



Constitution

of Council on the Ageing (South Australia)
Incorporated

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Adopted by resolution of the Members

on the 9th of October 2023

A handwritten signature in blue ink, appearing to read 'Paul Andrews', is written above a horizontal line.

Chairperson

CONSTITUTION
of
COUNCIL ON THE AGEING (SOUTH AUSTRALIA)
INCORPORATED

1. The name of the association is **COUNCIL ON THE AGEING (SOUTH AUSTRALIA) INCORPORATED** (hereinafter called 'the Council').

2. **Interpretation**

2.1 The following shall have the meanings respectively assigned to them unless there is something in the subject or context inconsistent with it:

2.1.1 **'Act'** means the *Associations Incorporation Act 1985 (SA)*, as amended.

2.1.2 **'Appeal Notice'** has the meaning set out in clause 6.4.3.

2.1.3 **'Board'** means the Board for the time being of the Council and includes the whole or any number (not being fewer than a quorum) of the Board Members of the Council for the time being assembled at a meeting of Board in accordance with this Constitution.

2.1.4 **'Board Member'** means a member of the Board.

2.1.5 **'Chief Executive'** means any person so appointed by the Board pursuant to clause 10.

2.1.6 **'Constitution'** means this constitution.

2.1.7 **'Deputy President'** means the Deputy Chairperson of the Board of the Council from time to time.

2.1.8 **'Financial Year'** means the period from 1 July in any year to 30 June in the immediately subsequent year.

2.1.9 **'Governor'** means the Governor of the State of South Australia.

2.1.10 **'Honorary Life Member'** means a Member of the Council pursuant to clause 5.3.3.

2.1.11 **'Individual Member'** means a member of the Council pursuant to clause 5.3.1.

2.1.12 **'Member'** means a member of the Council in accordance with this Constitution.

2.1.13 **'Membership Appeals Tribunal'** means the tribunal established by the Board to determine appeals by Members who have had their membership terminated.

2.1.14 **'Older People'** or **'Older Person'** means a person(s) who has attained the age of 50 years.

2.1.15 **'Older Persons Organisation'** means a body corporate, or other legal entity which, in the opinion of the Board, has members who are predominantly Older People or persons who voluntarily care for Older People (or both) and whose principal purposes include either representing the interests of Older People or improving the well-being of Older People (or both), and includes a body corporate, or other legal entity a member of which is an Older Persons Organisation within the meaning of this definition.

- 2.1.16 **'Older Persons Organisation Member'** means an organisation that is a member of the Council pursuant to clause 5.3.2.
- 2.1.17 **'Office'** means the registered office from time to time of the Council.
- 2.1.18 **'Officer'** includes any Board Member, and the Chief Executive.
- 2.1.19 **'Partner of an Individual Member'** means a person who cohabits with an Individual Member.
- 2.1.20 **'Person'** and words importing persons shall include partnerships, associations, corporations, companies unincorporated and incorporated by any act of Parliament or registration except in the context of Older Person, when the definition of Older Person will apply.
- 2.1.21 **'Policy Council'** means the policy council referred to in clause 17 of this Constitution.
- 2.1.22 **'Prescribed Board Member'** means a Board Member who:
- 2.1.22.1 is sitting on the Board immediately prior to the adoption of this Constitution; and
 - 2.1.22.2 has already served on the Board for more than nine years as at the time of adoption.
- 2.1.23 **'President'** means the Chairperson of the Board of the Council from time to time (or in the case of a meeting at which a Chairperson is appointed).
- 2.1.24 **'Public Officer'** means the Public Officer of the Council as set out in the Act.
- 2.1.25 **'Register'** means the Register of Members of the Council to be kept pursuant to the Act.
- 2.1.26 **'Regulations'** means regulations under the Act.
- 2.1.27 **'Tax Act'** means the *Income Tax Assessment Act 1997* (Cth).
- 2.1.28 **'Year'** means calendar year except as otherwise specifically provided.
- 2.2 A reference to the Act or any section of it shall be read as though the words 'or any statutory modification of it or any statutory provision substituted for it' were added to such reference.
- 2.3 Words importing the singular number include the plural number and vice versa and the masculine gender includes the feminine gender and person includes corporation and vice versa.
- 2.4 Another grammatical form of a defined word or expression has a corresponding meaning.
- 2.5 The headings shall not affect the construction of this Constitution.
- 2.6 The provisions of this Constitution shall be subject in all things to the Act and to the extent that the Act imposes any requirement or permits any action or thing to be done by the Council or its Board or Members then those requirements or permitted acts or things shall be deemed to be provided for in this Constitution. In the event of any inconsistency between the provisions of the Act and this Constitution the former shall prevail to the extent of the inconsistency.

3. Objectives

The objectives for which the Council is established are:

- 3.1 to enhance the quality of life of Older People;
- 3.2 to provide services to Older People and to undertake programs and projects to benefit the well-being of Older People, and in particular with respect to:
 - 3.2.1 relieving poverty, isolation, distress or illness;
 - 3.2.2 providing support services in the home and community;
 - 3.2.3 advancing or furthering physical or mental health;
 - 3.2.4 developing physical improvement, recreation and rehabilitation; and
 - 3.2.5 furthering co-operation between governmental, statutory, municipal, business, voluntary organisations and other organisations of Older People in respect of these concerns;
- 3.3 to promote opportunities for productive ageing in employment, recreation, education, community service and voluntary work, including to promote the positive contribution of Older People to a caring and just community;
- 3.4 to inform Older People, the broader community, media and governments on issues relevant to the well-being of Older People; to ensure access by Older People to information and advice; and to contribute to greater community understanding of ageing;
- 3.5 to develop and promote policies and initiatives to governments and to respond to policies and legislation proposed by governments in respect of these objectives; and of the needs, rights and interests of Older People and the redress of all forms of disadvantage;
- 3.6 to provide donations and other support to other charities and organisations that assist Older People or promote the well-being of Older People; and
- 3.7 to develop links and co-operate with other organisations working to achieve similar objectives, in Australia and overseas.

4. Powers

For the purpose of carrying out its objectives, the Council will have all the powers conferred by section 25 of the Act.

5. Membership of the Council

- 5.1 The number of persons who may be admitted as Members of the Council is not limited.
- 5.2 The Members of the Council shall consist of the following classes:
 - 5.2.1 Individual Members;
 - 5.2.2 Older Persons Organisation Members;
 - 5.2.3 Honorary Life Members; andsuch other class or classes of Members as the Board may from time to time approve.

- 5.3 The following provisions apply to the classes specified in clause 5.2:
- 5.3.1 Individual Members
 - 5.3.1.1 Any Older Person may apply to become an Individual Member.
 - 5.3.1.2 Any Partner of an Individual Member may apply to become an Individual Member.
 - 5.3.2 Older Persons Organisation Members
 - 5.3.2.1 Any Older Persons Organisation may apply to become an Older Persons Organisation Member of the Council.
 - 5.3.3 Honorary Life Members
 - 5.3.3.1 The Council may admit as Honorary Life Members (subject to their consent) persons who have rendered special or conspicuous service or benefit to or for the Council or in the furtherance of its objectives and on whom the Council desires to confer honour.
 - 5.3.3.2 Honorary Life Members shall enjoy all of the rights of Individual Members but shall not be obliged to pay any membership fee.
- 5.4 Any Member wishing to withdraw from membership of the Council may do so by one month's notice in writing to the Chief Executive, but the withdrawal shall not release such Member from any liability contingent or otherwise.
- 5.5 Membership Fees
- 5.5.1 Subject to clause 5.3.3.2, each membership class shall pay such membership fee (if any) as the Board may from time to time determine. The Board may establish different levels of fees for different classes of Members.
 - 5.5.2 Any Member who fails to pay the membership fee (if applicable) within 60 days of its due date shall automatically cease to be a Member.
- 5.6 Register of Members
- The Chief Executive must keep and maintain a register of Members containing:
- 5.6.1 the name and address of each Member;
 - 5.6.2 the date on which each Member's name was entered in the register; and
 - 5.6.3 the class of membership to which they belong.

6. Membership Process

- 6.1 Membership of the Council will be subject to an application process determined and varied by the Board at its discretion.
- 6.2 The Board may accept or reject a membership application at its discretion.
- 6.3 Cessation of Membership
 - Membership of the Council shall cease:
 - 6.3.1 in the case of a natural person who is a Member - on the death of that person;
 - 6.3.2 in the case of any Member:

6.3.2.1 upon an order or resolution for its winding up or dissolution becoming effective; or

6.3.2.2 the Member withdraws from membership under clause 5.4;

A Member who for any cause whatsoever ceases to be a member of the Council shall not have any claim monetary or otherwise upon the Council, its funds or property.

6.4 Termination of Membership

6.4.1 The Board may by resolution terminate the membership of any Member who:

6.4.1.1 refuses or neglects to comply with the provisions of this Constitution or the By-laws (if any);

6.4.1.2 is guilty of any conduct which in the opinion of the Board conflicts with or fails to conform to the ethical standards and values of the Council; or

6.4.1.3 is guilty of any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Council.

6.4.2 At least 21 days before the meeting of the Board at which such a resolution for termination is intended to be passed, the Member shall be provided with notice of the intended resolution and shall have had an opportunity to attend such meeting and to give any explanation or defence which such member may desire to make, either orally or in writing.

6.4.3 If the Board resolves to terminate the membership of any Member in accordance with clause 6.4.1, then that Member may lodge a written appeal (**Appeal Notice**) with the Public Officer within 14 days of the resolution.

6.4.4 In the event of an appeal, the appellant's membership shall not be terminated unless the determination of the Board to terminate the membership is upheld by the Membership Appeals Tribunal after the appellant has been heard by the Membership Appeals Tribunal.

6.5 Membership Appeals Tribunal

6.5.1 Persons will be appointed to the Membership Appeals Tribunal as determined by the Board.

6.5.2 The Membership Appeals Tribunal will comprise of three persons who are not Board Members. At least one of those persons must be a Member.

6.6 Membership Appeals Tribunal Process

6.6.1 The Membership Appeals Tribunal will consider the appellant's Appeal Notice and determine the extent to which it requires additional information from the appellant or the Board. The Membership Appeals Tribunal will communicate the decision to the appellant and the Board.

6.6.2 In the event the Membership Appeals Tribunal rejects the appeal, then the membership of the appellant will be taken to have been terminated at the date of the meeting at which the resolution of the Board occurred.

If the Membership Appeals Tribunal upholds the appeal, then the membership of the appellant will continue (subject to this Constitution).

7. General meetings

- 7.1 An annual general meeting of the Council shall be held in accordance with the provisions of the Act at such place as the Board may determine.
- 7.2 The notice convening the annual general meeting must specify that the meeting is an annual general meeting.
- 7.3 The ordinary business of the annual general meeting will be to:
- 7.3.1 confirm the minutes of the previous annual general meeting and of any general meeting held since that meeting;
 - 7.3.2 receive from the Board reports upon the transactions of the Council during the last preceding Financial Year; and
 - 7.3.3 consider any other business requiring consideration by the Council.
- 7.4 The annual general meeting may conduct any special business of which notice has been given in accordance with this Constitution.
- 7.5 All business that is conducted at the annual general meeting, except for business conducted under this Constitution as ordinary business of the annual general meeting, is deemed to be special business.
- 7.6 All other general meetings shall be called a special general meetings.
- 7.7 The Board may whenever it thinks fit convene a special general meeting
- 7.8 A special general meeting shall be convened by the Board, upon the written request of:
- 7.8.1 at least 100 Members entitled to vote at a general meeting;
 - 7.8.2 the President; or
 - 7.8.3 any four Board Members.
- 7.9 In the event that:
- 7.9.1 the annual general meeting is not held as specified in clause 7.1; or
 - 7.9.2 a special general meeting is not held as requisitioned in clause 7.8;
- then the annual general meeting or special general meeting may be convened by any two Board Members in such manner as they reasonably consider to be appropriate.
- 7.10 Twenty eight days' notice of any general meeting shall be given to all Members.
- 7.11 No business shall be transacted at any general meeting unless a quorum of Members entitled to vote at the meeting is present at the time when the meeting proceeds to business. Twenty one Members entitled to vote at the meeting shall be a quorum. If on the day appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Members present shall be a quorum.
- 7.12 The President, or in the absence of the President, the Deputy President, shall preside as chairperson at every general meeting.
- 7.13 If neither the President nor the Deputy President is present within 15 minutes after the time appointed for holding the meeting, or if neither of them is willing to act as

chairperson, the Members present and entitled to vote shall choose one of their number to be chairperson.

- 7.14 The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
 - 7.14.1 When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
 - 7.14.2 Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 7.15 At any general meeting, a resolution put to a vote of the meeting shall be decided by a majority through a show of hands (unless a poll is, before or on the declaration of the result of the show of hands, demanded by or on behalf of at least five Members entitled to vote at the meeting).
- 7.16 If a poll is duly demanded it shall be taken at such time and in such manner as the chairperson directs and unless the meeting is adjourned the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- 7.17 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson shall not have a second or casting vote and the resolution put to the meeting shall fail.
- 7.18 No Member shall be entitled to vote at any general meeting unless any moneys payable by them to the Council have been paid.
- 7.19 Appointment of Proxies
 - 7.19.1 A Member entitled to vote at a general meeting may appoint a proxy to be present at any general meeting of the Council provided that:
 - 7.19.1.1 notification of such appointment shall be made in writing and shall be lodged with the Public Officer at or prior to the meeting which the Member proposes the proxy should attend;
 - 7.19.1.2 the document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document;
 - 7.19.1.3 unless otherwise instructed the proxy may vote as the proxy thinks fit;
 - 7.19.1.4 except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting; and
 - 7.19.1.5 before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, the document appointing the proxy must be deposited with the Council.

7.20 Technology

7.20.1 The Council may hold a general meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

7.20.2 Anyone using this technology is taken to be present in person at the general meeting.

8. Management of the Council

8.1 The affairs of the Council will be administered by the Board.

8.2 The Board:

8.2.1 must manage and control the funds and other property of the Council;

8.2.2 may, subject to this Constitution, the Act and the Regulations, exercise all such powers and functions as may be exercised by the Council other than those powers and functions that are required by this Constitution to be exercised by general meetings of the Members; and

8.2.3 subject to this Constitution, the Act and the Regulations, has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Council.

8.3 The Board shall consist of not less than six and not more than nine persons appointed in accordance with this Constitution.

8.4 Board Members shall be appointed by the Board.

8.5 Any Board Member who is not a Member of the Council at the time of their appointment shall (unless the Board resolves otherwise) apply to become a Member of the Council as soon as is reasonably practicable after their appointment.

8.6 No more than one person aged less than 50 may be appointed to the Board at any one time.

8.7 Subject to clause 8.9, the term of office of each Board Member shall be up to three years, but Board Members may seek re-appointment for further term(s).

8.8 The Board shall appoint from their number a President and a Deputy President who shall hold office as President or Deputy President for an initial period of up to three years but shall then be eligible for re-appointment.

8.9 Subject to clause 28.2, no person may hold office as a Board Member for more than nine years PROVIDED THAT in exceptional circumstances the Board may allow a Board Member to exceed the nine year limit by up to two years.

8.10 If at any time the number of Board Members in office falls below the number required to constitute a quorum under clause 9.3, then the following provisions shall apply:

8.10.1 where there is one or more Board Members still in office – those Board Members may act, but only to appoint sufficient new Board Members to constitute a quorum; or

8.10.2 where there are no Board Members still in office – any two Members may convene a general meeting, at which the Members shall elect a sufficient number of Board Members to constitute a quorum.

9. Governance Responsibilities

- 9.1 The Board undertakes all governance responsibilities as stated in this Constitution and the Act, including the following:
- 9.1.1 exercising powers and discharging their duties with care and diligence;
 - 9.1.2 making judgments in good faith and for a proper purpose;
 - 9.1.3 informing themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
 - 9.1.4 rationally believing that the judgment is in the best interests of the Council.
- 9.2 The Board will meet the governance and role requirements as specified in this clause and ensure that they are able to competently and consistently apply relevant skills in achieving these requirements.
- 9.3 Four Board Members will need to be present to form a quorum for a meeting of the Board.
- 9.4 The Board may act notwithstanding any vacancy on the Board.

10. Appointment of Chief Executive

- 10.1 The Board shall appoint a person as Chief Executive who shall perform this role upon such terms and conditions as the Board may determine and may subject to this Constitution define the powers, authorities, discretions and duties of such Chief Executive.
- 10.2 The Chief Executive shall be responsible to the Board for the operation and management of the Council's affairs and records (including the Register), for the implementation of Council policy and Board decisions, and for the employment and supervision of other employees of the Council.
- 10.3 The Chief Executive shall not be a member of the Board, but may attend Board meetings at the invitation of the Board.
- 10.4 The Chief Executive shall be the Public Officer of the Council (provided that, in the absence of a Chief Executive, the Board shall appoint another person to be Public Officer).

11. Minutes of Meetings

- 11.1 The Board shall cause minutes to be kept:
- 11.1.1 of the names of the Board Members present at each meeting of the Board and of any committee of the Board; and
 - 11.1.2 of all resolutions and proceedings at all meetings of the Council and of the Board and of committees of the Board.

12. Disqualification of Board Members

The office of a Board Member shall be vacated if the Board Member:

- 12.1 dies;
- 12.2 is removed from office by a resolution of the Board (with the affected Board member being unable to vote);

- 12.3 becomes bankrupt;
- 12.4 resigns his office by notice in writing to the Board;
- 12.5 breaches clause 14; or
- 12.6 is prohibited from being a Board Member under the Act.

13. Proceedings of Board

- 13.1 The Board may meet together for the dispatch of business adjourn and otherwise regulate their meetings as they think fit.
- 13.2 Subject to the Act:
 - 13.2.1 a Board meeting may be held by the Board Members communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion;
 - 13.2.2 the Board Members need not all be physically present in the same place for a Board meeting to be held; and
 - 13.2.3 a Board Member who participates in a meeting held in accordance with this clause is taken to be present and entitled to vote at the meeting.
- 13.3 The President or in the absence of the President, the Deputy President shall preside at every meeting of the Board.
- 13.4 If neither the President nor the Deputy President is present within 15 minutes after the time appointed for the holding of a meeting of Board, or if neither of them is willing to act as chairperson, the Board present shall choose one of their number to be the chairperson of the meeting.
- 13.5 Circulating Resolutions
 - 13.5.1 If all the Board Members who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a meeting of the Board held on the day on which the document was last signed by a Board Member.
 - 13.5.2 For the purposes of clause 13.5.1, two or more identical documents, each of which is signed by one or more Board Members, together constitute one document signed by those Board Members on the days on which they signed the separate documents.
 - 13.5.3 For the purposes of clauses 13.5.1 and 13.5.2, a Board Member will be taken to have signed a document if that Board Member has:
 - 13.5.3.1 received an email addressed to them and all other Board Members containing the proposed resolution (**Emailed Resolution**); and
 - 13.5.3.2 responded by return email addressed to the sender of the Emailed Resolution and all other Board Members with an unqualified statement that the responding Board Member is in favour of the resolution.
 - 13.5.4 Any document referred to in this clause may be in the form of a facsimile transmission or email.

14. Pecuniary Interests

14.1 Notwithstanding any other provisions of this Constitution, a Board Member who has any direct or indirect pecuniary interest in a contract, or proposed contract, with the Council:

14.1.1 must, as soon as they become aware of their interest, disclose the nature and extent of their interest to the Board (if so required by the Act);

14.1.2 must disclose the nature and extent of their interest at the next annual general meeting (if so required by the Act); and

14.1.3 may (subject to complying with the Act) take part in any deliberations with respect to that contract, but must not (if so prohibited by the Act) take part in any decision of the Board with respect to that contract.

15. By-Laws

The Board shall have power from time to time to make such by-laws not inconsistent with this Constitution as in the opinion of the Board are necessary and desirable for carrying out the objectives for which the Council is formed and to amend or rescind from time to time any such by-laws.

16. Committees

16.1 The Board may appoint such committees as it may from time to time think fit and may delegate in writing to any such committee all or any of its powers except the power of sub-delegation; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.

16.2 The Board shall appoint a chairperson of each committee who shall be a Board Member.

16.3 A committee may have members who are not Members of the Council.

16.4 A committee may meet and adjourn as it thinks proper.

16.5 Each committee shall furnish to each regular meeting of the Board a report of its activities and shall tender to the Board such advice concerning the subject matter of its activities as it shall deem desirable.

17. Policy Council

17.1 The Council shall have a Policy Council that shall function as a committee of the Board.

17.2 The Chairperson of the Policy Council shall be a Board Member.

17.3 The Policy Council shall provide expertise and advice on issues of ageing to support the work of the Council in advancing the rights, needs and interests of Older People.

17.4 The role and operations of the Policy Council, and the process for appointment of Policy Council Members shall be specified in terms of reference approved by the Board. These terms may be amended at any time, subject to Board approval.

17.5 The Membership of the Policy Council shall be at least 15 and no more than 25 persons, including the Chairperson.

- 17.6 The Membership of the Policy Council shall reflect the diversity of the South Australian community and shall comprise no less than 75% of its Members being aged 50 or more years.
- 17.7 Members shall be appointed to the Policy Council through a transparent process and for terms of office approved by the Board. The process and terms of appointment may be altered from time to time, with the approval of the Board.

18. Accounts and Audit

- 18.1 The Board shall cause proper accounts to be kept in accordance with relevant accounting standards and relevant reporting requirements.
- 18.2 The accounts shall be kept at the registered office of the Council, or at such other place or places as the Board think fit, and shall always be open to inspection by the Board.
- 18.3 The Board shall in accordance with the Act cause to be prepared and to be laid before the Council in an annual general meeting such accounts and reports as are referred to in that Act for the financial year preceding the annual general meeting.
- 18.4 Auditors shall be appointed by the Board, and their duties regulated, in accordance with the Act.

19. Amendment

Notwithstanding any provision in this Constitution to the contrary, this Constitution may only be amended or replaced from time to time by a resolution passed by at least 75% of the Members present and voting at a general meeting of the Council convened in accordance with this constitution provided that notice of the amendment or replacement is included in the notice of the general meeting.

20. Gifts, contributions etc

- 20.1 The Council must comply with section 382-15 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).
- 20.2 At the first occurrence of one of the following events:
- 20.2.1 the winding up of the Council; and
- 20.2.2 the revocation of the Council's endorsement under Subdivision 30-BA of the Tax Act,
- the Council must transfer any surplus referred to in section 30-125(6)(b) of the Tax Act to one or more charitable funds, authorities or institutions gifts to which can be deducted under Division 30 of the Tax Act (as selected by the Board at or prior to the relevant event, or in default by the Supreme Court of South Australia).

21. Property and Dissolution

- 21.1 The income, property and funds of the Council shall be used solely towards the promotion of the objectives and shall not be paid or transferred to any Members or relatives of Members provided that nothing herein shall prevent any payment in good faith to any person in return for services actually rendered or to any person in furtherance of the objectives of the Council and without undue preference, including payment of:
- 21.1.1 interest on any money lent;
- 21.1.2 proper rent for premises let by any Member to the Council; or

- 21.1.3 any other expenses, properly incurred by the Council.
- 21.2 The Council shall not be wound up or deregistered except by approval of not less than 75% of the Members present and voting at a meeting called for that purpose of which not less than 28 days' written notice including notice of the proposed dissolution has been distributed to all Members.
- 21.3 Members will not be liable to contribute towards the payment of the debts and liabilities of the Council or the costs, charges, and expenses of a winding up or deregistration of the Council.
- 21.4 If upon the winding up or deregistration of the Council there remains 'surplus assets' as defined in the Act (apart from any assets dealt with under clause 20), such surplus assets:
 - 21.4.1 must not be distributed amongst the Members, except in accordance with clause 21.4.2; and
 - 21.4.2 will be distributed to one or more charitable funds, authorities or institutions:
 - 21.4.2.1 which are not carried on for the profit or gain of their members;
 - 21.4.2.2 which have objectives that are similar to the objectives of the Council; and
 - 21.4.2.3 gifts to which can be deducted under Division 30 of the Tax Act, as selected by the Board at or prior to winding up or deregistration (or in default by the Supreme Court of South Australia).

22. Dispute Resolution

- 22.1 The grievance procedure set out in this clause applies to disputes under this Constitution between:
 - 22.1.1 a Member and another Member; or
 - 22.1.2 a Member and the Council.
- 22.2 The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- 22.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- 22.4 The mediator must be:
 - 22.4.1 a person chosen by agreement between the parties; or
 - 22.4.2 in the absence of agreement:
 - 22.4.2.1 in the case of a dispute between a Member and another Member, a person appointed by the Board; or
 - 22.4.2.2 in the case of a dispute between a Member and the Council, a person who is a mediator appointed or employed by the Chair of the Resolution Institute (South Australian Branch).
- 22.5 A Member of the Council can be a mediator.
- 22.6 The mediator cannot be a Member who is a party to the dispute.
- 22.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- 22.8 The mediator, in conducting the mediation, must:

- 22.8.1 give the parties to the mediation process every opportunity to be heard;
 - 22.8.2 allow due consideration by all parties of any written statement submitted by any party; and
 - 22.8.3 ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- 22.9 The mediator must not determine the dispute.
- 22.10 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.
- 22.11 Notwithstanding the foregoing provisions, this clause 22 shall not apply to a dispute relating to any decision or action of the Board or Membership Appeals Tribunal under clause 6.

23. Notices

Any notice that is required to be given to a Member or a Board Member (**Recipient**) by or on behalf of the Council under this Constitution may be given by:

- 23.1 delivering the notice to the Recipient personally;
- 23.2 sending it by prepaid post addressed to the Recipient at that Recipient's address as shown in the register of Members or register of Board Members (as the case may be); or
- 23.3 electronic transmission, if the Recipient has consented to notice being given to them in this manner.

24. Indemnity

- 24.1 Subject to the Act, every person who is or has been a Board Member of the Council shall be indemnified out of the property of the Council against any liabilities, losses, costs, expenses and damages whatsoever sustained or incurred directly or indirectly in connection with that person's position as a Board Member of the Council and the discharge by the person of their duties as a Board Member of the Council except:
- 24.1.1 a liability owed to the Council; or
 - 24.1.2 a liability that did not arise out of conduct in good faith; or
 - 24.1.3 legal costs in defending or resisting proceedings in which the person is found by a Court to have a liability for which the person cannot be indemnified under any of the foregoing provisions of this clause; or
 - 24.1.4 legal costs in defending or resisting criminal proceedings in which the person is found guilty.
- 24.2 For the purposes of this clause:
- 24.2.1 "conduct" includes acts and omissions;
 - 24.2.2 "legal costs" means legal costs on a solicitor and client basis; and
 - 24.2.3 the outcome of legal proceedings means the outcome of the proceedings and any appeal in relation to the proceedings.
- 24.3 Where a person seeks to rely on the indemnities contained in this clause, that person shall:
- 24.3.1 immediately notify the Council of any claim which gives rise to or could give rise to a liability of the Council to that person;
 - 24.3.2 permit the Council to conduct any negotiations and legal proceedings in respect of the claim in the name of the person and to have the sole

arrangement and the control of such negotiations or proceedings and to settle or compromise the claim or make an admission or payment in relation thereto;

24.3.3 not make any admission without the prior written consent of the Council;

24.3.4 promptly render all reasonable assurance and co-operation to the Council as requested by the Council.

24.4 The Council shall make available for inspection by any person who is or has been a Board Member the books of the Council at all reasonable times for the purposes of any investigations or legal proceedings whether directly or indirectly in connection with that person's position as a Board Member of the Council:

24.4.1 to which the person is a party; or

24.4.2 that the person proposes in good faith to bring; or

24.4.3 that the person has reason to believe will be brought against the person.

25. Presumption of Validity

All acts of and things done by the Board, or any Board Member, for and on behalf of the Council and in good faith, are to be taken to have been validly done notwithstanding that it may afterwards be discovered that some defect or irregularity existed in the manner or circumstances of such act or thing or in the appointment or election of the Board or of any Member thereof.

26. Interpretation and Effect of the Constitution

26.1 Any question which may arise as to the interpretation or effect of this constitution or of any by-laws made pursuant thereto may be determined by the Board and any such determination is to be final and binding upon the Members.

26.2 If any circumstances shall arise where this Constitution is silent or is incapable of taking effect or being implemented according to its strict provisions, the Board shall, subject to any direction from time to time given to it by resolution of the annual general meeting or any general meeting, have power to determine what action may be taken to best give effect to the objectives of the Council and ensure its efficient administration; and every act of the Board bona fide resolve upon pursuant to this clause shall be valid and effectual as if specifically authorised herein.

27. Patrons

27.1 The Board may invite the Governor to be patron of the Council, and the duration of their appointment shall continue at the pleasure of the Governor, but shall not continue after the expiry of the term of office of the Governor.

27.2 Should the Governor decline the invitation of the Board to act as patron of the Council, the Board may invite such other person or persons as it deems fit to be patron(s) of the Council on such terms as the Board may from time to time decide.

27.3 The Board may also invite such persons as it may from time to time determine to be vice-patrons of the Council.

28. Transitional Provisions

28.1 This Constitution will be read and construed in such manner that:

28.1.1 any register maintained by the Council immediately before the adoption of this Constitution will be deemed to be a register maintained pursuant to this Constitution; and

28.1.2 unless a contrary intention appears in this Constitution, all persons, things and circumstances appointed or created by or under the Constitution of the Council in force before the adoption of this Constitution will continue to have the same status, operation and effect after the adoption of this Constitution.

28.2 Upon adoption of this Constitution, the Board Members in office immediately prior to the adoption of this Constitution will (as soon as is reasonably practicable and in any event prior to the annual general meeting to be held in November 2023) meet to appoint a new Board, President and Deputy President in accordance with clause 8 of this Constitution PROVIDED THAT nothing in this clause 28.2 is intended to prevent any person holding a particular office immediately before adoption of this Constitution from being re-appointed to that office, should that be the decision of the Board AND PROVIDED FURTHER THAT in the case of a Prescribed Board Member, and notwithstanding clause 8.9, the Board may (at the meeting held under this clause 28.2) appoint the Prescribed Board Member to the Board for a further term of up to three years.