



NATIONAL CONGRESS
OF AUSTRALIA'S FIRST PEOPLES

CONSTITUTION

Adopted by the National Board on 15 April 2010
Amendments approved at the special general meeting on 01 December 2010

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National Congress of Australia's First Peoples Limited

A company limited by guarantee

1 Company's name and governance structure

1.1 Name

The name of the company is **National Congress of Australia's First Peoples Limited**.

1.2 Structure

To assist in understanding the structure of the company, this constitution provides for:

- (a) members being divided into Chambers by the National Board, subject to eligibility requirements set by the National Board;
- (b) Delegates from each of the Chambers will attend the annual National Congress. It is anticipated the Chambers will consider and raise issues for discussion at the National Congress;
- (c) the National Congress will review the policies and priorities of the company and advise and make recommendations to the National Board;
- (d) each Chamber's Delegates will elect 2 directors to the National Board;
- (e) the members will elect two executive directors to the National Board who will be the co-chairs of the National Board;
- (f) an Ethics Council will be appointed to monitor, review and advise the National Board on the conduct of elections and other matters.

In addition to the constitution, the National Board will adopt regulations, procedures and policies which will bind members in addition to the constitution. The regulations, procedures and policies adopted by the National Board will be available to the members.

1.3 Steering Committee Report

This company and the terms of the constitution have arisen from the report issued in August 2009 by the Steering Committee for the National Representative Body consultations and the Australian Human Rights Commission entitled: '*Our future in our hands – Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples*'. The contribution of the following individuals in drawing that report and this constitution together are acknowledged:

Mr Tom Calma;

Mr Mark Bin Bakar;

Ms Tanya Hosch;

Mr Geoff Scott;

Dr Jackie Huggins AM;

Mr Tim Goodwin;

Ms Yananymul Mununggurr;
Mr Jason Glanville; and
Mr John Toshi Kris.

2 Company's purposes

- (a) The company is established for the public charitable purposes of:
- (1) providing national leadership and recognition of the status and of the rights of Aboriginal and Torres Strait Islander people as first nations peoples;
 - (2) protecting and advancing the wellbeing and rights of Aboriginal and Torres Strait Islander peoples and communities;
 - (3) providing a representative voice of, and a conduit for communications with and between, Aboriginal and Torres Strait Islander peoples;
 - (4) securing economic, political, social, cultural and environmental futures for Aboriginal and Torres Strait Islander peoples and communities by working with governments, service providers, communities and other stakeholders;
 - (5) building strong relationships with government, industry and among Aboriginal and Torres Strait Islander peoples and communities, based on mutual respect and equality;
 - (6) identifying issues, researching solutions and educating government, service providers and Aboriginal and Torres Strait Islander peoples and communities to achieve the above purposes.
- (b) In carrying out its purposes, the company will operate with the following values:
- (1) the highest standards of professionalism and objectivity;
 - (2) integrity and honesty;
 - (3) accountability, transparency and openness;
 - (4) participation and inclusion; and
 - (5) being informed.

3 Company's powers

Solely for carrying out the company's purposes, the company may:

- (a) raise funds or encourage contributions by way of gifts (by will or otherwise), grants, sponsorships, personal or public appeals or in any other manner;
- (b) provide funds, facilities or other material benefits;
- (c) accept and hold funds or property of any kind on or for any charitable objects or purposes specified or to be specified by any person or to be selected by the National Board from a class of trusts, objects or purposes specified by any person;
- (d) engage or dismiss any employee, agent, contractor or professional person;

- (e) accept and undertake trusteeships, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration for doing so;
- (f) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges;
- (g) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
- (h) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (i) construct, improve, maintain, develop, work, manage and control real or personal property;
- (j) enter into contracts and deeds;
- (k) appoint an attorney or agent with powers (including the power to sub-delegate) and on terms the company thinks fit, and procure registration or recognition of the company in any other country or place;
- (l) enter into arrangements with any government or authority;
- (m) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the company's property (both present and future) and purchase, redeem or pay off those securities;
- (n) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
- (o) print and publish information in hard copy or by electronic means;
- (p) accept any gift of real or personal property, whether subject to any special trust or not and decline to accept any gift;
- (q) appoint patrons of the company;
- (r) make donations for charitable purposes;
- (s) arrange conferences, meetings and other forums; and
- (t) do all other things that are incidental or conducive to carrying out the company's purposes.

4 Not for profit

- (a) The company's income and property must be applied solely towards promoting the company's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any of the members or directors.
- (c) This rule 4 does not prohibit:
 - (1) indemnification of, or payment of premiums on contracts of insurance for, or
 - (2) payment of director's fees or other payments under rule 15.6 to

any director to the extent permitted by law and this constitution.

5 Membership

5.1 Application for membership

- (a) The members are:
 - (1) the persons who consent to be the initial members; and
 - (2) any other persons the National Board admit to membership in accordance with this constitution and any regulations, procedures and policies of the National Board.
- (b) Every applicant for membership of the company (except the initial members) must apply in the form and manner decided by the National Board.
- (c) After receipt of an application for membership, the National Board (or a delegate approved by the National Board) must consider the application and decide whether to admit or reject the admission of the applicant. The National Board need not give any reason for rejecting an application.

5.2 Eligibility

- (a) The National Board may formulate regulations for categories of membership and eligibility to those categories in consultation with the Ethics Council. The National Board may increase the number of categories or change the type of category or eligibility requirements.
- (b) All members must assist the company in carrying out its purposes and adhering to its values.
- (c) The National Board must assign each member to a category of membership. At the commencement of the company, there are the following categories of membership and eligibility for the categories of membership (subject to the power of the National Board in rule 5.2(a)):
 - (1) Category 1 members - organisations which must be:
 - Peak Bodies for Aboriginal and Torres Strait Islander people at regional, State or Territory, or National level or
 - National Aboriginal and Torres Strait Organisationswhich meet any other eligibility requirements set by the National Board;
 - (2) Category 2 members – Aboriginal and Torres Strait Islander Organisations which meet any other eligibility requirements set by the National Board.
 - (3) Category 3 members - individual members who are Aboriginal or Torres Strait Islander people and are over the age of 18 years old and who meet any other eligibility requirements set by the National Board.
- (d) Any complaints relating to eligibility or the category of membership a member is assigned to can be referred to the National Board in accordance with the Grievance Procedure in rule 18.

5.3 Subscription fee

- (a) A subscription fee may be decided by the National Board. Varying amounts for the subscription fee may be applied to differing types of members as decided by the National Board and made available to the members in a subscription fee policy.
- (b) The National Board must notify all persons entered on the register of members of the amount and time for payment of any annual subscription fee and of any alteration to the subscription fee.
- (c) Where the subscription fee is not received:
 - (1) one month after the due date, the National Board may issue a written reminder notice to the member; and
 - (2) if the subscription fee is still not received one month after issue of the written reminder notice, the member's rights and privileges associated with that membership will be suspended.
- (d) If a member who was suspended under rule 5.3(c) has not paid a subscription fee for more than 2 months after issue of the written reminder notice, the person ceases to be a member, unless the person is also a director, in which case the suspension under rule 5.3(c) will continue.

5.4 Membership of Chambers

- (a) The membership of the company is divided into Chambers by reference to the category of membership. The number of Chambers may increase or the composition of the Chambers may be varied by regulation by the National Board.
- (b) The Chambers at the commencement of the company are intended to be:
 - (1) Chamber 1 – Category 1 members are members of Chamber 1;
 - (2) Chamber 2 – Category 2 members are members of Chamber 2;
 - (3) Chamber 3 – Category 3 members are members of Chamber 3.
- (c) The National Board may by regulation or policy, divide the Chambers into divisions or create separate Chambers based on postcodes or focus areas for meetings and communications and other purposes in the interests of the company.

6 Election and role of Delegates to National Congress

6.1 Operations of Chamber 1

- (a) Chamber 1 must:
 - (1) nominate and elect, in accordance with the procedures set by the National Board, up to 40 Delegates (**Chamber 1 Delegates**). To be eligible for nomination as a Chamber 1 Delegate, the person must be an individual member of the company, must not be a Delegate of another Chamber or nominated as a Delegate for another Chamber, and must meet any other eligibility requirements set by the National Board, as approved by the Ethics Council. No more than two representatives from any Chamber 1 member are eligible for election;

- (2) assist and collaborate with the Chamber 1 Delegates to ensure Chamber 1's advice and information relevant to the operations and purposes of the company are provided to the National Congress and to the National Board;
 - (3) hold a meeting of Chamber 1 members at least once every 2 years. The agenda of the meeting will be set by the National Board in consultation with the Chamber 1 Delegates.
- (b) After each election of Delegates, the Ethics Council must review those elected. The position of Delegate will not be effective until confirmed by the National Board, in consultation with the Ethics Council. The National Board is not required to give reasons for any confirmation or refusal to confirm the position of Delegate. If the position is not confirmed within 6 months after the elections, the position is taken not to be filled and the person not elected as a Chamber 1 Delegate.
- (c) In the first year of the company, the National Board will decide the procedures by which Chamber 1 will hold the elections for the Chamber 1 Delegates, with the endorsement of the Ethics Council. In each subsequent year, the National Board will consult with the Chamber 1 Delegates and then set the procedures for holding the elections. The intention is for substantive equality between men and women Delegates. The procedures and subsequent review process will allow the National Board to address any inequality that may arise, in a manner in accordance with the law.
- (d) The elections of the Chamber 1 Delegates will be staggered as follows:
- (1) In the first year the Chamber 1 Delegates will be elected with half (as decided by the National Board) having a term until the elections of Chamber 1 Delegates in the second year after their election (Group A Chamber 1 Delegates) and the other half will have a term until the election of Chamber 1 Delegates to be held in the third year after their election (Group B Chamber 1 Delegates).
 - (2) In the second year after the election of the first Group A Chamber 1 Delegates, and every second year thereafter, an election of up to 20 Group A Chamber 1 Delegates must be held with a term until the next election of Group A Chamber 1 Delegates and the outgoing Group A Chamber 1 Delegates will retire (if not re-elected) on the election of the next Group A Chamber 1 Delegates.
 - (3) In the third year after the election of the first Group B Chamber 1 Delegates, and every second year thereafter (alternating years to the elections of the Group A Chamber 1 Delegates), an election of up to 20 Group B Chamber 1 Delegates must be held with a term until the next election of Group B Chamber 1 Delegates and the outgoing Group B Chamber 1 Delegates will retire (if not re-elected) on the election of the next Group B Chamber 1 Delegates.
 - (4) Chamber 1 Delegates can stand for re-election with a maximum consecutive term of 10 years unless the Ethics Council set a longer term for one or more Chamber 1 Delegates.
- (e) Any vacancy in Chamber 1 Delegates created either by cessation under rule 7.2 or by failure to be confirmed under rule 6.1(b), may be filled by appointment by the National Board. The appointee must meet the eligibility requirements of a Chamber 1 Delegate and the National Board must seek recommendations from the Chamber 1 directors. The appointment will be for the term remaining of the Chamber 1 Delegate the appointee is replacing. A vacancy may be left vacant as the National Board decides.
- (f) The role of Chamber 1 Delegates is to:

- (1) nominate Chamber 1 Delegates who are also members of the company and who meet the eligibility criteria set by the National Board, as candidates for directors of the company, as and when requested by the National Board. Two directors must be elected by Chamber 1 Delegates at the National Congress in accordance with rule 15.4. The directors elected by the Chamber 1 Delegates as approved by the Ethics Council will be co-chairs of Chamber 1 (**Chamber 1 directors**);
- (2) attend the National Congress each year;
- (3) communicate with Chamber 1 members and Chamber 1 directors on issues relevant to the purposes of the company and advise and assist the National Congress in recommending strategy and priorities for the company;
- (4) assist in convening meetings, disseminating information and holding elections in relation to the Chamber and assist the National Board in developing policies for the operations of Chamber 1 in a manner consistent with the purposes and values of the company.
- (5) actively support and advocate for the issues set by the National Boards, as approved at the National Congress, in accordance with any communications policy the National Board may adopt.

6.2 Operations of Chamber 2

- (a) Chamber 2 must:
 - (1) nominate and, subject to rule 6.2(c), elect, in accordance with the procedures set by the National Board, up to 40 Delegates (**Chamber 2 Delegates**). To be eligible for nomination as a Chamber 2 Delegate, the person must be an individual member of the company, must not be a Delegate of another Chamber or nominated as a Delegate for another Chamber, and must meet any other eligibility requirements set by the National Board, as approved by the Ethics Council. No more than one representative from any Chamber 2 member is eligible for election;
 - (2) assist and collaborate with the Chamber 2 Delegates to ensure Chamber 2's advice and information relevant to the operations and purposes of the company are provided to the National Congress and to the National Board;
 - (3) assist the National Board in dividing Chamber 2 into divisions based on focus groups or locality or any other basis;
 - (4) hold a meeting of Chamber 2 members or meetings of all divisions of Chamber 2 members at least once every 2 years. The agenda of the meetings will be set by the National Board in consultation with the Chamber 2 Delegates.
- (b) After each election of Delegates, the Ethics Council must review those elected. The position of Delegate will not be effective until confirmed by the National Board, in consultation with the Ethics Council. The National Board is not required to give reasons for any confirmation or refusal to confirm the position of Delegate. If the position is not confirmed within 6 months after the elections, the position is taken not to be filled and the person not elected as a Chamber 2 Delegate.
- (c) In the first year of the company, the National Board will decide the procedures by which the Chamber 2 Delegates will be nominated and selected, with the endorsement of the Ethics Council. In each subsequent year, the National

Board will consult with the Chamber 2 Delegates and then set the procedures for holding the elections. The intention is for substantive equality between men and women Delegates. The procedures and subsequent review process will allow the National Board to address any inequality that may arise, in a manner in accordance with the law.

- (d) The elections of the Chamber 2 Delegates will be staggered as follows:
- (1) In the first year the Chamber 2 Delegates will be selected with half (as decided by the National Board) having a term until the elections of Chamber 2 Delegates in the second year after their selection (Group A Chamber 2 Delegates) and the other half will have a term until the election of Chamber 2 Delegates to be held in the third year after their selection (Group B Chamber 2 Delegates).
 - (2) In the second year after the election of the first Group A Chamber 2 Delegates, and every second year thereafter, an election of up to 20 Group A Chamber 2 Delegates must be held with a term until the next election of Group A Chamber 2 Delegates and the outgoing Group A Chamber 2 Delegates will retire (if not re-elected) on the election of the next Group A Chamber 2 Delegates.
 - (3) In the third year after the election of the first Group B Chamber 2 Delegates, and every second year thereafter (alternating years to the elections of the Group A Chamber 2 Delegates), an election of up to 20 Group B Chamber 2 Delegates must be held with a term until the next election of Group B Chamber 2 Delegates and the outgoing Group B Chamber 2 Delegates will retire (if not re-elected) on the election of the next Group B Chamber 2 Delegates.
 - (4) Chamber 2 Delegates can stand for re-election with a maximum consecutive term of 10 years unless the Ethics Council set a longer term for one or more Chamber 2 Delegates.
- (e) Any vacancy in Chamber 2 Delegates created either by cessation under rule 7.2 or by failure to be confirmed under rule 6.2(b), may be filled by appointment by the National Board. The appointee must meet the eligibility requirements of a Chamber 2 Delegate and the National Board must seek recommendations from the Chamber 2 directors. The appointment will be for the term remaining of the Chamber 2 Delegate the appointee is replacing. A vacancy may be left vacant as the National Board decides.
- (f) The role of Chamber 2 Delegates is to:
- (1) nominate Chamber 2 Delegates who are members of the company and who meet the eligibility criteria set by the National Board, as candidates for directors of the company, as and when requested by the National Board. Two directors must be elected by Chamber 2 Delegates at the National Congress in accordance with rule 15.4. The directors elected by the Chamber 2 Delegates as approved by the Ethics Council will be co-chairs of Chamber 2 (**Chamber 2 directors**);
 - (2) attend the National Congress each year;
 - (3) communicate with Chamber 2 members and Chamber 2 directors on issues relevant to the purposes of the company and advise and assist the National Congress in recommending strategy and priorities for the company;
 - (4) assist in convening meetings, disseminating information and holding elections in relation to the Chamber and assist the National Board in developing policies for the operations of Chamber 2 in a manner consistent with the purposes and values of the company;

- (5) actively support and advocate for the issues set by the National Boards, as approved at the National Congress, in accordance with any communications policy the National Board may adopt.

6.3 Operations of Chamber 3

- (a) The National Board must invite Chamber 3 members to apply for appointment to the National Congress as Chamber 3 Delegates, at least every 2 years. All applications must be in the form and manner set by the National Board. All applicants must meet the eligibility requirements set by the National Board. To be eligible to apply, the applicant must not be a Delegate of another Chamber or nominated as a Delegate for another Chamber.
- (b) The National Board, must set out the procedures for appointment by the National Board of up to 40 Delegates from Chamber 3 members to the National Congress (**Chamber 3 Delegates**). The intention is for substantive equality between men and women Delegates. The procedures will allow the National Board to address any inequality that may arise, in a manner in accordance with the law.
- (c) The Chamber 3 members must assist and collaborate with the Chamber 3 Delegates to ensure Chamber 3's views and information relevant to the operations and purposes of the company are provided to the National Congress and to the National Board.
- (d) Any vacancy in Chamber 3 Delegates may be filled by appointment by the National Board with recommendations received by the Chamber 3 directors for the term remaining of the Chamber 3 Delegate the appointee is replacing, or left vacant as the National Board decides.
- (e) The role of Chamber 3 Delegates is to:
 - (1) nominate members of the company who meet the eligibility criteria set by the National Board, as candidates for directors of the company, as and when requested by the National Board. Two directors must be elected by Chamber 3 Delegates at the National Congress in accordance with rule 15.4. The directors elected by the Chamber 3 Delegates as approved by the Ethics Council will be co-chairs of Chamber 3 (**Chamber 3 directors**);
 - (2) attend the National Congress each year;
 - (3) communicate with Chamber 3 members and Chamber 3 directors on issues relevant to the purposes of the company and advise and assist the National Congress in recommending strategy and priorities for the company;
 - (4) assist in consultations with Chamber 3 members or divisions of Chamber 3 members, convening meetings and disseminating information in relation to the Chamber, and assist the National Board in developing policies for the operations of Chamber 3 in a manner consistent with the purposes and values of the company;
 - (5) actively support and advocate for the issues set by the National Boards, as approved at the National Congress, in accordance with any communications policy the National Board may adopt.

7 Cessation of membership or Delegate status

7.1 Cessation of membership

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) resigns as a member by giving written notice to the company;
- (c) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) ceases to be a member under rule 5.3 or is expelled under rule 7.3; or
- (f) becomes, if the National Board so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her Registered Address.

7.2 Cessation as a Delegate

A person immediately ceases to be a Delegate of a Chamber if the person:

- (a) dies;
- (b) ceases to be a member;
- (c) becomes of unsound mind or the Delegate is, or their estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) is removed from the office of Delegate by resolution of the members of the Chamber he or she represents in accordance with the provisions of the Act relating to removal of a director by the members, read as though the Delegate was the director and the members of the Chamber were the members of the company;
- (e) is expelled under rule 7.3;
- (f) except to the extent of a leave of absence granted by the National Board, if the Delegate fails to attend at least 3 consecutive meetings of the Chamber Delegates; or
- (g) resigns by written notice to the company.

7.3 Expulsion

- (a) The National Board may by resolution expel a member from the company or a Delegate from the position of Delegate of a Chamber, if, in their absolute discretion after consultation with the Ethics Council, they decide it is not in the interests of the company for the person to remain a member or a Delegate.
- (b) If the National Board intend to consider a resolution under rule 7.3(a), at least one week before the meeting at which the resolution is to be considered, they must give the member or Delegate written notice:
 - (1) stating the date, place and time of the meeting;
 - (2) setting out the intended resolution and the grounds on which it is based; and

- (3) informing the member or Delegate that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

8 Liability of members

The liability of the members is limited to the amount of the guarantee given in rule 9.

9 Guarantee by members

Every member must contribute an amount not more than **\$100** to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:

- (a) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member; and
- (b) costs, charges and expenses of winding up.

10 Winding up

- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution:
 - (1) that is charitable at law;
 - (2) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 4; and
 - (3) Gifts to which can be deducted under Division 30 of the ITAA 97.
- (b) The identity of the institution referred to in rule 10(a) must be decided by the National Board, or if the National Board does not wish to decide or does not decide, it must be decided by the members by ordinary resolution at or before the time of winding up of the company and, if the members do not decide, by the Supreme Court of the state or territory in which the company is registered.

11 Altering this constitution

11.1 Alterations affecting charitable status

The company must not pass a special resolution altering the constitution, if, as a result, the company will cease to be a charity.

11.2 Notice to Commissioner

- (a) The company must give written notice to the Commissioner if:
 - (1) a special resolution is passed materially altering rule 2; or

- (2) the company ceases to be entitled to be endorsed as a tax concession charity as a result of a change in its constitution or activities or otherwise.
- (b) The notice must be given as soon as possible after the passing of the special resolution or the cessation.

11.3 Changes to members' rights

Any amendment, replacement or addition to rule 5 or this rule 11.3 or any other part of the constitution which may affect the rights of any category of members differently to the rights of any other category of members, must be passed by a special resolution of the members of the affected Chamber, as well as a special resolution of all members eligible to vote.

12 Public Fund

12.1 Establishment of Public Fund

- (a) There is established a public fund to be known as the National Congress of Australia's First Peoples Public Fund (**Public Fund**) for the purpose of receiving Gifts and Deductible Contributions to the company for the furtherance of the company's purposes in rule 2.
- (b) The company must establish a bank account in the name of the Public Fund into which all Gifts and Deductible Contributions of money in the Public Fund must be deposited (**Public Fund Bank Account**). Subject to rule 12.2(a)(3), no other money is to be deposited into the Public Fund Bank Account.
- (c) The company must invite the public to make Gifts and Deductible Contributions to the Public Fund.

12.2 Use of Public Fund

- (a) The company must ensure that:
 - (1) the Public Fund does not contain any property other than property described in rule 12.1;
 - (2) the Public Fund is only used in furtherance of the company's purpose in rule 2; and
 - (3) all money (including interest) derived from money or property in the Public Fund is credited to the Public Fund Bank Account.

12.3 Winding up or ceasing to be a deductible gift recipient

- (a) At the first occurrence of:
 - (1) the winding up of the company; or
 - (2) the company ceasing to be a deductible gift recipient under section 30-90 of the ITAA 97,any surplus assets of the Public Fund must be transferred to a fund, authority or institution:
 - (3) which is charitable at law;

- (4) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 4; and
 - (5) Gifts to which can be deducted under Division 30 of the ITAA 97.
- (b) The identity of the fund, authority or institution referred to in rule 12.3(a) must be decided by the National Board, or if the National Board does not wish to decide or does not decide, it must be decided by the members by ordinary resolution at or before the time of winding up of the company and, if the members do not decide, by the Supreme Court of the state or territory in which the company is registered.

12.4 Receipts

Receipts for Gifts and Deductible Contributions of money or property to the Public Fund must:

- (a) be issued in the name of the Public Fund; and
- (b) state the information required in the applicable provisions of section 30-228 of the ITAA 97.

12.5 Public Fund administration

- (a) The Public Fund must be administered by the National Board. If there is not a majority of the National Board who are Responsible Persons, the National Board may delegate the power to administer the Public Fund to a subcommittee of at least 3 people, the majority of whom are Responsible Persons.
- (b) If at any time the requirement in rule 12.5(a) is not met, the committee must not exercise any discretion or power until the requirement is met, except:
 - (1) to protect the Public Fund; or
 - (2) in the case of urgency.
- (c) Subject to rule 12, the National Board may specify:
 - (1) the manner in which the committee's proceedings are to be conducted;
 - (2) the matters which the committee must have regard to in carrying out its functions; and
 - (3) any other matters concerning the committee or its functions that the National Board decide.

12.6 Records and financial statements

- (a) The company must keep and maintain proper books of account and records (which are written up in accordance with generally accepted accounting standards and principles consistently applied) relating to all receipts and outgoings for the Public Fund.
- (b) For each financial year, the company must have financial statements (including a profit and loss account and balance sheet) prepared by a suitably qualified person (in accordance with generally accepted accounting standards and principles consistently applied) which detail the affairs of the Public Fund for that financial year including, without limitation, the following matters with respect to the Public Fund:
 - (1) income;
 - (2) capital;

- (3) costs and disbursements and other outgoings paid or payable and chargeable against income;
 - (4) capital expenditure and liabilities chargeable to capital; and
 - (5) investments and property.
- (c) The financial statements referred to in rule 12.6(b) must be certified by the Auditor to be true and proper statements of the affairs of the Public Fund.

13 Meetings of members

13.1 Application of meeting procedures

The terms of this rule apply to general meetings of the members and apply as modified by this constitution and by the National Board, to National Congress and meetings of Chambers and divisions of members.

13.2 Calling general meetings

- (a) A general meeting may only be called:
- (1) by a resolution of the National Board;
 - (2) in accordance with a members' requisition under the Act, or
 - (3) as otherwise provided in the Act.
- (b) The National Board may change the venue for, postpone or cancel a general meeting if:
- (1) they consider that the meeting has become unnecessary;
 - (2) the venue would be unreasonable or impractical; or
 - (3) a change is necessary in the interests of conducting the meeting efficiently.
- (c) If the general meeting was not called by a resolution of the National Board or was called in accordance with a members' requisition under the Act, then it may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

13.3 Notice of general meetings

- (a) Notice of every general meeting must be given in any manner authorised by rule 21 to each person who is at the date of the notice:
- (1) a member;
 - (2) a director;
 - (3) a councillor on the Ethics Council; or
 - (4) the Auditor.
- (b) A notice of a general meeting must:
- (1) specify the date, time and place of the meeting;
 - (2) except as provided by the Act, state the general nature of the business to be transacted at the meeting; and
 - (3) specify a place, fax number or electronic address for the receipt of proxies.

- (c) A person may waive notice of a general meeting by written notice to the company.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting does not invalidate any thing done or resolution passed at the general meeting if:
 - (1) the non-receipt or failure occurred by accident or error; or
 - (2) before or after the meeting, the person has notified or notifies the company of that person's agreement to that thing or resolution.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
 - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
 - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

13.4 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chair if one of the co-chairs of the National Board is not present, and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of 5 members entitled to vote and present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
 - (2) in any other case the meeting stands adjourned to the day, and at the time and place, that the National Board decides or, if the National Board does not make a decision, to the same day in the next week at the same time and place.
- (d) If at the adjourned meeting under rule 13.4(c)(2), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

13.5 General meetings by technology

- (a) The simultaneous linking together by telephone or other electronic means of a sufficient number of the members in person, to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this constitution relating to meetings of the members apply, as far as they can, with any necessary changes, to meetings of the members by telephone or other electronic means.
- (c) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

13.6 Chair of general meetings

- (a) At a general meeting, the chair will be one of the co-chairs of the National Board as they agree between them, or failing agreement as they determine by lot, provided the co-chair who is to preside as chair is present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If the co-chair who is to preside as chair is either not present within 15 minutes after the time appointed for the meeting or is not willing to act, then the other co-chair must preside as chair unless he or she is also not present within 15 minutes after the time appointed for the meeting or is not willing to act. In which case the members present must elect another chair of the meeting.
- (c) A chair elected under rule 13.6(b) must be:
 - (1) another director who is present and willing to act; or
 - (2) if no other director present at the meeting is willing to act, a member who is present and willing to act.

13.7 Adjourning general meetings

- (a) The chair of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (c) Except as provided by rule 13.7(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (d) Where a meeting is adjourned, the National Board may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act, the National Board may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member.

13.8 Conducting general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting. A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.
- (b) The chair of a general meeting may take any action they consider appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (1) in possession of a pictorial-recording or sound-recording device;
 - (2) in possession of a placard or banner;
 - (3) in possession of an article considered by the chair to be dangerous, offensive or liable to cause disruption;
 - (4) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; and/or

- (5) who behaves or threatens to behave in a dangerous, offensive or disruptive manner.
- (c) The chair may, at any time the chair considers it necessary or desirable for the proper and orderly conduct of the meeting:
 - (1) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; and
 - (2) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers.
- (d) The chair may postpone the meeting before it has started, whether or not a quorum is present, if, at the time and place appointed for the meeting, he or she considers that:
 - (1) there is not enough room for the number of members who wish to attend the meeting; or
 - (2) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out.
- (e) A postponement will be to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place will be taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (f) The chair may at any time during the course of the meeting:
 - (1) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and
 - (2) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for such period/s as he or she decides without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the chair otherwise allows.
- (g) The chair's rights under this rule are exclusive and, unless the chair requires otherwise, no vote may be taken or demanded by the members present about any postponement, adjournment or suspension of proceedings.
- (h) Only unfinished business may be transacted at a meeting resumed after an adjournment.

13.9 Decisions at general meetings

- (a) The chair of a meeting must ensure that a certificate, signed by the company secretary, of Direct Votes received is available at the meeting ahead of any vote taken.
- (b) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting and any Direct Votes. Such a decision is for all purposes a decision of the members.
- (c) Where the votes on a proposed resolution are equal:
 - (1) the chair of the meeting may exercise a second or casting vote, and

- (2) in the case of National Congress, if the chair is not a Delegate, he or she may exercise a casting vote.
- (d) A resolution put to the vote of a general meeting must be decided in the manner decided by the chair and if a Direct Vote has been received, the vote must be decided in a manner which includes the Direct Votes cast for or against that resolution.
- (e) A poll may be demanded, before the vote is taken or before or immediately after the declaration of the result of the show of hands and Direct Votes, by:
 - (1) the chair of the meeting;
 - (2) at least 2 members present and with the right to vote on the resolution; or
 - (3) a member or members present at the meeting and representing at least 5% of the total voting rights of all members entitled to vote on the resolution on a poll.
- (f) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll has been demanded.
- (g) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been:
 - (1) carried;
 - (2) carried unanimously;
 - (3) carried by a particular majority; or
 - (4) lost,
 and an entry to that effect in the book containing the minutes of the company's proceedings, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (h) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chair of the meeting directs. The poll must include a count of the Direct Votes cast for or against the resolution. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (i) A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (j) The demand for a poll may be withdrawn.

13.10 Voting rights at general meetings

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting every member present has one vote which may be given:
 - (1) personally at the meeting;
 - (2) by proxy, attorney or representative who is entitled to a separate vote for each member the person represents in addition to any vote the person may have as a member in his or her own right;
 - (3) by valid notice of their voting decision (Direct Voting).
- (b) Subject to clause 13.13, if a member attempts to cast more than one vote on a particular resolution the order of priority is:
 - (1) Direct Vote;
 - (2) a vote by a member present on a show of hands; and

- (3) a vote by a proxy, attorney or representative.
- (c) An objection to the qualification of a person to vote at a general meeting must be:
 - (1) raised before or at the meeting at which the vote objected to is given or tendered; and
 - (2) referred to the chair of the meeting, whose decision is final.
- (d) A vote not disallowed by the chair of a meeting under rule 13.10(c) is valid for all purposes.
- (e) Councillors on the Ethics Council in attendance at a general meeting do not have any voting rights however they may address the meeting as determined by the chair.

13.11 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (1) in person or, where a member is a body corporate, by its representatives;
 - (2) by one proxy; or
 - (3) by one attorney.
- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.

13.12 Authority of a proxy, attorney or representative

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative is to be taken to confer authority:
 - (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution; and
 - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given.
- (b) Even though the instrument (appointing a proxy, attorney or representative) may refer to specific resolutions and may direct the proxy, attorney or representative on how to vote on those resolutions, unless otherwise provided, it is taken to confer authority:
 - (1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (2) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (3) to act generally at the meeting.
- (c) An instrument appointing a proxy, attorney or representative may direct the manner in which the proxy, attorney or representative is to vote in respect of a particular resolution and, where an instrument so provides, the proxy, attorney or representative is not entitled to vote on the proposed resolution except as directed in the instrument.

- (d) Subject to rule 13.12(e), an instrument appointing a proxy, attorney or representative need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (e) A proxy, attorney or representative may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, attorney or representative, and the authority under which the instrument is signed, or a certified copy of the authority, are:
 - (1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (3) in the case of a poll, produced when the poll is taken.
- (f) The National Board may waive all or any of the requirements of rules 13.12(d) and 13.12(e) and in particular, may, on production of other evidence to prove the valid appointment of a proxy, attorney or representative required by the National Board, accept:
 - (1) an oral appointment of a proxy, attorney or representative;
 - (2) an appointment of a proxy, attorney or representative which is not signed in the manner required by rule 13.12(d); and
 - (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy, attorney or representative or a power of attorney or other authority under which the instrument is signed.
- (g) A vote given in accordance with the terms of an instrument appointing a proxy, attorney or representative is valid despite the revocation of the instrument or the authority under which the instrument was executed, if no written notice of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy, attorney or representative must be deposited, tabled or produced under rule 13.12(e).
- (h) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, in person or by Direct Vote, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

13.13 Direct Voting at general meetings

- (a) A person who has cast a Direct Vote is entitled to attend a meeting. However, they are not able to vote on resolutions the subject of the Direct Vote at that meeting.
- (b) A Direct Vote may be in any form decided or accepted by the directors but, subject to rule 13.13(c), is not valid unless the Direct Vote is:
 - (1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;

- (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- (3) in the case of a poll, produced when the poll is taken.
- (c) The directors may, on the production of such evidence as the directors require to prove the validity of the Direct Vote, accept:
 - (1) an oral Direct Vote;
 - (2) a Direct Vote lodged through the internet or by electronic means;
 - (3) a written Direct Vote which is not signed; and
 - (4) the deposit, tabling or production of a copy (including a copy sent by fax) of a Direct Vote.
- (d) If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the chair of the meeting must:
 - (1) where the meeting votes other than by a poll (ie on a vote on a show of hands) count each member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote as well as the votes cast at the meeting; and
 - (2) on a poll, count the votes cast by each member who has submitted a Direct Vote directly for or against the resolution.

14 National Congress

- (a) National Congress is the annual meeting of the Delegates and National Board.
- (b) All Delegates are expected to attend and participate in National Congress as delegates of the Chamber they represent with their primary duty at National Congress to review the performance of and assist the company in carrying out its purposes in accordance with its values. Delegates must present the views of their Chamber but act for the best interests of the Company as a whole, ie not just for the objectives or interests of the Chamber they represent or of any employer, contractor or interest group they may represent.
- (c) Each National Congress will be conducted in accordance with rule 13 with any modifications set out by the National Board or under this constitution.
- (d) A quorum for a meeting of the National Congress consists of 70% of Delegates.
- (e) Delegates cannot appoint a proxy, attorney or alternate to attend and vote in their place at National Congress.
- (f) National Board must set the agenda for National Congress and it must include:
 - (1) review of a report from National Board setting out its activities, financial statements and performance since the previous National Congress against any strategic or performance objectives and budget recommended by the previous National Congress;
 - (2) discussion and recommendation of the following 12 months and longer term strategy, budget and priorities for the company within the terms of the purposes and values;
 - (3) review of policies set by the National Board;
 - (4) division into separate meetings of Chamber Delegates to elect the Chamber directors (where required).

- (g) The National Board may also request Delegates to divide into focus groups to provide recommendations as to policy and priorities in specified areas, to the National Board.
- (h) The National Board will issue an invitation to all councillors on the Ethics Council to attend and participate in the National Congress. Councillors on the Ethics Council will not have any voting rights at the National Congress.

15 National Board

15.1 National Board

- (a) The minimum number of directors is 3 and the maximum number of directors is 14, unless the company in general meeting resolves otherwise.
- (b) The National Board must consist of:
 - (1) two executive directors who are co-chairs elected under rule 15.3;
 - (2) two Chamber directors from each Chamber, who are co-chairs of the Chamber and are elected under rule 15.4;
 - (3) any additional directors appointed or elected under any policy or regulation adopted by the National Executive, as approved by the Ethics Council.
- (c) The company must have substantial gender equality in its leadership and the National Board may take special measures within the law to achieve substantial equality at all levels of its leadership and management, including in setting the procedures for the election and appointment to the National Board.

15.2 Initial National Board

- (a) The first directors are those named as directors in the application for registration of the company.
- (b) The initial term of the first directors is until 20 Business Days from the end of the first National Congress.
- (c) The first directors are appointed to the following roles:
 - (1) the co-chairs of the National Board are **Sam Jeffries and Kerry Arabena**;
 - (2) the co-chairs of Chamber 1 are **Daphne Yarram and Peter Buckskin**;
 - (3) the co-chairs of Chamber 2 are **Klynton Wanganeen and Josephine Bourne**;
 - (4) the co-chairs of Chamber 3 are **Colleen Hayward and Ned David**.

15.3 Election of co-chairs

- (a) The National Board in consultation with the Ethics Council must set out the procedures for the application, eligibility and review process for the election by the members of the co-chairs of the National Board. The procedures will include:
 - (1) any individual member who meets the eligibility requirements may apply in accordance with the procedures;

- (2) the applicant must be prepared to be an executive director of the company, in full time employment with the company;
 - (3) the requirement for substantive gender equality expressed in 15.1(c);
 - (4) review of those candidates with the most votes by the Ethics Council before the election is effective.
- (b) The election of co-chairs will be subject to approval by the Ethics Council. The election of co-chairs will not be effective until confirmed by the National Board, in consultation with the Ethics Council. The National Board is not required to disclose the number of votes received by any candidate and will not give reasons for any confirmation or refusal to confirm the election of any candidate.
 - (c) The term of office for a co-chair commences 20 Business Days from the first National Congress at which his or her election is confirmed by the National Board as co-chair of the National Board (or if the confirmation occurs before a National Congress, 20 Business Days after the National Congress immediately following the confirmation) and ends (subject to rule 15.5) 20 Business Days after the second National Congress following the commencement of the co-chair's term of office. The co-chair can apply for re-election.
 - (d) If only 2 candidates are nominated then these candidates provided they meet the eligibility criteria and are confirmed by the National Board in consultation with the Ethics Council are deemed to be elected without the need for a vote. If more than 2 candidates who meet the eligibility criteria are nominated, the National Board may decide that the election of the co-chairs of the National Board will take place by ballot or at a meeting of members.
 - (e) If the election of co-chairs to the National Board is to take place by ballot or at a general meeting, voting will take place in accordance with the procedures set by the National Board in consultation with the Ethics Council.
 - (f) The procedures for a ballot will include, in addition to the matters referred to in rule 15.3(a):
 - (1) the date on which the members must be on the register of members in order to be entitled to vote;
 - (2) the appointment of a Returning Officer and one or more independent scrutineers to oversee the procedures for the election of co-chairs by ballot;
 - (3) the timeframe which will enable the names of the elected and confirmed co-chairs to be announced at the National Congress following the ballot.
 - (g) If the office of co-chair becomes vacant, the National Board, in consultation with the Ethics Committee must appoint a co-chair who meets the eligibility requirements. A co-chair appointed under this paragraph holds office for the remainder of the term of the co-chair he or she is replacing.

15.4 Chamber directors

- (a) The National Board in consultation with the Ethics Council must set out the procedures for the eligibility and for the election of the Chamber directors of the National Board. The procedures will include:
 - (1) the Chamber directors may not be full or part time employees of the company;
 - (2) the requirement for substantive gender equality expressed in 15.1(c);

- (3) each Chamber must elect the Chamber directors who will co-chair that Chamber and the candidates must be from the nominations received from the Chamber Delegates;
 - (4) review of those candidates with the most votes by the Ethics Council before the election is effective.
- (b) The election of co-chairs of each Chamber will be subject to approval by the Ethics Council. The election of co-chairs will not be effective until confirmed by the National Board, in consultation with the Ethics Council. The National Board is not required to disclose the number of votes received by any candidate and will not give reasons for any confirmation or refusal to confirm the election of any candidate.
 - (c) The term of office for a Chamber director commences on the later of 20 Business Days from the National Congress at which elections for the Chamber director was held or the date the National Board confirms the appointment of the Chamber director and ends (subject to rule 15.5) 20 Business Days after the National Congress in the fourth year after the National Congress at which the Chamber director was elected, subject to an inaugural term for 3 of the first elected Chamber directors (which must be one of each of the co-chairs for each Chamber, as decided by the National Board) being until 20 Business Days after the National Congress in the second year after their appointment. The Chamber director can be nominated for re-election.
 - (d) If the office of a Chamber director becomes vacant or the election of a new Chamber director has not been confirmed within 2 months of the National Congress at which the election was conducted, the National Board must fill the casual vacancy or must replace the outgoing Chamber director by appointing a member who meets the relevant eligibility requirements and is approved by the Ethics Council as Chamber director and confirming his or her appointment as the new co-chair . A Chamber director appointed under this paragraph holds office for the remainder of the term of the outgoing Chamber director or, if the appointment is as a result of there being no confirmation by the National Board within 2 months of an election, for the term he or she would have if rule 15.4(c) applied.

15.5 Vacation of office

The office of a director becomes vacant:

- (a) in the circumstances in the Act;
- (b) if the director becomes of unsound mind or a director is, or their estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) if the director is removed from office by resolution of the members in accordance with the Act;
- (d) except to the extent of a leave of absence granted by the National Board, if the director fails to attend at least 3 consecutive meetings of the National Board or at least 4 meetings over a period of 365 days; or
- (e) if the director resigns by written notice to the company.

15.6 Payments to National Board

- (a) All payments to directors or members must be approved by the National Board including, but not limited to:
 - (1) out-of-pocket expenses incurred by a director in performing a duty as a director of the company;

- (2) payments for a service rendered to the company by a director or member in a professional or technical capacity, provided the service has the prior approval of the National Board, and the amount payable is commercially reasonable for the fee or service;
 - (3) indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution;
 - (4) payments for goods or property supplied or leased by a director or member provided the amount is commercially reasonable.
- (b) Each director is entitled to remuneration from the company for his or her services as a director as the National Board decide, but the total amount provided to all directors for their services as the National Board, must not exceed in aggregate in any financial year the amount fixed by the company in general meeting.
- (c) When calculating a director's remuneration for the purposes of rule 15.6(b), disregard any amount paid by the company:
- (1) to a superannuation, retirement or pension fund for a director so that the company is not liable to pay the superannuation guarantee charge or similar statutory charge; or
 - (2) for any insurance premium paid or agreed to be paid for a director under this constitution; or
 - (3) in payment of travelling and other expenses they incur in attending to the company's affairs, meetings and other events;
 - (4) in payment of extra services approved by the National Board for the benefit of the company.
- (d) Remuneration may be provided in such manner that the National Board decide, including by way of non cash benefit, such as a contribution to a superannuation fund. The remuneration is taken to accrue from day to day.

15.7 Directors may contract with the company and hold other offices

- (a) The National Board may adopt regulations requiring the disclosure of interests that a director, and any person considered by the National Board as related to or associated with the director, may have in any matter concerning the company. Any regulations made under this constitution binds all of the National Board but no act, transaction, agreement, instrument, resolution or other thing with a third party is invalid or voidable only because a director fails to comply with the regulations.
- (b) Unless the Act permits and the National Board agree that this rule will not apply in any particular matter, a director who has a material personal interest in a matter that is being considered at a National Board meeting must not:
- (1) be present while the matter is being considered at the meeting; or
 - (2) vote on the matter.
- (c) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity, merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (d) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.

- (e) A director who is interested in an arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with applicable disclosure requirements under any regulations adopted by the National Board, and under the Act regarding that interest.
- (f) A director may hold any other office or position (except Auditor) in the company in conjunction with his or her directorship and may be appointed to that office or position on terms (including remuneration and tenure) that the National Board decides.
- (g) A director may be or become:
 - (1) a director of;
 - (2) another officer of; or
 - (3) interested in,
 a body corporate associated with the company, and, with the consent of the company's National Board, need not account to the company for remuneration or other benefits the director receives as a director or officer of, or from having an interest in, that body corporate.
- (h) The National Board may exercise the voting rights conferred by shares in a body corporate held or owned by the company in the manner that they think fit.

15.8 Powers and duties of the National Board

- (a) The National Board is responsible for managing the company's affairs and carrying out the company's purposes. The National Board will consider the recommendations and advice of the National Congress and the Ethics Council when exercising the company's powers and in carrying out the company's purposes. The National Board may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) The National Board may decide how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (c) The National Board may pay out of the company's funds all expenses of the promotion, formation and registration of the company.
- (d) The National Board may:
 - (1) appoint or employ an officer, agent or attorney of the company with the powers, discretions and duties vested in or exercisable by the National Board, on the terms the National Board decides;
 - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (e) A power of attorney may contain provisions for the protection and convenience of the attorney or persons dealing with the attorney that the National Board thinks fit.

15.9 Proceedings of the National Board

- (a) The National Board may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The simultaneous linking together by telephone or other electronic means of a sufficient number of the National Board to constitute a quorum constitutes a meeting of the National Board. All the provisions in this constitution relating to meetings of the National Board apply, as far as they can and with any necessary changes, to meetings of the National Board by telephone or other electronic means.
- (c) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one of the National Board involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, a technical difficulty occurs which means that one or more of the directors cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum of the National Board remains present, continue with the meeting.

15.10 Convening meetings of the National Board

- (a) Either co-chair or any 2 or more directors may convene a meeting of the National Board whenever he or she or they think fit.
- (b) A secretary must, on the requisition in accordance with paragraph (a), convene a meeting of the National Board.

15.11 Notice of meetings of the National Board

- (a) Subject to this constitution, notice of a meeting of the National Board must be given to each person who is at the time of giving the notice a director, except a director on leave of absence approved by the National Board.
- (b) A notice of a meeting of the National Board:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;
 - (3) may be given immediately before the meeting; and
 - (4) may be given in person or by post, telephone, fax or other electronic means.
- (c) A director may waive notice of a meeting of the National Board by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of the National Board by, or a failure to give notice of a meeting of the National Board to, a director does not invalidate any thing done or resolution passed at the meeting if:
 - (1) the non-receipt or failure occurred by accident or error;
 - (2) the director has waived or waives notice of that meeting under rule 15.11(c) before or after the meeting;

- (3) the director has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means before or after the meeting; or
- (4) the director attended the meeting.
- (e) Attendance by a person at a meeting of the National Board waives any objection which that person may have to a failure to give notice of the meeting.

15.12 Quorum at meetings of the National Board

- (a) No business may be transacted at a meeting of National Board unless a quorum of the National Board is present at the time the business is dealt with.
- (b) A quorum consists of a majority of directors.
- (c) If there is a vacancy in the office of a director then, subject to rule 15.12(d), the remaining directors may act.
- (d) If the number of directors in office at any time is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

15.13 Chair of the National Board

- (a) The co-chairs elected under rule 15.3 are the co-chairs of the National Board.
- (b) At a meeting of the National Board, the chair will be one of the co-chairs of the National Board as they agree between them, or failing agreement as they determine by lot, provided the co-chair who is to preside as chair is present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If the co-chair who is to preside as chair is either not present within 10 minutes after the time appointed for the meeting or is not willing to act, then the other co-chair must preside as chair unless he or she is also not present within 10 minutes after the time appointed for the meeting or is not willing to act. In which case the directors present must elect one of the National Board as chair of the meeting.

15.14 Decisions of the National Board

- (a) A meeting of the National Board at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the National Board under this constitution.
- (b) Questions arising at a meeting of the National Board must be decided by a majority of votes cast by the National Board present. Such a decision is for all purposes a decision of the National Board.
- (c) Where the votes on a proposed resolution are equal the chair of the meeting may exercise a second or casting vote.

15.15 Written resolutions of the National Board

- (a) A resolution is taken to have been passed by a meeting of the National Board if:
 - (1) all the National Board (except any director on leave of absence approved by the National Board, any director who disqualifies himself or herself from considering the resolution in question and any director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and

- (2) the directors who sign or consent to the resolution would have constituted a quorum at a National Board meeting held to consider that resolution.
- (b) A director may consent to a resolution by:
 - (1) signing the document containing the resolution (or a copy of that document);
 - (2) giving to the company at its registered office a written notice (including by fax or other electronic means) addressed to the secretary or to the co-chairs of the National Board signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (3) telephoning the secretary or either of the co-chairs of the National Board and signifying assent to the resolution and clearly identifying its terms.

15.16 Minutes of meetings and minutes of resolutions

- (a) The National Board must ensure:
 - (1) minutes of proceedings; and
 - (2) resolutions of general meetings and of meetings of the National Board (including committees of the National Board),

are recorded in books kept for the purpose, within one month after the relevant meeting is held.
- (b) The National Board must ensure that minutes of resolutions passed by National Board (and committees of the National Board) without a meeting are recorded in books kept for that purpose within one month after the resolution is passed.
- (c) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

15.17 Committees of the National Board

- (a) The National Board may delegate any of their powers to one or more committees consisting of the number of directors and other people as they think fit.
- (b) A committee to which powers have been delegated must exercise those powers delegated in accordance with directions given by the National Board.
- (c) Provisions of this constitution that apply to meetings and resolutions of the National Board apply, as far as they can, with any necessary changes, to meetings and resolutions of a committee of the National Board.

15.18 Delegation to individual directors

- (a) The National Board may delegate any of their powers to one director.
- (b) A director to whom powers have been delegated must exercise those powers delegated in accordance with directions given by the National Board.

15.19 Validity of acts

An act done by a person acting as a director, a meeting of the National Board, or a committee of the National Board attended by a person acting as a director, is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the National Board or the committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified as a director or having vacated office; or
- (c) the person not being entitled to vote.

16 Board officers

16.1 Board director

- (a) The National Board may appoint the co-chairs of the National Board as executive directors.
- (b) A director's appointment as an executive director automatically terminates if they cease to be a director.
- (c) The National Board may confer on an executive director any title they think fit.

16.2 Secretary

- (a) The National Board must appoint at least one secretary and may appoint additional secretaries.
- (b) The first secretary of the company is the person who has consented to act as secretary and who is named as the secretary in the application for registration of the company.

16.3 Provisions that apply to all executive officers

- (a) A reference in this rule 16.3 to an executive officer is a reference to an executive director and the secretary of the company.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions that the National Board think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer may be removed or dismissed by the National Board at any time, with or without cause.
- (d) The National Board may:
 - (1) confer on an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the National Board) they think fit;
 - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An act done by a person acting as an executive officer is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person when the act was done:
 - (1) a defect in the person's appointment as an executive officer; or
 - (2) the person being disqualified to be an executive officer.

17 Ethics Council

- (a) The National Board must maintain an Ethics Council as an advisory committee to the National Board.
- (b) The number of councillors must be at least 6 and the councillors must be Aboriginal or Torres Strait Islander people with the highest integrity. While acting as a councillor on the Ethics Council, a councillor must not be a member of the company or a representative of a member of the company. The councillor may attend meetings of members, chambers or the National Congress but may not vote.
- (c) The first directors referred to in rule 15.2(a) must appoint an initial Ethics Council and subject to the decision of the National Board to extend the term or to remove a member, the term of the appointment will be 2 years. The functions of the initial Ethics Council will be set out in a charter set by the National Board and must include:
 - (1) recommending the process for the appointment and removal of members of the Ethics Council by the National Board;
 - (2) other matters required of the Ethics Council in this constitution and as requested by the National Board.
- (d) The functions of the Ethics Council will include:
 - (1) reviewing the candidates to the positions of co-chairs of the National Board and recommending candidates to the National Board for the office, bearing in mind the requirements of rule 12.5(a) and other eligibility requirements;
 - (2) reviewing the Chamber 1 and 2 Delegates once elected to recommend confirmation or rejection of the election bearing in mind the eligibility requirements;
 - (3) reviewing the applications to positions of Chamber 3 Delegates and making recommendations to the National Board, bearing in mind the eligibility requirements;
 - (4) reviewing the candidates to the positions of the Chamber directors and recommending candidates to the National Board for the office of co-chair of each Chamber, bearing the requirements of rule 12.5(a) and the eligibility requirements;
 - (5) acting as a mediator if requested under the grievance procedures;
 - (6) reviewing the policies and application of eligibility for the categories of membership;
 - (7) reviewing the creation and operation of any divisions within a category of membership;
 - (8) assisting in reviewing the terms of any Chamber Delegates;
 - (9) assisting and recommend policies and procedures to ensure the company, National Board and National Congress maintain the highest ethical standards;
 - (10) assisting the company in adhering to the purposes and values;
 - (11) investigating any potential breaches of ethical standards or the company's values;
 - (12) recommending members for joining the Ethics Council;
 - (13) other matters required by the National Board.

- (e) The National Board must specify in the charter:
- (1) the manner in which proceedings of the Ethics Council are to be conducted;
 - (2) the matters which the Ethics Council must include in any consideration of issues in carrying out its functions; and
 - (3) any other matters concerning the Ethics Council or its functions that the National Board decide.

18 Grievance procedure

- (a) Any dispute under these rules between a member and another member or between a member and the company must, unless the parties otherwise agree, be dealt with by the procedure in this rule 18.
- (b) Any party to a dispute between members, may refer the dispute to the National Board for determination. The National Board may appoint a director, subject to rule 18(d) below, to act as the mediator or a third party.
- (c) If there is a dispute between the company and a member, either party may require the dispute be referred to the Ethics Council for determination. The Ethics Council may appoint a member of the Ethics Council, subject to rule 18(d) below, to act as the mediator or a third party.
- (d) The mediator must be:
- (1) a person agreed between the parties to the dispute; or
 - (2) in the absence of agreement within 14 days of a party requiring mediation;
 - in the case of a dispute between a member and another member, a person appointed by the National Board; or
 - in the case of a dispute between a member and the company, a person who is a mediator appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice) or its successor in law or organisation with similar authority and structure within any other State or Territory.
- (e) A member can be a mediator.
- (f) The mediator cannot be a party to the dispute.
- (g) Any party to a dispute may appoint any person to act on behalf of that party in the process of determination by the mediator.
- (h) The mediator, in conducting the mediation, must:
- (1) give the parties to the dispute every reasonable opportunity to be heard;
 - (2) allow due consideration by all parties of any written statement submitted by a party; and
 - (3) ensure that natural justice is accorded to the parties to the dispute throughout the process.
- (i) A determination made by the mediator, as the case may be, any under this rule is final and binding on all parties to the dispute.

19 Indemnity and insurance

19.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 19 apply to Indemnified Officers.

19.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
 - (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the company; and
 - (2) operates only to the extent that the loss or liability in question is not covered by insurance.

19.3 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an officer of the company where the National Board considers it appropriate to do so.

19.4 Savings

Nothing in this rule 19:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this indemnity or insurance; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 19 does not apply.

20 Auditor

The company must appoint a properly qualified Auditor whose duties will be regulated in accordance with the Act.

21 Notices

21.1 Notices by the company to members

The company may give notices, including a notice of general meeting to a member:

- (a) personally;

- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member.

21.2 Notices by the company to National Board

Subject to this constitution, a notice may be given by the company to any director by:

- (a) serving it personally at the director's usual residential or business address;
- (b) sending it by post in a prepaid envelope to the director's usual residential or business address; or
- (c) sending it to the fax number or electronic address supplied by the director to the company for giving notices.

21.3 Notices by member or National Board to the company

Subject to this constitution, a notice may be given by a member or director to the company by:

- (a) serving it on the company at the registered office of the company;
- (b) sending it by post in a prepaid envelope to the registered office of the company; or
- (c) sending it to the principal fax number or the principal electronic address of the company at its registered office.

21.4 Time of service

- (a) A notice properly addressed and posted is taken to be served:
 - (1) in the case of a notice of a general meeting, at 10.00am on the day after the date it was posted; or
 - (2) in any other case, at the time the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the fax report produced by the sender's fax machine.
- (c) Where a notice is sent by an electronic messaging system with a delivery verification function, the notice is taken as served on generation of a delivery verification notice, log entry, or other confirmation by the electronic messaging system.
- (d) Where a notice is sent by email or other electronic messaging system (not covered by rule 21.4(c)), the notice is served on delivery to:
 - (1) the addressee's email or electronic messaging system account if the addressee is a natural person; or
 - (2) the corporation's computer systems if the addressee is a corporation.
- (e) If service under rules 21.4(b), 21.4(c) and 21.4(d) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following Business Day.

21.5 Other communications and documents

Rules 21.1 to 21.4 (inclusive) apply, as far as they can, with any necessary changes, to the service of any communication or document.

21.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by fax or electronic transmission or any other form of written communication.

22 Definitions and interpretation

22.1 Definitions

The meanings of the terms used in this constitution are set out below.

Term	Meaning
Act	the <i>Corporations Act 2001</i> (Cth).
Aboriginal and Torres Strait Islander person	a person: <ol style="list-style-type: none">1 of Aboriginal and Torres Strait Islander descent; and2 who identifies themselves as an Aboriginal or Torres Strait Islander; and3 is accepted as an Aboriginal or Torres Strait Islander by an Aboriginal or Torres Strait Islander community, as accepted by the National Board.
Aboriginal and Torres Strait Islander Organisation	an incorporated organisation: <ol style="list-style-type: none">1 which has at least 51% of its members being Aboriginal and Torres Strait Islander people2 which has at least 51% of its governing board being Aboriginal and Torres Strait Islander people3 whose principal purpose and activity is related specifically to Aboriginal and Torres Strait Islander people but which is not a National Aboriginal and Torres Strait Islander Organisation.
Auditor	the auditor of the company.
Business Day	a day on which banks are open for business in the City where the registered office of the Company is located, excluding a Saturday, Sunday or a public holiday in that city.

Term	Meaning
Chambers	the groups of members divided into chambers based on the category of membership.
Chamber 1 directors	has the meaning in rule 6.1(f)(1).
Chamber 2 directors	has the meaning in rule 6.2(f)(1)
Chamber 3 directors	has the meaning in rule 6.3(e)(1)
Chamber directors	means directors .
Commissioner	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.
Deductible Contribution	a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the principal purpose of the company.
Delegates	the individuals elected or appointed to attend the National Congress.
Direct Vote	Valid notice of a member's voting decision.
Gift	a gift of money or property as described in item 1 of the table in section 30-15 of the ITAA 97 for the principal purpose of the company.
Indemnified Officer	<ol style="list-style-type: none"> 1 each person who is or has been a director or executive officer (within the meaning of rule 16.3(a)) of the company; and 2 any other officers or former officers of the company as the National Board in each case decide.
ITAA 97	the <i>Income Tax Assessment Act 1997</i> (Cth).
National Aboriginal and Torres Strait Islander Organisations	Aboriginal and Torres Strait Islander Organisations that operate, or have significant number of members, throughout, or substantially throughout Australia, as decided by the National Board.
National Congress	the annual meeting of the Delegates.

Term	Meaning
National Board	the board of directors of the company.
Peak Body	<p>must meet the following criteria:</p> <ol style="list-style-type: none"> 1 not controlled by government 2 members of the Peak Body are organisations (including one or more Aboriginal and Torres Strait Islander Organisations) which provide the same or similar services as each other, to or for the benefit of Aboriginal and Torres Strait Islander people 3 members of the Peak Body either: <ol style="list-style-type: none"> a. operate in a region or in a State or Territory (regional or State or Territory Peak Bodies) or b. are organisations referred to in criteria 3a (national Peak Bodies) 4 activities include supporting member services, research, information, co-ordination, development of policies, programs or services 5 at least 51% of the governing board are Aboriginal and Torres Strait Islander people 6 not, and could not be, a member of a Peak Body as defined in criteria 1-5.
Registered Address	a member's address as notified to the company by the member and recorded in the company's records.
Responsible Person	<p>an individual who:</p> <ol style="list-style-type: none"> 1 performs a significant public function; 2 is a member of a professional body having a code of ethics or rules of conduct; 3 is officially charged with spiritual functions by a religious institution; 4 is a director of a company whose shares are listed on the Australian Securities Exchange; 5 has received a formal recognition from government for services to the community; or 6 is approved as a Responsible Person by the Australian Taxation Office.

22.2 Interpretation

In this constitution:

- (a) references to notices include formal notices of meeting, all documents and other communications from the company to its members;
- (b) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements nor re-enactments of any of them;

- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative;
- (d) a reference to writing and written includes printing, lithography, electronic means of writing (eg fax, email) and other ways of representing or reproducing words in a visible form;
- (e) the singular includes the plural and the plural includes the singular; and
- (f) headings and bold type are used for convenience only and do not affect the interpretation of this constitution.

23 Application of the Act

23.1 What parts of the Act apply

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to rule 23.1(a), an expression in a rule that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

23.2 Replaceable rules displaced

- (a) The provisions of this constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this rule) to the company.
 - (b) The replaceable rules do not apply to the company except those which operate as mandatory rules for public companies under the Act.
-