

**CONSTITUTION OF  
NEAS  
(National ELT Accreditation Scheme)  
Limited**

Australian Company Number (ACN) 003980667  
Australian Business Number (ABN) 29003980667

A Company limited by guarantee  
A not-for-profit charity to further education

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## Preliminary

### 1. Name of the Company

The name of the **Company** is National ELT Accreditation Scheme Limited (the **Company**).

### 2. Type of Company

The **Company** is a not-for-profit public **Company** limited by guarantee which is established to be, and to continue as, a charity.

### 3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

### 4. The guarantee

Each member must contribute an amount not more than \$20 (the guarantee) to the property of the **Company** if the **Company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **Company** incurred before the member stopped being a member, or
- (b) costs of winding up.

### 5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 70 and 72.

## Charitable purposes and powers

### 6. Object

The **Company's** object is to pursue the following charitable purpose(s):

- (a) advance English language teaching and cultural development in the community;
- (b) establish and conduct an autonomous industry-based self-regulatory Quality Endorsement system for Centres;
- (c) provide advice to appropriate governmental authorities as to whether Centres are Quality Endorsed;
- (d) assess compliance of Centres with requirements of Quality Endorsement;
- (e) suspend or revoke, or advise the suspension or revocation of the Quality Endorsement of a Centre;
- (f) advise Centres on matters affecting their Quality Endorsement;
- (g) determine the requirements for Quality Endorsement of Centres, in conjunction where necessary with appropriate Governmental authorities;
- (h) establish "Quality Endorsement Committees";
- (i) establish such other processes for the Quality Endorsement of courses or Centres associated with the teaching of English as are considered necessary from time to time;
- (j) support the achievement of quality outcomes for Education & Training globally;
- (k) advance global Quality Assurance in Education & Training;
- (l) empower knowledge partnerships with Education & Training communities; and

- (m) do any other things in connection with education and training as considered appropriate or necessary.

#### **7. Powers**

Subject to clause 8, the **Company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a **Company** limited by guarantee under the **Corporations Act**.

#### **8. Not-for-profit**

8.1 The **Company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 69.

8.2 Clause 8.1 does not stop the **Company** from doing the following things, provided they are done in good faith:

- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **Company**, or
- (b) making a payment to a member in carrying out the **Company's** charitable purpose(s).

#### **9. Amending the constitution**

9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.

9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **Company** to no longer be a charity.

## **Members**

#### **10. Membership and register of members**

10.1 The members of the **Company** are:

- (a) **initial members**, and
- (b) any other person that the directors allow to be a member, in accordance with this constitution.

10.2 The **Company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
  - i. name
  - ii. address
  - iii. any alternative address nominated by the member for the service of notices, and
  - iv. date the member was entered on to the register.
- (b) for each person who stopped being a member in the last 7 years:
  - i. name
  - ii. address
  - iii. any alternative address nominated by the member for the service of notices, and
  - iv. dates the membership started and ended.

10.3 The **Company** must give current members access to the register of members.

10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

## 11. Who can be a member

11.1 The following persons are eligible to apply to be a member of the **Company** under clause 12 and may be accepted for membership by the Board upon payment of the relevant subscriptions and fees payable under this constitution:

11.2 In this clause, 'person' means an individual or incorporated body.

(a) Full Member

A person that:

- (i) supports the purposes of the **Company** and has an interest in Quality Assurance;
- (ii) complies with national, State or Territory requirements, or the requirements of any other organisation recognised by the Board, for devising and/or delivering registered and accredited education and training and/or educational assessment services to the public;
- (iii) has been granted current Quality Endorsement by the **Company**; and
- (iv) has paid in full membership fees, subscriptions and annual return fees in accordance with this constitution.

(b) Associate Member

A person that:

- (i) does not fall within Clause 11.1(a);
- (ii) is not an employee of a Member;
- (iii) whose employment or business is significantly exposed to the Sector;
- (iv) who has been approved by the directors under Clause 13; and
- (v) has paid in full membership fees, subscriptions and annual return fees in accordance with this constitution.

(c) Life Member

A person who, in the discretion of the directors, has been awarded the honour of Life Member for distinguished and meritorious service to the Company.

11.3 Full members are entitled to all the privileges of membership, including the right to attend, speak and vote at general meetings.

11.4 Associate Members and Life Members are entitled to attend and speak at general meetings, but are not entitled to vote at general meetings.

11.5 Where a member has multiple premises and/or additional centres, and but for this clause, would receive an aggregate number of member votes at a general meeting of more than one (1), the Main Centre will be the Full Member pursuant to this Constitution and any additional entities in that group who are otherwise entitled to Full Membership will be made Associate Members.

11.6 Representatives

(a) Any corporation or organisation which is a Member must:

- (i) by written notice to the Company appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
- (ii) may remove a Representative.

(b) A Representative is entitled to:

- (i) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
  - (ii) subject to clause 39.4, stand for election as an office bearer or Director; and
  - (iii) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its representative.
- (c) A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- (d) The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- (e) The appointment of a Representative may set out restrictions on the Representative's powers.
- 11.7 Except where the context otherwise requires, a reference in this Constitution to a Member, Full Member, Associate Member or Life Member includes a Centre.

## **12. How to apply to become a member**

12.1 A person (as defined in clause 11.2) may apply to become a member of the **Company** by writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purpose(s) of the **Company**, and
- (c) agree to comply with the **Company's** constitution, including paying the guarantee under clause 4 if required.

Application must be accompanied by payment of the applicant's first annual subscription and evidence of the person (or, if clause 11.5 applies, a member of the group of which the person is a part) having been granted Quality Endorsement by the Company.

## **12.2 Subscriptions**

- (a) The Board will determine the annual subscription payable by each Member or each category of Member.
- (b) The annual subscription period will commence on 1 July of each year, and the annual subscription will be due in advance within 30 days of this date.
- (c) An applicant for membership whose application has been accepted must pay their first annual subscription (being in respect of the annual subscription current for the period during which they apply for membership) before they can be admitted as a Member.
- (d) If a Member does not pay a subscription within 30 days after it becomes due the Board:

- (i) Will give the Member notice of that fact; and
- (ii) If the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

### **13. Directors decide whether to approve membership**

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 13.2 If the directors approve an application, the secretary must as soon as possible:
  - (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 13.4 As soon as practicable following rejection of an application for membership, the Company will send the applicant written notice of the rejection (together with a refund of any payment received by the Company in respect of the applicant's first annual subscription).
- 13.5 As soon as practicable following acceptance of an application for membership, the Company will send the applicant written notice of the acceptance and, if the application was not accompanied by the applicant's first annual subscription, request payment of the applicant's first annual subscription.
- 13.6 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters.

### **14. When a person becomes a member**

Other than **initial members**, an applicant will become a member when they are entered on the register of members.

### **15. When a person stops being a member**

A person immediately stops being a member if they:

- (a) die
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
- (c) resign, by writing to the secretary
- (d) are expelled under clause 17, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## **Dispute resolution and disciplinary procedures**

### **16. Dispute resolution**

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
  - (a) one or more members
  - (b) one or more directors, or
  - (c) the **Company**.



- 16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days:
- (a) tell the directors about the dispute in writing
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - i. for disputes between members, a person chosen by the directors, or
    - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **Company** has its registered office.
- 16.6 A mediator chosen by the directors under clause 16.5(b)(i):
- (a) may be a member or former member of the **Company**
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
  - (b) allow those involved a reasonable chance to review any written statements
  - (c) ensure that those involved are given natural justice, and
  - (d) not make a decision on the dispute.
- 17. Disciplining members**
- 17.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **Company** if the directors consider that:
- (a) the member has breached this constitution, or
  - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **Company**.
  - (c) The Membership is forfeited under clause 12.2.
- 17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
  - (c) what the member is said to have done or not done
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 17.3 Before the directors pass any resolution under clause 17.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or

- (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the directors may:
  - (a) take no further action
  - (b) warn the member
  - (c) suspend the member's rights as a member for a period of no more than 12 months
  - (d) expel the member
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a **general meeting**.
- 17.5 The directors cannot fine a member.
- 17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## General meetings of Members

### 18. General meetings called by directors

- 18.1 The directors may call a **general meeting**.
- 18.2 If members with at least 50% of the votes that may be cast at a **general meeting** make a written request to the **Company** for a **general meeting** to be held, the directors must:
  - (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
  - (b) hold the **general meeting** within 2 months of the members' request.
- 18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a **general meeting** must:
  - (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the **Company**.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 19. General meetings called by members

- 19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 19.2 To call and hold a meeting under clause 19.1 the members must:
  - (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
  - (b) call the meeting using the list of members on the **Company's** member register, which the **Company** must provide to the members making the request at no cost, and

- (c) hold the **general meeting** within three months after the request was given to the **Company**.
- 19.3 The **Company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.
- 20. Annual general meeting**
- 20.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) within 18 months after registration of the **Company**, and
  - (b) after the first annual **general meeting**, at least once in every calendar year.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **Company's** activities
  - (b) a review of the **Company's** finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the annual **general meeting**, the directors must give information to the members on the **Company's** activities and finances during the period since the last annual **general meeting**.
- 20.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **Company**.
- 21. Notice of general meetings**
- 21.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting
  - (b) each director, and
  - (c) the auditor (if any).
- 21.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
  - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.
- 21.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
  - (b) the general nature of the meeting's business
  - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution

- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - i. the proxy does not need to be a member of the **Company**
    - ii. the proxy form must be delivered to the **Company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii. the proxy form must be delivered to the **Company** at least 48 hours before the meeting.
- 21.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## **22. Quorum at general meetings**

- 22.1 For a **general meeting** to be held, at least six (6) members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 22.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **23. Auditor's right to attend meetings**

- 23.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 23.2 The **Company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **Company** is entitled to receive.

## **24. Representatives of members**

- 24.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 31, and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 24.2 The appointment of a representative by a member must:
- (a) be in writing
  - (b) include the name of the representative
  - (c) be signed on behalf of the member, and
  - (d) be given to the **Company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.

24.4 The appointment may be standing (ongoing).

**25. Using technology to hold meetings**

25.1 The **Company** 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, including to hear and be heard.

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

**26. Chairperson for general meetings**

26.1 The **elected chairperson** is entitled to chair **general meetings**.

26.2 The members present and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:

- (a) there is no **elected chairperson**, or
- (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
- (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

**27. Role of the chairperson**

27.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

27.2 The chairperson does not have a casting vote.

**28. Adjournment of meetings**

28.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.

28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Members' resolutions and statements

**29. Members' resolutions and statements**

29.1 Members with at least 10% of the votes that may be cast on a resolution may give:

- (a) written notice to the **Company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
- (b) a written request to the **Company** that the **Company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).

29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.

29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

29.5 The percentage of votes that members have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the **Company**.

29.6 If the **Company** has been given notice of a members' resolution under clause 29.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.

29.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

### **30. Company must give notice of proposed resolution or distribute statement**

30.1 If the **Company** has been given a notice or request under clause 29:

- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **Company's** cost, or
- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **Company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **Company** will pay these expenses.

30.2 The **Company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 1 000 words long
- (b) the directors consider it may be defamatory
- (c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the **Company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

### **31. Circular resolutions of members**

31.1 Subject to clause 31.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).

31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.

31.3 Circular resolutions cannot be used:

- (a) for a resolution to remove an auditor, appoint a director or remove a director
- (b) for passing a **special resolution**, or
- (c) where the **Corporations Act** or this constitution requires a meeting to be held.

31.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.

31.5 Members may sign:

- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or

- (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 The **Company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## Voting at general meetings

### 32. How many votes a member has

Each member has one vote.

### 33. Challenge to member's right to vote

- 33.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 34. How voting is carried out

- 34.1 Voting must be conducted and decided by:
  - (a) a show of hands
  - (b) a vote in writing, or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 35. When and how a vote in writing must be held

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (a) at least five **members present**
  - (b) **members present** with at least 10% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
  - (c) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
  - (a) for the election of a chairperson under clause 26.2, or
  - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

### 36. Appointment of proxy

- 36.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy does not need to be a member.

- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
  - (b) the **Company's** name
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the **Company** at the address stated in the notice under clause 21.5(d) or at the **Company's** registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 36.8 Unless the **Company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
  - (b) is mentally incapacitated
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **37. Voting by proxy**

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 37.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
  - (b) if the way they must vote is specified on the proxy form, must vote that way, and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

### **38. Number of directors**

The **Company** must have at least four (4) and no more than eight (8) directors.

### **39. Election and appointment of directors**

#### **39.1 Board Composition**



The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the company. With effect on and from the first general meeting of the company, the directors must be (and may only be) appointed as follows:

- (a) Up to five persons appointed by the Directors with such qualifications as the Directors determine appropriate from time to time, who are independent of the Company, its members and the Centres, in that the persons do not have any interest in the Company, a Member or a Centre, whether as a director, shareholder, adviser, sponsor, consultant, employee or otherwise (Independent Directors); and
- (b) Up to three persons elected in accordance with rule 39.2 or, in the case of a casual vacancy, elected under rule 39.3 (**Elected Directors**).

### 39.2 **Elected Director**

- (a) Only a person who is a director, employee or officeholder of a Member or engaged in the administration or management of a member shall be eligible to be nominated for election, and be elected, as an Elected Director.
- (b) Subject to rule 3.4(a), a person other than a retiring Elected director is not eligible for election as an Elected Director at a general meeting unless there is lodged with the Secretary at least 28 days before the relevant meeting:
  - (i) A written nomination for the person's election as an Elected Director signed by two members; and
  - (ii) A brief profile of the nominee; and
  - (iii) The person's signed written consent to act as a Director (which may be included in the form of nomination).
- (c) A written notice referring to all Elected Director vacancies and each candidate for election and re-election, must be sent to members as part of the notice for the general meeting at which an election of an Elected Director will take place.

39.3 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

- (a) is a member of the **Company**, or a representative of a member of the **Company** (appointed under clause 24)
- (b) gives the **Company** their signed consent to act as a director of the **Company**, and
- (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

39.4 If the number of directors is reduced to fewer than four or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to four (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

39.5 Apart from the initial directors and directors appointed under clauses 39.1 and 39.3, the members may elect an Elected Director by a resolution passed in a **general meeting**.

39.6 Each of the Elected Directors must be appointed by a separate resolution, unless:

- (a) the members present have first passed a resolution that the appointments may be voted on together, and
- (b) no votes were cast against that resolution.

39.7 A person is eligible for election as an Elected Director of the Company if they:

- (a) are a member of the Company, or a representative of a member of the Company (appointed under clause 24)
- (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),
- (c) give the Company their signed consent to act as a director of the Company, and
- (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

#### **40. Election of chairperson**

The directors must elect one of the Independent Directors as the **Company's elected chairperson**.

#### **41. Term of office**

##### **41.1 At each annual general meeting:**

- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire

##### **41.2 If they have not retired earlier pursuant to clause 41.1:**

- (a) Each Independent Director will retire at the annual general meeting following the third anniversary of his or her appointment or re-appointment and is eligible for re-appointment.
- (b) Each Elected Director will retire at the annual general meeting following the third anniversary of his or her election or re-election and is eligible for re-election.

**41.3** Other than a director appointed under clause 39.3, a director's term of office starts on the date of their appointment or at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.

**41.4** Each director must retire at least once every three years.

**41.5** A director who retires under clause 41.2 may nominate for election or re-election, subject to clause 41.6.

**41.6** A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution**

#### **42. When a director stops being a director**

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **Company**
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of the **Company**
- (e) are a representative of a member, and that member stops being a member
- (f) are a representative of a member, and the member notifies the **Company** that the representative is no longer a representative
- (g) are absent for [three (3)] consecutive directors' meetings without approval from the directors, or
- (h) become ineligible to be a director of the **Company** under the **Corporations Act** or the **ACNC Act**.

## Powers of directors

### 43. Powers of directors

- 43.1 The directors are responsible for managing and directing the activities of the **Company** to achieve the purposes set out in clause 6.
- 43.2 The directors may use all the powers of the **Company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 43.3 The directors must decide on the responsible financial management of the **Company** including:
- (a) any suitable written delegations of power under clause 43, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 43.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

### 44. Delegation of directors' powers

- 44.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **Company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 44.2 The delegation must be recorded in the **Company's** minute book.

### 45. Payments to directors

- 45.1
- (a) The **Company** may, by ordinary resolution of this Constitution, determine to pay fees to directors for acting as a directors.
  - (b) In giving effect to clause 45.1(a), the **Company** must comply with the requirements of the Corporation Act relating to remuneration of and payments to Directors;
  - (c) The aggregate amount of the remuneration payable to the Directors in any one year must not exceed the amount set by the members by ordinary resolution at general meeting for the preceding year.
- 45.2 The **Company** may:
- (a) pay a director for work they do for the **Company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **Company**.
- 45.3 Any payment made under clause 45.2 must be approved by the directors.
- 45.4 The **Company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

### 46. Execution of documents

The **Company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **Company**, or
- (b) a director and the secretary.

## Duties of directors

### 47. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Company**
- (b) to act in good faith in the best interests of the **Company** and to further the charitable purpose(s) of the **Company** set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48
- (f) to ensure that the financial affairs of the **Company** are managed responsibly, and
- (g) not to allow the **Company** to operate while it is insolvent.

### 48. Conflicts of interest

48.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors, or
- (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.

48.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

48.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 48.4:

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

48.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the **Company**, and the other members have the same interest
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **Company** (see clause 66)
- (c) their interest relates to a payment by the **Company** under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or

- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **Company**, and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

### 49. When the directors meet

The directors may decide how often, where and when they meet.

### 50. Calling directors' meetings

50.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

50.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 51. Chairperson for directors' meetings

51.1 The **elected chairperson** is entitled to chair directors' meetings.

51.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) present but does not want to act as chairperson of the meeting.

### 52. Quorum at directors' meetings

52.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.

52.2 A quorum must be present for the whole directors' meeting.

### 53. Using technology to hold directors' meetings

53.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

53.2 The directors' agreement may be a standing (ongoing) one.

53.3 A director may only withdraw their consent within a reasonable period before the meeting.

### 54. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### 55. Circular resolutions of directors

55.1 The directors may pass a circular resolution without a directors' meeting being held.

55.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.

55.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The **Company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 55.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.

## Secretary

### 56. Appointment and role of secretary

- 56.1 The **Company** must have at least one secretary, who may also be a director.
- 56.2 A secretary must be appointed by the directors (after giving the **Company** their signed consent to act as secretary of the **Company**) and may be removed by the directors.
- 56.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 56.4 The role of the secretary includes:
- (a) maintaining a register of the **Company's** members, and
  - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

## Minutes and records

### 57. Minutes and records

- 57.1 The **Company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
  - (b) minutes of circular resolutions of members
  - (c) a copy of a notice of each **general meeting**, and
  - (d) a copy of a members' statement distributed to members under clause 30.
- 57.2 The **Company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 57.3 To allow members to inspect the **Company's** records:
- (a) the **Company** must give a member access to the records set out in clause 57.1, and
  - (b) the directors may authorise a member to inspect other records of the **Company**, including records referred to in clause 57.2 and clause 58.1.
- 57.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 57.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

### 58. Financial and related records

- 58.1 The **Company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 58.2 The **Company** must also keep written records that correctly record its operations.
- 58.3 The **Company** must retain its records for at least 7 years.
- 58.4 The directors must take reasonable steps to ensure that the **Company's** records are kept safe.

## By-laws

### 59. By-laws

- 59.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 59.2 Members and directors must comply with by-laws as if they were part of this constitution.

## Notice

### 60. What is notice

- 60.1 Anything written to or from the **Company** under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 60.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 36.6.

### 61. Notice to the Company

Written notice or any communication under this constitution may be given to the **Company**, the directors or the secretary by:

- (a) delivering it to the **Company's** registered office
- (b) posting it to the **Company's** registered office or to another address chosen by the **Company** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **Company** to the members as the **Company's** email address or other electronic address, or
- (d) sending it to the fax number notified by the **Company** to the members as the **Company's** fax number.

### 62. Notice to members

- 62.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
  - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or

- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 62.2 If the **Company** does not have an address for the member, the **Company** is not required to give notice in person.

**63. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 62.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

**64. Company's financial year**

The **Company's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

**65. Indemnity**

- 65.1 The **Company** indemnifies each officer of the **Company** out of the assets of the **Company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **Company**.
- 65.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 65.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **Company** is not precluded by law (including the **Corporations Act**) from doing so, and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **Company**.

**66. Insurance**

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **Company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Company** against any liability incurred by the person as an officer of the **Company**.

**67. Directors' access to documents**



- 67.1 A director has a right of access to the financial records of the **Company** at all reasonable times.
- 67.2 If the directors agree, the **Company** must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors, and
  - (b) any other documents referred to in those documents.

## Winding up

### 68. Surplus assets not to be distributed to members

If the **Company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **Company**, unless that member or former member is a charity described in clause 69.1.

### 69. Distribution of surplus assets

- 69.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **Company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
  - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Company**.
- 69.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Company** may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 70. Definitions

In this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

**Associate Member** has the meaning given to it in clause 11.2(b);

**Centre** means any person who is a Full Member or would be entitled to be so under clause 11 excepting for clause 11.5;

**Company** means the **Company** referred to in clause 1

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

**Endorsed Centre** means the type of training institution owned and run by a full member which is the institution for which the member has been endorsed by the **Company** with full member status subject to clause 11;

**Elected chairperson** means a person elected by the directors to be the **Company's** chairperson under clause 40;

**Full Member** has the meaning given to it in clause 11.2(a);

**General meeting** means a meeting of members and includes the annual **general meeting**, under clause 20.1;

**Initial member** means a person who is currently a registered member of the **Company**, with their consent, as a proposed member of the **Company**;

**Life Member** has the meaning given to it in clause 11.2(c);

**Main Centre** means the Endorsed Centre which is nominated by NEAS to be the Full Member, as in Clauses 11.2 and 11.5

**Member present** means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting;

**NEAS Ultimate Holding Entity** means the corporation or body that is the ultimate holding company of a group or a corporate group which includes companies who are eligible to be a Full Member of the Company;

**Quality Endorsement** means the recognition of Centres as having demonstrated their quality through the rigorous quality assurance processes of the **Company**;

**Registered charity** means a charity that is registered under the **ACNC Act**;

**Representative** means a person appointed as such under clause 11.6;

**Special resolution** means a resolution:

- i. of which notice has been given under clause 21.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution;

**Surplus assets** means any assets of the **Company** that remain after paying all debts and other liabilities of the **Company**, including the costs of winding up; and

**Ultimate Holding Entity** has the meaning given to the definition of Ultimate Holding Company in the *Corporations Act 2001* (Cth).

## **71. Reading this constitution with the Corporations Act**

71.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Company**.

71.2 While the **Company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

71.3 If the **Company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

71.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## **72. Interpretation**

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).