


# CONSTITUTION

Financial Counselling Industry Fund Limited

ACN 676 500 833

A public company limited by guarantee



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# Constitution

## Financial Counselling Industry Fund Limited

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### 1 Preliminary

#### 1.1 Defined terms

In this constitution:

Defined term	Meaning
<b>ACNC</b>	the Australian Charities and Not-for-profits Commission, or any body which replaces, or substantially succeeds to, its powers and functions.
<b>ACNC Act</b>	the <i>Australian Charities and Not-for-Profits Commission Act 2012</i> (Cth).
<b>Board</b>	the board of directors of the company from time to time.
<b>Board Nominations Committee</b>	the nominations committee referred to in rule 8.6.
<b>Charitable Purpose</b>	the meaning given in rule 4.1.
<b>Contribution Amount</b>	an Industry Member's monetary amount contributed to the company, whether pursuant to a "Memorandum of Understanding" with the company or other form of agreement or document with the company, as determined by the Board.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Corporations Regulations</b>	the <i>Corporations Regulations 2001</i> (Cth).
<b>Eligible Organisation</b>	<p>an Organisation which:</p> <ul style="list-style-type: none"> <li>(a) has objects or purposes which include objects or purposes which are similar to the Charitable Purpose;</li> <li>(b) has a governing document which requires its income and property to be applied in promoting its objects or purposes and agrees to use any distribution provided to it by the company to further such objects or purposes;</li> <li>(c) is registered as a charity with the ACNC; and</li> <li>(d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) on a similar basis to the company.</li> </ul>

Defined term	Meaning
<b>FCA Member</b>	Financial Counselling Australia Ltd ACN 073 167 361, or any Organisation which replaces, or substantially succeeds to, its powers and functions.
<b>Financial Counselling Agency</b>	the meaning given in the Corporations Regulations.
<b>Financial Counselling Sector Director</b>	a person appointed to the Board as a Financial Counselling Sector Director in accordance with rules 8.2 to 8.4, and who is not an Independent Director or an Industry Director.
<b>Financial Year Period</b>	unless determined by the Board otherwise, each 12-month financial year period ending 30 June of each year.
<b>Independent Chair</b>	the Independent Chair of the Board from time to time as appointed in accordance with rule 8.8.
<b>Independent Director</b>	a person appointed to the Board as an Independent Director in accordance with rules 8.2 to 8.4, and who is not a Financial Counselling Sector Director or an Industry Director, and includes any Independent Chair.
<b>Industry</b>	any industry which has an interest in the Charitable Purpose, including (but not limited to) the banking, financial services, superannuation, telecommunications, energy, water, insurance, wagering and any other relevant industries.
<b>Industry Director</b>	a person appointed to the Board as an Industry Director in accordance with rules 8.2 to 8.4, and who is not an Independent Director or a Financial Counselling Sector Director.
<b>Industry Member</b>	each member of the company other than the FCA Member.
<b>Initial Directors</b>	those persons noted as the initial directors on the application for incorporation of the company.
<b>Initial Term</b>	the period commencing on the date the company is incorporated and ending on the third annual general meeting after the incorporation of the company or, if the company does not hold one or more annual general meetings during that period, three years from the incorporation of the company.
<b>Liability</b>	losses, liabilities, costs, charges and expenses of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

Defined term	Meaning
<b>Minimum Contribution Requirement</b>	the meaning given in rule 5.4(b).
<b>Officer</b>	<p>(a) each person who is or has been a director or executive officer of the company or a Related Body Corporate of the company; and</p> <p>(b) such other officers or former officers of the company or its Related Bodies Corporate as the Board in each case decides.</p>
<b>Organisation</b>	an incorporated association, company or other body corporate.
<b>Related Body Corporate</b>	the meaning given in the Corporations Act.
<b>Representative</b>	a representative of a member appointed in the way permitted by section 250D of the Corporations Act, regardless of whether that member is in fact bound by the Corporations Act.
<b>Show of Preference</b>	the meaning given in rule 7.7(d).
<b>Surplus Assets</b>	the meaning given in rule 10(a).
<b>Vulnerable Individuals Experiencing Financial Difficulty</b>	individuals who are suffering financial difficulty, distress or misfortune due to circumstances such as unemployment, sickness, disability, family breakdown, low income, poverty, significant debt, significant inability to pay bills on time or at imminent risk of being unable to do so, bankruptcy, insolvency or other relevant financial hardship or circumstances.

## 1.2 Interpretation

The following rules of interpretation apply unless any contrary intention appears in this constitution or the context requires otherwise:

- (a) headings and bold type used in this constitution are only for convenience and do not affect the meaning of this constitution;
- (b) the singular includes the plural and vice-versa;
- (c) words of any gender include all genders;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a word or phrase given a meaning in the Corporations Act has the same meaning in this constitution;
- (f) a reference to a statute or regulation, or to any provision of them includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it;
- (g) the word 'includes' or 'including' in any form is not a word of limitation; and
- (h) a reference to a person includes that person's successors and legal personal representatives.

## 1.3 Application of the Corporations Act and replaceable rules

This constitution is to be interpreted subject to the Corporations Act. However, the rules that apply as replaceable rules to companies under the Corporations Act do not apply to the company except so far as they are repeated in this constitution.

## 1.4 Application of the ACNC Act

If the company is a registered charity under the ACNC Act, this constitution is to be interpreted subject to the ACNC Act.

## 2 Powers of the company

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- (a) The company is a public company limited by guarantee which is established to be, and to continue as, a charity.
- (b) To carry out the Charitable Purpose, the company may, in any matter permitted by the Corporations Act:
  - (i) exercise any power;
  - (ii) take any action; and

(iii) engage in any conduct or procedure,

which under the Corporations Act a public company limited by guarantee may exercise, take or engage in if authorised by this constitution.

(c) Without limiting rule 2(b), the company may pursue the Charitable Purpose by:

(i) raising money to further the Charitable Purpose and secure sufficient funds to pursue the Charitable Purpose; and

(ii) receive any funds and apply those funds in a manner to seek to attain the Charitable Purpose.

### **3 Not for profit nature of company**

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(a) The income and property of the company:

(i) must be applied solely towards the Charitable Purpose; and

(ii) must not be paid or given to a member (other than an Eligible Organisation to pursue objects or purposes similar to the Charitable Purpose), directly or indirectly, by way of dividend, bonus or otherwise.

This rule 3(a) does not prevent the company from paying a member or Officer a reasonable and proper amount with the Board's prior approval in good faith for goods or services supplied to the company.

(b) If the company is a registered charity under the ACNC Act, then despite anything to the contrary in this constitution, the company is established:

(i) solely to be a not for profit, charitable and benevolent institution; and

(ii) to pursue not for profit, charitable and benevolent purposes in Australia only.

### **4 Charitable Purpose and activities of the company**

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#### **4.1 Charitable Purpose**

The purpose of the company is to provide charitable, benevolent relief to Vulnerable Individuals Experiencing Financial Difficulty by reducing the level of unmet demand for financial counselling services for such Vulnerable Individuals Experiencing Financial Difficulty (the **Charitable Purpose**).

#### **4.2 Activities of the company**

The activities of the company must be conducted in furtherance of the Charitable Purpose and may include to:

(a) provide Vulnerable Individuals Experiencing Financial Difficulty with access to financial counselling services;



- (b) support the capacity and capability of financial counsellors to provide financial counselling services to Vulnerable Individuals Experiencing Financial Difficulty;
- (c) support financial counsellors with access to appropriate training, support and exchange of information regarding the provision of support to Vulnerable Individuals Experiencing Financial Difficulty;
- (d) encourage and foster innovation in the provision of financial counselling services to Vulnerable Individuals Experiencing Financial Difficulty;
- (e) obtain funding contributions from industry, government and other relevant sources;
- (f) engage with, and improve coordination between, representatives of financial counsellor, industry, government and other relevant bodies;
- (g) monitor, analyse and report on the level of unmet demand for financial counselling services by Vulnerable Individuals Experiencing Financial Difficulty;
- (h) monitor, analyse and report on the provision of financial counselling services and the effectiveness of financial counselling services to Vulnerable Individuals Experiencing Financial Difficulty;
- (i) monitor, analyse and report on the provision of funding contributions by industry, government and other relevant sources, and the levels of funding required to achieve the Charitable Purpose; and
- (j) do all such other things or activities which are consistent with, or necessary or desirable to achieve and further, the Charitable Purpose and the activities of the company as contemplated in this rule 4.2.

## **5 Membership**

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### **5.1 Limited liability of members**

The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$10 to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

### **5.2 Members of the company**

- (a) The members of the company are:
  - (i) the FCA Member, or any Organisation which replaces, or substantially succeeds to, its powers and functions;
  - (ii) those noted as such on the application for the incorporation of the company and who have not since ceased to be a member; and
  - (iii) any applicant that has been admitted as a member of the company by the Board, having regard to the matters set out in rule 5.3.

- (b) If an applicant is admitted as a member of the company, the company secretary must ensure that:
  - (i) the applicant is given notice of admission as a member of the company; and
  - (ii) the name and details of the applicant are entered in the member's register in accordance with rule 5.8.
- (c) The company secretary will ensure that each applicant not admitted as a member of the company is informed of this decision. The Board may, but is not required to, provide reasons for a decision not to admit an applicant into membership.

### 5.3 Becoming a member

To become a member of the company, an applicant must:

- (a) be an Organisation;
- (b) in respect of a member other than the FCA Member:
  - (i) be a participant in the Industry (whether on its own account or as a representative body for participants in the Industry);
  - (ii) have a commitment to, and understanding of, the Charitable Purpose; and
  - (iii) have satisfied, or will satisfy (as determined by the Board, acting reasonably), the applicable Minimum Contribution Requirement as at the relevant date of becoming a member of the company;
- (c) complete and lodge a membership application in such form as determined by the Board from time to time, acting reasonably;
- (d) ensure that all information provided when applying for membership is true and accurate and is not misleading or deceptive; and
- (e) satisfy such other criteria as the Board may determine from time to time, acting reasonably.

### 5.4 Minimum Contribution Requirement

- (a) Unless determined by the Board otherwise, in order to become a member of the company as contemplated by rule 5.3, and to be eligible to maintain membership of the company as contemplated by rule 6.3, an Industry Member must meet the Minimum Contribution Requirement.
- (b) The **Minimum Contribution Requirement** will be the amount determined by the Board from time to time as the minimum Contribution Amount to be made by an Industry Member for each Financial Year Period in order to become a member, or be eligible to maintain membership of the company.
- (c) The Board will notify the members of the Minimum Contribution Requirement for each Financial Year Period at such times as it determines, acting reasonably.

- (d) For the purposes of calculation of the “Contribution Amount” under this constitution, any monetary amount contributed to the company will only be counted once. For example, if a member is a representative body for participants in the Industry who are also members, the representative body and such members must notify the Board whether monetary amounts contributed by the representative body have been made by the representative body on its account as a member, or should be taken as contributed by the relevant participants in the Industry who are also members on their account (so as not to be double-counted).
- (e) For the avoidance of doubt, the FCA Member is not required to contribute any Contribution Amount to the company in order to become a member or maintain its membership with the company.

## **5.5 Member fees**

Without limiting any other term of this rule 5, the Board may from time to time send a notice to one or more members requiring that member to confirm or to renew membership of the company, or to confirm or update that member’s details.

## **5.6 Members’ rights**

In addition to the voting rights described in rule 7.8, each member has the right to receive notices of and to attend and be heard at any general meeting of the company.

## **5.7 Membership not transferable**

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

## **5.8 Register of members**

- (a) A register of members must be kept in accordance with the law.
- (b) Without limiting the requirement under rule 5.8(a), the following must be entered in the register in respect of each member:
  - (i) the name and address of the member;
  - (ii) the date of admission to and cessation of membership;
  - (iii) the full name and contact details of its Representative, if applicable; and
  - (iv) any other information required by the Board or by law from time to time.

# **6 Ceasing to be a member**

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## **6.1 General overview**

- (a) A member will have its membership with the company cancelled if the member:

- (i) resigns from membership in accordance with rule 6.2;
  - (ii) has its membership with the company cancelled by the Board in accordance with rule 6.3; or
  - (iii) is expelled from membership by the Board in accordance with rule 6.4.
- (b) The Board may adopt such other policies and procedures relating to the suspension, disciplining or cancellation of members as it so determines from time to time so long as they are consistent with the requirements set out in this rule 6.
- (c) Where an Organisation ceases to be a member under this constitution, its name must be removed from the register of members.
- (d) Upon the removal of an Organisation's name from the register of members:
- (i) that Organisation will forfeit all rights and privileges attached to membership and all rights which that Organisation may have against the company arising out of the membership; and
  - (ii) the company will have no liability to such entity in respect of its removal from the register of members.
- (e) Any entity that ceases to be a member remains liable for:
- (i) any moneys which may be owing to the company; and
  - (ii) in the case of the company being wound up, within one year of the date of cessation of membership, the relevant guaranteed amount under rule 5.1.

## **6.2 Resignation from membership**

- (a) An Industry Member may resign from membership of the company at any time by providing written notice to the company addressed to the company secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.
- (b) Unless resolved by a special resolution of members, the FCA Member may not resign from membership of the company and, for the avoidance of doubt, is not subject to the matters referred to in rules 6.3 or 6.4.

## **6.3 Cancellation of membership**

The Board may cancel an Industry Member's membership with the company if the Industry Member:

- (a) is dissolved or wound up;
- (b) has not met the relevant Minimum Contribution Requirement in respect of a Financial Year Period; or
- (c) otherwise no longer satisfies the membership eligibility requirements in rule 5.3.

## 6.4 Disciplining, suspension and expulsion of member

The Board may warn, suspend, expel or otherwise discipline an Industry Member if that Industry Member:

- (a) has refused, neglected, breached or otherwise failed to comply with the provisions of this constitution; or
- (b) has acted in a way that, in the reasonable opinion of the Board is, or could be, prejudicial to the interests or reputation of the company.

On reasonable request by any such Industry Member, the Board will provide such Industry Member a reasonable opportunity to provide the Board with an explanation or defence to the relevant matter giving rise to the disciplinary action proposed to be taken by the Board, but any decision by the Board regarding any such disciplinary action will be final.

## 7 General meetings

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### 7.1 Introduction

- (a) For so long as the company is registered as a charity with the ACNC, and for so long as the law permits or requires, the Board:
  - (i) may determine whether or not to hold meetings of members including annual general meetings unless the Corporations Act otherwise requires a meeting of members for a particular resolution to be passed;
  - (ii) must ensure that the relevant governance standards adopted by the ACNC from time to time (including Governance Standard 2 relating to accountability to members in force as at the date of this constitution and any modified, replacement or substituted version of this standard) are complied with; and
  - (iii) must ensure that if the company does hold a meeting of members, it does so in accordance with this constitution and the Corporations Act, despite the fact that the provisions of the Corporations Act dealing with members' meetings may not be directly binding upon the company.
- (b) If there is any inconsistency between the Corporations Act and this constitution with respect to the calling and holding of members' meetings then, to the extent permitted by law, the provisions of this constitution will prevail.

### 7.2 Calling of general meetings

- (a) If the Board determines to hold an annual general meeting, it may do so at any time despite the requirements relating to the timing of annual general meetings contained within the Corporations Act.
- (b) A general meeting of members may be initiated by:
  - (i) a resolution of the Board;

- (ii) the members in accordance with the Corporations Act; or
  - (iii) the court in accordance with the Corporations Act.
- (c) Without limiting rule 7.2(b), a general meeting of members to remove a director may be initiated by members in accordance with the Corporations Act.
- (d) A meeting of members may be held in two or more places linked together by any technology as long as it:
- (i) gives the members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chair of the meeting to be aware of proceedings in each place; and
  - (iii) enables the members in each place to vote on a Show of Preference and on a poll.

### **7.3 Notice of general meetings**

- (a) Notice of a general meeting must be given to each person who, at the time of giving the notice, is a member, director or auditor of the company in the manner authorised by rule 14.
- (b) The content of a notice of a general meeting called by the Board is to be decided by the Board, but must state the date, place and time of the meeting and the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act.
- (c) Subject to the provisions of the Corporations Act relating to agreements for shorter notice, at least 21 days' notice must be given of a meeting of the company's members.
- (d) Unless the Corporations Act provides otherwise, the non-receipt of a notice convening a general meeting or the accidental omission to give notice to any person entitled to receive the notice does not invalidate anything done or any resolution passed at the general meeting.
- (e) Unless the Corporations Act provides otherwise, no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting.
- (f) Except with the approval of the Board or the Independent Chair, no person may move to amend a proposed resolution set out in the notice calling the meeting or a document which relates to such a resolution.

### **7.4 Quorum at general meetings**

- (a) No business may be transacted at a general meeting unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum for a general meeting will be present if:

- (i) the FCA Member is present in person or by proxy, attorney or Representative; and
  - (ii) Industry Members holding at least 30% of the total votes which may be cast by Industry Members on a resolution at a general meeting are present in person or by proxy, attorney or Representative.
- (c) If there is no quorum within 30 minutes after the time appointed for the general meeting:
- (i) where the meeting was called other than by a directors' resolution, the meeting is dissolved; or
  - (ii) in any other case, the meeting stands adjourned to the same day, time and place in the next week, or to such other day, time and place as the directors present decide. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

## **7.5 Independent Chair**

- (a) Subject to rule 7.5(b), the Independent Chair is entitled to preside as chair at general meetings.
- (b) The directors present may choose one of their number to preside as chair of the general meeting if:
  - (i) there is no Independent Chair; or
  - (ii) the Independent Chair is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act.
- (c) If the directors do not choose a chair under rule 7.5(b) or, in the absence of all directors or if none of the directors present wishes to act, the members present may elect one of their number to preside as chair of the general meeting.
- (d) The Independent Chair (or such other person appointed as chair under this rule 7.5) may, for any item of business or part of the meeting, vacate the chair in favour of another person nominated by him or her.

## **7.6 Conduct of general meetings**

- (a) Subject to the Corporations Act, the Independent Chair (or such other person appointed as chair under rule 7.5) of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting.
- (b) The Independent Chair (or such other person appointed as chair under rule 7.5) may:
  - (i) adopt any procedures for the proper and orderly conduct of the general meeting and for the casting or recording of votes at the meeting; and
  - (ii) impose a limit on the time that a person may speak on a motion or item of business being considered by the meeting and may, if

necessary for the proper conduct of the meeting, terminate debate or discussion.

- (c) Any decision by the Independent Chair (or such other person appointed as chair under rule 7.5) on matters of procedure is final. Any challenge to a decision must be made at the general meeting and may be determined by the Independent Chair (or such other person appointed as chair under rule 7.5) whose decision is final.
- (d) Nothing contained in this rule limits the powers conferred on a chair or chairperson by law.

## 7.7 Decisions at general meetings

- (a) Except in the case of any resolution which under this constitution or under the Corporations Act or as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting (including being present by technological means) and that decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution at a meeting of members, the Independent Chair (or such other person appointed as chair under rule 7.5) does not have a second or casting vote.
- (c) On or before a general meeting, the company secretary may determine the number of votes of each member in accordance with rule 7.8. A determination of the company secretary under this rule 7.7(c) is final.
- (d) Unless a poll is demanded, a resolution put to the vote of a general meeting must be decided on a show of preference of members, with each member present indicating a preference by a means appropriate to that member and that is readily interpreted and understood by the Independent Chair (or such other person appointed as chair under rule 7.5) (**Show of Preference**).
- (e) A member may only exercise one vote on a Show of Preference regardless of whether that member also holds one or more proxies.
- (f) A poll may be demanded before a vote being decided by a Show of Preference is taken or before or immediately after the declaration of the result of the Show of Preference:
  - (i) by the Independent Chair (or such other person appointed as chair under rule 7.5);
  - (ii) by at least two members present and entitled to vote on the relevant resolution; or
  - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (g) Unless a poll is demanded, a declaration by the Independent Chair (or such other person appointed as chair under rule 7.5) on the result of a vote on a Show of Preference is decisive of the outcome of that resolution. Such declaration does not need to refer to the number or proportion of votes for or against the resolution.



- (h) Except for a poll on the question of an adjournment which must be taken immediately, if a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and in all cases the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (i) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (j) The demand for a poll may be withdrawn.

## **7.8 Voting rights**

- (a) On any resolution of members:
  - (i) the FCA Member has the right to exercise one vote for each vote that is cast by each Industry Member on such resolution; and
  - (ii) subject to rule 7.8(b), each Industry Member has the right to exercise one vote for each dollar of the Contribution Amount contributed by that Industry Member to the company during the Financial Year Period prior to the Financial Year Period in which the resolution is proposed.
- (b) In respect of any resolution of members to be passed in the first Financial Year Period, unless determined by the Board otherwise, each Industry Member will have the right to exercise one vote for each dollar of the Contribution Amount paid by that Industry Member from the date of incorporation of the company up until the date which is 7 days prior to the date on which the resolution of members is proposed.

## **7.9 Representation at general meetings**

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - (i) in person through its Representative;
  - (ii) by proxy in a form as the directors may prescribe or accept; or
  - (iii) by attorney in a form as the directors may prescribe or accept.
- (b) A proxy, Representative or attorney may be a member of the company but does not need to be.
- (c) The Independent Chair (or such other person appointed as chair under rule 7.5) of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the Independent Chair (or such other person appointed as chair under rule 7.5) that the person has been validly appointed as a proxy, attorney or a Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:
  - (i) the person specified by the company in the proxy form; or

- (ii) if no person is specified by the company in the proxy form, the chair of the meeting for which that proxy applies.
- (e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:
  - (i) at the registered office of the company or at another place or electronic address specified for that purpose in the notice convening the meeting; and
  - (ii) at least 48 hours before the time scheduled for the commencement of the meeting.
- (f) Unless otherwise permitted by the Independent Chair (or such other person appointed as chair under rule 7.5), the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that relevant member is present at the meeting.

#### **7.10 Meetings conducted using electronic means**

A member who participates in a general meeting by telephone or other electronic means which allows mutual communication and for that member to indicate a Show of Preference is taken to be present in person at the meeting.

#### **7.11 Passing resolutions without meetings**

- (a) If the company has only one member, that member may pass a resolution by the member recording it and signing the record. The record of decisions made by the sole member is valid and effective as if it were a resolution duly passed at a meeting of the members. Where the sole member is a body corporate, the corporate representative of the body corporate may sign the record of decisions.
- (b) Subject to rule 7.11 (c), if the company has more than one member, a resolution is passed as if by a general meeting if all of the members entitled to vote on the resolution sign a document:
  - (i) setting out the resolution; and
  - (ii) stating that they are in favour of it.
- (c) Rule 7.11 (b) does not apply to a resolution under section 329 of the Corporations Act to remove an auditor.
- (d) A resolution under rule 7.11 (b) is passed when the document is signed by the last member whose signature is required under that rule.
- (e) A document for the purposes of rule 7.11 (b):
  - (i) may comprise two or more separate but identical documents, each signed by one or more members; and
  - (ii) may be received by the company at its registered office (or other place appointed by the Board) by post, by email or by being delivered personally.

## **8 Directors**

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### **8.1 Number of directors**

- (a) The minimum number of directors is three. Subject to rule 8.1(b), the maximum number of directors is seven.
- (b) The directors may change the maximum number of permitted director positions in accordance with the Corporations Act.
- (c) If at any time the number of directors falls below three, the remaining director or directors may act but only:
  - (i) in an emergency;
  - (ii) for the purpose of convening a general meeting of the company; or
  - (iii) for the purpose of increasing the number of directors to three.

### **8.2 Becoming a director**

- (a) Subject to this rule 8, a person may become a director upon appointment by the Board, such appointment to be for a term of up to three years with the precise period determined by the Board at the time of appointment.
- (b) When appointing a person to the office of director and determining that person's term of office, the Board must have regard to the maintenance of the balance of Board as required under rule 8.3.

### **8.3 Rules about the composition of Board**

Subject to rules 8.2, 8.10 and 8.11:

- (a) two director positions are reserved for, and may only be filled by, Industry Directors;
- (b) two director positions are reserved for, and may only be filled by, Financial Counselling Sector Directors;
- (c) two director positions are reserved for, and may only be filled by, Independent Directors; and
- (d) one director position is reserved for, and may only be filled by, the Independent Chair in accordance with rule 8.8.

### **8.4 Qualifications and requirements of directors**

To be eligible to fill a director position, a person must not be ineligible to be a director under the Corporations Act or the ACNC Act and, unless determined by the Board otherwise;

- (a) have a commitment to, and understanding of, the Charitable Purpose;
- (b) in the case of an Industry Director, have experience with or in the Industry which is relevant to the Charitable Purpose and the activities of the company;

- (c) in the case of a Financial Counselling Sector Director, have experience with or in the financial counselling sector, which is relevant to the Charitable Purpose and the activities of the company;
- (d) in the case of an Independent Director, meet the requirements referred to in rule 8.7;
- (e) not be engaged (as an employee, contractor or in any other capacity) by a member or a Financial Counselling Agency; and
- (f) meet any other criteria relating to the composition of the Board, and skills and qualifications of directors, as may be determined by the Board from time to time, to ensure a balanced and appropriately constituted Board.

### **8.5 Consultation process for appointment of new directors**

- (a) Prior to appointing or re-appointing any director, the Board will seek to facilitate a reasonable period during which:
  - (i) in the case of a proposed Financial Counselling Sector Director appointment or re-appointment, the FCA Member will be able to nominate one or more candidates to the Board to fill the position of such Financial Counselling Sector Director;
  - (ii) in the case of a proposed Industry Director appointment or re-appointment, the Industry Members will be able to nominate one or more candidates to the Board to fill the position of such Industry Director; and
  - (iii) in the case of a proposed Independent Director (including the Independent Chair), the members will be able to nominate one or more candidates to the Board to fill the position of such Independent Director,

provided that, consistent with this constitution, the Board will make the final decision with respect to such appointment.

- (b) Without limiting rule 8.5(a), prior to appointing or re-appointing any director, the Board will use reasonable efforts to consult with, and have regard to the nominations and views of, the relevant members for such appointment on the basis set out in rule 8.5(a), together with any other members or stakeholders as determined by the Board, acting reasonably, with regard to such appointment.
- (c) In undertaking its consultation as referred to in this rule 8.5, and the appointment or re-appointment of directors generally, the Board will seek to ensure that it:
  - (i) possesses high corporate governance standards and practices, and encompasses the requisite skills, diversity and experience required to discharge its duties;
  - (ii) makes appointments that add to the credibility of the company to its members and other key stakeholders; and

- (iii) considers the qualifications and requirements of directors as set out in rule 8.4.

## **8.6 Board Nominations Committee**

- (a) The Board may establish a Board Nominations Committee to assist the Board with:
  - (i) monitoring the composition and performance of the Board in accordance with this rule 8;
  - (ii) identifying and recommending suitable candidates to be appointed or re-appointed to the Board in accordance with this rule 8; and
  - (iii) coordinating and facilitating the consultation process referred to in rule 8.5 on behalf of the Board.
- (b) The Board Nominations Committee has an advisory role only and is not a decision-making role.
- (c) The Board Nominations Committee may include such persons as determined by the Board (and who may also be, but are not required to be, a director), and the Board Nominations Committee must operate in accordance with any terms of reference or delegation powers notified to it by the Board from time to time.

## **8.7 Independent Directors**

- (a) Without limiting any other rule of this constitution, Independent Directors are to be appointed and re-appointed in accordance with the following principles:
  - (i) each Independent Director must be independent of the members such that they are not likely to have any substantive conflict of interest in fulfilling their role as a director of the company; and
  - (ii) each Independent Director must meet any other suitable requirements for 'independence' as determined by the Board from time to time, for example, having regard to guidance of the Australian Institute of Company Directors (or any other relevant similar guidance or body).
- (b) The Board (or the Board Nominations Committee, as applicable) will review the ongoing independence of the Independent Directors on a regular basis, including any periodic internal review in a manner which it deems appropriate.

## **8.8 Independent Chair**

- (a) The Board must appoint a person who is an Independent Director as the Independent Chair of the company. Subject to rules 8.8(b) and 8.8(c), such appointment is to be for a term of up to three years with the precise period determined by the Board at the time of appointment.
- (b) A person may only fill the office of Independent Chair for so long as that person is a director of the company.

- (c) The Board may, subject to the Corporations Act and this constitution, remove the Independent Chair and replace the Independent Chair with another Independent Director to act as Independent Chair.
- (d) The Independent Chair must preside as chair at each Board meeting unless he or she is unable to attend or unwilling to act.
- (e) If the Independent Chair is unable to attend a Board meeting or is unwilling to act, then the directors present at that meeting must elect a person from those directors present to preside as the chair for that meeting.

### **8.9 Initial directors**

Each Initial Director may remain as a director for the Initial Term at which point each Initial Director must retire. Nothing in this rule 8.9 prohibits an Initial Director from being appointed for additional terms of office in accordance with the requirements set out under rules 8.2 and 8.3.

### **8.10 Director's time in office**

- (a) Subject to rule 8.9, each director is to remain as a director until their term of office expires or until he or she resigns or is otherwise removed as a director of the company in accordance with the law and this constitution.
- (b) The maximum period for which a director is to serve on the Board is a period of nine years in total (including all consecutive or multiple appointment periods, as applicable), and any director must retire at the conclusion of such period.
- (c) For the avoidance of doubt, the term of office referred to in rule 8.10(b) includes any Initial Term served by a director.

### **8.11 Ceasing to be a director**

- (a) In addition to the circumstances prescribed by law (including the Corporations Act and the ACNC Act), the office of any director becomes vacant if the director dies or if the director:
  - (i) becomes bankrupt;
  - (ii) is convicted of an indictable offence; or
  - (iii) unless the Board otherwise resolves, fails to attend three or more consecutive Board meetings without leave of absence approved by the Board.
- (b) Without limiting rule 8.11(a), the Board may remove:
  - (i) an Independent Director as a director, if at any time the Independent Director fails to meet the requirements of an Independent Director set out in rule 8.7; or
  - (ii) a Financial Counselling Sector Director or Industry Director as a director, if at any time the Financial Counselling Sector Director or Industry Director (as applicable) fails to meet the requirement set out in rule 8.4(e) (unless the Board otherwise resolves).

- (c) Nothing in rule 8.11(a) or rule 8.11(b) prevents a director from vacating his or her office if the director resigns by notice in writing to the company.

#### **8.12 Payments to directors**

- (a) Each director may be paid a modest remuneration out of the funds of the company as the Board determines, consistent with the Charitable Purpose, but if the company in general meeting has fixed a limit on the amount of remuneration payable to the directors, the aggregate remuneration of directors must not exceed that limit.
- (b) In addition to any remuneration payable to a director under rule 8.12(a) and subject to rule 8.12(c), directors are entitled to:
  - (i) be reimbursed for all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the directors and meetings of committees; and
  - (ii) receive payment for any goods supplied or services rendered to the company (other than as a director), as long as the amount is proper and reasonable in the circumstances.
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to that director unless and until that payment is approved by:
  - (i) the Board; or
  - (ii) such other person or persons to whom the Board may have delegated such authority in a way consistent with rule 8.21 or rule 8.22.

#### **8.13 Interested directors**

- (a) No contract or other arrangement made between a director and the company is voided merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Each director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the directors.
- (c) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (d) Subject to rule 8.13(e), a director who is in any way interested in an arrangement (other than by having a material personal interest) may, despite that interest, be counted in determining whether a quorum is present at any meeting of directors considering that arrangement.
- (e) Rule 8.13(d) does not apply to the extent that it would be contrary to law.

#### **8.14 Powers of the Board and duties of directors**

- (a) The Board is responsible for the governance, business and affairs of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the members.
- (b) The directors must comply with their duties as directors under legislation and common law and with the duties described in governance standard 5 of the regulations made under the ACNC Act from time to time and which, as of the date of incorporation of the company, are summarised as follows:
  - (i) to act with reasonable care and diligence;
  - (ii) to act honestly and fairly in the best interests of the company and for the Charitable Purpose;
  - (iii) not to misuse their position or information they gain in their position as a director;
  - (iv) to disclose any conflicts of interest;
  - (v) to ensure that the financial affairs of the company are managed responsibly; and
  - (vi) not to allow the company to operate while it is insolvent.

#### **8.15 Board meetings**

- (a) The Board may hold meetings (including by technological means) for the conduct of business and regulate them as it thinks fit.
- (b) The Board should meet as often as required for the proper discharge of its directors' duties and in any event no less than four times per year.

#### **8.16 Calling meetings of the Board**

A meeting of the Board may be convened by the Independent Chair or any two of the directors.

#### **8.17 Notice of meetings of the Board**

- (a) Notice of a meeting of the Board must be given to each person who is at the time the notice is given a director, except a director on leave of absence approved by the Board.
- (b) A notice of a Board meeting must:
  - (i) be given in a way permitted by rule 14;
  - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting;
  - (iii) state the nature of the business to be transacted at the meeting; and



- (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a Board meeting is not invalid just because a director did not receive notice of the meeting provided that:
  - (i) the notice was not received because of accident or error;
  - (ii) before or after the meeting, the director notifies the company of his or her agreement to the resolution; or
  - (iii) the director attended the meeting.

### **8.18 Quorum for Board meetings**

- (a) No business may be transacted at a Board meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) Subject to rule 8.18(c), a quorum consists of a majority of directors, provided that at least one Independent Director, one Financial Counselling Sector Director and one Industry Director are present.
- (c) If, for whatever reason, there are no Industry Directors, no Financial Counselling Sector Directors or no Independent Directors currently holding office, a quorum consists of a majority of current directors.
- (d) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone.
- (e) If, within 30 minutes after the time appointed for a Board meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those directors present at the meeting decide.

### **8.19 Decisions of the Board**

- (a) A Board meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Board under the law and this constitution.
- (b) Questions arising at a Board meeting and any other matter to be determined by the Board under this constitution are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the Board.
- (c) If there are an equal number of votes cast for and against a resolution at a Board meeting, then the Independent Chair (or such other person appointed as chair) does not have a second or casting vote.

### **8.20 Decisions without meetings**

Directors may pass resolutions outside of a Board meeting in any manner (including through the use of technology) provided the quorum requirements described at rules 8.18(a) to 8.18(c) are satisfied and such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the passing of resolutions as determined by the Board from time to time.

### **8.21 Committees**

- (a) Without limiting rule 8.6, the Board may resolve to:
  - (i) establish one or more committees, including advisory committees, consisting of such persons as they determine;
  - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
  - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
  - (iv) change the makeup of a committee at any time or dissolve it all together.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the directors which, for the avoidance of doubt, may be contained within policies, charters, guidelines or protocols.
- (c) The Board may continue to exercise all of their powers despite any delegation made under this rule.

### **8.22 Delegation to individuals**

- (a) The Board may resolve to delegate any of its powers:
  - (i) to one or more directors;
  - (ii) to one or more members; or
  - (iii) to one or more employees.
- (b) The Board may delegate its powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the Board.
- (d) The Board may continue to exercise all of its powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position.

### 8.23 Validity of acts

An act done by a director or by a meeting of the Board or a committee attended by a director is not invalidated just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the Board or committee, as the case may be, when the act was done.

## 9 Company Secretary

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- (a) The Board must appoint at least one company secretary who may be, but does not need to be, a director.
- (b) The appointment of a company secretary may be for the period, on the conditions and, subject to rule 9(c), at the remuneration (if any) as the Board determines.
- (c) A director may not also be remunerated in his or her capacity as company secretary.
- (d) Subject to any contract between the company and the relevant company secretary, a company secretary of the company may be removed or dismissed by the Board at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the company secretary include, but are not limited to:
  - (i) ensuring that the necessary registers required by the law are established and properly maintained;
  - (ii) ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
  - (iii) ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.
- (f) An act done by a person acting as a company secretary is not invalidated just because:
  - (i) of a defect in the person's appointment as a company secretary; or
  - (ii) the person is disqualified from being a company secretary,

if that circumstance was not known by the person when the act was done.

## 10 Winding up

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- (a) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must not be given or distributed to members and must instead be given or distributed to one or more Eligible Organisations, each of which must, if the company is endorsed as a deductible gift recipient, be similarly endorsed at the time the distribution is made.
- (b) The decision as to which Eligible Organisation is (or which Eligible Organisations are) to be given the Surplus Assets under rule 10(a) is to be determined:
  - (i) by a resolution of the Board at or before the winding up or dissolution of the company; or
  - (ii) if no such resolution is passed, by the Supreme Court of Victoria.
- (c) Any part of the Surplus Assets consisting of money or property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.

## 11 Loss of deductible gift recipient endorsement

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If the company is endorsed as a deductible gift recipient as a whole and this endorsement is revoked, then the company must ensure that the following assets remaining after the payment of all liabilities are distributed to one or more charitable organisations having the same deductible gift recipient endorsement as the company (as determined by a resolution of the directors):

- (a) deductible gifts of money or property received for the Charitable Purpose;
- (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Charitable Purpose; and
- (c) money received by the company because of such deductible gifts and contributions.

## 12 Minutes and records

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### 12.1 Minutes

The Board must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) meetings and resolutions of members;
- (b) meetings and resolutions of the Board; and
- (c) meetings and resolutions of any committees.

### 12.2 Inspection of records

- (a) Each member will be entitled to inspect, on providing reasonable notice to the Board:
  - (i) books containing the minutes of any meetings of the company's members and resolutions passed by members without a meeting;
  - (ii) a copy of the current register of members of the company;
  - (iii) a copy of the company's constitution; and
  - (iv) each annual financial report of the company.
- (b) Subject to the rights available to members under rule 12.2(a) and the Corporations Act, the Board must determine whether and to what extent, and at what time and place and under what conditions, the accounting records and other documents of the company or any of them will be open to the inspection of members other than directors, and a member other than a director does not have the right to inspect any document of the company except as provided by law or authorised by the Board or by the company in general meeting.

## **13 Indemnity, insurance and access**

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### **13.1 Indemnity**

- (a) The company may, to the extent permitted by law:
  - (i) indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all Liabilities incurred by the person as an Officer; and
  - (ii) execute a documentary indemnity in any form in favour of an Officer on such terms as the Board thinks fit and which are not inconsistent with this rule 13.1.
- (b) The indemnity in rule 13.1 (a):
  - (i) will be enforceable without the Officer having to first incur any expense or make any payment; and
  - (ii) will be a continuing obligation and is enforceable by a person to whom rule 13.1 (a) applies even though that person has ceased to be an Officer.

### **13.2 Insurance**

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance or pay or agree to pay a premium for insurance for each Officer against any Liability incurred by the person as an Officer where the Board considers it appropriate to do so; and
- (b) bind itself in any contract or deed with any Officer to make payments on such terms as the Board thinks fit which are not inconsistent with this rule 13.2.

### **13.3 Access**

Without limiting the rights of a director or former director to access the books of the company, the company may:

- (a) give a former director access to papers, including documents provided to or available to the directors and other papers referred to in those documents;
- (b) bind itself in any contract or deed with a director or former director agreeing to give the access to such papers; and
- (c) procure that its subsidiaries provide access to papers similar to that set out in rule 13.3(a).

## **14 Notices**

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Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the directors from time to time.

## **15 Jurisdiction**

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Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of Victoria, the Federal Court of Australia and the Courts which may hear appeals from those Courts.