

CONSTITUTION OF

Community Legal Centres NSW Incorporated

An association incorporated pursuant to the Associations Incorporation Act 2009 (NSW)

Effective 22 December 2016

Amended: 24 May 2005, 18 November 2008, 19 May 2009, 30 November 2016.

PART 1- PRELIMINARY

1. NAME

The name of the incorporated association is Community Legal Centres NSW Incorporated.

2. OBJECTS

The objects of the Association are:

- 2.1 To act as a peak organisation for Community Legal Centres by assisting member Community Legal Centres fulfil their public benevolent goals and policies, particularly through advocacy for the provision of adequate resources and education of the public about the role of Community Legal Centres.
- 2.2 To facilitate communication and cooperation among member Community Legal Centres, and between member Community Legal Centres and other bodies and to assist all member Community Legal Centres, especially those in remote and rural areas, to participate fully in the activities of the Association.
- 2.3 To provide member Community Legal Centres with administration services, training, and/or other support services with a view to improving the quality, efficiency and sustainability of Community Legal Centre services.
- 2.4 To advocate for social justice, particularly for people who are socially or economically disadvantaged and whose inability to access the legal system further aggravates or perpetuates their disadvantage.
- 2.5 To promote and facilitate legal and administrative reform identified by member Community Legal Centres as being in need, in response to the issues that arise from the needs of their clients and Communities.
- 2.6 To provide information for Community Legal Centres and related agencies and disadvantaged people in need of legal services.

- 2.7 To provide a referral service for people seeking legal assistance from Community Legal Centres in New South Wales.
- 2.8 To liaise closely and, as appropriate, work co-operatively with other organisations, particularly the NSW Legal Aid Commission and relevant national networks, in relation to justice issues and the provision of Community based services.
- 2.9 To maintain membership, as appropriate, of relevant peak organisations, including NACLC.
- 2.10 For the purpose of supporting the sustainability of the Association and Community Legal Centres, but subject to clause 50 and provided that the Association's activities are always predominately carried on for public benevolent purposes:
- (a) to provide services to individuals, corporations and other organisations throughout New South Wales (including on a for-profit basis), regardless of their background and whether or not they are members of the Association, and apply any surplus funds from those services solely towards promoting the public benevolent objects above; and
 - (b) to undertake fundraising activities throughout New South Wales and apply the surplus funds from these activities solely towards promoting the public benevolent objects above.

3. **INTERPRETATION**

In this Constitution, except in so far as the context or subject matter otherwise indicates or requires:

" **Aboriginal Advisory Group Nominated Representative**" means a person nominated by the Aboriginal Advisory Group for a position of Board Member.

"**Aboriginal Advisory Group**" means the group consisting of Aboriginal staff members of member Community Legal Centres and the Association, that provides peer support to such staff; addresses issues facing Aboriginal Communities who are (but not limited to those who are) accessing Community Legal Centres; undertakes both social and law reform; participates in community and sector capacity building and makes recommendations to the Association, the Board and other peak bodies on such issues.

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

"**Act**" means the *Associations Incorporation Act 2009* (NSW).

"**Annual General Meeting**" means a general meeting held pursuant to clause 32.

"**Associate Member**" means a member of the Association who meets the requirements of clause 4.3 and is approved as an associate member in accordance with clause 6.

"**Association**" means Community Legal Centres NSW Incorporated.

"**Authorised Representative**" means a person holding one of the following positions within a Full Member organisation:

- (i) Chairperson;
- (ii) Executive Director;
- (iii) CEO; or

(iv) Director,

or a person who has been delegated in writing the power to act as the Authorised Representative in relation to business involving the Association.

"Board" means the board of the Association as described in clause 18. For the avoidance of doubt, the Board shall be deemed to be and construed as the Association's committee (as such term is defined under the Act) and shall be the governing body of the Association.

"Board-Appointed Board Member" has the meaning given to it in clause 18.4.

"Board Member" means a person who is, for the time being, a Board Member of the Association.

"Chairperson" means the person appointed under clause 18.9.

"Clause" or **"clause"** means each of the clauses of this Constitution and **"Clauses"** or **"clauses"** means any combination of them.

"Community" means a local or geographic community and/or community of interest and **"Communities"** means any combination of them.

"Community Legal Centre" means a centre which was a member of the Association at the date of incorporation of the Association, or an organisation which:

- (v) is independent¹ from government, commercial and professional bodies;
- (vi) is not for profit, community based, and has goals and priorities established in response to the needs of its Community; and
- (vii) aims to:
 - (A) provide legal and/or related services;
 - (B) develop effective ways of informing Community members of their legal rights and responsibilities;
 - (C) provide disadvantaged members of the Community, and/or the public generally in public interest matters, with access to legal and related information and/or services
 - (D) advocate for the development of laws, administrative practices and a legal justice system which are fair, just and accessible to all;
 - (E) develop and maintain close links with its Community to ensure that areas of unmet legal need are detected and appropriate services developed; and
- (viii) has developed, and continues to develop management and operational structures which enable the involvement of the Community or Communities it serves.

"Complaint Notice" has the meaning given to it in clause 13.3(a)(i) or 13.3(b)(i).

¹ This requirement does not preclude a CLC from having people from government, commercial and professional bodies on its Board or management Committee, or such people or the organisations themselves as members.

"**Constitution**" means this document setting out the objects, rules and governing provisions of the Association, as amended from time to time.

"**Full Member**" means a member of the Association who, subject to clause 4.1, meets the requirements of clause 4.2. and is approved as a full member in accordance with clause 6.

"**General Meeting**" means any meeting of the members of the Association.

"**Guide**" has the meaning given to it in clause 5.3(f)(i).

"**ITA Act**" means the *Income Tax Assessment Act 1997* (Cth).

"**NACLC**" means the National Association of Community Legal Centres, the national peak body for community legal centres, of which CLCNSW is itself a member.

"**NACLC Accreditation Criteria**" means the criteria set by NACLC that determines whether a Community Legal Centre can be certified and granted a license to use the NACLC Certification Trade Mark.

"**National Professional Indemnity Insurance (PII) Scheme**" refers to the scheme of this name for community legal centres administered by NACLC.

"**Professional Indemnity Insurance (PII) Committee**" means the committee established under clause 29.8.

"**Principal Solicitor**" means 'Principal Solicitor' under the NACLC Risk Management Guide.

"**Public Officer**" means the person holding office under this Constitution as the Association's public officer, who is an ordinary resident of NSW, and may, but need not, be a Board Member.

"**Registered Charity**" means an entity that is registered under the ACNC Act as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act (or, if that provision is repealed and not re-enacted, an entity that would have been entitled to be so registered)..

"**Registered Public Benevolent Institution**" means an institution that is a Registered Charity and registered under the ACNC Act as the subtype of entity mentioned in column 2 of item 14 of the table in subsection 25-5(5) of that Act (or, if that provision is repealed and not re-enacted, an entity that would have been entitled to be so registered)..

"**Regulation**" means the Associations Incorporation Regulation 2010 (NSW).

Secretary means:

(a) the person holding office under this constitution as secretary of the association, or

(b) if no such person holds that office—the Public Officer.

"**State Office**" means the principal place of administration of the Association.

A reference to "**member**" or "**membership**" of the Association includes a Full Member or membership and an Associate Member or membership.

A reference to a function includes a reference to a power, authority or duty.

A reference to the exercise of a function includes, where the function is a duty, a reference to the performance of a duty.

The provisions of the *Interpretation Act 1987* (NSW) apply to and in respect of this Constitution in the same manner as those provisions would so apply if this Constitution were an instrument made under the Act.

PART 2 - MEMBERSHIP

4. MEMBERSHIP QUALIFICATIONS

4.1 All members of the Association as at the date of the Association's incorporation are deemed to be Full Members of the Association.

4.2 Full Membership of the Association is open to a Community Legal Centre (as defined in clause 3) that is also either:

- (a) a Registered Public Benevolent Institution; or
- (b) an organisation that the Board determines should be a member having regard to the Objects of the Association.

For the avoidance of doubt, a "complying community legal centre" for the purposes of the Legal Profession Uniform Law (NSW) must satisfy the definition of Community Legal Centre in this Constitution to be entitled to be considered for membership of the Association.

4.3 Associate Membership is open to incorporated and unincorporated organisations, groups or individuals.

5. MEMBERSHIP OBLIGATIONS

5.1 Members must comply with the following obligations as applicable.

5.2 All Members (Full and Associate) are obliged to:

- (a) adhere to this Constitution;
- (b) promote the aims and interests of Full Members;
- (c) pay membership fees, contributions to NACLCL and such additional levies or subscriptions as may be decided by the Association from time to time, and
- (d) comply with any membership rules or conditions that are approved by two thirds of Members in a General Meeting.

5.3 In addition, Full Members are obliged to:

- (a) work cooperatively with other Community Legal Centres in furthering the aims and interests of the Association;
- (b) participate in Association General Meetings and activities;
- (c) advise the Association of relevant activities, proposed funding and project submissions for the purpose of preventing duplication and enhancing co-operation;
- (d) where they are Registered Public Benevolent Institutions, to maintain this registration and to notify the Association where their registration is revoked under the ACNC Act or they are no longer entitled to registration as a public benevolent

institution under the ACNC Act (including when they have an obligation to notify the Commissioner of the Australian Not-for-profits Commission of the circumstances described in subsection 65-5(2) of the ACNC Act);

- (e) undertake to review, discuss and give due consideration to the decisions of the Association; and
- (f) comply with the NACLC Accreditation Criteria, or have satisfied the Association that they are working towards complying with the Accreditation Criteria, including:
 - (i) satisfactory compliance with the mandatory standards set out in the NACLC Risk Management Guide as amended from time to time ("**Guide**");
 - (ii) participating in the annual "cross check" of compliance with the Guide as required by the PII Committee; and
 - (iii) causing the Principal Solicitor or her/his delegate to attend all meetings of the PII Committee.

5.4 Full members that seek to be insured through the National Professional Indemnity Insurance (PII) Scheme are also required to pay the annual PII premium and administration levy.

5.5 Members that refuse or neglect to comply with these Membership Obligations may have action taken against them, including action leading to suspension or expulsion, in accordance with clause 14.

6. **NOMINATION FOR MEMBERSHIP**

6.1 Nomination of an organisation or individual for membership of the Association:

- (a) must be made in writing, in a form prescribed by the Board, by two employees or members of the governing body each from a different Full Member of the Association, accompanied by the written consent of the nominee;
- (b) must contain the information required by the Board, including evidence that the nominee endorses the Constitution of the Association and whether the nomination is for Full Membership or Associate Membership; and
- (c) must be lodged with the Public Officer of the Association.

6.2 As soon as practicable after receiving a nomination for membership, the Public Officer must refer the nomination to a meeting of the Board (the "First Board Meeting") which shall appoint a committee of at least three and no more than four Board Members to review the nomination (the "membership committee"). If the nomination is for Full Membership, the membership committee must include the convenor of the Practice and Insurance Committee who will, in the membership committee's report, make a separate recommendation to the Board in relation to whether the member Community Legal Centre has the necessary systems to comply with the Guide.

6.3 The membership committee must report back to the Board within one month of receiving a nomination.

6.4 Following receipt of the membership committee's report the Board may make a decision regarding the nomination for membership or may ask for more information from the applicant which will be considered at the next Board meeting.

6.5 A determination must be made by the Board within two months of the First Board Meeting.

- 6.6 Where the Board approves a nomination for membership, the Public Officer must, within one week after that decision, notify the nominee of that approval and request the nominee to pay within 28 days any entrance fee and annual subscription payable under this Constitution. Where the Board rejects a nomination for membership, the Public Officer must, within one week after that decision, notify the nominee of that rejection.
- 6.7 The Public Officer must, on payment by the nominee of the amounts referred to in clause 6.6 within the period referred to in that clause, enter the nominee's name in the register of members, and indicate whether the nominee is a Full Member or an Associate Member. On the name being so entered, the nominee becomes a member of the Association.
- 6.8 A nominee who is dissatisfied with the Board's decision may, within one month of receiving notice of that decision, make application in writing to the Public Officer to have the nomination reconsidered by the Association at its next General Meeting. The nominee may make a written submission to the Association by providing it to the Public Officer at least [21 days] prior to the date fixed for the holding of the General Meeting, for inclusion with the papers for that meeting.
- 6.9 The members of the Association may pass a resolution in General Meeting to overturn or confirm the determination of the Board.
- 6.10 The resolution passed by members of the Association in General Meeting is final.

7. **CESSATION OF MEMBERSHIP**

An organisation or individual ceases to be a member of the Association if it:

- (a) where it is an organisation, ceases to exist; or
- (b) where it is an individual, becomes of unsound mind or dies; or
- (c) resigns its membership, effective one month after the date of notice of resignation; or
- (d) is expelled from the Association; or
- (e) has failed to pay annual membership fees or any other fees that the Board determines are payable under clause 11.1 for at least three months after the date on which they were due and payable (unless the Board determines otherwise).

8. **MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE**

A right, privilege or obligation which an organisation or individual has by reason of being a member of the Association:

- (a) is not capable of being transferred or transmitted to another organisation or individual; and
- (b) terminates upon cessation of the organisation's or individual's membership.

9. **RESIGNATION OF MEMBERSHIP**

- 9.1 A member may resign from membership of the Association by giving notice in writing to the Public Officer.
- 9.2 Where a member ceases to be a member pursuant to clause 9.1, and in every other case where a member ceases to hold membership, the Public Officer must make an appropriate

entry in the register of members recording the date on which the member ceased to be a member.

10. REGISTER OF MEMBERS OF ASSOCIATION AND BOARD

10.1 The Public Officer of the Association must establish and maintain a register of members of the Association specifying the name and postal or residential/registered address of each member, the category of membership and the date on which they became a member.

10.2 The register of members of the Association must be kept at the State Office and must be open for inspection, free of charge, by a delegate of the management of any member of the Association at any reasonable hour.

10.3 A member of the Association may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.

10.4 If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.

10.5 A member must not use information about a person obtained from the register to contact or send material to the person, other than for:

- (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the Association or other material relating to the Association; or
- (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.

10.6 The Public Officer shall keep a register of members of the Board which must:

- (a) contain the name and residential address of each Board Member and the date on which they became a Board Member;
- (b) contain the date on which the person ceased to be a Board Member;
- (c) indicate if a Board Member holds the position of Chairperson, Deputy Chairperson, Treasurer of the Board, Secretary or of Public Officer of the Association;
- (d) set out the date on which any such member was elected to, or ceased to hold, such position;
- (e) be updated within one month of any change taking place;
- (f) be kept at the State Office (or at such other place, or in such other manner prescribed by the Regulations); and
- (g) be made available for inspection by any person, at all reasonable hours and free of charge.

11. FEES, SUBSCRIPTIONS, ETC.

11.1 Membership of the Association is subject to the payment of such fees or subscriptions as may be determined by the Board from time to time. These include, but are not limited to:

- (a) Entrance fees to the Association on first becoming a member
- (b) Annual membership fees paid to the Association

- (c) Contributions to NACLC
- (d) Where the Full Member is also a member of the National Professional Indemnity Insurance (PII) Scheme, the annual PII premium and administration levy.

11.2 All fees and subscriptions are payable by the members on admission to membership and before 1 July in each succeeding calendar year.

11.3 Where the Association or NACLC charges fees for additional services agreed to by an individual member, the member's failure to pay such fees may result in the withdrawal of the additional services but will not affect the member's membership of the Association.

12. **MEMBERS' LIABILITIES**

The liability of a member of the Association to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the member in respect of membership of the Association as required by clause 11.

13. **RESOLUTION OF INTERNAL DISPUTES**

13.1 In the event of a dispute arising between members (in their capacity as members) of the Association, and disputes raised by members against the Association, the following procedure is to apply.

13.2 A member may lodge a written notice of dispute with the Public Officer stating that this clause 13 has been enlivened, nominating a representative to attempt to negotiate a solution and specifying whether the dispute is against another member (**Other Member**) or against the Association. The member lodging a notice of dispute and the Other Member (where applicable) must participate in the procedure as outlined in clause 13 of this Constitution.

13.3 The Public Officer must:

(a) where the dispute is against another member:

- (i) serve written notice of the complaint (a **Complaint Notice**) on the member concerned within one week of receiving the complaint.
- (ii) the member against which the complaint is made must nominate a representative to attempt to negotiate a solution within seven days of the Complaint Notice.

(b) where the dispute is against the Association:

- (i) refer the matter to the Board (a **Complaint Notice**) and seek a Board representative to attempt to negotiate a solution.

13.4 The Board may refuse to deal with a complaint if it, in good faith, considers the complaint to be trivial or vexatious in nature.

13.5 Each side of the dispute must, in good faith, try to resolve the dispute by negotiation (through their respective nominated representatives) within 14 days from the date of the Complaint Notice.

13.6 If after 14 days from the date of the Complaint Notice, the dispute remains unresolved, it is to be referred to a person mutually agreed upon for mediation.

- 13.7 If the dispute remains unresolved following such mediation, or a mediator cannot be agreed upon within 21 days after the date of the Complaint Notice, the matter must be referred to a qualified independent arbitrator selected by the Board.
- 13.8 The decision of the independent arbitrator is final.
14. **DISCIPLINING OF MEMBERS**
- 14.1 Disciplinary proceedings against a member may commence by way of:
- (a) a member lodging a complaint against an offending member with the Public Officer; or
 - (b) the Board initiating disciplinary proceedings against any member of the Association by way of a notice to the offending member,
- stating that the offending member has persistently refused or neglected to comply with a provision of this Constitution or has persistently and wilfully acted in a manner prejudicial to the interests of the Association.
- 14.2 By way of clarification, where the proceedings relate to a failure to satisfactorily comply with the NACLC Accreditation Scheme, disciplinary action under this clause should only be commenced when the Association is of the view that the process has been finalised.
- 14.3 The Board may refuse to deal with a complaint from a member if it, in good faith, considers the complaint to be trivial or vexatious in nature.
- 14.4 Disciplinary action available where a complaint is upheld are:
- (a) a reprimand;
 - (b) a suspension of that member from membership of the Association for a specified period or until a specified activity has been completed to the satisfaction of the Board; or
 - (c) expulsion of that member from the Association.
- 14.5 If a member lodges a complaint with the Public Officer, or the Board initiates disciplinary proceedings, the Board must:
- (a) serve written notice of the complaint on the member concerned setting out the details of the complaint and whether it was initiated by a member or the Board (**Disciplinary Notice**);
 - (b) in that Disciplinary Notice, nominate a Board Member to attempt to negotiate a solution in the first instance.
- 14.6 Each side of the dispute must, in good faith, try to resolve the dispute by negotiation (through their respective nominated representatives) within 45 days from the date of the Disciplinary Notice.
- 14.7 The member concerned may not raise a complaint against the member that complained or against the Board or the Association under clause 13 pending resolution of the disciplinary proceedings.
- 14.8 If after 45 days from the date of the Disciplinary Notice, the Board's representative reports that negotiation has been unsuccessful, the Board must serve notice of the complaint on the member concerned giving the member at least 30 days from the time the notice is served within which to make submissions in connection with the complaint.

- 14.9 On receipt of submissions from a member under clause 14.8, (or, if submissions are not provided, the expiry of the notice) the Board must convene a meeting of a special disciplinary committee (comprised of between three and four Board Members) within 28 days after the date on which the Board received the submissions (or, if submissions are not provided, the expiry of the notice) to consider the complaint and the submissions (if any) and vote on whether to reprimand, suspend or expel the member.
- 14.10 If two thirds of the special disciplinary committee members present vote to pass a resolution to expel or suspend a member, then the resolution is passed. The special disciplinary committee must provide reasons for reprimanding, suspending or expelling a member.
- 14.11 If the special disciplinary committee reprimands, expels or suspends a member, the Public Officer must, within 7 days after the resolution is passed, cause written notice to be given to the member of the resolution of the special disciplinary committee, of the reasons given by the meeting for having taken that action and of the member's right of appeal under clause 15.
- 14.12 Any suspension or expulsion does not take effect until the expiration of 21 days after the service of notice of suspension or expulsion on the member, being the time in which they may lodge an appeal or, if an appeal has been lodged, until such later time as the appeal process has come to an end.
- 14.13 If the special disciplinary committee votes against the resolution to expel or suspend a member, or does not pass the resolution within the time period set out in this clause 14, then the disciplinary proceedings will be concluded.

15. **RIGHT OF APPEAL OF DISCIPLINED MEMBER**

- 15.1 A member suspended or expelled under clause 14 may appeal to the Board against the resolution of the special disciplinary committee which expels them or suspends their membership by lodging with the Public Officer a notice of appeal in writing within 14 days of receiving notice of the resolution from the Board pursuant to clause 14.11. The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- 15.2 If no notice of appeal is lodged by the disciplined member with the Public Officer within 14 days of receiving notice of the resolution from the Board pursuant to clause 14.11, the suspension or expulsion is final.
- 15.3 Upon receipt of a notice of appeal, the Public Officer must refer the matter to the Board at its next meeting and the Board must call a General Meeting within 28 days to determine the appeal. The appellant may make submissions to the meeting in writing or in person. The special disciplinary committee members may make submissions in response to the appellants submissions to the meeting in writing or in person. The appeal may be allowed or dismissed by decision of the majority of Full Members present at the meeting.
- 15.4 At a General Meeting of the Association convened under clause 15.3:
- (a) no business other than the question of the appeal is to be transacted;
 - (b) the special disciplinary committee and the member must be given the opportunity to state their respective cases orally or in writing (including by way of the submissions contemplated under clause 15.3), or both; and
 - (c) the Full Members present are to vote by secret ballot on whether the appeal be allowed or dismissed.

- 15.5 The resolution passed by full members of the Association at the General Meeting by secret ballot is final.

PART 3 - THE BOARD

16. POWERS OF THE BOARD

The Board is to be called the Board of the Association and, subject to the Act, the Regulation and this Constitution and to any resolution of the Association passed by the Association in General Meeting:

- (a) is to control and manage the affairs of the Association;
- (b) may exercise all such functions as may be exercised by the Association other than those functions that are required by this Constitution to be exercised by a General Meeting of the members of the Association; and
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Association.

17. DUTIES OF BOARD MEMBERS

The Board Members must comply with their duties as Board Members under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Board Member of the Association;
- (b) to act in good faith in the best interests of the Association and to further the charitable purpose(s) of the company set out in the Objects of this constitution;
- (c) not to misuse their position as a Board Member;
- (d) not to misuse information they gain in their role as a Board Member;
- (e) to disclose any perceived or actual material conflicts of interest;
- (f) to ensure that the financial affairs of the Association are managed responsibly; and
- (g) not to allow the Association to operate while it is insolvent.

18. COMPOSITION OF THE BOARD AND BOARD MEMBERSHIP

- 18.1 The Board is to be composed of at least five but no more than nine Board Members.
- 18.2 At least five Board Members must be employed by, or on the governance body of, a Full Member of the Association. These Board Members are elected through the procedure set out in clause 23.
- 18.3 One of the Board Members shall be an Aboriginal person who is nominated to the Board in writing by the Aboriginal Advisory Group of CLCNSW. The Aboriginal Advisory Group Nominated Representative may only be removed or replaced as a Board Member by written notice from the Aboriginal Advisory Group to the Board.
- 18.4 If the Board determines by unanimous resolution that it requires additional Board Members to be appointed with specific skills, the Board may, subject to the limits in clause

18.5, appoint up to three additional Board Members who need not be drawn from members of the Association (**Board-Appointed Board Member**).

- 18.5 Any additional Board Member to be appointed following a resolution in accordance with clause 18.4 must be appointed and may only be removed or replaced by a unanimous resolution of all of the Board Members.
- 18.6 The Association acknowledges that Board Members (other than those appointed through clause 18.3 and 18.4) should be elected from, and representative of, a diverse range of Members and community legal centres, including generalist and specialist legal centres, and centres from regional, remote and rural NSW.
- 18.7 The Association should strive to appoint a Board which is representative of the diversity of the community, taking into account the differences in Board Members' background and life experience, communication styles, interpersonal skills, education, functional expertise and problem solving skills.
- 18.8 Subject to all of the clauses above, the Board may appoint a person to be a Board Member either to fill a casual vacancy or as an addition to the Board. A Board Member appointed to fill a casual vacancy must resign at the next Annual General Meeting and will be eligible for re-election in accordance with clause 23.
- 18.9 The Board Members will vote to determine which Board Member shall fill the office of Chairperson, Deputy Chairperson, Treasurer, Public Officer and (if the Board wishes) a Secretary. A Board Member may hold up to 2 offices (other than both the Chairperson and Deputy Chairperson offices).

19. RETIREMENT OF BOARD MEMBERS

- 19.1 Except as provided in clause 19.4 and clause 24, Board Members are to hold office for two-year terms.
- 19.2 With the exception of the Aboriginal Advisory Group Nominated Representative, no Board Member may hold office for more than six consecutive years, unless the Board Member has, for a period of two years, ceased to be a Board Member.
- 19.3 The term of a Board members described in clause 18.2 ends at the commencement of the second Annual General Meeting following the date of their election, however they shall be eligible for re-election, subject to clause 19.2.
- 19.4 The term of a Board Member described in clause 18.2 ends at the commencement of the second Annual General Meeting following the date of their election, however they shall be eligible for re-election, subject to clause 19.2.
- 19.5 Three of the Board Members who are described in clause 18.2 and have been in office for the longest period must resign at the Annual General Meeting in 2017 and shall be eligible for re-election as set out in clause 23.

20. RETIREMENT OF BOARD-APPOINTED BOARD MEMBERS

- 20.1 For those Board members appointed under clause 18.4, a term ends two years after the date of their appointment, however they shall be eligible for re-appointment under clause 18.4 subject to clause 19.2.

21. RETIREMENT OF ABORIGINAL ADVISORY GROUP NOMINATED REPRESENTATIVE

- 21.1 For the Aboriginal Advisory Group Nominated Representative appointed through clause 18.3, a term ends two years following the date of their appointment, however they shall be eligible for re-appointment through the same procedure as set out in clause 18.3.

There is no restriction on the number of consecutive terms an Aboriginal Advisory Group Nominated Representative may serve.

22. ELIGIBILITY OF BOARD MEMBERS

To be eligible for nomination as a Board Member, a person must be:

- (a) 18 years of age;
- (b) ordinarily resident in Australia;
- (c) a fit and proper person;

and must not be:

- (d) a person disqualified from managing a corporation under the Corporations Act 2001; or
- (e) a person disqualified from being a responsible person by the ACNC Commissioner, within the previous 12 months.

23. ELECTION OF BOARD MEMBERS

23.1 The Board members referred to in clause 18.2 shall be elected by an Annual General Meeting through the following procedure:

- (a) A nomination of a person to be a Board Member must:
 - (i) be made by an Authorised Representative of two Full Members of the Association;
 - (ii) have the consent of the person nominated; and
 - (iii) be in writing in a form approved by the Board.
- (b) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (c) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (d) If insufficient nominations are received, any vacant positions remaining on the Board are taken to be casual vacancies.
- (e) Not more than one Board Member may be elected from any one Full Member.
- (f) Board Members are elected as individuals and not as representatives of Full Members.

24. CASUAL VACANCIES

For the purpose of this Constitution, a casual vacancy in the office of a Board Member occurs if the Board Member:

- (a) dies;
- (b) resigns office by notice in writing given to the Public Officer;
- (c) is removed from office under clause 25;

- (d) is absent from three consecutive meetings of the Board without the approval of the Board;
- (e) ceases to be an employee or management committee member of a Full Member (where the Board Member was appointed through clause 18.2);
- (f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth;
- (g) becomes a mentally incapacitated person;
- (h) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months;
- (i) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the *Corporations Act 2001* of the Commonwealth; or
- (j) is disqualified from being a responsible person by the ACNC Commissioner.

25. **REMOVAL OF BOARD MEMBER**

- 25.1 The Association in General Meeting may, by resolution approved by two thirds of the Full Members present in person or by proxy, remove any Board Member from the office of Board Member before the expiration of the Board Member's term of office and may, by ordinary resolution, appoint another person as a Board Member until the expiration of the term of office of the Board Member so removed.
- 25.2 If a Board Member to whom a proposed resolution referred to in clause 25.1 relates makes representations in writing to the Public Officer (not exceeding a reasonable length) and requests that the representations be notified to the members of the Association, the Public Officer may send a copy of the representations to each member of the Association or, if the representations are not so sent, the Board Member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

26. **REMOVAL OF BOARD-APPOINTED BOARD MEMBERS**

Board-Appointed Board Members may only be removed in accordance with clause 18.5.

27. **REMOVAL OF ABORIGINAL ADVISORY GROUP NOMINATED REPRESENTATIVE**

The Aboriginal Advisory Group Nominated Representative can only be removed in accordance with clause **18.3**.

28. **BOARD MEETINGS**

- 28.1 The Board must meet at least four times each year at such place and time as the Board may determine.
- 28.2 Additional meetings of the Board may be convened by any two Board Members.
- 28.3 Oral or written notice of a meeting of the Board must be given by the Secretary to each Board Member at least 7 days (or such shorter period as may be unanimously agreed upon by the Board Members) before the time appointed for the holding of the meeting.
- 28.4 Notice of a meeting given under clause 28.3 must specify the general nature of the business to be transacted at the meeting, except business which the Board Members present at the meeting agree to treat as urgent business.

- 28.5 The quorum for meetings of the Board shall be 4 or 50% of the total number of Board Members appointed at the relevant time. A quorum may be formed by telephone link up, or any other electronic means agreed by the Board to be sufficient for that purpose, if Board Members are unable to be physically present for a meeting.
- 28.6 No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week. When that day is a public holiday then the day of the next meeting should be the next working day.
- 28.7 If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- 28.8 It is the duty of the Chairperson of the Association to:
- (a) chair meetings of the Board and the Association;
 - (b) set the agenda for Board meetings;
 - (c) ensure that Board meetings or General Meetings of the Association are constitutional and properly conducted;
 - (d) ensure that members are properly heard;
 - (e) ensure that all agenda items and special issues at the meeting are adequately discussed;
 - (f) be designated spokesperson of the Association; and
 - (g) delegate the role of spokesperson to other Board Members where appropriate.
- 28.9 It is the duty of the Deputy Chairperson to assist the Chairperson perform the duties set out in clause 28.8.
- 28.10 It is the duty of the Secretary to ensure minutes are kept of:
- (a) all appointments of office bearers and other Board Members;
 - (b) the names of Board Members present at a Board meeting or a General Meeting; and
 - (c) all proceedings at Board meetings and General Meetings.
- 28.11 Minutes of proceedings at a meeting must be signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting.
- 28.12 It is the duty of the Treasurer of the Association to ensure:
- (a) that all money due to the Association is collected and received and that all payments authorised by the Association are made; and
 - (b) that correct books and accounts are kept showing the financial affairs of the Association, including full details of all receipts and expenditure connected with the activities of the Association.
- 28.13 At a meeting of the Board:
- (a) the Chairperson is to preside; and

- (b) if the Chairperson is absent or unwilling to act, the Deputy Chairperson will preside and, in the absence of both, such one of the remaining members of the Board as may be chosen by the members present at the meeting is to preside.

29. **COMMITTEES**

29.1 The Board may, by instrument in writing, delegate to one or more committees (consisting of representatives from the Board, membership of the Association, and/or other people as the Board thinks fit) the exercise of such functions of the Board as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function which is a duty imposed on the Board by the Act or by any other law.

29.2 A function, the exercise of which has been delegated to a committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the committee in accordance with the terms of the delegation.

29.3 A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.

29.4 Despite any delegation under this clause, the Board may continue to exercise any function delegated.

29.5 Any act or thing done or suffered by a committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Board.

29.6 The Board may, by instrument in writing, revoke wholly or in part any delegation under this clause.

29.7 Except as provided in clause 29.8, a committee may meet and adjourn as it thinks fit.

29.8 A Professional Indemnity Insurance (PII) Committee will be permanently appointed to monitor and support Full Members' compliance with the **Guide** and to inform members of other relevant legal practice issues. The PII Committee will:

- (a) consist of the Principal Solicitor of every Full Member, or her/his delegate;
- (b) meet at least four times a year; and
- (c) report to the Annual General Meeting and, where required, to the Board.

29.9 Members of the Association may also set up a working group on any issue.

29.10 A working group can only represent and make decisions on behalf of the Board if established in accordance with clause 29.1.

30. **CONSENSUS AND VOTING**

30.1 Except as provided elsewhere in this Constitution, questions arising at a meeting of the Board or of any committee appointed by the Board are to be determined by a consensus of opinion. The opinion of each member of the Board or committee is equal in value and is to be considered by all other members. If after a reasonable period of time the Chairperson is of the view that a consensus of opinion cannot be reached, voting provisions are to apply.

- 30.2 When a question arising at a Board or committee meeting is to be voted upon, each member present at a meeting of the Board or of any committee appointed by the Board (including the person presiding at the meeting), either in person or by means of telephone link up, any other electronic means agreed by the Board to be sufficient for the purpose, is entitled to one vote but, in the event of an equality of votes on any question, the Presiding Member at the relevant meeting (under clause 36) may exercise a second or casting vote. Proxy votes are acceptable but each member present may hold only one proxy. Votes may also be accepted by fax or post sent to a place nominated in the relevant notice of meeting. Unless this Constitution provides otherwise, matters to be voted upon at a Board or committee meeting are to be determined by a majority of votes.
- 30.3 Where a committee is unable to reach a decision by consensus and needs to decide by a vote, the decision should then be referred to the Board for final decision as to whether to uphold the vote of the committee.
- 30.4 Subject to clause 28.5, the Board may act despite any vacancy on the Board.
- 30.5 Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or by a committee appointed by the Board, is valid and effectual, despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or committee.

PART 4 – GENERAL MEETINGS

31. ANNUAL GENERAL MEETINGS - HOLDING OF

- 31.1 With the exception of the first Annual General Meeting of the Association, the Association must, at least once in each calendar year and within the period of six months after the expiration of each financial year of the Association, convene an Annual General Meeting of its members.
- 31.2 The Association must hold its first Annual General Meeting:
- (a) within the period of 18 months after its incorporation under the Act; and
 - (b) within the period of six months after the expiration of the first financial year of the Association.
- 31.3 Clauses 31.1 and 31.2 have effect subject to any extension or permission granted by the Office of Fair Trading under section 37(2)(b) of the Act.

32. ANNUAL GENERAL MEETINGS - CALLING OF AND BUSINESS AT

- 32.1 The Annual General Meeting of the Association is, subject to the Act and to clause 31, to be convened on such date and at such place and time as the Board thinks fit.
- 32.2 In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting is to:
- (a) confirm the minutes of the last preceding Annual General Meeting and of any other General Meeting held since that meeting;
 - (b) receive from the Board reports upon the activities of the Association during the last financial year;
 - (c) elect the Board of the Association; and
 - (d) receive and consider any financial statement or report which is required to be submitted to members under the Act.

32.3 An Annual General Meeting must be specified as such in the notice convening it.

33. **GENERAL MEETINGS - CALLING OF**

33.1 The Board may, whenever it thinks fit, convene a General Meeting of the Association.

33.2 The Board must, on the requisition in writing of at least 10 per cent of the total number of Full Members, convene a General Meeting of the Association.

33.3 A requisition of Full Members for a General Meeting:

- (a) must state the purpose or purposes of the meeting;
- (b) must be signed by the Full Members making the requisition;
- (c) must be lodged with the Public officer; and
- (d) may consist of several documents in a similar form, each signed by one or more of the Full Members making the requisition.

33.4 If the Board fails to convene a General Meeting to be held within one month after that date on which a requisition of members for the meeting is lodged with the Public Officer, any one or more of the members who made the requisition may convene a General Meeting to be held not later than three months after that date.

33.5 A General Meeting convened by a member or members as referred to in clause 33.4 must be convened as nearly as is practicable in the same manner as Annual General Meetings are convened by the Board and any member who consequently incurs expense is entitled to be reimbursed by the Association for any expense so incurred.

34. **NOTICE OF GENERAL MEETINGS**

34.1 Unless the nature of the business proposed to be dealt with at a General Meeting requires a special resolution of the Association (in which case clause 34.2 applies), the Public Officer must, at least 14 days prior to the date fixed for the holding of the General Meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.

34.2 Where the nature of business proposed to be dealt with at a General Meeting requires a special resolution of the Association, the Public Officer must, at least 21 days before the date fixed for the holding of the General Meeting, cause notice to be given to each member specifying, in addition to the matters required under clause 34.1, the intention to propose the resolution as a special resolution.

34.3 Notwithstanding the notice periods set out in clauses 34.1 and 34.2, the Association may call on shorter notice:

- (a) an Annual General Meeting, if all the Full Members entitled to attend and vote at the Annual General Meeting agree in writing beforehand; and
- (b) any other General Meeting, if at least 75% of the Full Members entitled to attend and vote at the meeting agree in writing beforehand,

except where a purpose of the meeting is to remove a Board Member or an auditor, in which case at least 21 days' notice must be given.

34.4 No business other than that specified in the notice convening a General Meeting is to be transacted at the meeting except, in the case of an Annual General Meeting, business which may be transacted under clause 32.2.

34.5 A Full Member desiring to bring any business before a General Meeting may give notice in writing of that business to the Public Officer, who must include that business in the next notice calling a General Meeting given after the receipt of the notice from the member.

35. **PROCEDURE AT GENERAL MEETINGS**

35.1 No item of business is to be transacted at a General Meeting unless a quorum of members entitled under these clauses to vote is present during the time the meeting is considering that item.

35.2 Authorised Representatives of fifty percent of the total number of Full Members of the Association (being all full members entitled under this Constitution to vote at a General Meeting), who may be present in person or by proxy, subject to clause 35.3, constitutes a quorum for the transaction of the business of a General Meeting.

35.3 An Authorised Representative of a Full Member may, by written notice given to the Public Officer no later than 24 hours before the time of the General Meeting, appoint an Authorised Representative of another Full Member to act as their proxy at the General Meeting, provided that no Authorised Representative of a Full Member present at the meeting may hold more than one proxy.

35.4 If, within half an hour after the appointed time for the commencement of a General Meeting a quorum is not present, the meeting:

(a) if convened on the requisition of Full Members, is to be dissolved; and

(b) in any other case, is to stand adjourned to the same day in the following week at the time and (unless another place is specified at the time of the adjourned meeting by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.

35.5 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the members present (only if not less than 25% of Full Members entitled to vote) are to constitute a quorum.

36. **PRESIDING MEMBER**

36.1 The Chairperson, or, in the Chairperson's absence, the Deputy Chairperson, or in the absence of both, a Board Member delegated by the Chairperson or Deputy Chairperson, is to preside as chairperson at each General Meeting of the Association.

36.2 If the Chairperson, Deputy Chairperson or their delegate is absent or unwilling to act, the Full Members present must elect one of their number to preside as chairperson at the meeting.

37. **ADJOURNMENT**

37.1 The Chairperson at a General Meeting at which a quorum is present may, with the consent of a majority of the Full Members present at the meeting adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

37.2 Where a General Meeting is adjourned for 14 days or more, the Public Officer must give written or oral notice of the adjourned meeting to each member of the Association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

37.3 Except as provided in clauses 37.1 and 37.2, notice of an adjournment of a General Meeting or of the business to be transacted at an adjourned meeting is not required to be given.

38. MAKING OF DECISIONS AT GENERAL MEETINGS

38.1 Questions arising at any General Meeting are to be determined by a consensus of opinion. The opinion of each member is equal in value and is to be considered by all other members. If, after a reasonable period of time the Chairperson is of the view that a consensus of opinion cannot be reached, the voting provisions in clauses 38.2 to 38.4 are to apply.

38.2 When a question arising at a General Meeting of the Association is to be voted upon, the Chairperson shall call for a show of hands and, unless 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, or 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 votes recorded in favour of or against that resolution.

38.3 At a General Meeting of the Association, a poll may be demanded by the Chairperson or by not less than three Full Members present in person or by proxy at the meeting.

38.4 If a poll is demanded at a General Meeting, the poll must be taken:

- (a) immediately in the case of a poll which relates to the election of the Chairperson of the meeting or to the question of an adjournment; or
- (b) in any other case, in such manner and at such time before the close of the meeting as the Chairperson directs,
- (c) and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.

39. SPECIAL RESOLUTION

39.1 A special resolution of the Association must be passed in the following manner:

- (a) a notice must be sent to all members advising that a General Meeting is to be held to consider a special resolution;
- (b) the notice must give details of the proposed special resolution and give at least 21 days notice of the meeting;
- (c) a quorum must be present at the meeting; and
- (d) at least three quarters of the Full Members of the Association present in person or by proxy must vote in favour of the resolution.

39.2 In situations where it is not possible or practicable for a resolution to be passed as described above, a request may be made to the Office of Fair Trading for permission to pass the resolution in some other way.

39.3 A special resolution must be passed by a General Meeting of the Association to effect the following:

- (a) a change of the Association's name or any provision of its Constitution;
- (b) an amalgamation with another incorporated Association;

- (c) the voluntary winding up or cancellation of incorporation of the Association; or
- (d) the application for registration as a company or cooperative.

40. VOTING

- 40.1 On any question arising at a General Meeting of the Association, a Full Member has one vote only. An Associate Member has no voting rights.
- 40.2 All votes must be given in person or by proxy but no Full Member may hold more than one proxy.
- 40.3 In the case of an equality of votes on a question at a General Meeting, the Chairperson of the meeting is entitled to exercise a second or casting vote.
- 40.4 A Full Member or proxy is not entitled to vote at any General Meeting of the Association unless all money due and payable by the member or proxy to the Association has been paid, other than the amount of the annual subscription payable in respect of the then current year. However, a Full Member's attendance may count for quorum regardless of whether monies are due.
- 40.5 The Association may hold a postal ballot to determine any issue or proposal (other than an appeal under clause 15). A postal ballot is to be conducted in accordance with the procedure set out in Annexure A to this Constitution.

PART 5 – MISCELLANEOUS

41. MEMBERS CONSULTATION

The Association is required to inform, consult with, and provide members with services, through forums, training or other means, which may cover the following:

- (a) consulting with members to ensure the activities of the Association are continuing to meet its broad aims and objectives;
- (b) members of the work of the Board and committees;
- (c) discussion of key policy issues;
- (d) facilitating the production, sharing and dissemination of information and resource material to and between Community Legal Centres;
- (e) communicating between Community Legal Centres, and between Community Legal Centres and other individuals and organisations;
- (f) identifying and promoting a discussion of organisational issues affecting Community Legal Centres; and
- (g) providing education and training opportunities for members of the Association.

42. INSURANCE

- 42.1 The Association may effect and maintain insurance.

43. FUNDS - SOURCE

- 43.1 The funds of the Association are to be derived from entrance fees and annual subscriptions of members, grants, donations and, subject to any resolution passed by the Association in General Meeting, such other sources as the Board determines.
- 43.2 All money received by the Association is to be deposited as soon as practicable, and without deduction, to the credit of the Association's bank account.
- 43.3 The Association must, as soon as practicable after receiving any money, issue an appropriate receipt.

44. FUNDS - MANAGEMENT

- 44.1 Subject to any resolution passed by the Association in General Meeting, the funds of the Association must be used in pursuance of the objects of the Association.
- 44.2 All cheques, draft, bills of exchange, promissory notes and other negotiable instruments must be signed by two members of the Board or employees of the Association, being members or employees authorised to do so by the Board.
- 44.3 Any two Board Members or any two employees of the Association that have been authorised to by the Board may open and operate the bank accounts of the Association.

45. AUDITOR

- 45.1 The Association is to appoint an auditor or auditors.
- 45.2 The auditor or auditors are to be appointed at the Annual General Meeting or at an earlier General Meeting if necessary. They are to examine all accounts, vouchers, receipt books, etc. and furnish a report thereon to the members at the Annual General Meeting. Audits are to be conducted each financial year or at a lesser interval if so determined by the General Meeting of the Association or the Board.
- 45.3 An auditor is not to be a member or closely related to any member of the Association or the Board.
- 45.4 Subject to clause 45.5 notice of intention to nominate auditors to replace the current auditors is to be given to the Public Officer at least 21 days before a General Meeting of the Association. The Public Officer is to send a copy of the nomination to the current auditors at least 7 days before the General Meeting. The current auditors are entitled to attend the General Meeting and if they so wish, to be heard at such a General Meeting.
- 45.5 Where the current auditors submit their resignation or notify the Public Officer of their intention not to seek re-election as auditor, clause 45.4 does not apply.

46. COMMON SEAL

- 46.1 The common seal of the Association is to be kept in the custody of the Public Officer.
- 46.2 The common seal is not to be affixed to any instrument except by authority of the Board and the affixing of the common seal must be attested by the signatures either of two Board Members or of one Board Member and of the Public Officer or Secretary.

47. CUSTODY OF BOOKS

Except as otherwise provided by this Constitution, the Public Officer must keep in his or her custody or under his or her control, all records, books and other documents relating to the Association.

48. **INSPECTION OF BOOKS**

The records, books and other documents of the Association (excluding confidential client files) must be open for inspection, free of charge, by a Board Member at any reasonable hour. These records include:

- (a) records, books and other financial documents of the Association;
- (b) this Constitution; and
- (c) minutes of all Board and committee meetings and General Meetings of the Association.

Members of the Association may inspect such documents, free of charge, by arrangement with the Board. A member of the Association may obtain a copy of any such documents on payment of a fee of not more than \$1 for each page copied.

49. **SERVICE OF NOTICES**

49.1 For the purpose of this Constitution, a notice is properly given by the Association if it is:

- (a) addressed to the member to whom it is to be given; and
- (b) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail to that member's address shown in the register of members; or
 - (iii) sent by fax to the fax number (if any) nominated by that member; or
 - (iv) sent by electronic message to the electronic address (if any) nominated that member for this purpose.

49.2 A notice to a member by the Association is taken, unless the contrary is proved, to have been given and received:

- (a) if it is delivered personally:
 - (i) by 5.00pm (local time in the place of receipt) on a business day – on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day;
- (b) if it is sent by pre-paid post one business day after posting; and
- (c) if it is sent by fax or electronic message;
 - (i) by 5.00pm (local time in the place from which it is sent or given) on a business day - on that day; or
 - (ii) after 5.00pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day.

50. **PAYMENT ETC. OF MEMBERS OF THE ASSOCIATION AND BOARD**

50.1 The assets and income of the Association shall be applied exclusively to the promotion of its objects and no portion shall be paid or distributed directly or indirectly to the members of the Association or of the Board except as bona fide remuneration for services rendered or expenses incurred on behalf of the Association.

50.2 Without limiting clause 50.1 and at the discretion of the Board, the member from which a Board Member is elected and the member providing a convenor of a committee or representative of a group, is entitled to receive payments in the amount determined by the Board, to reflect the time and services provided by that person to the Association.

51. **WINDING UP AND CANCELLATION OF INCORPORATION**

51.1 In the event of the Association being dissolved or its incorporation cancelled, the amount which remains after such dissolution and satisfaction of all debts and liabilities shall be paid and applied by the Association in accordance with the Act to any one or more charities:

- (a) which has charitable objects similar to, or inclusive of, the objects in clause 2;
- (b) which has rules prohibiting the distribution of its assets and income to its members to at least the same extent as the Association; and
- (c) that is or are deductible gift recipients within the meaning of the ITA Act.

51.2 If the Association's deductible gift recipient endorsement is revoked (whether or not the Association is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of clauses 51.1(a), 51.1(b) and 51.1(c), as decided by the Board Members.

51.3 For the purpose of this Clause 51.3:

- (a) **gift funds** means:
 - (i) gifts of money or property for the principal purpose of the Association;
 - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the Association; and
 - (iii) money received by the Association because of such gifts and contributions.
- (b) **contributions** and **fund-raising event** have the same meaning as in Division 30 of the ITA Act.

52. **FINANCIAL YEAR**

The financial year of the Association is:

- (a) the period of time commencing on the date of incorporation of the Association and ending on the following 30 June; and
- (b) each period of 12 months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

Effective 22 December 2016

Amended: 24 May 2005, 18 November 2008, 19 May 2009, 30 November 2016.

ANNEXURE A – CONDUCT OF POSTAL BALLOTS

1. Ballots

1.1 The Board must:

- (a) cause the details of the proposal on which the ballot is to be held to be set out in a statement; and
- (b) fix the dates for:
 - (i) the forwarding of ballots to members;
 - (ii) the closing of the ballot; and
- (c) appoint a returning officer for the ballot.

1.2 Every ballot must be conducted by the returning officer appointed by the Board.

2. Returning officers

2.1 A Board Member of the Association may not be appointed as a returning officer.

2.2 The returning officer may be assisted in the performance of his or her duties by any person (who would be eligible to be a returning officer) appointed by the returning officer.

3. Preparation of voting roll and ballot papers

3.1 The returning officer must prepare a roll of the full names and addresses of the members of the Association who are eligible to vote.

3.2 A person whose name is on the roll is entitled to vote in the ballot, and no person is otherwise so entitled.

3.3 The returning officer must cause ballot papers to be prepared:

- (a) in or to the effect of Form A in this Annexure; or
- (b) in such other form as the Board determines.

3.4 Each ballot paper must:

- (a) be initialled by the returning officer or an appointed assistant; or
- (b) bear a mark that identifies it as a genuine ballot paper.

3.5 The returning officer must, at least 14 days (or 21 days in the case of a special resolution) before the date fixed for the closing of the ballot, send by post or otherwise deliver to every member entitled to vote in the ballot one set of the following material:

- (a) one ballot paper;
- (b) an envelope (in this Annexure referred to as the outer envelope) addressed to the returning officer and the reverse side of which is noted or printed with the name and address of the member;
- (c) a small envelope (in this Annexure referred to as the inner envelope) in which the ballot paper is to be enclosed;

- (d) a copy of a statement prepared by the Board setting out the terms of the resolution; and
- (e) in the case of a special resolution - a copy of a statement to the effect that the resolution is intended to be passed as a special resolution.

4. Duplicate ballot papers

The returning officer may send a duplicate ballot paper to any voter if the returning officer is satisfied:

- (a) that the voter has not received a ballot paper; or
- (b) that the ballot paper received by the voter has been lost, spoilt or destroyed and that the voter has not already voted.

If a duplicate ballot paper is sent, the relevant outer envelope is to be marked with the word "Duplicate".

5. Voting

A member casts a vote in the ballot by:

- (a) marking his or her vote on the ballot paper according to the instructions on the ballot paper; and
- (b) sending the ballot paper, in the envelopes provided, to the returning officer.

6. Safe keeping of ballot papers

- 6.1 The returning officer must provide a ballot box that must be secured immediately before the ballot papers are delivered to members in accordance with clause 3.5 above and must remain secured until the close of the ballot.
- 6.2 The returning officer must place the outer envelopes in the ballot box not later than the time and date fixed on the ballot paper for the closing of the ballot.

7. Counting of the votes

- 7.1 As soon as practicable after the date fixed for the closing of the ballot, the returning officer must, in the presence of such scrutineers as may be appointed by the Board, open the ballot box and deal with the contents in accordance with clause 7.3.
- 7.2 The returning officer must:
 - (a) examine the outer envelopes;
 - (b) if a duplicate outer envelope has been issued and the original outer envelope is received, reject the original envelope and mark it "rejected";
 - (c) mark the voter's name on the roll by drawing a line through the name;
 - (d) remove the inner envelopes from the outer envelopes; and
 - (e) when all the inner envelopes have been dealt with in the above manner, open all unrejected inner envelopes and take the ballot papers from them.
- 7.3 The ballot papers must be scrutinised by the returning officer who must reject as informal any ballot paper that:

- (a) is not duly initialled by the returning officer or appointed assistant or does not bear a mark that identifies it as a genuine ballot paper;
- (b) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer;
- (c) has any mark or writing not authorised by this Annexure that, in the opinion of the returning officer, will enable the voter to be identified; or
- (d) has not been marked as prescribed on the ballot paper itself.

8. Statement by returning officer

8.1 The returning officer must count all votes cast and make out and sign a statement of:

- (a) the number of formal votes cast in favour of the proposal;
- (b) the number of formal votes cast against the proposal;
- (c) the number of informal votes cast;
- (d) the number of envelopes marked "rejected"; and
- (e) the proportion of the formal votes cast in favour of the proposal.

8.2 On the declaration of the returning officer of the result of the postal ballot, the Board must cause an entry to be made in the minute book showing the particulars referred to in clause 8.1(a) to 8.1(e).

8.3 The returning officer must forward a copy of the statement to the Chairperson of the Board who must announce the result of the ballot at the next General Meeting.

9. Notification of result of ballot for special resolutions

In the case of a special resolution, the Association must cause the result of the ballot to be notified in writing to its members as soon as practicable after the ballot.

10. Retention of ballot papers

10.1 The returning officer must retain:

- (a) all ballot papers (whether formal or otherwise);
- (b) all rejected outer envelopes; and
- (c) all rolls,

used in connection with the conduct of the postal ballot, locked in the ballot box, in accordance with this clause.

10.2 The returning officer must retain those items for a period of not less than 8 weeks after the date fixed for the closing of the ballot unless directed in writing by the Board to retain those items for a longer period.

Form A - Postal ballot paper

Note:

Before completing this ballot paper, please read the "How to vote" section below.

Name of Association:

Ballot of members to determine the following proposal:

.....
.....
.....

Do you support the above proposal? (Please write YES or NO in the box)

The ballot will close at [*time*] on [*date*].

How to vote

- 1 Read these directions and the ballot paper carefully.
- 2 If:
 - (a) you are in favour of the proposal—write the word "YES" in the box provided above, or
 - (b) you are not in favour of the proposal—write the word "NO" in the box provided above.
- 3 After marking the ballot paper, fold it and place it in the inner envelope provided and seal the envelope. Then place the inner envelope in the envelope addressed to the returning officer.
- 4 Forward this envelope either by post or personal delivery so as to reach the returning officer not later than the time and date set out above.
- 5 Unless the ballot paper is marked as indicated in 3 above and the details referred to in 2 above are completed in full, your vote may be rejected as informal.