



Baringa Child-Care Centre Association Incorporated
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CONSTITUTION

BARINGA CHILD-CARE CENTRE ASSOCIATION INCORPORATED

an incorporated association

2023

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Constitution of Baringa Child Care Centre Incorporated

1. Interpretation

- 1.1 Words used in this Constitution shall take their meaning as set out in the clause **Specific Definitions**.
- 1.2 Any words not defined in this Constitution shall have their meaning as defined in the Associations Incorporations Act 1991 (the Act) and if the words are not defined, shall take their ordinary meaning.
- 1.3 In this Constitution, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) each gender includes the other genders;
 - (c) the reference to persons includes a natural person and any partnership, association, body, an authority or entity whether incorporated or not;
 - (d) references to a person includes the legal personal representatives, employees, agents, contractors, successors, and permitted assigns of that person;
 - (e) the words “writing” and “written” include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (f) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (g) a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (h) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
 - (i) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution. Other definitions of general application and rules of interpretation are set out at the end of this Agreement.
- 1.4 A clause that deals with an expression with a special meaning in a particular Part or Division of the Act, has the same meaning as that Part or Division of the Act, unless a contrary intention appears.

2. Specific Definitions

- 2.1 In this Constitution, unless there is something in the subject or context which is inconsistent:
- (a) “**Act**” means the Associations Incorporations Act 1991 (ACT);
 - (b) “**Annual General Meeting**” means the Annual General Meeting of the Association;
 - (c) “**Association**” means the association referred to in Association name;
 - (d) “**Board**” means the Board elected or appointed in accordance with this Constitution;
 - (e) “**Board Member**” means a person on the Board and means both Ordinary Board Members and Office-Bearers;
 - (f) “**By-Laws**” means the by-laws of the Association as created and amended from time to time in accordance with the clause By-Laws;

- (g) **“Centre”** means the centre(s) and childcare services governed by the Association, as amended from time to time.
- (h) **“Organisation’s Management”** are the individuals who make up the Organisation’s Management Team as determined by the Board and as per the By-Laws;
- (i) **“Chair”** means the Chair of the Association;
- (j) **“Constitution”** means this Constitution as amended or supplemented from time to time;
- (k) **“Finance Director”** means the Finance Director appointed in accordance with the clause Finance Director;
- (l) **“Financial Member”** means a Member who has paid all annual Membership fees due and payable (if any) under the clause Membership fee;
- (m) **“Financial Year”** means the Financial Year ending on 30 June;
- (n) **“General Meeting”** means the Annual General Meeting or any Special General Meeting of the Association;
- (o) **“Majority”** means over fifty percent (50%);
- (p) **“Member”** means a Member of the Association pursuant to the clause Admission;
- (q) **“Non-Financial Member”** means a Member who has not paid all the annual Membership fees due and payable under the clause Fees and subscriptions;
- (r) **“Non-Voting Member”** means a Member who is not entitled to vote at a General Meeting under this Constitution;
- (s) **“Objects”** means the Objects of the Association as set out in the clause Objects;
- (t) **“Office-Bearer”** means an office-bearer as set out in the clause Constitution of the Board;
- (u) **“Ordinary Board Member”** means a Member of the Board who is not an Office-Bearer of the Association;
- (v) **“Public Officer”** means the public officer of the Association as required by section 57 of the Act;
- (w) **“Register of Members”** means the register of Members of the Association as required by the clause Register of Members and section 67 of the Act;
- (x) **“Registrar”** means the Registrar-General of incorporated associations under the Act;
- (y) **“Regulation”** means the Associations Incorporation Regulation 1991 (ACT);
- (z) **“Secretary”** means the person appointed as the Secretary of the Association in accordance with this Constitution and includes any assistant or acting secretary;
- (aa) **“Special General Meeting”** means a special General Meeting of the Association;
- (bb) **“Special Resolution”** means a resolution of at least three quarters ($\frac{3}{4}$) of the votes of the Voting Members present either in person or by proxy at a meeting of Members;
- (cc) **“Standards, The”** means the *National Quality Standard* issued by the Australian Children’s Education & Care Quality Authority, and as updated from time to time.
- (dd) **“Tax Act”** means the Income Tax Assessment Act 1997 (Cth); and
- (ee) **“Voting Member”** means a Member entitled to vote at a General Meeting under this Constitution.

3. Association Name

- 3.1 The name of the Association is Baringa Child Care Centre Incorporated.

4. Association Type

- 4.1 The Association is an incorporated association under Division 3.3 of the Act.

5. Objects

- 5.1 The Association has the following Objects:

- (a) provide early childhood education and care services;
- (b) provide a program of activities catering for the individual development needs of these children;
- (c) provide our services in accordance with The Standards;
- (d) administer and maintain and do all things necessary in the management of the Association;
- (e) promote the involvement and participation of all members in the administration and operations of the Association;
- (f) liaise and co-operate with individuals, groups and institutions within the community in the furtherance of the above aims; or
- (g) undertake and pursue all such similar, related and compatible objects as the Board may from time to time consider appropriate; or
- (h) undertake any charitable activities and fundraising that meets with these Objects.

Review and Variation of the Objects

- 5.2 A review of the objects may be proposed by a Member submitting to the Board a written view proposal explaining the reasons for and detail a proposed review and any proposed variations to the Objects.
- 5.3 Promptly upon receipt of same the Chair will distribute copies of review proposal to all Board Members and prepare a resolution to be put to Members which can only be passed by a special resolution of Members.
- 5.4 Before distributing any proposed special resolution, the Chair may seek such information or commission or advice such reports as the Chair may consider or the Board may resolve to be required to provide relevant information to Members to assist in their consideration of the review proposal.

6. Admission

- 6.1 A person is eligible to be a Member if they are:

- (a) at least eighteen (18) years of age; and
- (b) interested in pursuing the Objects of the Association,

and the Board may only admit a person who meets the criteria in this subclause to be a Member of the Association and who qualifies as a Member in accordance with the following subclause.

6.2 An eligible person under the preceding subclause qualifies as a Member if:

- (a) they are a person mentioned in the Act at section 21(2(a) or (b) and has not ceased to be a Member of the Association at any time after the incorporation of the Association under the Act; or
 - (b) the person:
 - (i) has been nominated for Membership in accordance with the clause **Nomination for Membership**; and
 - (ii) has paid the prescribed Membership fee (if applicable) to the Association; or
 - (c) they are admitted to Membership by the Board in accordance with this Constitution.
-

7. Register of Members

7.1 The Board is responsible for the maintenance of an accurate and up-to-date register of Members and, to this end:

- (a) a Member who changes address or another material detail must promptly give notice of that change in writing to the Board; and
- (b) the Board must make any necessary change to the register of Members upon receiving a written notice in accordance with the preceding paragraph (a).

7.2 The Board may delegate, at its reasonable discretion the implementation of 7.1 to the Organisation's Management.

8. Membership Classes

8.1 Subject to the following subclause, the Membership classes and requisite rights and obligations are detailed in the By-Laws.

8.2 The Board may unanimously, from time to time, determine and include as By-Laws:

- (a) the various classes of Membership of the Association;
 - (b) any restriction in the number of Members or the number of Members within each class;
 - (c) the qualifications for admission to each class; and
 - (d) the rights attached to being a Member in each class.
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9. Membership Process

9.1 A person may become a Member of the Association by:

- (a) automatically becoming a class of member as detailed in the By-Laws; or
- (b) when approved by the Board as a Community Member, which may include a nomination process as detailed in the By-Laws.

9.2 The Association must enter the person's name in the Register of Members, and the nominee becomes a Member upon their name being so entered.

10. Membership Entitlements Non-Transferable

- 10.1 A right, privilege or obligation that a person has because of being a Member of the Association:
- (a) cannot be transferred or transmitted to another person;
 - (b) terminates on cessation of the person's membership; and
 - (c) may not be exercised during any period that the Member's membership fees have not been paid.

11. Member Obligations

- 11.1 The Constitution constitutes a contract between each Member and the Association, and each Member agrees to be bound by the Constitution and By-Laws.
- 11.2 All Members must comply with and observe the Constitution and By-Laws and any determination or resolution which may be made or passed by the Association or the Board.
- 11.3 All Members submit to the jurisdiction of the Australian Capital Territory in respect of any disputes between a Member and the Association or a Member and another Member.

12. Fees and Subscriptions

- 12.1 Each Member must pay the annual Membership fee as determined by the Board from time to time.
- 12.2 The Board may:
- (a) fix an annual and/or reoccurring Centre Improvement Fee ;
 - (b) set different rates of Building and Administration Levy for different classes of membership, as detailed in the By-Laws, or establish a scale of rates for a particular class of Membership, as detailed in the By-Laws.
- 12.3 Different annual Membership fees may be determined for:
- (a) different categories of Membership;
 - (b) discounts and concessions as determined by the Board; and
 - (c) other circumstances as determined by the Board.
- 12.4 The annual Membership fee is due at a time reasonably determined by the Board.
- 12.5 In any financial year, the Membership Fees and any other monies, determined by the Board must not exceed the amount (if any) determined by the Members, from time to time, by special resolution.
- 12.6 If a Member fails to pay all monies due and payable to the Association:
- (a) that Member's rights under this Constitution will be immediately suspended, unless otherwise determined by the Board;
 - (b) such rights will be suspended until all due monies have been paid, unless otherwise determined by the Board;
 - (c) if the monies remain outstanding for a period of 56 days, the Board may deal with the Member at its discretion and may suspend, disqualify, discipline or retain that Member as a Member, or impose any such other reasonable condition/requirement determined by the Board.

- 12.7 In addition to the preceding clause, any Membership Fees or other monies which are overdue may be recovered by the Association as a debt immediately due and payable without the need for any prior demand of payment.

13. Members' Liability

- 13.1 The liability of a Member is limited in accordance with section 51 of the Act.

14. Cessation of Membership

- 14.1 A Member ceases to be a Member if:

- (a) They die (or, if a corporation, are wound up); or
- (b) their child ceases to be enrolled at the Centre; or
- (c) they are a staff member and are no longer engaged by the Centre.

- 14.2 Subject to the following subclause, a Member also ceases to be a Member if, in the opinion of the Board, they:

- (a) refuse or neglect to comply with the provisions of this Constitution; or
- (b) are guilty of any conduct which is:
 - (i) unbecoming of a Member; or
 - (ii) prejudicial to the interests of the Association.

- 14.3 Where a Member ceases to be a Member pursuant to the preceding subclause:

- (a) the Secretary must:
 - (i) notify the Member in writing; and
 - (ii) provide the reason for the termination.

Effect of Termination of Membership

- 14.4 The cancellation or cessation of a Membership does not:

- (a) prejudice, lessen or affect the rights, duties, liabilities and obligations of a Member whether they arise under this Constitution or otherwise existing at the date of cancellation or cessation or which may arise from crystallisation or by reason of any facts or circumstances occurring or in existence at or before that date;
- (b) relieve a Member from any obligation to record or account for or pay any monies for which the Member may be liable under this Constitution where such liability accrued from facts or circumstances arising prior to the cancellation or cessation of membership; or
- (c) extinguish the Member's liability in the event of winding up or to dissolution of the Association.

- 14.5 Any Member who ceases to be a Member of the Association for any reason will not have any claim upon the Association, its funds or property.

15. Appeal to Cessation of Membership

- 15.1 If any Member ceases to be a Member as a result of the second subclause in the preceding clause **Cessation of Membership** (“**Terminated Member**”), the Terminated Member may lodge a written appeal (“the Appeal”) to the Secretary to be reinstated.
- 15.2 The Board must review the Appeal at the next Board meeting after the Secretary receives the Appeal.
- 15.3 If the Board decides to reinstate the Terminated Member, the Secretary must notify the Member in writing, of their reinstatement within seven (7) days of the Board making its decision.
- 15.4 If the Board affirms the decision to cancel a Member’s Membership, the Board must call and hold a Special General Meeting within three (3) months of their decision.
- 15.5 The only business at the Special General Meeting under the preceding subclause will be to determine whether the Terminated Member should be reinstated.
- 15.6 The Board must, at least fourteen (14) days prior to the Special General Meeting, provide the Terminated Member with a written notice of the intended resolution to affirm their decision to terminate the Member’s Membership.
- 15.7 The Special General Meeting will be held in accordance with this Constitution.
- 15.8 Notwithstanding the preceding subclause, the Chair of the Special General Meeting must allow the Terminated Member to present their case for reinstatement, orally or in writing at the Special General Meeting.
- 15.9 If the Voting Members at the Special General Meeting:
- (a) affirm the Board’s decision to terminate the Member by Special Resolution, the Terminated Member will continue to be a non-member; and
 - (b) if the Voting Members at the Special General Meeting overturn the Board’s decision by Special Resolution, the Terminated Member is reinstated as a Member.

16. Annual General Meeting

- 16.1 The Association must hold an Annual General Meeting of its Members:
- (a) at least once in each Financial Year; and
 - (b) within the period of five (5) months from the end of each Financial Year.

17. Special General Meetings

- 17.1 Any General Meeting other than an Annual General Meeting is a Special General Meeting.
- 17.2 The Board may convene a Special General Meeting:
- (a) as required under this Constitution;
 - (b) as required under the Act; and
 - (c) at any time that it thinks fit.

18. General Meetings

18.1 The Board must give at least twenty-one (21) calendar days' notice of every General Meeting to:

- (a) every Member, except those Voting Members who have not supplied a current email address;
- (b) every Board Member; and
- (c) the auditor or auditors of the Association,

except:

- (d) for Special Resolutions which require notice in accordance with the Act; and
- (e) where there is an agreement for shorter notice between the Voting Members.

18.2 A notice of a General Meeting must include:

- (a) the place of the meeting;
- (b) the date of the meeting;
- (c) the time of the meeting; and
- (d) the business to be transacted at the General Meeting.

18.3 A General Meeting may, at the sole discretion of the Board, be held in two or more places linked together by any technology that:

- (a) gives the Members present at those places a reasonable opportunity to participate in proceedings;
- (b) enables the Chair to be aware of proceedings in each place; and
- (c) enables the Members in each place to vote on a show of hands and on a poll.

18.4 If a General Meeting is held in two (2) or more places in accordance with the preceding subclause:

- (a) a Member present at one of the places is taken to be present at the General Meeting; and
- (b) the Chair of that General Meeting may determine at its sole discretion which place the meeting is taken to have been held.

19. Quorum for General Meetings

19.1 No business can be transacted at a General Meeting unless a quorum is present.

19.2 The quorum for any General Meeting is five (5) Voting Members.

19.3 For the purpose of this clause and the proceeding clauses, "**Voting Member**" includes a person attending as a proxy or a representative of an entity which is a Voting Member.

19.4 If a quorum is not met within thirty (30) minutes of the start of the meeting, the meeting:

- (a) if convened by the requisition of Voting Members – is dissolved; and
- (b) in any other case - stands adjourned to:

- (i) the same day in the following week at the same time and place; or
- (ii) to such other day, time and place as the Chair may determine.

19.5 If a quorum is not met within thirty (30) minutes of the start of an adjourned meeting, two (2) or more Voting Members present in person or by proxy will constitute a quorum.

19.6 The business transacted at any adjourned meeting must only be the business left unfinished at the General Meeting from which the adjournment took place.

20. Meetings may be cancelled or postponed

20.1 The Board may at any time after notice of a general meeting has been given, postpone or cancel the general meeting by giving reasonable notice to all persons entitled to receive notice of that general meeting except that a meeting convened on the requisition of Members as allowed by the Act must not be cancelled without the consent of those Members.

21. Presiding at meetings

21.1 The Chair presides at every General Meeting.

21.2 The Voting Members present will elect a Voting Member to be Chair for that meeting only, if

- (a) there is no Chair; or
- (b) the Chair is not present within fifteen (15) minutes after the time appointed for the General Meeting; or
- (c) the Chair is unwilling to act.

22. Adjourning meeting

22.1 The Voting Members present at a General Meeting may by Majority resolution adjourn the meeting from time to time and place to place.

22.2 If a General Meeting is adjourned for thirty (30) days or more, the Secretary must give all Members notice of the time and place of the adjourned General Meeting twenty-one (21) days prior to the adjourned General Meeting.

22.3 A notice of an adjourned meeting does not need to state the business to be transacted.

22.4 The business transacted at any adjourned meeting must only be the business left unfinished at the General Meeting from which the adjournment took place.

23. Proceedings and voting

23.1 At any General Meeting a resolution put to the vote will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the Chair; or
- (b) by at least two (2) Members present in person or by proxy.

23.2 A declaration by the Chair that a resolution has on a show of hands been carried (unanimously or by a particular majority) or lost and entry in the minutes of the Association showing the result of the resolution is conclusive evidence of the result of the resolution, except where a poll is demanded.

- 23.3 A resolution is carried if support by a Majority of Voting Members present at a General Meeting in person or by proxy.
- 23.4 The Chair of that General Meeting has a second or casting vote if the vote on any resolution is tied.
- 23.5 Any poll must be taken in such a manner as the Chair directs, subject to the following subclause.
- 23.6 Notwithstanding the preceding subclause, a poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- 23.7 The result of any poll is the resolution of the General Meeting at which the poll was demanded.
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24. Proxy

- 24.1 A Voting Member may by using the Proxy Voting Form appoint another person to act as their proxy to attend, speak and vote in their place at a General Meeting.
- 24.2 The Proxy Voting Form is to be used unless the Board approves another form for such use, and until such a determination by the Board any written instrument other than a Proxy Voting Form which purports to appoint a proxy:
- (a) is not valid; and
 - (b) must not be recognised by the Chair of the General Meeting.
- 24.3 A Non-Voting Member cannot appoint a person to act as their proxy to attend and speak in their place at a General Meeting.
- 24.4 The completed Proxy Voting Form must be sent by the Voting Member to the Secretary at least forty-eight (48) hours before the time for holding the General Meeting or adjourned General Meeting at which the Voting Member proposes to vote.
- 24.5 The proxy voting form must be signed by:
- (a) the Voting Member; or
 - (b) the Voting Member's attorney; or
 - (c) if a corporation – in accordance with the Corporations Act 2001 (Cth) or by an authorised
 - (d) representative of that corporation.
- 24.6 The Proxy Voting Form must include the power of attorney or other authority (or a certified copy of that power or authority), under which it is signed.
- 24.7 A Voting Member may instruct their proxy in favour of or against any proposed resolutions.
- 24.8 A proxy may vote as they think fit, unless otherwise instructed.
- 24.9 On a show of hands every person present who is a:
- (a) voting Member; or
 - (b) an authorised representative, attorney or proxy of a Voting Member,
- has one (1) vote.
- 24.10 The Proxy Voting Form confers authority on the proxy to demand or join in demanding a poll.

24.11 On a poll every Voting Member present:

- (a) in person; or
- (b) by proxy; or
- (c) by attorney; or
- (d) by other duly authorised representative,

has one (1) vote on their own behalf and one (1) vote for every proxy they hold.

24.12 A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding:

- (a) the previous death or unsoundness of mind of the Voting Member; or
- (b) the revocation of the instrument or the authority under which the instrument was executed, if

no indication in writing of such death, unsoundness of mind or revocation has been received by the Secretary before the commencement of the General Meeting or adjourned General Meeting at which the instrument is used.

25. Voting Entitlement

25.1 Subject to this Constitution:

at meetings of Members, each Member entitled to vote may vote in person or by proxy, attorney or by a representative (when the Member is a body corporate),

- (a) on a show of hands every Member present has one vote, and on a poll every Member present in person or by proxy, attorney or representative has one vote; and
- (b) a Member whose Membership Fees for the current financial year has been due but not paid for a period of 6 months is not entitled to vote.

26. Resolution outside General Meeting

26.1 A written resolution signed by all Voting Members is valid and effectual as if it had been passed at a General Meeting duly convened and held, and any such resolution may consist of several documents in like form, each signed by one or more Voting Members.

27. Circular Resolutions of Members

27.1 Subject to the Act, and except in the case of a resolution to remove an auditor, the Association may pass a resolution without a General Meeting being held if all the Voting Members on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Following the signing of the document, the Voting Members will be required to give the document back to the Association, where the Association will consider the signed document as a signed resolution.

27.2 Signing of the documentation abovementioned, may be done so via counterparts.

28. Powers of the Board

28.1 The Board:

- (a) controls and manages the affairs of the Association with the ability to delegate governance support functions to the Organisation's Management; and

- (b) may exercise all functions that may be exercised by the Association other than those functions that are required by these rules to be exercised by the Association in General Meeting; and
 - (c) has the power to perform all acts and do all things that appear to the Board to be necessary or desirable for the proper management of the affairs of the Association.
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29. Reserved Matters

29.1 The Board may not delegate decisions in relation to matters (**Reserved Matters**):

- (a) where any decision required under the Constitution or Act is to be determined by special or unanimous resolution of the Board; or
- (b) any other task or type of decision that the Board may by resolution reserve to itself from time to time.

29.2 Dealings of Reserved Matters are detailed in the Reserved Matters By-Laws.

30. Constitution of the Board

30.1 The Board consists of:

- (a) no less than three (3) and no more than eight (8) Board Members elected by the Members in General Meeting; plus
 - (b) no more than four (4) Co-Opted Directors appointed by the Board,
- collectively referred to as the “Board Members”.

30.2 Subject to the following subclauses in this clause, the Board Members will be elected in accordance with the By-Laws.

30.3 Up to two (2) Co-Opted Directors must have specific skills, experience and expertise deemed necessary for effective Board functioning and in meeting the Association’s purpose and objectives.

30.4 If there is a vacancy in the Membership of the Board, the Board may appoint a Member of the Association to fill the vacancy and the Member so appointed holds office, subject to these rules, until the conclusion of the next Annual General Meeting after the date of the appointment.

30.5 Each Board Member holds office, subject to this Constitution, until the conclusion of the Annual General Meeting following the date of the Board Member’s election, but is eligible for re-election.

31. Office-Bearers

31.1 The Office-Bearers of the Association are as per the By-Laws and may include:

- (a) the Chair;
- (b) the Deputy Chair;
- (c) the Secretary; and
- (d) the Finance Director.

31.2 Subject to the following subclause, the Office-Bearers are determined by Board Members.

31.3 If an Office-Bearer resigns then their replacement will be determined at the next meeting of the Board

following such resignation, and the Board must by Majority determine the replacement Office-Bearer on such terms as they think fit.

32. Organisation Management

- 32.1 The individuals who make up the Organisation's Management Team will be determined by the Board and their roles and delegated responsibilities be determined and included as By-Laws.

33. Chair

- 33.1 The Board:

- (a) may suspend or remove the Chair; and
- (b) may vest in the Chair such powers and authority as it may from time to time determine as per the By-Laws.

- 33.2 The Chair:

- (a) is elected annually by the Board at the first Board Meeting after the Annual General Meeting and will exercise all such powers and authority in accordance with the Board's direction and By-Laws;
- (b) may hold its office for a period of three (3) years and will be eligible to be re-elected for a maximum period of six (6) consecutive years providing they do not contravene Clause 38.3 (Term of Board Members) which limits consecutive Board membership to a total of six years (consisting of two periods of three-year-terms). Each annual term of office will commence at the first Board Meeting immediately after the Annual General Meeting and conclude at the end of the Annual General Meeting that their annual term ceases.
- (c) may resign following written notice to the Board;
- (d) may be removed as Chair, but not as a Board Member, by resolution passed at least by 75% of the Board; and
- (e) will be deemed to have vacated its position if they cease to be a Board Member.

- 33.3 If the Chair becomes incapable of performing their duties, the Board may appoint the Deputy Chair or another person to act as Chair on a temporary basis.

34. Deputy Chair

- 34.1 The Deputy Chair will exercise such powers and authority as it may from time to time determine as per the By-Laws.

- 34.2 The Deputy Chair:

- (a) is elected annually by the Board at the first Board Meeting after the Annual General Meeting and will exercise all such powers and authority in accordance with the Board's direction and By-Laws;
- (b) may hold office for a maximum consecutive term of six (6) years providing they do not contravene Clause 38.3 (Term of Board Members) which limits consecutive Board membership to a total of six years (two periods of three-year-terms). Each annual term of office will commence at the first Board Meeting immediately after the Annual General Meeting and conclude at the end of the Annual General Meeting that their annual term ceases.
- (c) may resign following written notice to the Board;
- (d) may be removed as Deputy Chair, but not as a Board Member, by resolution passed at least by 75% of the Board, and

- (e) will be deemed to have vacated the position if they cease to be a Board Member.
- (f) If the Deputy Chair becomes incapable of performing their duties, the Board may appoint another person to act as Deputy Chair until a new Deputy Chair is appointed.

35. Secretary

- 35.1 The Secretary of the Association is the person specified in the application for registration of the Association under the Act as Secretary.
- 35.2 The Board may suspend or remove the Secretary.
- 35.3 The Secretary must:
 - (a) act in accordance with the Act; and
 - (b) discharge all functions conferred on the Secretary under this Constitution or the Act.
- 35.4 The duties of the Secretary as per the By-Laws include but are not limited to:
 - (a) keeping minutes of all elections and appointments of Office-Bearers and Ordinary Board Members;
 - (b) keeping minutes of the names of Board Members present at a Board meeting or a General Meeting;
 - (c) keeping minutes of all proceedings at Board meetings and General Meeting;
 - (d) ensuring that the necessary registers required to be kept by the Act are established and properly maintained; and
 - (e) ensuring that all returns required to be lodged with the Registrar are prepared and filed within appropriate time limits.
- 35.5 The Secretary is supported by a Secretariat as established by the Organisation's Management Team to carry out the day-to-day duties of the Secretary as delegated by the Board and as per the By-Laws.
- 35.6 In the absence of a Secretary, the Board may delegate the Organisation's Management to provide secretariat support functions, for the avoidance of doubt the Organisation's Management cannot act as the Public Officer.

36. Finance Director

- 36.1 The Finance Director of the Association must provide oversight and strategic advice in regards to:
 - (a) the way in which the Association collects and receives all amounts owing to the Association and how the Association makes all payments authorised by the Association;
 - (b) the Association's accounts and books showing the financial affairs of the Association, with full details of all receipts and expenditure connected with the activities of the Association; and
 - (c) ensuring the financial audit occurs in a timely fashion and is presented at the Annual General Meeting.
- 36.2 The Board may suspend or remove the Finance Director.
- 36.3 The Finance Director is supported by the Organisation's Management Team and staff to carry out the duties of the Finance Director as delegated by the Board and as per the By-Laws.

37. Public Officer

- 37.1 The Association must at all times have a person acting as Public Officer in accordance with the Act.
- 37.2 No person is eligible to be the Public Officer unless:
- (a) they reside in the Australian Capital Territory; and
 - (b) they are at least eighteen (18) years of age.
- 37.3 If the Board determines that the Secretary is not the Public Officer then the Board must appoint another person to hold the position of Public Officer in accordance with section 57 of the Act.
- 37.4 If a vacancy occurs in the office of the Public Officer then the Board must within fourteen (14) days of the vacancy occurring appoint another person to act as Public Officer.
- 37.5 Not later than one (1) month after the appointment of the new Public Officer that person must lodge a notice of appointment with the Registrar.
- 37.6 A Public Officer may hold any other office in the Association unless the Board determines otherwise.
- 37.7 The Public Officer is appointed each year by the Board and does not need to be the Secretary, a Board or Association Member.

38. Election of Board Members

- 38.1 Board Members will be elected in accordance with the By-Laws.

39. Term of Board Members

- 39.1 A Board Member's term of office:
- (a) commences from the end of the Annual General Meeting in which they were elected; and
 - (b) ceases at the Annual General Meeting three (3) years from the date on which they were elected.
- 39.2 No more than four (4) Board Members shall be obliged to retire at each Annual General Meeting, this will be determined as follows:
- (a) any Board Member who wishes to retire and does not offer to stand for re-election;
 - (b) any Board Member who has been appointed without an election, as per the By-Laws; and
 - (c) those Board Members who have been longest in office since their last election but as between Board Members elected on the same day, they shall retire as agreed by the Board.
- 39.3 A Board Member is not eligible for re-appointment if that person, at the time of re-appointment, would have been a Board Member of the Association for a continuous period of six (6) years.

40. Resolution to Remove a Board Member

- 40.1 The Members may by resolution in a General Meeting remove a Board Member from office prior to the expiration of the Board Members term.

- 40.2 A Board Member whom a resolution relates to, may submit written representation to the Chair. The representation may be sent to each Member or alternatively, the Board Member is entitled to require the representation be read out at the meeting at which the resolution is considered.
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41. Casual Vacancies

- 41.1 The Board may at any time appoint a person to fill any casual vacancy on the Board. Any Board Member so appointed shall only hold office until the next Annual General Meeting of the Association after the appointment is made.
- 41.2 The office of a Board Member shall become a casual vacancy if the Board Member:
- (a) dies;
 - (b) becomes bankrupt or enters into arrangements with administrators;
 - (c) becomes prohibited from being a Board Member under the law;
 - (d) becomes of unsound mind or whose personal estate is liable to be dealt with in a way under the laws relating to mental health;
 - (e) provides their written resignation to the Association;
 - (f) the Members pass a special resolution to remove the Board Member before the expiration of their period in office; or
 - (g) is absent without the consent of the Board for more than two (2) meetings of the Board during any six (6) month consecutive period.
- 41.3 The Board may act, despite any vacancy in their body, but if the number falls below the minimum required by the Act, the Board may act:
- (a) for the purpose of increasing the number of Board Members to the minimum; or
 - (b) for the purpose of convening a general meeting; or
 - (c) in emergencies,
- but for no other purpose.
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42. Co-Opted Directors

- 42.1 The Board may at any time resolve to appoint up to four (4) Co-opted Directors to the Board to:
- (a) fill a casual vacancy;
 - (b) address a skills deficit and to bring a balance of skills and knowledge to the Board in light of the Board composition at that time; and/or
 - (c) to ensure the Board encompasses a broad spectrum of interests.
- 42.2 Each Co-opted Director appointed in accordance with this clause, shall take office immediately and will hold office until the end of the next Annual General Meeting, unless formally elected in accordance with this Constitution.
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43. Remuneration of Board Members

- 43.1 At an Annual General Meeting the Voting Members may, by Majority resolution, pass a resolution on the remuneration payable to Board Member. In the absence of such a resolution, the remuneration is zero (0).
- 43.2 A Board Member's remuneration must be a fixed sum and not a commission or a percentage of the turnover of the Association basis.
- 43.3 Each Board Member is entitled to reimbursement of their prior Board approved reasonable expenses incurred in the performance of their duties as a Board Member.
- 43.4 If a Board Member performs extra or special services for the Association, the Association may pay to the Board Member any special remuneration the Board decides, in addition to the Board Member's normal remuneration.

Board Member Fees

- 43.5 The Board must take detailed advice from the Association's accountant and Finance Director as to the Association's financial position and must consider and where appropriate take external advice as to the fees generally payable for comparable positions in the not-for-profit sector when determining any Board Member's fees.
- 43.6 Notwithstanding anything else contained in this Constitution, no Board Member fees can be made by the Association to the Board Member until the Board approves same via majority ruling.

44. Re-election

- 44.1 A Board Member is not eligible for re-election to the Board if at the time of re-election they would have already served as a Board Member for a continuous six (6) year period.

45. Termination of Board Member

- 45.1 Subject to the Act, the Voting Members may by ordinary resolution remove any Board Member before the expiration of their period of office.

Vacancy

- 45.2 The office of a Board Member becomes vacant if the Board Member:
- (a) dies;
 - (b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
 - (c) becomes prohibited from being a Board Member of an association by reason of any order made under the Act;
 - (d) becomes of unsound mind;
 - (e) has an estate liable to be dealt with in any way under the law relating to mental health;
 - (f) resigns their office by notice in writing to the Association;

- (g) for more than six (6) months is absent without permission of the Board from meetings of the Board held during that period;
- (h) holds any office of profit under the Association without the Board's consent;
- (i) ceases to be a Member; or
- (j) is directly or indirectly interested in any contract or proposed contract with the Association, except as permitted under this Constitution (for example as permitted by the clause **Managing conflict of interest**).

46. Board Meetings

- 46.1 The Board must meet at least four (4) times each Financial Year to carry out its duties and responsibilities.
- 46.2 The Board may adjourn and otherwise regulate its meetings and proceedings as it thinks fit.
- 46.3 A Board Member may at any time, and the Secretary will on the request of a Board Member, summon a meeting of the Board.
- 46.4 All Board Members must be given at least forty-eight (48) hours notice of a Board meeting, unless agreed otherwise by the Board Members.
- 46.5 The Secretary must give each Board Member a written notice of a Board meeting in accordance with the preceding subclause and the notice must:
 - (a) specify the day, time and place of the meeting; and
 - (b) state the business to be transacted.
- 46.6 A Board meeting may be held using any technology consented to by all the Board Members.
- 46.7 The consent to use of technology may be a standing one and a Board Member may only withdraw consent within a reasonable period before the meeting.
- 46.8 The Chair presides at every Board meeting and in their absence the Deputy Chair as Chair of the meeting.
- 46.9 The Board will choose one of the Board Members present to be the Chair for that meeting if:
 - (a) There is no Chair and Deputy Chair; or
 - (b) at any Board meeting the Chair and Deputy Chair are not present within ten (10) minutes after the time appointed for holding the meeting; or
 - (c) being present, the Chair or Deputy Chair is unwilling to preside.

47. Quorum for Board meetings

- 47.1 No business can be transacted at a Board meeting unless a quorum is present.
- 47.2 The quorum for any Board meeting is more than fifty percent (50%) of the Board, as long as that does not mean less than three (3) Board Members, or such greater number as determined by the Board from time to time.
- 47.3 If there are not enough Board Members in office to form a quorum,
- (a) the remaining Board Members may act only:
 - (i) to increase the number of Board Members to a quorum; or
 - (ii) to call a General Meeting of the Association.
 - (b) the meeting stands adjourned to such day, time and place as the Board Members determine or to the next business day, at the same time and place, if decision can be made.
 - (c) if at the adjourned meeting again no quorum is reached, the meeting is dissolved.
- 47.4 No business may be transacted at any meeting of the Board, adjournments excepting, unless a quorum is present.
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48. Board Voting

- 48.1 All decisions of the Board are determined by Majority vote of Board Members present at the Board meeting.
- 48.2 The Chair of the Board meeting has a second or casting vote if the vote on a resolution is tied.
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49. Decisions Requiring Unanimous Board Approval

- 49.1 The following types of decisions, including but not limited to the below, require unanimous Board approval:
- (a) create any fixed/floating charge, lien or encumbrance of the whole or any part of the undertaking, property or assets of the Association;
 - (b) borrow any sum of money (with the exception of borrowings from an Australian financial institution in the ordinary course of business) in excess of the maximum aggregate sum outstanding at that point in time;
 - (c) make any loan or advance in excess of a sum to reasonably be determined by the Board;
 - (d) give any guarantee or indemnity to secure the liability or obligations of any person;
 - (e) sell, transfer, lease, assign or otherwise dispose of any part of an undertaking, property or asset of the Association or contract to do so;
 - (f) enter into any contract, arrangement, or commitment involving expenditure except as authorised in the Association's annual budget;
 - (g) take or agree to take any dealings with property; or
 - (h) enter into any partnership or profit sharing agreement with any person.

50. Resolution Outside Board meeting

- 50.1 A written resolution signed by all Board Members entitled to vote is valid and effectual as if it had been passed at a Board meeting duly convened and held.
- 50.2 Any such resolution may consist of several documents in like form, each signed by one or more Board Members.

51. Managing Conflict of Interest

- 51.1 Where a Board Member has a material personal interest in a matter to be considered at a meeting, that Board Member must:
- (a) declare their interest; and
 - (b) must not be present while the matter is being considered at the meeting or vote on the matter, unless the Board Members who do not have a material personal interest pass a resolution which permits the Board Member to do so.
- 51.2 A Board Member who is in any way interested in a contract or arrangement or proposed contract or arrangement (other than having a material personal interest) may, despite that interest:
- (a) be counted in determining whether or not a quorum is present at any meeting of Board Members considering that contract or arrangement of proposed contract or arrangement;
 - (b) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (c) vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of the those things.

52. Management of the Association

- 52.1 Management of the Association will be the responsibility of the Board, which may exercise all such powers of the Association as are not, by the Act or this Constitution, required to be exercised by the Association in a general meeting.

53. Delegation of powers – general committee

- 53.1 The Board:
- (a) may form any general or advisory committees it sees fit as per the By-Laws; and
 - (b) may delegate to one or more general committees, any of its powers and/or functions (not being duties imposed on the Board as the Board Members of the Association by the Act or the general law) as it thinks fit.
- 53.2 Any general committee must:
- (a) comply with any directions given by the Board; and
 - (b) operate in accordance with the directions of the Board.

54. Advisory Committees

- 54.1 The Board may appoint one or more advisory committees consisting of such persons as the Board thinks fit.
- 54.2 An advisory committee must only act in an advisory capacity and cannot bind the Association or the Board.
- 54.3 Any advisory committee must:
- (a) comply with any directions given by the Board; and
 - (b) operate in accordance with the directions of the Board.

55. Minutes

- 55.1 The Board must cause minutes containing the following information to be entered into the Association's minute record keeping medium within one (1) month after the meeting:
- (a) the names of Board Members present at the relevant Board and Committee meeting;
 - (b) all resolutions, proceedings and action items of the Board and Committee meeting;
 - (c) all resolutions passed by the Association or the Board in the absence of a meeting; and
 - (d) such matters as set out in the Act.
- 55.2 All minutes shall be signed by the Chair of the meeting or the Chair of the succeeding meeting. All minutes purported to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place as recorded and of the regularity of such matters that the same took place at the requisite meeting.

56. Financial Records

- 56.1 The Association must keep the financial records required by the Act and in accordance with the Tax Act.
- 56.2 The financial records must be audited as required by the Act.
- 56.3 The audited financial records must be provided to Members as required by the Act.

57. Audit

- 57.1 A properly qualified auditor(s) must be appointed and their duties regulated in accordance with the Act.

58. Inspection

- 58.1 To the maximum extent permitted under the Act, the Board may determine whether and to what extent, place, time and duration a Member may inspect the Associations books and/or any other documents of the Association.

59. Registers

- 59.1 The Association must keep the registers required by the Act.
- 59.2 The Association must make the registers available to Members as required by the Act.
- 59.3 The Secretary must ensure the registers of the Association are accurate and up to date.

60. Execution of Documents

60.1 The Association may execute any agreement, deed or other document in accordance with section 55 of the Act.

61. Notice to Members

61.1 The Association may give notice to a Member:

- (a) personally;
- (b) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member;
- (c) by sending it by post to the registered office of the Member if the Member is an Association or association; or
- (d) by sending it to the email address nominated by the Member.

62. Notice to Board Members

62.1 The Association may give notice to a Board Member:

- (a) personally;
- (b) by sending it by post to the Board Member's usual residential or business address or any other address nominated by them;
- (c) if a notice calling a meeting – by sending it to their Centre email address; and
- (d) if any other notice – by sending it to the email address nominated by the Board Member.

63. Times of Service of Notice

63.1 A notice sent by post is taken to be given three (3) business days after posting.

63.2 A notice sent by email, is taken to be given on the business day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic address).

64. Application of Income

64.1 The income and property of the Association must be applied solely towards the promotion of the Objects.

64.2 The Association must not pay or transfer (directly or indirectly) by way of dividend, bonus or otherwise any portion of the income or property to any Member.

64.3 Notwithstanding the preceding subclause, the Association may pay in good faith to any Member:

- (a) for any services rendered or goods supplied in the ordinary and usual course of business to the Association;
- (b) for any out of pocket expenses incurred by any Member on behalf of the Association; or
- (c) for any other bona fide reason or purpose for the attainment of the Objects.

64.4 Notwithstanding the second subclause in this clause Application of Income, the Association may pay in good faith to any Board Member:

- (a) for out of pocket expenses incurred by the Board Member in the performance of any duty as a Board Member where the amount payable does not exceed an amount previously approved by the Board; and
- (b) for any service rendered to the Association by the Board Member in a professional or technical capacity as approved by the Board, other than in their capacity as a Board Member.

64.5 Any payment under this clause must be commercially reasonable for the service.

65. Not for Profit

65.1 Any income and property of the Association must be applied solely towards promoting the Objects, and not towards remuneration of Members except as;

- (a) fair and reasonable remuneration in return for any services rendered to or for the Association in the ordinary course of business and on arms' length basis;
- (b) board Member remuneration (if any);
- (c) fair and reasonable reimbursement for out of pocket expenses which has been authorised by resolution of the Board and reasonably and properly incurred by the Member for or on behalf of the Association;
- (d) payment for goods and/or services supplied to the Association in the ordinary course of business;
- (e) wages, salaries, superannuation and related remuneration to Staff Members as employees of the Centre; or
- (f) reasonable and proper rent for premises.

66. Winding Up

66.1 If upon the winding-up there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its members, but shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997*. At the first General Meeting of the Association, the Association must pass a Special Resolution nominating the "Winding Up Recipient", which is to be:

- (a) another association; or
- (b) a fund, authority or institution.

67. Revocation of deductible gift status

67.1 If the Association is endorsed as having deductible gift recipient status and that endorsement is subsequently revoked, the Association must transfer to another organisation to which income tax deductible gifts can be made, any surplus:

- (a) gifts of money or property for the principal Objects of the Association;
- (b) contributions made in relation to an eligible fundraising event held for the principal Objects of the Association; and
- (c) money received by the Association because of such gifts and contributions above.

68. Indemnity

68.1 Every person who is or has been a:

- (a) Board and Committee Member;
- (b) Member of the Organisation's Management; or
- (c) other officer of the Association,

is indemnified, to the maximum extent permitted by the Act and law, out of the property of the Association.

68.2 Subject to the last subclause in this clause Indemnity, the Association indemnifies the persons referred to in the preceding subclause against any liability for costs and expenses incurred by that person:

- (a) in defending any proceedings (whether civil or criminal) relating to that person's position with the Association; or
- (b) in connection with any administrative proceedings (whether civil or criminal) relating to that person's position with the Association; or
- (c) in connection with any application in relation to any proceedings (whether civil or criminal) relating to that person's position with the Association.

68.3 The indemnity in the preceding subclause only applies if:

- (a) judgment is given in that person's favour; or
- (b) the person is acquitted; or
- (c) the proceedings is withdrawn before judgment; or
- (d) relief is granted to that person under the Act by a court.

68.4 The indemnity in this clause does not apply to a liability arising out of conduct involving a lack of good faith or dishonesty.

69. Alterations to Constitution

69.1 The Constitution may be altered, repealed and expanded by Special Resolution of the Voting Members in General Meeting in accordance with section 33 of the Act.

70. Dispute Resolution

70.1 In the event of a dispute Members will follow any relevant policies of the Association.

70.2 Subject to the following subclause, if the dispute cannot be resolved then the Association must engage a locally based mediation service to attempt to resolve the dispute before a Member takes any court action.

70.3 The preceding subclause is subject to any laws that provide for other processes, for example in relation to health and safety processes.

71. Common Seal

71.1 The common seal of the Association:

- (a) must be kept in the custody of the Association; and
- (b) must not be affixed to any instrument except with the authority of the Board and in accordance with the Act.

72. By-Laws

72.1 The Board may formulate, approve, issue, adopt, interpret and amend such By-Laws for:

- (a) the proper advancement, management and administration of the Association;
- (b) the advancement of the Objects, and
- (c) as it thinks necessary or desirable.

72.2 All By-Laws must be consistent with this Constitution and the Act.

72.3 All By-Laws made under this clause are binding on the Association and its Members.

72.4 The Board may amend any By-Law following advisement to the Members by means of written notices approved by the Board.