

# **Constitution**

## **National Association of Community Legal Centres**

**ACN 163 101 737**

**A Company Limited by Guarantee**

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## 1 Definitions and Interpretation

### 1.1 Definitions

In this Constitution unless a contrary intention appears:

**Advisory Council** means the committee established under clause 22.

**Annual General Meeting** has the same meaning as the term 'AGM' in the Corporations Act.

**Appointed Director** has the meaning set out in clause 11.2(b).

**Auditor** means the auditor for the time being of the Company.

**Board** means some or all of the Directors of the Company acting as a board.

**Community Legal Centre** means an organisation that operates independently from government, commercial and professional bodies<sup>1</sup>, and is:

- (a) not for profit, community based, and has service goals and priorities established in response to the needs of its geographic community and/or community of interest;
- (b) provides legal and/or related services, free and/or on such terms as ensure that no individual is excluded from assistance because of their inability to make a financial contribution; and
- (c) is a member of a State or Territory association of community legal centres and complies with the definition of community legal centre that is contained in the constitution or rules of that association.

**Company** means National Association of Community Legal Centres being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 163 101 737.

**Constitution** means this Constitution as amended from time to time.

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

**Deductible Contribution** means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Income Tax Assessment Act in relation to a fundraising event held for the purpose of the Company.

**Director** means an individual holding office as director of the Company.

**Elected Director** has the meaning set out in clause 11.2(a).

**General Meeting** means a meeting of the Members of the Company and includes an Annual General Meeting.

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<sup>1</sup> This requirement does not prevent a Community Legal Centre from having people from government, commercial or professional bodies as members of the Community Legal Centre or as members of its Board or Management Committee, or from having government, commercial or professional bodies as members of the Community Legal Centre.

**Gift** means a gift as described in item 1 of the table in section 30-15 of the Income Tax Assessment Act.

**Gift Fund** means a fund established in accordance with clause 5.

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

**Member** means a person entered on the Register of the Company as a member.

**Peak Body** means a body corporate comprised of members that are Community Legal Centres in a State or Territory in Australia, or, where there is no such body corporate, such body that the Board considers in its sole discretion to best represent the interests of the Community Legal Centres in the State or Territory in Australia in which the entity is located.

**Register** means the register of members under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office for the time being of the Company.

**Related Body Corporate** has the same meaning it has in the Corporations Act.

**Representative** means an individual appointed to represent a Member at a General Meeting of the Company in accordance with the Corporations Act, or an individual appointed by a Member to represent the Member at a General Meeting.

**Rule** means a rule made by the Board in accordance with clause 16.

**Schedule** means a schedule to this Constitution.

**Seal** means the common seal (if any) of the Company.

**Secretary** means an individual appointed as a Secretary of the Company and includes an honorary Secretary and where appropriate includes an acting secretary and an individual appointed by the Directors to perform all or any of the duties of a Secretary of the Company.

**Special Resolution** takes the meaning given by section 9 of the Corporations Act.<sup>2</sup>

## **1.2 Interpretation**

In this Constitution unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a law includes regulations and instruments made under the law;
- (c) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (d) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State, Territory or the Commonwealth of Australia or otherwise;
- (e) a reference to a meeting includes a meeting using any technology that gives the invitees as a whole a reasonable opportunity to participate;
- (f) a reference to a person being present in person includes a person participating at a meeting by using technology as described in clause 1.2(e);
- (g) a power, an authority or a discretion reposed in a Director, the Board, the company in General Meeting or a Member may be exercised at any time and from time to time;
- (h) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible or audible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (i) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

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<sup>2</sup> At the time of adoption of this Constitution, section 9 of the Corporations Act provides that a Special Resolution is a resolution:

- (a) of which notice has been given to the Members in accordance with clause 8.3; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

### **1.3 Signing**

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied by an electronic signature and communication of the document in any manner permitted by law or by any State or Territory or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Board.

### **1.4 Corporations Act**

In this Constitution unless the contrary intention appears an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

### **1.5 Headings**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

### **1.6 Replaceable rules do not apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

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## **2 Objects of the Company**

As the national peak body for Community Legal Centres in Australia, the objects of the Company are to assist people in Australia experiencing disadvantage and marginalisation or who have special needs and are vulnerable to disadvantage, to obtain access to legal and related services by, among other ways:

- (a) supporting Community Legal Centres to provide accessible, appropriate and culturally safe legal and related services to their target client groups;
- (b) supporting Community Legal Centres to build, sustain and continuously improve their services and organisations;
- (c) providing a national forum for Community Legal Centres;
- (d) developing and coordinating Community Legal Centres' policy;

- (e) advancing the interests of Community Legal Centres and their target client groups, including through advocacy that publicises the work and value of Community Legal Centres and that protects and promotes the rights of Community Legal Centres' target client groups;
- (f) acting as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects; and
- (g) doing such other things as are incidental or conducive to the attainment of these objects.

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### **3 Powers**

The Company has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

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## **4 Application of income for objects only**

### **4.1 Application of income and property**

The income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the objects of the Company as set out in clause 2; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

### **4.2 Payment in good faith**

The above clause does not prevent payment in good faith to a Member:

- (a) of reasonable remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Company in a General Meeting; or
- (d) of reasonable rent for premises let by a Member.



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## **5 Gift Fund**

- (a) Without limiting clause 28, the Company may maintain a management account (**Gift Fund**):
  - (i) to identify and record Gifts and Deductible Contributions;
  - (ii) to identify and record any money received by the Company because of those Gifts and Deductible Contributions; and
  - (iii) that does not identify and record any other money or property.
- (b) The Directors must use the Gift Fund only for purposes of receiving Gifts and Deductible Contributions for the objects of the Company.
- (c) The Gift Fund forms part of the accounts of the Company.
- (d) At the first occurrence of:
  - (i) the winding up of the Gift Fund or the Company; or
  - (ii) the Gift Fund ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act;any surplus assets of the Gift Fund must be transferred to a fund or institution that:
  - (iii) complies with clause 6.2(a);
  - (iv) is endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act; and
  - (v) where the Company is endorsed as a public benevolent institution under section 30-45(1) of the Income Tax Assessment Act, is similarly endorsed.

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## **6 Winding up**

### **6.1 Contributions by Members**

- (a) Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within one year after they cease to be a Member.

- (b) This contribution is for:
  - (i) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$10.

## **6.2 Application of property**

- (a) If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:
  - (i) having objects similar to the objects of the Company; and
  - (ii) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution.
- (b) The Members must determine the institution to which property may be given or transferred, at or before the time of dissolution.

## **6.3 Winding up of Company and revocation of Australian Tax Office endorsement**

- (a) Where the Company has been endorsed as a deductible gift recipient as an organisation or in relation to a public fund under Subdivision 30-BA of the Income Tax Assessment Act, then where:
  - (i) the Company is wound up; or
  - (ii) the fund is wound up; or
  - (iii) the endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked;

then any surplus assets of the Company or fund remaining after payment of all liabilities must be transferred to an institution or fund that:

  - (iv) complies with clause 6.2(a);

- (v) where the Company does not operate a Gift Fund:
  - (A) is an endorsed deductible gift recipient; and
  - (B) where the Company is endorsed as a public benevolent institution under section 30-45(1) of the Income Tax Assessment Act, is similarly endorsed.
- (b) Where the Company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked only in relation to one of those funds then it may transfer any surplus assets of that fund after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient.

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## **7 Membership**

### **7.1 Number of Members**

The minimum number of Members will be eight (8).

### **7.2 Members of the Company**

Any person the Board admits to membership under clause 7.3 are the Members.

### **7.3 Admission as a Member**

The Board may admit any person as a Member if the person is eligible under clause 7.4 and makes an application in accordance with clause 7.5.

### **7.4 Membership criteria**

To be eligible to be a Member, a person must:

- (a) be an incorporated Peak Body or an individual appointed by an unincorporated Peak Body;
- (b) consent in writing to be a Member; and
- (c) agree to be bound by this Constitution.

## **7.5 Membership process**

- (a) The application for membership must be:
  - (i) in writing, signed by an authorised representative of the applicant body;
  - (ii) in such form as the Board may from time to time prescribe; and
  - (iii) accompanied by payment of the membership fee, if any, determined by the Board.
- (b) Each application for membership must be considered by the Board at the next meeting after the application is made. At that meeting the Board must determine whether to admit the applicant to membership of the Company or whether to reject the application.
- (c) When an applicant has been accepted or rejected for membership, the Secretary must, as soon as reasonably practicable, notify the authorised representative of the applicant of the decision of the Board.

## **7.6 Board's discretion to admit or refuse admission as a Member**

The Board has absolute discretion to refuse any person admission as a Member without giving any reason for refusing.

## **7.7 Registration as Member**

If the Board accepts an application for membership, as soon as practicable, the Board must register the name of the person in the Register.

## **7.8 Membership fees**

The Members must pay such membership fees as prescribed from time to time by the Board in General Meeting.

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# **8 Ceasing to be a Member**

## **8.1 Cessation of membership**

A Member ceases to be a Member on:

- (a) in the case of an individual, death or, in the case of a body, of its ceasing to exist or to be a Peak Body;

- (b) in the case of an individual, being determined by a Court or Tribunal to lack legal capacity or the ability to exercise their legal capacity in the context of their decision-making role as a Director;
- (c) resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;
- (d) failing to pay any membership fee that may be prescribed by the Board from time to time within three months after the membership fee was due and payable;
- (e) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally;
- (f) the passing of a resolution by the Board or Members in General Meeting pursuant to clause 8.2;
- (g) in the case of an individual appointed by an unincorporated Peak Body, the passing of a resolution by the Board that it considers, in its sole discretion, that that Peak Body has ceased to best represent the interests of the Community Legal Centres in the State or Territory in Australia in which the entity is located, or where the Peak Body has notified the Company that the appointment of the individual has been terminated; or
- (h) the expiry of the two year or Board determined term of membership, unless the Member had applied for and been admitted as a Member for the following term.

## **8.2 Termination of membership**

- (a) Subject to this Constitution, the Board or Members in General Meeting may at any time terminate the membership of a Member if the Member:
  - (i) refuses or neglects to comply with this Constitution or any applicable Rules made by the Board;
  - (ii) engages in conduct which in the opinion of the Board, in its absolute discretion, considers is prejudicial or potentially prejudicial to the reputation or other interests of the Company, or to the reputation or other interests of Members or of Community Legal Centres; or
  - (iii) fails to pay any debt due to the Company within a period of three months, or such other extended period as the Board may have determined, after the date

for payment (such debt not including a membership fee referred to in clause 8.1(d)).

- (b) For a decision of the Board or the Members in General Meeting under clause 8.2(a) to be effective the dispute resolution procedure contained in clause 26 must be followed. The general nature of the allegations made against the Member must be notified to the Member and for the purposes of clause 26.1(a) this notification will be the notice of the Dispute.

### **8.3 Limited liability**

The Members have no liability as Members except as set out in clause 6.1.

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## **9 General Meetings**

### **9.1 Annual General Meetings**

Annual General Meetings of the Company are to be held in accordance with the Corporations Act.

### **9.2 Convening a General Meeting**

The Board may convene and arrange to hold a General Meeting when it thinks fit and must do so if required to do so under the Corporations Act.

### **9.3 Notice of a General Meeting**

- (a) Notice of a General Meeting, including the amount of notice to be given, must be given in accordance with the Corporations Act and served in accordance with clause 31.
- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

### **9.4 Calculation of period of notice**

In computing the period of notice under clause 9.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

## **9.5 Business at an Annual General Meeting**

The business that shall be conducted at an Annual General Meeting must include:

- (a) the consideration of the annual financial report of the Company, the Directors' report and the Auditor's report of the last financial year; and
- (b) the election of Elected Directors.

## **9.6 Cancellation or postponement of General Meeting**

- (a) Where the Board convenes a General Meeting, it may by notice, whenever it thinks fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by it.
- (b) Clause 9.6 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Board on the request of Members or to a meeting convened by a Court.

## **9.7 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement of a General Meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

## **9.8 Contents of notice of postponement of meeting**

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) the technology (if any) that will be available to be used to facilitate the attendance at the meeting.

### **9.9 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the General Meeting required to be given under clause 9.3.

### **9.10 Business at postponed meeting**

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

### **9.11 Proxy at postponed meeting**

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at one or more General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by force of this clause 9.11, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

### **9.12 Non-receipt of notice**

The non-receipt of notice of a General Meeting or cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of a meeting.



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## **10 Proceedings at General Meetings**

### **10.1 Appointment of Representative**

- (a) Each Member shall appoint a Representative to represent that Member at a General Meeting of the Company in accordance with the Corporations Act.
- (b) In the case of a Member who is an individual, the Representative may be themselves or another person.
- (c) The instrument appointing a Representative:
  - (i) may be in the form set out in Schedule 1 to this Constitution;
  - (ii) must be in writing signed by an authorised representative of the Member; and
  - (iii) shall remain in force until the authority is revoked.

### **10.2 Number of a quorum**

- (a) Five (5) Representatives present in person or by proxy are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy is to be counted, except that:
  - (i) where a Member has appointed more than one proxy, only one is to be counted; and
  - (ii) where an individual is attending both as a Member and as a proxy, that individual is to be counted only once.

### **10.3 Other attendees at General Meetings**

The Board may permit people from Member bodies or from Community Legal Centres and such other invitees as it sees fit to attend General Meetings, but such invitees do not have voting rights or a right to speak at a General Meeting.

### **10.4 Requirement for a quorum**

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.

- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairperson of the meeting (on the chairperson's own motion or at the request of a Representative or proxy who is present) declares otherwise.

#### **10.5 If quorum not present**

If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Board appoints by notice to the Members and others entitled to notice of the meeting.

#### **10.6 Appointment and powers of chairperson of General Meeting**

If the Board has elected one of its number as chairperson of their meetings under clause 19.1, that person is also entitled to preside as chairperson at a General Meeting.

#### **10.7 Absence of chairperson at General Meeting**

If a General Meeting is held and:

- (a) a chairperson has not been elected by the Board; or
- (b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following individuals may preside as chairperson of the meeting (in order of precedence):

- (c) the deputy chairperson if a Director has been so elected by the Board under clause 19.1; or
- (d) a Director or person elected by the Representatives and proxies to preside as chairperson of the meeting.

## **10.8 Conduct of General Meetings**

- (a) The chairperson of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
  - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chairperson under this clause is final.

## **10.9 Adjournment of General Meeting**

- (a) The chairperson of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
  - (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Representatives or proxies acting on behalf of Members; and
  - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

## **10.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **10.11 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

### **10.12 Equality of votes – no casting vote for chairperson**

If there is an equality of votes, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative, and consequently the resolution fails.

### **10.13 Voting**

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided by individuals each voicing their vote unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the chairperson that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact.
- (c) Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **10.14 Poll**

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairperson or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### **10.15 Votes of Members**

- (a) Every Member has one vote.

- (b) Subject to this Constitution:
  - (i) on a show by voice, each Representative present in person and each other person present as a proxy of a Member has one vote; and
  - (ii) on a poll, each Representative present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

#### **10.16 Right to appoint proxy**

- (a) Subject to the Corporations Act, a Member entitled to appoint a person to attend a meeting of the Company is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member's Representative to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (b) The instrument appointing a proxy must be in writing under seal or signed by an authorised representative of the Member.
- (c) The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) A Member is entitled to instruct the Member's proxy to vote in favour of or against any proposed resolutions. The proxy may vote as the proxy thinks fit unless otherwise instructed.
- (e) No person may hold and vote in accordance with more than three proxies.
- (f) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.
- (g) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a certified copy of that power or authority must be received at the registered office of the Company, or at such other place within the State, or by fax or email, as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid.

### **10.17 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies or ceases to exist; or
- (b) the Member revokes the appointment or authority.

### **10.18 Objection to voting qualification**

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
  - (i) may not be raised except at that meeting or adjourned meeting; and
  - (ii) must be referred to the chairperson of that meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

### **10.19 Expenses of Representatives**

A Representative for each Member or, in the case of a Member who is an individual, that Member, is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as may be incurred when travelling to or from General Meetings.

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## **11 Directors**

### **11.1 Number of Directors**

The number of Directors must be such number as the Board may determine from time to time and subject to the provisions of the Corporations Act, but must be a minimum of five (5) and no greater than seven (7).

## **11.2 Composition of the Board**

The Board is to be comprised of:

- (a) five (5) Directors elected by the General Meeting in accordance with clause 11.3, of whom at least four (4), must be either:
  - (i) a current member of the governing board, or
  - (ii) an employee,

of a Peak Body or of a Community Legal Centre (**Elected Director**), and

- (b) up to two (2) Directors appointed by the Elected Directors to bring such expertise, skills and experience as the Board regards as necessary or useful at any time and for a period of two years or less (**Appointed Director**).

An Elected Director who ceases to be a current member of the governing board or an employee of a Peak Body or of a Community Legal Centre during their term as a Director, may continue to serve as a Director until the conclusion of their elected term.

## **11.3 Elected Directors elected at General Meeting**

The Members may, at a General Meeting at which an Elected Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office in accordance with clause 11.2(a).

## **11.4 Qualification of Directors**

To be eligible for the office of Director a person must consent in writing to act as a Director.

## **11.5 Appointment of officers**

At the next meeting of the Board held following the Company's adoption of this Constitution, the Board shall appoint the Secretary and the Public Officer of the Company. Thereafter, the Board shall appoint those officers with such frequency as the Board from time to time determines.

## **11.6 Retirement of Directors – transitional rule applying for second and third Annual General Meetings**

- (a) At each of the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) Annual General Meetings from the date of adoption of this Constitution, two (2) Directors must retire from office but are eligible for reappointment.

- (b) The two (2) Directors to retire at each of these meetings is to be determined by the Board.
- (c) For the avoidance of doubt, this clause 11.6 ceases to have any application following the third (3<sup>rd</sup>) Annual General Meeting from the date of adoption of this constitution.

#### **11.7 Retirement of Directors – two year terms**

- (a) Directors are elected and appointed for terms of two (2) years.
- (b) At each Annual General Meeting, any Director who has held office for two (2) years or more since last being elected or appointed, must retire from office, but subject to clause 11.8 is eligible for reappointment.

#### **11.8 Reappointment of Directors – limit on period of service**

- (a) Notwithstanding clause 11.7, with the exception of the chairperson, Elected Directors and Appointed Directors are entitled to seek reappointment as Directors on two consecutive occasions only so that a Director's continuous period of service to the Company shall not exceed a period of six (6) years, unless otherwise resolved by the Members in General Meeting.
- (b) A person unable to seek reappointment as a Director due to clause 11.8(a) may seek reappointment following a period of at least one (1) year since last retiring as a Director.
- (c) A Director who has been elected as chairperson under clause 19, may serve as chairperson for no longer than six (6) consecutive years. A chairperson's period of service as a Director while they were not chairperson, is not taken into account when calculating their period of service as chairperson and vice versa.

#### **11.9 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires.

#### **11.10 Removal or replacement of Directors**

The Members may by ordinary resolution remove any Director before the expiration of that Director's period of office, and may by an ordinary resolution appoint another person in the place of an Elected Director.



### **11.11 Casual vacancy or additional Director**

- (a) The Board may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with clause 11.1.
- (b) A Director appointed under this clause holds office until the conclusion of the next Annual General Meeting of the Company but is eligible for election or appointment in accordance with clause 11.2.

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## **12 Remuneration of Directors**

The Directors must not be paid any remuneration for their services as Directors.

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## **13 Expenses of Directors**

- (a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Board or a committee of the Board or when otherwise engaged on the business of the Company.
- (b) Any payment to reimburse a Director under clause 13(a) must be approved by the Board or its delegate within a policy approved by the Board.

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## **14 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) is determined by either:
  - (i) a Court or Tribunal to lack legal capacity or the ability to exercise their legal capacity in the context of their decision-making role as a Director; or
  - (ii) the Board, upon such expert advice as it sees fit to obtain, to lack legal capacity in the context of their decision-making role as a Director;

- (b) is a person whose person or estate is liable to be dealt with in any way under the law relating to the mental health of that person;
- (c) resigns from the office by notice in writing to the Company;
- (d) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditor;
- (e) is absent personally or by proxy at three successive meetings of the Board without leave of absence from the Board;
- (f) becomes prohibited for being a Director by reason of any order of any court of competent jurisdiction; or
- (g) dies.

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## **15 Powers and duties of the Board**

### **15.1 The Board to manage the Company**

The Board is to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.

### **15.2 Specific powers of the Board**

Without limiting the generality of clause 15.1, and subject to any trusts relating to the assets of the Company, the Board may exercise all the powers of the Company to:

- (a) borrow or raise money;
- (b) charge any property or business of the Company; and
- (c) give any security for a debt, liability or obligation of the Company or of any other person.

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## **16 Rules**

Subject to this Constitution, the Board may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Company.

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## **17 Appointment of attorney**

- (a) The Board may, by power of attorney, appoint any person to be the attorney of the Company for the objects of the Company and with the powers, authorities and discretions held by the Board for the period and subject to the conditions that the Board thinks fit.
- (b) A power of attorney granted under this clause 17 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Board thinks fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

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## **18 Proceedings of the Board**

### **18.1 Board meetings**

- (a) The Board must meet at least four (4) times in each financial year.
- (b) The Board may on such reasonable notice as is practicable in the circumstances, meet together to conduct business, and adjourn and otherwise regulate their meetings as it thinks fit.
- (c) Subject to clause 18.1(a), a Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Board.

### **18.2 Questions decided by majority**

A question arising at a meeting of the Board is to be decided by a majority of votes of Directors participating and entitled to vote, and that decision is for all purposes a decision of the Board.

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## **19 Chairperson and deputy chairperson of directors**

### **19.1 Election of chairperson and deputy chairperson**

The Board may elect from its number a chairperson and a deputy chairperson of its meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.

## **19.2 Absence of chairperson at Board meeting**

If a Board meeting is held and:

- (a) a chairperson has not been elected under clause 19.1; or
- (b) the chairperson is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 19.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

## **19.3 No casting vote for chairperson at Board meetings**

In the event of an equality of votes cast for and against a question, the chairperson of the Board meeting does not have a second or casting vote, and consequently the question is decided in the negative.

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## **20 Quorum for Board meeting**

- (a) At a meeting of the Board, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Board, and, unless so determined, is a majority of Directors holding office.
- (b) The Board may act despite a vacancy in its number. If its number is reduced below the minimum fixed by clause 11.1, the Board may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring its number up to that minimum or to convene a General Meeting.

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## **21 Committees**

### **21.1 Delegation to committees**

- (a) The Board may delegate any of its powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of such one or more of its number or such other individuals it thinks fit.

- (b) Whenever the Board delegates any of its powers to a committee, it shall set terms of reference, and any procedures that it sees fit, for that committee.
- (c) A committee to which any powers have been delegated under this clause 21.1 must exercise those powers in accordance with any directions of the Board. Any power exercised in this way, is taken to have been exercised by the Board.

## **21.2 Meetings of committee**

A committee may meet and adjourn as it thinks appropriate.

## **21.3 Chairperson of committee**

- (a) When the Board has delegated any of its powers to a committee, the Board may appoint a member of that committee as its chairperson.
- (b) Where the Board has not appointed a chairperson for a committee, the members of the committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:
  - (i) a chairperson has not been elected; or
  - (ii) the chairperson is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members participating may elect one of their number to be chairperson of the meeting.

## **21.4 Determination of questions**

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members participating and voting.
- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

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## **22 Advisory Council**

### **22.1 Establishment of Advisory Council**

An Advisory Council is established under this Constitution and shall operate as a committee under clause 21 to:

- (a) serve in an advisory role to the Board;
- (b) participate and provide input into major policy and advocacy planning for the Company;
- (c) serve as a forum for Members, Community Legal Centres and individuals from Community Legal Centres, and such other persons as the Board may see fit to consult from time to time, to have their voices heard by the Board by providing information and feedback to the Board on the perspectives and priorities of the Members and of Community Legal Centres and their client groups, as may be relevant to the work and planning of the Company; and
- (d) undertake such other activities as are determined by the Board from time to time.

### **22.2 Membership of Advisory Council**

- (a) The membership of the Advisory Council will include:
  - (i) an individual appointed by each Member to represent it in this role or, in the case of a Member who is an individual, that person; and
  - (ii) an Aboriginal and/or Torres Strait Islander man and woman with skills, experiences and knowledge relevant to the objects of the Company, appointed by the Board after consultation;and may include:
  - (iii) such other people with specific skills, experiences and expertise as the Board may determine to be of assistance to it from time to time.
- (b) In the event that the Board appoints people to the Advisory Committee in accordance with clause 22.2(a)(ii) and (iii), their total number at any time must be less than the total number of individuals appointed by Members under clause 22.2(a)(i).

### **22.3 Recommendations for additional members**

- (a) The Advisory Council may at any time recommend to the Board that it consider the appointment of an additional member or members of the Advisory Council with such skills, experience and expertise as the Council identifies as needed and the term that they consider appropriate for that appointment.
- (b) A recommendation under clause 22.3(a) must be by made by all or a majority of the Advisory Council.

### **22.4 Meetings**

The Advisory Council will meet at least two (2) times in each financial year.

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## **23 Circulating resolutions**

- (a) The Board may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when a majority of Directors have signed the document.
- (d) For the purposes of this clause 23, signing a document can include an electronic confirmation (in the form of an email) sent from a Director to the other Directors.

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## **24 Validity of acts of Directors**

All acts done at a meeting of the Board or of a committee of the Board, or by a person acting as a Director are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of that person as a Director or of the person so acting; or
- (b) the person acting as a Director was disqualified or was not entitled to vote.

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## **25 Secretary**

### **25.1 Appointment of Secretary**

There must be at least one Secretary who is to be appointed by the Board.

### **25.2 Suspension and removal of Secretary**

The Board may suspend or remove a Secretary from that office.

### **25.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Board.

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## **26 Dispute resolution**

### **26.1 Handling a dispute**

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of these rules or otherwise (**Dispute**), then either must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) The Member and the Company must in the period fourteen days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute.
- (b) If the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company.



- (c) If the disputants are unable to agree on a mediator within seven days of the Initial Period, the Member or the Company may request the President of LEADR<sup>3</sup> to nominate a mediator to whom the dispute will be referred.
- (d) The costs of the mediation must be shared equally between the Member and the Company.
- (e) Where:
  - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 26.1(b); or
  - (ii) the mediation has not occurred within six weeks of the date of the notice of the Dispute; or
  - (iii) the mediation fails to resolve the Dispute;then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.
- (f) The procedure in this clause will not apply in respect of proceedings for urgent or interlocutory relief.

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## **27 Execution of documents**

Documents executed for and on behalf of the Company must be executed by:

- (a) two Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Board by resolution appoints from time to time.

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<sup>3</sup> LEADR is a not-for-profit organisation facilitating dispute resolution – further information can be found at [www.leadr.com.au](http://www.leadr.com.au).

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## **28 Accounts**

- (a) The Board must cause proper financial records to be kept and if required by a law, regulation or guideline applicable to the Company or otherwise considered by the Board to be appropriate, cause the accounts of the Company to be audited accordingly.
- (b) The Board must distribute to the Members copies of the annual financial reports of the Company accompanied by a copy of the Auditor's report and Directors' report in accordance with the requirements of any relevant law, regulation or guideline.

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## **29 Seals**

### **29.1 Safe custody of common seals**

The Board must provide for the safe custody of any seal of the Company.

### **29.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Board, or of a committee authorised by the Board to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

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## **30 Inspection of records**

### **30.1 Inspection by Members**

Subject to the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors).

## **30.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in General Meeting.

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## **31 Service of documents**

### **31.1 Document includes notice**

In this clause 31, a reference to a document includes a notice.

### **31.2 Methods of service**

- (a) The Company may give a document to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
  - (iii) by sending it to a fax number or electronic address nominated by the Member.
- (b) A Member may give a document to the Company:
  - (i) personally;
  - (ii) by sending it by post to the Registered Office of the Company; or
  - (iii) by sending it to a fax number or electronic address nominated by the Company.
- (c) A document sent by post:
  - (i) if sent to an address in Australia, may be sent by ordinary post and is taken to have been received on the day after the date of its posting; and
  - (ii) if sent to an address outside Australia, must be sent by airmail and is taken to have been received on the fifth day after the date of its posting.
- (d) If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (i) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (ii) to have been delivered on the day following its transmission.

### **31.3 Evidence of service**

- (a) A certificate in writing signed by a Director or the Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.
- (b) A certificate in writing signed by a Director or authorised officer of a Member stating that a document was sent to the Company by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

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## **32 Indemnity and Insurance**

### **32.1 Indemnity**

The Company may indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity; and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **32.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or

executive officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

### **32.3 Contract**

The Company may enter into an agreement with a person referred to in clauses 32.1 and 32.2 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

**Appointment of Representative or Proxy**

**National Association of Community Legal Centres**

**ACN 163 101 737**

I/We \_\_\_\_\_ [name]

of \_\_\_\_\_ [address]

being a Member of the above named Company hereby appoint

\_\_\_\_\_ [name]

of \_\_\_\_\_ [address]

or, in his or her absence \_\_\_\_\_ [name]

of \_\_\_\_\_ [address]

as its Representative or proxy to vote for it on its behalf at the meeting of the Members of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ and at any adjournment of that meeting.

[If appropriate, replace the above wording with “as its Representative or proxy to vote for it on its behalf at meetings of the Members of the Company from [meeting date] and until this notice is revoked in writing.”]

[Insert if desired This form is to be used in favour of/against the resolution (Delete whichever is not desired)]

[Insert details of specific resolutions if desired]

SIGNED \_\_\_\_\_

NAME \_\_\_\_\_

DATED \_\_\_\_\_

***This notice must be returned to National Association of Community Legal Centres at [address and/or email address] by [time] on [date] [insert specific details ensuring that the time is 48 hours before the time for the meeting]***