolution passed at a general meeting:

- (a) of which 21 days' notice specifying the intention to propose the resolution as a special resolution has been given pursuant to this Constitution and the Act; and
- (b) by not less than 75% of the votes cast.

## 19.2 Interpretation

In this Constitution:

- (a) if an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression (except where a contrary intention appears in this Constitution); and
- (b) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of it;
  - (ii) any legislative provision substituted for it; and
  - (iii) all regulations and statutory instruments issued under it.

## 19.3 Exclusion of replaceable rules

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

# 20 Transitional provisions

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The following clauses apply notwithstanding anything to the contrary in this Constitution.

## 20.1 Members

The members immediately following the adoption of this Constitution will be those members listed on the Register at the time of adoption.

## **20.2 Directors**

- (a) The directors immediately following the adoption of this Constitution will be those in office at the time of adoption.
- (b) Directors appointed prior to the adoption of this Constitution may complete their term of office under the previous Constitution. Time served prior to the adoption of this Constitution will not be taken into account for the purposes of clause 8.7(c).

Schedule A - Proxy form

Appointment of Proxy – National Employment Services Association Limited

I, .....  
(Member)

of .....  
(Address)

appoint .....  
(Proxy)

as my proxy for the general meeting of National Employment Services Association Limited to be held on

.....  
(Date)

and at any adjournment.

Choose

☐ My proxy can vote on my behalf for all resolutions at the above general meeting.

OR

☐ My proxy can vote for the resolutions listed below as indicated:

| in favour of / against | detail of proposed resolution |
|------------------------|-------------------------------|
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Signed: .....  
(Member)

Date: .....