

# **CONSTITUTION**

Public Company Limited By Guarantee

*Corporations Act 2001 (Cth)*

**POSITIVE EDUCATION SCHOOLS ASSOCIATION LIMITED**

**A.C.N. 168 259 096**

Last Updated: September 2021

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**THIS CONSTITUTION dated:**

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**1. NAME**

The name of the Company Limited by Guarantee is:

**POSITIVE EDUCATION SCHOOLS ASSOCIATION LIMITED**

and is hereafter referred to in this Constitution as ‘the **Company**’.

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**2. OBJECTS**

- 2.1 The objects of the Company (the **Objects**) are set out in the Statement of Objects contained in the Schedule 1.
- 2.2 All of the Company’s income and Property must be applied solely toward the promotion of the Objects.
- 2.3 The Company is empowered to do all things necessary which are incidental to and necessary for the attainment of the Objects.
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**3. STATUTORY PROVISIONS AND EXCLUSION OF REPLACEABLE RULES**

- 3.1 The replaceable rules of the Corporations Act do not apply to the Company.
- 3.2 This Constitution sets out the basis for the administration and management of the Company.
- 3.3 Nothing in this Constitution is intended to derogate from the Corporations Act or the ACNC Act (as applicable). If any provision within this Constitution is inconsistent with a mandatory law, regulation, rule or condition specified in the Corporations Act or the ACNC Act, then the provision of this Constitution is deemed to be amended or altered to the extent necessary (but only to that extent) so that it is or remains consistent with the mandatory law, regulation, rule or condition set out in the applicable Act.
- 3.4 In this Constitution, except where the context otherwise requires, a word or expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the word or expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that word or expression has the same meaning as in that provision.
- 3.5 If, while the Company is a Registered Entity, the Corporations Act operates such that an Imported Provision does not apply to the Company because the Company is a Registered Entity:
- (a) a clause in the same terms as the Imported Provision, along with any relevant definitions in the Corporations Act, is deemed to be included in this Constitution and to apply to the Company to the extent the Imported Provision would have applied to the Company were the Company not a Registered Entity (**Equivalent Clause**); and

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- (b) a reference in this Constitution to an Imported Provision is deemed to be a reference to the Equivalent Clause.

3.6 For the purposes of this Constitution, if the provisions of the Corporations Act or the ACNC Act conflict with the terms of this Constitution on the same matter, the provisions of the relevant Act prevail to the extent of the conflict.

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**4. NOT-FOR-PROFIT**

**4.1 No distributions to Members**

The Company must not distribute any income or assets directly or indirectly to any Member, except as provided in Article 4.2.

**4.2 Permitted payments to Members**

- (a) Subject to Article 4.2(b), the Company may make the following payments to a Member:
  - (i) Reimbursement of reasonable expenses properly incurred by the Member on behalf of the Company;
  - (ii) Reasonable and genuine compensation in return for any goods or services provided to the Company in the ordinary and usual course of business;
  - (iii) Payments in good faith, of reasonable remuneration as an employee of the Company;
  - (iv) Principal repayments on money loaned by the Member to the Company (and any interest on such a loan at a rate not exceeding current bank overdraft rates of interest for moneys lent);
  - (v) Rent for premises or property leased by any Member to the Company; or
  - (vi) Such other payment, distribution or transfer as may be permitted under the Applicable Not-for-profit Laws.
- (b) Any payments made by the Company under Article 4.2(a) must be made in good faith and on the basis of reasonable commercial terms.

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**5. POWERS OF THE COMPANY**

**5.1 General Powers**

The Company has all the powers conferred on companies limited by guarantee under the Corporations Act and may only exercise those powers to carry out the Objects.

## **6. MEMBERSHIP**

### **6.1 Existing Members**

- (a) The Members of the Company are the Existing Members; and
- (b) any other eligible persons whom the Board admits to membership in accordance with this Constitution and who agree to become Members of the Company.

### **6.2 Membership Generally**

- (a) Subject to Article 6.2(b), a person is eligible to be a Member of the Company if the person:
  - (i) is an individual, a body corporate or an incorporated association;
  - (ii) has been nominated and approved for membership of the Company in accordance with Article 6.4;
  - (iii) accepts to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Board from time to time; and
  - (iv) qualifies for admission to one of the classes of membership of the Company set out in Schedule 2.
- (b) A natural person will not be eligible for admission as a Member if the person is:
  - (i) a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) or similar legislation or has ever been convicted of an indictable offence; or
  - (ii) a disqualified person for the purposes of the *Child Protection (Working with Children) Act 2012* (NSW) or similar legislation.
- (c) The Board may from time to time establish other criteria for membership as it deems appropriate, provided the criteria do not contravene the Corporations Act.

### **6.3 Membership Classes**

- (a) The Company has the classes of membership set out in Schedule 2, and the other classes as may be created by the Board from time to time in accordance with any requirements set out in the Corporations Act.
- (b) The membership classes have the rights assigned to them in Schedule 2, or such other rights as determined by the Board from time to time.

## **6.4 Admission to Membership**

- (a) The application of a person for membership of the Company:
  - (i) may be made by that person;
  - (ii) must state the class of membership for which the person is applying; and
  - (iii) must be in a form approved by the Board in its absolute discretion (whether electronic or in another format), and which shall include the person's:
    - A. full name;
    - B. address;
    - C. school or other organisation (if applicable);
    - D. email address;
    - E. phone number;
    - F. statement that the applicant accepts to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Board from time to time; and
    - G. statement confirming that the applicant agrees to be contacted by email, mail, telephone or such other means deemed reasonably appropriate by the Board; and
  - (iv) in the case of a natural person, must be accompanied by any applicable membership fee as determined by the Board.
- (b) The Secretary may, in their absolute discretion accept, reject or refer an application to the Board for consideration.
- (c) In considering an application referred to it for consideration, the Board may, in its absolute discretion:
  - (i) accept the application;
  - (ii) reject the application; or
  - (iii) ask the applicant to give more evidence of their eligibility or suitability for membership (with the Board's determination of such an application to be deferred until the evidence is given).
- (d) If an applicant's application for membership is rejected, then:



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- (i) The Secretary must arrange for any money the applicant tendered with the application to be repaid to the applicant, without interest; and
  - (ii) Neither the Secretary nor the Board must give any reasons for the rejection.
- (e) An applicant does not become a Member until the Company has:
- (i) in the case of a natural person, received any fee that applies; and
  - (ii) the name and address of the applicant (and its Representative if relevant) are entered in the Register of Members.

**6.5 Membership Fees**

- (a) The Board may prescribe:
- (i) a cost payable by way of Membership fees and any other fees the Board thinks fit; and
  - (ii) when and in what circumstances these fees are payable.
- (b) Unless otherwise determined by the Board, the annual membership fee must be paid:
- (i) in the case of Individual or Student Members, at the same time the application for membership is submitted, and thereafter on the anniversary of that date; and
  - (ii) in the case of an Institutional Member, within 14 days of the date that the Secretary advises the applicant that its application has been approved, and thereafter on the anniversary of the date of that payment.
- (c) If:
- (i) any amount (including Membership fees and any other fees) payable by a Member (**Outstanding Amount**) is overdue; and
  - (ii) the Outstanding Amount remains unpaid by a Member for 14 days after that Outstanding Amount has become due,
- that Member will cease to be a Member and their name will be removed from the Register of Members.
- (d) Each applicant and Member is liable for all taxes, duty and charges payable in respect of their application, their Membership and any related transaction or document. Each Member indemnifies the Company and will keep it indemnified in respect of any liability for all those amounts.

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**6.6 Members' Guarantee and Limited Liability**

The liability of each Member is limited to the Guarantee Amount, that is payable on demand under Article 18.

**6.7 Membership not transferable**

A Member may not transfer their Membership to another person without the prior consent of the Secretary.

**6.8 Member to notify changes**

A Member must promptly notify the Company of any change in the details with respect to that Member which are recorded in the Register of Members.

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**7. REGISTER OF MEMBERS**

7.1 The Secretary must establish and maintain a Register of Members of the Company, specifying each Member's:

- (a) name;
- (b) postal or residential address;
- (c) date of admission as a Member; and
- (d) date of cessation as a Member;

7.2 The Register of Members must be kept:

- (a) at the main premises of the Company;
- (b) within a database or other electronic record controlled by the Company; or
- (c) if the Company has no premises, at the Company's registered office.

7.3 The Register of Members must be open for inspection, free of charge, by any Member of the Company at any reasonable hour.

7.4 Subject to Article 7.6, the Company will obtain consent from each Member (or class of Members) prior to making public the list of Members or a list of a specific class of Members (as the case may be) including, but not limited to, listing the name of Members on the Company's website and in its promotional material.

7.5 Subject to the Corporations Act, a Member of the Company may obtain a copy of any part of the Register of Members on payment of a fee of not more than \$1.00 for each page copied.

7.6 If a Member does not consent to any of their information contained on the Register of Members about the Member (other than the Member's name) being disclosed to the public (other than by being available for inspection), that information must not be made public.

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7.7 The Secretary, each Member and Director (and each former Secretary, Member and Director) must not use information about a person obtained from the Register of Members to contact or send material to the person, other than for:

- (a) the purposes of sending the person a newsletter or other information relating to the Company's Objects; a notice in respect of the general business of the Company; a meeting or other event relating to the Company; or other material relating to the Company;
- (b) any purpose consented to in writing by the Member; and
- (c) any other purpose necessary to comply with a requirement of either the Corporations Act or the ACNC Act.

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**8. CESSATION OF MEMBERSHIP**

**8.1 Events that cause Member's membership to cease**

A person ceases to be a Member on the date that the Member:

- (a) gives the Secretary written notice of the resignation, or on a later date specified in the notice;
- (b) in the case of an Institutional Member, becomes insolvent, is wound up or otherwise ceases to exist;
- (c) in the case of an individual member:
  - (i) dies;
  - (ii) becomes bankrupt or makes an arrangement or composition with creditors of the person's joint or separate estate generally; or
  - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) ceases to meet the requirements for eligibility for membership set out in Article 6.2 and Schedule 2; or
- (e) ceases to be a Member pursuant to Article 6.5(c);
- (f) has their membership terminated by the Directors or by the Company in general meeting in accordance with Article 9.

**8.2 Reinstatement of Membership**

If a Member ceases to be a member pursuant to Article 6.5(c), then the Board may readmit that person to membership if they pay the Outstanding Amount.

### **8.3 Ongoing Liability of Member**

A Member who ceases to be a Member shall remain liable to pay to the Company:

- (a) All moneys which have become due by the Member up to the date of their cessation of membership; and
- (b) The Guarantee Amount that is payable on demand under Article 18.1 for 12 months from the date of resignation.

### **8.4 Register of Members to be Updated by Secretary**

If a Member ceases to be a member under Article 8, and in every other case where a Member ceases to hold membership, the Secretary must make an appropriate entry in the Register of Members recording the date on which the Member ceased to be a member.

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## **9. DISCIPLINING MEMBERS**

### **9.1 Complaints Against Members**

- (a) A complaint may be made to the Board by any person that a Member of the Company:
  - (i) has refused or neglected to comply with a provision of this Constitution; or
  - (ii) has wilfully acted in a manner prejudicial to the interests of the Company or the Objects.
- (b) The Board may, in its discretion, decline to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.

### **9.2 Disciplinary Procedure**

- (a) If the Board decides to deal with the complaint, the Board must:
  - (i) cause written notice of the complaint (setting out the facts, matters and circumstances giving rise to the complaint) to be served on the Member concerned;
  - (ii) give the Member at least 14 days from the time the complaint notice is served to make submissions to the Board in connection with the complaint; and
  - (iii) take into consideration any submissions made by the Member in connection with the complaint.
- (b) The Board may, by Special Resolution, expel the Member from the Company or suspend the Member from membership of the Company if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been

proved on the balance of probabilities and the expulsion or suspension is warranted in the circumstances.

- (c) If the Board expels or suspends a Member, the Secretary must, within 7 days after the action is taken, cause written notice to be given to the Member identifying the action taken and outlining the Member's right of appeal under Article 9.3.
- (d) The expulsion or suspension does not take effect:
  - (i) until the period within which the Member is entitled to appeal against the resolution has expired; or
  - (ii) if the Member exercises their right of appeal, until the appeal has been determined and the Company confirms the resolution under Article 9.3.

### **9.3 Right Of Appeal Of Disciplined Member**

- (a) A Member may appeal against a resolution of the Board made under Article 9.2 by lodging a written appeal notice with the Secretary within 21 days of the date of the resolution.
- (b) The appeal notice must identify the grounds on which the Member intends to rely for the purposes of the appeal.
- (c) On receipt of an appeal notice from a Member under Article 9.3(a), the Secretary must notify the Board, and the Board must convene a general meeting of the Company to be held within 28 days after the date on which the Secretary received the notice. The Member shall be given not less than 14 days' notice of the general meeting.
- (d) At a general meeting of the Company convened under Article 9.3(c):
  - (i) no business other than the question of the appeal is to be transacted;
  - (ii) the Board and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and
  - (iii) the Members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (e) The appeal is to be determined by an Ordinary Resolution of the Members.
- (f) Any decision of the Members under this clause 9.3 shall be final.

### **9.4 Reinstatement Of Members**

The Board is entitled, in its discretion, to readmit, on such membership terms as the Board deems fit, any person who ceased to be a Member pursuant this Article 9.

## **10. GENERAL MEETINGS**

### **10.1 Holding of Annual General Meetings**

The Directors:

- (a) Must convene a general meeting, called the annual general meeting at least once in every calendar year;
- (b) May, whenever they think fit, convene a general meeting of the Members of the Company; and
- (c) Must on the requisition of Members representing not less than 25% of the total voting rights in the Company at the date of that requisition proceed to convene a general meeting of the Members of the Company.

### **10.2 Member Requisition for a General Meeting**

- (a) Each requisition made under Article 10.1(c) must:
  - (i) State the purpose or purposes of the meeting;
  - (ii) Be signed by the members making the requisition; and
  - (iii) Be lodged with the Secretary.
- (b) The requisition may consist of several documents in identical form, each signed by one or more of the members making the requisition.
- (c) A Member may not call and arrange to hold a general meeting except under section 249E and 249F of the Corporations Act.
- (d) A general meeting convened by a Member or Members as referred to in Article 10.2(c) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Board.

### **10.3 Calling And Business Of Annual General Meetings**

- (a) The annual general meeting of the Company is, subject to the Corporations Act and this Constitution, to be convened on the date and at the place and time as the Board thinks fit.
- (b) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (i) to confirm the minutes of the last preceding annual general meeting and of any Extraordinary General Meeting held since that meeting;
  - (ii) to receive from the Board reports on the activities of the Company during the last preceding Financial Year;

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- (iii) to elect Member Elected Directors of the Company;
  - (iv) while the Company is a Registered Entity, a reasonable opportunity for the Members as a whole at the meeting to ask questions about and make comments on the management of the Company; and
  - (v) to receive and consider any financial statement or report required to be submitted to Members under either the Corporations Act or the ACNC Act (if any).
- (c) An annual general meeting must be specified as such in the notice convening the meeting.

**10.4 Members have power to convene annual general meeting**

If there are not sufficient Directors to constitute a quorum at a meeting of the Board and consequently the Board cannot resolve to convene and arrange an annual general meeting under Article 10.1(a), then one Director or any two or more Members may convene an annual general meeting of the Company at the cost of the Company.

**10.5 Notice**

- (a) Notice of a general meeting must be given to each person referred to in Article 10.8 entitled to receive notice of a general meeting, at least 21 days before the date for which the meeting is convened, in accordance with Article 19.9 and the Corporations Act. The notice of meeting must contain:
- (i) the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
  - (ii) the general nature of the meeting's business; and
  - (iii) if a Special Resolution is to be proposed at the meeting — specify an intention to propose the Special Resolution and state the resolution; and
  - (iv) a statement that the member has a right to appoint a proxy; and
  - (v) information on how to appoint a proxy.
- (b) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under Article 10.3(b).
- (c) No person may move any amendment to a resolution proposed at a general meeting the terms of which are set out in the notice convening the meeting, or to a document which relates to such a resolution (and a copy of which has been sent to Members or made available for them to inspect or obtain), without the approval of the Chair of the meeting (in their discretion).

## **10.6 Calculation of period of notice**

In calculating the period of notice under Article 10.5(a), both the days on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

## **10.7 Non-receipt of notice of general meeting**

The non-receipt of notice of a general meeting, or the accidental omission to give notice of a general meeting to a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

## **10.8 Entitlement to notice**

Notice of every general meeting must be given to:

- (a) every Member (other than Patron Members);
- (b) every Director;
- (c) the Secretary; and
- (d) any auditor.

## **10.9 Technology**

The Company may hold a meeting of Members at 2 or more locations using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

## **10.10 Quorum For General Meetings**

- (a) No item of business is to be transacted at a general meeting unless a quorum of Members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- (b) The lower of:
  - (i) a majority of Members; and
  - (ii) 5 Memberspresent (being Members entitled under this Constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (c) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (i) if convened on the requisition of Members, is to be automatically dissolved; and



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- (ii) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to Members given before the day to which the meeting is adjourned) at the same place.
- (d) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the Members present are to constitute a quorum.
- (e) For the purposes of this Article 10.10, a reference to **Member** includes a Member present in person or by proxy, attorney or Representative.

**10.11 Presiding Member**

- (a) The Chair or, in the Chair's absence, the Vice-Chair, is to act as chairperson at each general meeting of the Company.
- (b) If the Chair and the Vice-Chair are absent or unwilling to act, the Directors present must elect one of their number to preside as chairperson at the meeting.
- (c) Subject to applicable laws and this Constitution, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the Chair.
- (d) If there is a dispute at a general meeting about a question of procedure, the Chair may determine the question.

**10.12 Adjournment**

- (a) The chairperson of a general meeting at which a quorum is present:
  - (i) may, in their discretion, adjourn the general meeting with the consent of the majority of Members present at the meeting; and
  - (ii) must, if directed by the meeting, adjourn the meeting.
- (b) An adjourned general meeting may take place at a different venue to the initial general meeting.
- (c) No business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (d) Notice of an adjourned general meeting must only be given in accordance with Article 10.5(a) if a general meeting has been adjourned for more than 21 days.

**10.13 Making Of Decisions**

- (a) A question arising at a general meeting of the Company is to be determined on a show of hands unless a written ballot is demanded by:

- (i) the Chair; or
  - (ii) 5 or more Members present at the meeting.
- (b) Unless a written ballot is so demanded:
- (i) a declaration by the chairperson that a resolution has, on a show of hands, been:
    - A. carried;
    - B. carried unanimously;
    - C. carried by a particular majority; or
    - D. lost; and
  - (ii) an entry to that effect in the minute book of the Company,
- are conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (c) The demand for a written ballot may be withdrawn.
  - (d) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the Chair.
  - (e) The result of the written ballot will be the resolution of the meeting at which the written ballot was demanded.
  - (f) The Chair may determine any dispute about the admission or rejection of a vote.
  - (g) The Chair's determination, if made in good faith, will be final and conclusive.
  - (h) A demand for a written ballot does not prevent the continuance of the meeting for the transaction of any business other than the question on which the ballot has been demanded.

## **10.14 Voting**

- (a) Subject to this Constitution, on any question arising at a general meeting of the Company each Member has 1 vote only.
- (b) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (c) A Member is not entitled to vote at any general meeting of the Company:
  - (i) if the Member owes any money to the Company; or
  - (ii) the Member's membership has been suspended under Article 9.

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- (d) A Member is not entitled to vote at any general meeting of the Company if the Member is under 18 (eighteen) years of age.
- (e) For the purposes of this Article 10.14, a reference to **Member** includes a Member present in person or by proxy, attorney or Representative.

**10.15 Business at General Meetings**

- (a) All business must be considered and resolved by way of an Ordinary Resolution of Members entitled to vote on the matter, unless required to be considered and resolved by way of a Special Resolution under a term of this Constitution or by the Corporations Act.
- (b) Subject to this Constitution and the requirements of the Corporations Act, a resolution is taken to be carried if an Ordinary Resolution is passed in favour of it.

**10.16 Proxy Votes Permitted**

- (a) Subject to any other provision of this Constitution, a Member entitled to vote is entitled to vote by proxy.
- (b) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and is in the approved form as set out in Schedule 3.
- (c) A proxy may, but need not be, a Member.
- (d) A Member who has appointed a proxy may revoke the appointment at any time by giving the Company written notice of the revocation before the relevant general meeting or adjourned general meeting.
- (e) An appointment for a meeting is valid for an adjournment of that meeting.
- (f) Unless otherwise approved by the chairperson, a proxy or attorney is not to be treated as valid unless the written appointment of a proxy or attorney is received by the Company at its official address (or another place or electronic address specified in the notice of meeting) at least 24 hours before the time for holding the general meeting (or adjourned meeting) at which the appointee proposes to vote or the taking of a ballot on which the appointee proposes to vote.
- (g) The Chair may determine that an appointment of proxy is valid even if it only contains some of the information required by the approved form set out in Schedule 3.
- (h) If a proxy appointment is signed by the Member but does not name the proxy in whose favour it is given, the Chair may either cast as proxy or complete the appointment by inserting the name or names of a Director or the Secretary.
- (i) A proxy has the same rights as the Member to speak and vote at a general meeting and to demand or join in demanding a written ballot.

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- (j) A proxy or attorney may vote on a ballot.
- (k) Unless otherwise provided for in the appointment of a proxy or attorney, the appointment of the proxy or attorney will be taken to confer authority:
  - (i) to attend a general meeting on behalf of the Member;
  - (ii) to vote on:
    - A. any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - B. any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,  
  
even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (iii) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- (l) The rights of a proxy are suspended while the Member is personally present at the meeting.
- (m) The proxy or other person must vote on a resolution in accordance with any direction in the appointment.
- (n) If there is no direction, and the person is separately entitled to vote on the resolution, the person may vote on it for the Member as they think fit.
- (o) If there is no direction, and the person is not separately entitled to vote on the resolution, they must abstain from voting on it.

**10.17 Right to appoint attorney**

- (a) If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Company's membership in the Company:
  - (i) the attorney must also be a Member; and
  - (ii) the Member must deliver the instrument appointing the attorney to the Company for notation.
- (b) The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

### **10.18 Validity**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

### **10.19 Right to appoint Representative**

- (a) An Institutional Member may appoint a person who is an employee or other person duly authorised in writing by the Institutional Member to represent and (if applicable) to vote on behalf of the Institutional Member at meetings of the Company, and to be the contact person for service of notices by the Company on the Institutional Member (a **Representative**).
- (b) An appointment under Article 10.19(a):
  - (i) must be by written notice to the Secretary;
  - (ii) will stand unless and until the Institutional Member notifies the Company that such appointment has been revoked or that the appointee has been replaced; and
  - (iii) may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (c) A Representative is entitled to:
  - (i) exercise at the relevant general meeting all the powers which the Member could exercise if it were a natural person; and
  - (ii) be counted towards a quorum on the basis that the Member is considered to be personally present at the general meeting.
- (d) The chairperson of a general meeting may allow a Representative to vote on the condition that they subsequently establish (to the satisfaction of the chairperson of the general meeting) their status as a Representative within a period prescribed by the chairperson of the general meeting.

### **10.20 Cancellation or postponement of general meeting**

Where a general meeting (including an annual general meeting) is convened by the Board, they may, when they think fit, change a venue or venues or cancel the meeting

or postpone the holding of the meeting to a date and time determined by them. This Article does not apply to a meeting convened as the result of a Member's requisition under Article 10.1(c).

#### **10.21 Written notice of cancellation or postponement of general meeting**

Written notice of cancellation or postponement of a general meeting must be given to the persons referred to in Article 10.8. The notice must be given at any time prior to the date on which the meeting was scheduled to be convened.

#### **10.22 Contents of notice postponing general meeting**

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting; and
- (b) a place for the holding of the meeting, which may be either the same as or different to the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **10.23 Notice period for postponed general meeting**

The number of clear days from when a notice postponing the holding of a general meeting is given to the date specified in that notice for the holding of the meeting may not be less than the number of days' notice of the meeting required to be given by this Constitution or the Corporations Act.

#### **10.24 Business at postponed general meeting**

The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting.

#### **10.25 Non-receipt of notice of cancellation or postponement of a general meeting**

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

#### **10.26 Proxy at postponed general meeting**

Where:

- (a) by the terms of an instrument appointing a proxy, attorney or of an appointment of a Representative, the appointed person is authorised to attend and vote at:
  - (i) a general meeting to be held on a specified date; or

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- (ii) a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, attorney or appointment of a Representative,

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

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**11. AUTHORITY OF THE BOARD**

**11.1 Powers of the Board**

- (a) Subject to the Corporations Act and this Constitution, and to any resolution passed by the Members in general meeting, the Board:
  - (i) is to control and manage the affairs of the Company; and
  - (ii) may exercise all such functions as may be exercised by the Company, other than those functions that are required by the Corporations Act and this Constitution to be exercised by a general meeting of Members of the Company; and
  - (iii) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Company.
- (b) Without limiting Article 11.1(a), the Board has the power to:
  - (i) administer the finances, appoint bankers, and direct the opening of banking accounts for specific purposes, and to transfer funds from one account to another, and to close any such account;
  - (ii) fix the manner in which such banking accounts must be operated upon, providing the Company passes all payments;
  - (iii) fix fees and subscriptions payable by members and decide such levies, fines and charges as is deemed necessary and advisable, and to enforce payment thereof;
  - (iv) adjudicate on all matters brought before it which in any way affect the Company;
  - (v) cause minutes to be made of all proceedings at meetings of the Board and general meetings of Members;
  - (vi) make, amend and rescind rulings of the Company;

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- (vii) have the power to form and appoint any sub-committees as required for specific purposes; and
- (viii) employ a person or persons to carry out certain duties required by the Company, at salaries or remunerations for such period of time, as may be deemed necessary.
- (c) All acts of a Director, or a person acting as a Director in the event of a casual vacancy, are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

**11.2 Powers of the Board while the Company is a Responsible Entity**

In addition to their responsibilities at law, each Director is responsible and accountable for compliance by the Company with its Objects and must:

- (a) exercise their powers and discharge their duties as Director;
- (b) comply with the Corporations Act in relation to the disclosure of the Director's interest; and
- (c) at all times while the Company is a body corporate registered under the ACNC Act, each Director is subject to, and must comply with the duties described in ACNC Governance Standard 5.

**11.3 Authorised Signatories**

- (a) The Secretary is an authorised signatory of the Company.
- (b) The Board may from time to time appoint additional authorised signatories from among such of its Directors as are ordinarily resident in Australia, and may at any time revoke any such appointment.
- (c) A person (other than the Secretary) vacates office as an authorised signatory if:
  - (i) their appointment as an authorised signatory is revoked;
  - (ii) they cease to be a Director; or
  - (iii) they cease to be ordinarily resident in Australia.

**11.4 Delegation By Board**

- (a) The Board may, by instrument in writing, delegate to:
  - (i) an employee of the Company;
  - (ii) a Director;
  - (iii) one or more committees (each a **Committee**); or



- (iv) any other person,  
the exercise of such of the functions of the Board as are specified in the instrument, other than:
  - (v) this power of delegation; and
  - (vi) a function which is a duty imposed on the Board by the Corporations Act, the ACNC Act or by any other law.
- (b) A least one member of each Committee must be a Director.
  - (c) A delegation under this Article may be made subject to the conditions or limitations as to the exercise of any function, or as to time or circumstances, specified in the instrument of delegation.
  - (d) Despite any delegation under this Article, the Board may continue to exercise any function delegated.
  - (e) Any act or thing done by a committee acting in the exercise of a delegation under this Article has the same force and effect as it would have if it had been done by the Board.
  - (f) The Board may, by instrument in writing, revoke wholly or in part any delegation under this Article.
  - (g) A committee may meet and adjourn as it thinks proper, but if the meeting consists of two or more Directors, the meetings and proceedings are governed by the provisions of this Constitution as to the meetings and proceedings of the Board so far as they are applicable.

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## **12. APPOINTING DIRECTORS**

### **12.1 Composition of the Board of Directors**

- (a) The Directors and Secretary in office on the date this Constitution is adopted by the Company, continue in office subject to this Constitution.
- (b) The minimum number of Directors is 3. The maximum total number of Directors is 11.
- (c) Subject to Articles 12.1(d) and 12.1(e), the Board must generally be comprised of:
  - (i) **6** Member Elected Directors, to be elected in accordance with Article 12.2; and
  - (ii) **5** Co-opted Directors to be elected in accordance with Article 12.3.
- (d) The Board must be comprised of a majority of Member Elected Directors at all times.

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- (e) The Board may, in its discretion, authorise the appointment of up to a maximum of 11 Member Elected Directors if it is deemed impossible or impracticable to fill all 5 positions reserved for Co-opted Directors.
- (f) Each:
  - (i) Director (other than a Co-opted Director) is, subject to this Constitution, to hold office until the conclusion of the 3<sup>rd</sup> annual general meeting following the date of the Director's election to the Board and
  - (ii) Co-opted Director is, subject to this Constitution, to hold office for a 3 year term.
- (g) Each Director is eligible for re-election for up to 3 consecutive terms of 3 years.
- (h) A Director must not be a Director for a period of at least 1 year following the conclusion of their third consecutive term.

**12.2 Member Elected Directors**

- (a) Nominations of candidates for election as a Member Elected Director:
  - (i) must be made in writing, signed by 2 Members, and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
  - (ii) must be delivered to the Secretary at least 14 days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (b) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are automatically elected as from the end of that annual general meeting.
- (c) If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated are automatically elected as from the end of that annual general meeting, and further nominations may be received at the annual general meeting.
- (d) If insufficient further nominations are received, any vacant positions remaining on the Board are taken to be casual vacancies.
- (e) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (f) The ballot for the election of Directors is to be conducted at the annual general meeting in such usual and proper manner as the chairperson of the annual general meeting directs. Persons elected as a Director under a ballot are appointed as a Director as from the end of that annual general meeting.

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- (g) A person nominated as a candidate for election as a Director must at that time be a Member of the Company, and must remain a Member of the Company at all times during which they hold office.

**12.3 Co-opted Directors**

- (a) The Board may constitute a Governance Nominations Committee (**GNC**) to nominate candidates for election as Co-opted Directors.
- (b) The GNC will:
  - (i) Comprise at least 3 current Directors, including the Chair, Vice-Chair and other Directors as appointed by the Board.
  - (ii) Meet at such times and locations as nominated by the Chair, giving reasonable notice to all members of the GNC, and may be convened in one or more locations using technology; and
  - (iii) Have regard to the professional skillsets and experience required to maintain a balanced and cohesive Board, namely:
    - A. Not-for-profit management and governance;
    - B. Educational policy development;
    - C. Commercial, strategy and business development (assumed to include financial acumen);
    - D. Marketing and promotion;
    - E. Engagement with philanthropy;
    - F. Mental health promotion; and
    - G. Academic qualifications in a relevant field, preferably a Masters of Applied Positive Psychology;
  - (iv) Consider candidates eligible to hold office as Co-opted Directors and refer nominations of suitable candidates to the Secretary in accordance with Article 12.3(c).
- (c) Nominations by the GNC must:
  - (i) be made in writing, signed by all members of the GNC, and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination) (the **Nomination Form**); and
  - (ii) specify the nominee's skillsets and experience, having regard to the principles in Article 12.3(b)(iii);
  - (iii) be delivered to the Secretary at least 14 days prior to:

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- A. the proposed appointment date specified in the Nomination Form; or
  - B. the next annual general meeting,  
  
whichever occurs first.
- (d) If the number of nominations received is less than or equal to the number of vacancies to be filled, the persons nominated are automatically elected as from the appointment date specified in the Nomination Form or the next annual general meeting, whichever occurs first.
- (e) If insufficient nominations are received, any vacant positions reserved for Co-opted Directors may, at the Board's discretion:
- (i) be treated as casual vacancies and filled in accordance with Article 12.4; or
  - (ii) be reserved until such time as the GNC or the Board identifies a suitable Co-opted Director nominee.
- (f) If the number of nominations received exceeds the number of vacancies to be filled, a Directors' ballot is to be held at:
- (i) the next Board meeting; or
  - (ii) the annual general meeting,  
  
whichever occurs first, in such usual and proper manner as the chairperson at that meeting directs. In the event of a tied vote, the Chair shall have the casting vote. Persons appointed elected as a Co-opted Director under a Directors' ballot are appointed as a Director as from the end of the meeting at which the ballot is determined.
- (g) A person nominated as a candidate for election as a Co-opted Director need not at that time be a Member of the Company. If that person is not at that time a Member, they will be conferred Honorary Membership by the Secretary for the term during which they hold office.
- (h) Notwithstanding the foregoing, the Board may, by Ordinary Resolution, veto the nomination or election of a Co-opted Director.

**12.4 Casual Vacancies**

- (a) In the event of a casual vacancy occurring in the membership of the Board, the Board may in its discretion:
- (i) appoint a Member of the Company to fill the vacancy and the Member so appointed is to hold office, subject to this Constitution, until the conclusion of the annual general meeting next following the date of the appointment; or

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- (ii) subject to Article 12.1(d), reserve the position for a Co-opted Director, to be nominated and appointed in accordance with Article 12.3.
- (b) A Member who ceases to hold office as a Director by virtue of Article 12.4(a)(i) is, subject to Article 12, eligible for re-election as a Director.
- (c) A casual vacancy on the Board will occur between annual general meetings if a Director (whether a Member Elected Director or a Co-opted Director):
  - (i) dies;
  - (ii) ceases to be a Member of the Company;
  - (iii) resigns office by notice in writing given to the Secretary;
  - (iv) is removed from office under Article 12.5;
  - (v) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
  - (vi) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the Director's joint or separate estate generally;
  - (vii) is absent without the consent of the Board from 3 consecutive meetings of the Board;
  - (viii) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months;
  - (ix) becomes:
    - A. a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) or similar legislation;
    - B. a disqualified person for the purposes of the *Child Protection (Working with Children) Act 2012* (NSW) or similar legislation;
  - (x) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest as required under the Corporations Act;
  - (xi) ceases to be a Director by operation of the Corporations Act; or
  - (xii) is prohibited or disqualified from being a director of the Company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act or under the ACNC Act.

## **12.5 Removal of Directors**

- (a) The Company in general meeting may by resolution:
  - (i) remove in accordance with section 203D of the Corporations Act any member of the Board from the office of Director before the expiration of the Director's term of office; and
  - (ii) by resolution appoint another person to hold office until the expiration of the term of office of the Director so removed.
- (b) If a Director to whom a proposed resolution referred to in Article 12.5(a) relates:
  - (i) makes representations in writing to the Secretary or Chair; and
  - (ii) requests that the representations be notified to the Members of the Company,

the Secretary or the Chair will, subject to the Corporations Act, send a copy of the representations to each Member or, if the representations are not so sent, the Member is entitled to require that the representations be read out at the meeting at which the resolution is considered.

## **12.6 Remuneration of Directors**

A Director must not be paid any remuneration for services as a Director.

## **12.7 Payments to Directors**

Subject to Article 12.8, no payment will be made to any Director other than payment:

- (a) which is in reimbursement for out of pocket expenses properly incurred by the Director in connection with the operation of the Company (including for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Board or a Committee, or when otherwise engaged on the business of the Company), where the amount payable does not exceed an amount previously approved by the Directors of the Company and is substantiated or supported by appropriate documentation as determined by the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service is required for the operation of the Company and has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than reasonable market value;
- (c) of any salary, wage or remuneration due to the Director if the Director is an employee of the Company where the terms of employment have been approved by the Directors of the Company; and

- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

## **12.8 Payments to Director**

Any payment to a Director must:

- (a) comply with the ACNC Governance Standards;
- (b) comply with any policy ratified by the Board or Chief Executive Officer to uphold these principles; and
- (c) be approved by the Board.

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## **13. BOARD MEETINGS**

### **13.1 Board Meetings and Quorum**

- (a) The Board must meet at least 3 times in each period of 12 calendar months at the place and time the Board determines.
- (b) Additional meetings of the Board may be convened by the Chair or by any 2 Directors.
- (c) Oral or written notice of a meeting of the Board must be given by the Secretary to each Director at least 5 clear business days (or such other period as may be unanimously agreed by the Board) before the time appointed for the holding of the meeting.
- (d) Notice of a meeting given under Article 13.1(c) must specify the general nature of the business to be transacted at the meeting. The Board may agree to transact business other than that business specified in that notice which may include urgent business.
- (e) An accidental omission to give notice of a meeting of Directors to any Director or the non-receipt of such notice by any Director does not invalidate the proceedings at or any resolution passed at the meeting.
- (f) By attending a Directors' meeting, a Director waives any objection they may have had in relation to the notice of meeting.
- (g) Subject to this Article 13.1, the Directors may meet together, adjourn and regulate their meetings as they think fit.
- (h) A **majority** of the Directors constitutes a quorum for the transaction of the business of a meeting of the Board.
- (i) No business is to be transacted by the Board unless a quorum is present, and if within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.

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- (j) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (k) Subject to Article 15, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- (l) At a meeting of the Board:
  - (i) the Chair or, in the Chair's absence, the Vice-Chair is to act as chair; or
  - (ii) if the Chair and the Vice-Chair are absent or unwilling to act as chair, one of the remaining Directors, as chosen by the Directors present at the meeting, is to act as chair.

**13.2 Voting And Decisions**

- (a) The provisions of this Article 13.2 are subject to Article 15.
- (b) Subject to this Constitution and the Corporations Act, questions arising at a meeting of the Board, or of any Committee, are to be determined by an Ordinary Resolution of the Directors (or Committee members) present at the meeting.
- (c) Each Director present at a meeting of the Board, or of any committee, (including the person presiding at the meeting) is entitled to **one vote**, but in the event of an equality of votes on any question, the chairperson **may** exercise a second or casting vote.
- (d) Subject to Article 13.1(h), the Board may act despite any vacancy on the Board. If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may only act to:
  - (i) appoint a Director under Article 12.4(a)(i); or
  - (ii) call a general meeting.
- (e) Any act or thing done or suffered, or purporting to have been done or suffered, by the Board, or by a Committee, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or Committee.

**13.3 Written Resolutions**

- (a) Unless the Corporations Act requires otherwise, the Directors may pass a resolution without a meeting of the Board being held if the majority of the Directors who are entitled to vote on the resolution:
  - (i) sign a document containing a statement that they are in favour of the resolution set out in the document; or



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- (ii) respond by email with a statement that they are in favour of the resolution set out in the originating email.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) Any document referred to in this clause may be in the form of an electronic transmission.
- (d) The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.

**13.4 Technology**

- (a) Notice of a meeting of Directors may be given in writing or in person, or the meeting may be otherwise called by email, telephone or any other technology consented to by the Directors from time to time.
- (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- (c) Subject to the Corporations Act, the Board may hold a meeting of the Board at 2 or more locations using any technology through which the Directors are able to simultaneously hear each other and that gives the Directors seeking to participate in the meeting a reasonable opportunity to participate in the deliberations of the meeting.

**13.5 Alternate Directors**

A Director cannot appoint an alternate Director for any purposes, including attending, speaking and voting at meetings.

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**14. OFFICE-BEARERS**

**14.1 Appointment of Office-bearers**

- (a) The office-bearers of the Company are as follows:
  - (i) the Chair;
  - (ii) the Vice-Chair;
  - (iii) the Treasurer; and
  - (iv) the Secretary.
- (b) The Board may by Ordinary Resolution establish other office-bearer roles as it thinks fit from time to time.
- (c) At the first Board meeting following the annual general meeting the Board must elect Directors to fill each office, and on the election of an office-bearer the term of the incumbent officer-bear ends.

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- (d) A Director may nominate for re-election to an office held by the Director immediately before the election.
- (e) A Director may only hold a single office at any one time.

**14.2 Secretary**

- (a) The Secretary must, as soon as practicable after being appointed as Secretary, lodge notice with the Company of their address.
- (b) It is the duty of the Secretary to keep minutes of:
  - (i) all appointments of office-bearers and Directors and admission of Members of the Company, and
  - (ii) the names of Directors of the Company present at meetings of the Board and general meetings, and
  - (iii) all proceedings at meetings of the Board and general meetings.
  - (iv) all resolutions passed by the Board in accordance with Article 13.3, and
  - (v) all disclosures of interest made under Article 15.
- (c) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

**14.3 Public Officer**

- (a) The Board must from time to time appoint and maintain a Public Officer who is aged 18 (eighteen) years or more and is ordinarily resident in Australia.
- (b) The position of Public Officer:
  - (i) Must be held by a Member of the Company; and
  - (ii) May but need not be, held by the Secretary or a Director of the Company.

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**15. CONFLICTS OF INTEREST**

**15.1 Disclosure of interest**

- (a) A Director may:
  - (i) hold office in the Company on any terms as the Board resolves;
  - (ii) hold an office or otherwise be interested in other body corporates in which the Company is interested; or

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- (iii) act, or the Director's firm may act, in any professional capacity for the Company (except as auditor),

and retain the benefits of doing so if the Director discloses their interest in accordance with Article 15.1(b) and any applicable provisions of the Corporations Act and the ACNC Act.

- (b) As required by the Corporations Act or this Constitution, a Director who has a material personal interest in a matter that relates to the affairs of the Company must:

- (i) as soon as they become aware of their interest, disclose the nature and extent of their interest to the Board; and
- (ii) disclose the nature and extent of their interest at the next annual general meeting of the Company.

- (c) If a Director discloses their interest in accordance with this Article 15 and any applicable provisions of the Corporations Act and the ACNC Act:

- (i) the Director may contract or make an arrangement with the Company in any matter in any capacity;
- (ii) the Director may retain the any profit or benefits realised by or under any such contract or arrangement; and
- (iii) no contract made by the Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which the Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

- (d) A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

**15.2 Voting on a matter in which a Director has an interest**

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted by the Corporations Act or this Constitution to do so, in which case the Director may:

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- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

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**16. INDEMNITY AND INSURANCE**

**16.1 Indemnity of Officers**

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act and any other applicable statutory restrictions, every person who is or has been an Officer is entitled to be indemnified out of the property of the Company against:

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

unless:

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

**16.2 Insurance**

To the extent permitted by law, the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been an Officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

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

**16.3 Contract**

Subject to the Corporations Act, the Company may enter into an agreement with a person referred to in Article 16.1 and Article 16.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this Article may include

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provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

**16.4 Tax**

- (a) The amount of any indemnity payable under Article 16.1 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- (b) If, for any reason and by any means, any tax is or would be imposed on a person in respect of any sum paid or payable to the person under this Article 16 (**Indemnity Payment**), then the amount of any indemnity payable under this Article 16 will include any additional amount required to ensure that the total amount retained by the person (after allowing for the amount of such tax and after taking into account any tax deduction or tax benefit available to the person, at any time, that is attributable to the liability or legal costs to which the Indemnity Payment relates) is equal to the amount that would have been retained by the person if such tax was not imposed in respect of the Indemnity Payment. Payment of any such additional amount is conditional on the person providing the Company with all information and assistance reasonably required to enable the Company to calculate and verify the amount.

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**17. AUDITOR**

17.1 The Board must, if required by either the Corporations Act or the ACNC Act:

- (a) prepare and maintain accounts;
- (b) appoint and maintain an auditor or reviewer (as the case may be); and
- (c) cause the accounts of the Company to be audited or reviewed

each case, in accordance with the applicable Act.

17.2 Subject to Article 17.1, the Company is not required to prepare accounts or have them audited.

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**18. WINDING UP**

**18.1 Member contributions on winding up**

If the Company is wound up while a person is a Member (or within 12 months after they stop being a Member) then that person must contribute up to the Guarantee Amount to the Company for:

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- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

**18.2 Revocation of deductible gift recipient endorsement**

On the winding up of the Company or, if the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act then on the revocation of that endorsement, any surplus of the following assets, namely:

- (a) gifts of money or property for the principal charitable purpose of the Company;
- (b) contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for the principal purpose;
- (c) money received by the Company because of such gifts or contributions;

will, as required by section 30-125 of the Tax Act, be given or transferred to a fund authority or institution gifts to which are deductible under Division 30 of the Tax Act and which, by its constitution, is:

- (d) required to pursue charitable purposes only (being charitable purposes similar, as far as possible, to those of the Company);
- (e) required to apply its income in promoting its charitable purposes; and
- (f) prohibited from making any distribution to its members and paying fees to its directors, to at least the same extent of such prohibitions under this Constitution,

such fund authority or institution to be determined by the Members, and in default, by application to the Supreme Court of Victoria for determination.

**18.3 Surplus Assets**

Subject to clause 18.2, on the winding up of the Company, any surplus remaining following the satisfaction of all debts and liabilities of the Company will not be paid to or distributed amongst Members, but will, unless otherwise required by law, be given or transferred to another corporation or body which, by its constitution, is:

- (a) required to pursue charitable purposes only (being charitable purposes similar, as far as possible, to those of the Company);
- (b) required to apply its income in promoting its charitable purposes; and
- (c) prohibited from making any distribution to its members and paying fees to its directors, to at least the same extent of such prohibitions under this Constitution,

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such corporation or body to be determined by the Members, and in default, by application to the Supreme Court of Victoria for determination.

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**19. MISCELLANEOUS**

**19.1 Insurance**

The Company may effect and maintain insurance.

**19.2 Source Of Funds**

- (a) The funds of the Company are to be derived from annual membership fees, donations and any other revenue derived from the business of the Company, including revenue derived from events and other activities, and, subject to any resolution passed by the Company in general meeting, such other sources as the Board determines.
- (b) All money received by the Company must be deposited as soon as practicable and without deduction to the credit of the Company's bank or other authorised deposit-taking institution account.
- (c) The Company must, as soon as practicable after receiving any money, issue an appropriate receipt.

**19.3 Management of Funds**

- (a) The funds of the Company are to be used in pursuance of the Objects in such manner as the Board determines.
- (b) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by:
  - (i) any 2 Directors; or
  - (ii) any 1 Director and the Secretary; or
  - (iii) one or more employees of the Company authorised to do so by a written resolution of the Board.

**19.4 Common Seal**

- (a) The Company is not required to maintain a common seal, or execute documents with a common seal.
- (b) If the Company adopts a common seal:
  - (i) the common seal must be kept in the care of the Secretary; and
  - (ii) the seal must not be used or affixed to any deed or document except:
    - A. pursuant to a resolution of the Board; and

- B. in the presence of at least the Chair and one other Member of the Board.

### **19.5 Resolution Of Disputes**

- (a) In the event that a dispute arises between Members of the Company, or between a Member and the Company, the complainant must provide written notice of the dispute to the other party (or parties) to the dispute.
- (b) The dispute notice referred to in Article 19.5(a) must include a summary of the facts and issues in dispute. Within 18 days of service of the dispute notice, the disputants must agree on a time and place for the disputants (or, if a disputant is not a natural person, the disputant's representative) to meet to try to resolve the dispute.
- (c) The disputants (or, if the disputant is not a natural person, their representatives) must meet at the agreed time and place to try to resolve the dispute. If the dispute has not been resolved, the parties must continue to negotiate across 2 consecutive business days unless they otherwise agree to reconvene.
- (d) If the dispute has not been resolved by the conclusion of the meetings specified in Article 19.5(c) above, any disputant may, within 14 days thereafter, refer the dispute to arbitration. The *Commercial Arbitration Act 2011* (VIC) applies to any such dispute referred to arbitration.

### **19.6 Alterations to Constitution**

- (a) Notice of all motions to alter, repeal or add to this Constitution must be given to members at least 21 days prior to the annual general meeting or the Extraordinary General Meeting called for such purpose.
- (b) Such motions, or any part thereof, are of no effect unless passed by a **Special Resolution** of the Company at the meeting and in accordance with the Corporations Act.

### **19.7 Inspection Of Books And Records**

- (a) The following documents must be open to inspection, free of charge, by a Member of the Company at any reasonable hour:
- (i) this Constitution; and
- (ii) minutes of all general meetings of the Company.
- (b) A Member of the Company may obtain a copy of any of the documents referred to in Article 19.7(a) on payment of a fee of not more than \$1.00 for each page copied.
- (c) Except as otherwise required by law and subject to this Constitution:



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- (i) the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors; and
- (ii) a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.

**19.8 Appointment of attorneys and agents**

- (a) The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a person in accordance with Article 19.8(b) to be the attorney or agent of the Company:
  - (i) for the purposes;
  - (ii) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (iii) for the period; and
  - (iv) subject to the conditions,  
determined by the Directors.
- (b) An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
  - (i) any company;
  - (ii) the members, directors, nominees or managers of any company or firm; or
  - (iii) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- (c) A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- (d) An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

**19.9 Service Of Notices**

- (a) For the purpose of this Constitution, a notice may be served on or given to a person:
  - (i) by delivering it to the person personally; or

- (ii) by sending it by pre-paid post to the address of the person; or
  - (iii) by sending it by email (or some other form of electronic transmission) to an address specified by the person for giving or serving the notice.
- (b) For the purpose of this Constitution, a notice is taken, unless the contrary is proved, to have been given or served:
- (i) in the case of a notice given or served personally, on the date on which it is served on the addressee; and
  - (ii) in the case of a notice sent by pre-paid post:
    - A. within Australia – 3 business days after posting; or
    - B. to a place outside of Australia – 7 business days after posting; and
  - (iii) in the case of a notice sent by email (or some other form of electronic transmission), on the date it was sent.

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## **20. INTERPRETATION**

20.1 In this Constitution, unless the context indicates a contrary intention:

- (a) a reference to a 'person', in the context of membership, means an individual or a body corporate;
- (b) a reference to a function includes a reference to a power, authority and duty, and
- (c) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

20.2 Without limiting the foregoing:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the plural includes the singular and vice versa;
- (c) a reference to any gender includes every other gender;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a Article, schedule or annexure is a reference to an Article of, or a schedule or annexure to, this Constitution and a reference to this Constitution includes any schedule or annexure;

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- (f) a reference to this Constitution includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time in existence;
- (g) a reference to a document (including this Constitution) is to the document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Constitution or that other document;
- (h) reference to any statute, or any subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them and a reference to a statute includes all subordinate legislation and instruments made under that statute.
- (i) a reference to dollars and \$ is to Australian currency;
- (j) a reference to time is a reference to Victoria, Australia time;
- (k) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally; and
- (l) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

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**21. DICTIONARY**

In this Constitution, unless the context clearly indicates otherwise, the following expressions have the meanings set out below:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the regulations made thereunder (as the context requires or permits), as amended or varied from time to time;
- (b) **ACNC Governance Standards** means the governance standards made under Part 3-1 of the ACNC Act;
- (c) **Applicable Not-for-profit Law** means any law relating to the regulation of charities or not-for-profit entities applicable to the Company, including each of the Tax Act, section 150 of the Corporations Act and the ACNC Act.
- (d) **Board** means the board of Directors of the Company as constituted from time to time;
- (e) **CEO** means the chief executive officer of the Company from time to time.
- (f) **Committee** means a committee established by the Board in accordance with Article 11.4;
- (g) **Company** means Positive Education Schools Association Limited ACN 168 259 096;

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- (h) **Constitution** means the constitution of the Company as amended from time to time;
- (i) **Co-opted Director** means a director of the Company appointed under Article 12.3;
- (j) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (k) **Director** means a director of the Company, whether a Member-Elected Director or a Co-opted Director;
- (l) **Existing Members** means the members of the Company as at the date of the adoption of this Constitution;
- (m) **Extraordinary General Meeting** means a general meeting of the Company other than an annual general meeting;
- (n) **GNC** means the Governance Nominations Committee constituted by the Board under Article 12.3(a) (if any);
- (o) **Guarantee Amount** means \$40.00;
- (p) **Financial Year** means:
  - (i) the period of time commencing on the date of incorporation of the Company and ending on the following 30 June; and
  - (ii) each period of 12 (twelve) months after the expiration of the previous Financial Year of the Company, commencing on 1 July and ending on the following 30 June;
- (q) **Honorary Member** means a member of the Company admitted to membership as an Honorary Member;
- (r) **Imported Provisions** means the following provisions of the Corporations Act:
  - (i) Section 139 (*Company must send copy of constitution to member*);
  - (ii) sections 191 to 194 (*disclosure of, and voting on matters involving, material personal interests*);
  - (iii) Divisions 1 to 7 of Part 2G.2 (*meetings of members of companies*); and
  - (iv) Part 2G.3 (*minutes and members' access to minutes*).
- (s) **Individual Member** means a member of the Company admitted to membership as an Individual Member;
- (t) **Institutional Member** means a member of the Company admitted to membership as an Institutional Member;

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- (u) **Member** means a member of the Company under Article 6 and includes Individual Members, Institutional Members, Patron Members, Honorary Members and Student Members, whose name is entered for the time being on the Register of Members;
- (v) **Member Elected Director** means a director of the Company appointed under Article 12.2;
- (w) **Objects** has the meaning given in Article 2.1;
- (x) **Officer** means:
  - (i) a Director;
  - (ii) a Secretary;
  - (iii) the Public Officer; and
  - (iv) the CEO.
- (y) **Ordinary Resolution** means a resolution passed by persons who together hold more than 50% of the total voting rights that may be exercised in respect of that resolution;
- (z) **Outstanding Amount** has the meaning given in Article 6.5(c).
- (aa) **Patron Member** means a member of the Company admitted to membership as a Patron Member;
- (bb) **Property** includes any estate and any interest in any real, personal, movable or immovable property of any description and in any location, whether in possession or not, including (without limiting the generality hereof) policies of assurance or endowment, cash and choses in action;
- (cc) **Public Officer** means the person appointed from time to time under Article 14.3;
- (dd) **Registered Entity** means a body corporate registered under the ACNC Act.
- (ee) **Representative** has the meaning given in Article 10.18;
- (ff) **School** means an institution for the education of primary, middle and/or high school students;
- (gg) **Secretary** means the person holding office under this Constitution as secretary of the Company from time to time;
- (hh) **Special Resolution** means a vote passed by persons who together hold 75% or more of the total voting rights that may be exercised in respect of that resolution;
- (ii) **State** means Victoria;

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- (jj) **Student Member** means a member of the Company admitted to membership as a Student Member; and
- (kk) **Tax Act** means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

**- END OF MAIN PROVISIONS -**

**Schedule 1**

**Statement of Objects**

The objects for which the Company is established, as a health promotion charity, are to integrate Positive Psychology throughout the Australian education system in order to promote the prevention and control of mental illness and, for that purpose, to:

- (a) train and provide resources to educators to adopt the principals of Positive Psychology in their teaching to prevent the occurrence of mental illness amongst students;
- (b) combat the prevalence of depression in young people in order for them to lead flourishing lives;
- (c) implement Positive Psychology methodology in all schools across Australia to promote the prevention and control of mental illness amongst students nationwide;
- (d) promote and advocate for the adoption of Positive Psychology in education systems and to school leaders and communities;
- (e) develop and promote a Positive Psychology education framework to be adopted in schools in order to promote the prevention and control of mental illness among students;
- (f) build a membership base with a cross-representation of Australian schools to assist with the development of the Positive Psychology education framework to ensure its effectiveness;
- (g) facilitate the collaboration between educators and schools to assist with the development of the Positive Psychology education framework and ensure its effectiveness;
- (h) strengthen and communicate the evidence base behind Positive Psychology;  
and
- (i) advise and link schools with service providers for training and consultancy on Positive Psychology.

And for the avoidance of doubt and for the purpose of section 150(1)(a) of the Corporations Act, it is confirmed that this Constitution requires the Company to pursue charitable purposes only and to apply its income in promoting those purposes.

**- END OF SCHEDULE 1 -**

**Schedule 2**

**Membership Classes**

<p>Individual Members</p>	<p><b>Eligibility</b></p> <p>Eligibility for individual membership is available to natural persons that align with the Objects.</p> <p><b>Rights</b></p> <p>Right to receive notice of any general meeting of the Company.                  Right to attend and vote at all general meetings of the Company.</p> <p><b>Obligations</b></p> <p>Payment of annual membership fee.</p> <p><b>Annual Membership Fee</b></p> <p>A\$99.00, or such other amount as prescribed by the Board from time to time.</p>
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<p>Institutional Members</p>	<p><b>Eligibility</b></p> <p>Institutional membership is available to Schools, body corporates, incorporated associations or other organisations who align with the Objects.</p> <p>Institutional membership is available to other organisations as determined by the Board.</p> <p><b>Rights</b></p> <p>Right to receive notice of any general meeting of the Company.                  Right to attend and vote at all general meetings of the Company.</p> <p><b>Rights conferred at discretion of Board</b></p> <p>3 x complimentary Individual Memberships for current staff members of the Institutional Member.</p> <p>These Individual Memberships are:</p> <ul style="list-style-type: none"> <li>• Conferred concurrently with the Institutional Membership and terminate on termination of the Institutional Membership;</li> <li>• Available only to current staff members of the Institutional Member;</li> <li>• Transferrable to other staff members in the event that the staff member's employment with the Institutional Member ceases;</li> <li>• In all other respects subject to the rights and obligations applicable to Individual Membership.</li> </ul> <p><b>Obligations</b></p> <p>Payment of annual membership fee.</p> <p><b>Annual Membership Fee</b></p>
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	A\$599.00, or such other amount as prescribed by the Board from time to time.
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<p>Patron Members</p>	<p><b>Eligibility</b></p> <p>The Board of Directors may, at its discretion, elect 1 or more patrons of the Association for such period as may be deemed necessary.</p> <p><b>Rights</b></p> <p>No right to receive notice of any general meeting of the Company.          No right to attend and vote at all general meetings of the Company.</p> <p><b>Annual Membership Fee</b></p> <p>Nil.</p>
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<p>Honorary Members</p>	<p><b>Eligibility</b></p> <p>Honorary membership may be granted by the Board or the CEO to individuals who have made a significant and recognised contribution to positive psychology, positive education or the Company in accordance with the Objects.</p> <p><b>Rights</b></p> <p>Right to receive notice of any general meeting of the Company.          Right to attend and vote at all general meetings of the Company.</p> <p><b>Annual Membership Fee</b></p> <p>Nil.</p>
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<p>Student Members</p>	<p><b>Eligibility</b></p> <p>Eligibility for student membership is available to full-time students who align with the Objects.</p> <p><b>Rights</b></p> <p>Right to receive notice of any general meeting of the Company.          Right to attend and vote at all general meetings of the Company.</p> <p><b>Obligations</b></p> <p>Payment of annual membership fee.</p> <p><b>Annual Membership Fee</b></p> <p>A\$29.00, or such other amounts as prescribed by the Board from time to time.</p>
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**- END OF SCHEDULE 2 -**

**Schedule 3**

**Pro-forma Proxy Form**

Meeting:

Place	
Date	
Time	

I/We, [insert name and address of member/members], am/are a member/members of Positive Educations Schools Association Limited. I/We appoint the following person/persons as my/our proxy/proxies to vote on my/our behalf at the specified meeting and any adjournment.

Name or office of proxy	Address

I/We appoint the following alternate person/persons to vote on my/our behalf at that meeting and any adjournment if a person/s I/we have appointed proxy is/are unable to act.

Name of proxy	Name of alternate	Address of alternate

[Include any instructions concerning voting in favour of or against particular resolutions]

Signed: .....  
 [Insert name of member appointing proxy]

**- END OF SCHEDULE 3-**