



ACTIV FOUNDATION INCORPORATED

(A.R.B.N. 060 921 271)

(Members' Liability Limited)

CONSTITUTION

Approved by Council - 18 November 2021

A handwritten signature in black ink, appearing to read 'John Francks', written over a horizontal line.

JOHN FRANCKS

Council Chair

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PREAMBLE

Activ Foundation Incorporated (Formerly the Slow Learning Children's Group) was formed in 1951 by a group of dedicated families who believed their children living with intellectual Disability deserved better, came together in support of each other.

Activ is proud of this heritage and those founding families who had the courage and belief that their children with developmental Disability deserved better. They had the leadership and the passion to build something for generations to come. As the Disability sector evolved, so did the organisation and it continues to evolve, particularly with the advent of the National Disability Insurance Scheme.

Whilst Activ's original core services were focused for people with developmental Disability it now embraces all people living with Disability. Further, the founding families' attributes of leadership, passion, courage and vision still drive the organisation today. These attributes underpin the honour and respect held for the capabilities and potential of people living with Disability and of their right to choice, freedom and empowerment to live their life full of growth and happiness.

CONSTITUTION

This document is the Constitution of Activ Foundation Incorporated, incorporated under the Act ("Constitution").

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Constitution, unless the contrary intention appears or the context does not permit:

“**ACNC**” means the Australian Charities and Not-for-profits Commission.

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

“**ACNC Commissioner**” means the Commissioner of the ACNC for the purposes of the ACNC Act.

“**Act**” means the *Associations Incorporations Act 2015 (WA)*.

“**Activ**” shall mean Activ Foundation Incorporated.

“**Annual General Meeting**” shall mean the meeting required by this Constitution to be held once in each calendar year after the end of the Financial Year in accordance with the Act.

“**Auditor**” means the auditor, if any, of Activ appointed under rule 23.

“**Board**” means the Board of Directors established pursuant to this Constitution.

“**Board Meeting**” means a meeting of the Board.

“**Board Member**” means a member of the Board.

“**Board Council Member**” means a Board Member who is also a Council Member.

Board Moratorium Period means the period of two (2) years from the date the Board Member ceased to be Board Member.

“**Business Day**” means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

“**Chair and Deputy Chairs of the Board**” means the chair or deputy chairs appointed by the Board pursuant to rule 10.6.

“**Chair and Deputy Chair of the Council**” means the chair or deputy chair appointed by the Council pursuant to rule 6.9

“**Chief Executive Officer**” has the meaning given in rule 17.

“**Commissioner**” means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA97.

“**Community Housing Assets**” means:

- (a) land and/or premises transferred to Activ as a community housing provider by the Housing Authority, but does not include land or land and premises that the Housing Authority sells at market value to Activ;

- (b) land and/or premises acquired by Activ wholly or partly with funding provided by the Housing Authority, including but not limited to where such funding is comprised of:
 - (i) funding provided directly by the Housing Authority;
 - (ii) GST input tax credits claimed by Activ in connection with any supplies which are funded wholly or in part by the Housing Authority;
- (c) a legal interest in land and/or premises acquired by Activ wholly or partly with funding provided by the Housing Authority or where the acquisition is facilitated by the Housing Authority;
- (d) land and/or premises acquired by Activ wholly or in part with borrowings leveraged off or cash flow generated from any assets in Activ's portfolio in which the Housing Authority has an interest;
- (e) land and/or premises where the Housing Authority is identified as having an interest in any legal agreement;
- (f) land and/or premises procured with the proceeds of sale of land and/or premises in which the Housing Authority has an interest; and
- (g) housing constructed by the Housing Authority or improvements made on land and/or premises by the Housing Authority,

provided that the Housing Authority has a legal interest in any such land/or premises by way of legal agreement between the Housing Authority and Activ.

"Community Housing Provider" means an organisation that provides community housing and has successfully achieved registration under the Community Housing Regulatory Framework as a tier 1, 2 or 3 provider.

"Community Housing Regulatory Framework" means a regulatory administrative system implemented by the Housing Authority to register and regulate Community Housing Providers.

"Constitution" means this constitution of Activ.

"Council" means the Council of Activ established pursuant to this Constitution.

"Council Member" means a member of Activ.

"Council Membership Fee" has the meaning given in rule 6.3.

"Deductible Gift Recipient" means an institution, fund, authority or any other entity that is endorsed as a deductible gift recipient by the Commissioner under Division 30 of the ITAA97 or is a specifically listed deductible gift recipient under Division 30 of the ITAA97.

"Delegate" means, the individual appointed and delegated to by the Chief Executive Officer to act in his or her absence.

"Delegations Policy" means Activ's Delegation of Authority policy

“Disability” shall mean a Disability that is attributable to one or more intellectual, cognitive, neurological, sensory, psychiatric or physical impairment whether congenital or occurring as a result of an event or disease that is permanent or likely to be permanent and result in substantial functional or cognitive limitation including, but not limited to:

- (a) Communication;
- (b) Social interaction;
- (c) Learning;
- (d) Mobility;
- (e) Self care;
- (f) Self-management; or
- (g) As determined by the Board in accordance with Activ’s Objects, the term “people living with Disability” may include people with other disabilities.

“Employee Moratorium Period” means the period of two (2) years from the date of ceasing employment with Activ.

“Financial Year” means the period commencing on the first day of July in each year, and ending on the thirtieth (30) day of June in the following year.

“General Meeting” means a meeting of the Council Members for the purpose of conducting the business of Activ and includes an Annual General Meeting and a Special General Meeting.

“Housing Authority” means a body corporate constituted under the *Housing Act 1980 (WA)* as amended.

“ITAA97” means the *Income Tax Assessment Act 1997 (Cth)*.

“Objects” means the objects of Activ as set out in rule 2 and 2.1 - 7.

“Office Bearers” means the Board Chair and Deputy(s) as in rule 10.2

“Patron” means a non-member appointed by resolution of the Board to lend their name and non-financial support to Activ to assist Activ in meeting its Objects and purpose.

“Percentage” has the meaning given in rule 18.1(a)(iii).

“Register of Council Members” means the register of Council Members referred to in rule 7.

“Registered Public Benevolent Institution” has the meaning contained in section 995(1) of the ITAA97.

“Reviewer” means the reviewer, if any, of Activ appointed under rule 23.

“Special General Meeting” means a General Meeting other than an Annual General Meeting.

“Subcommittee” means a subcommittee of the Board established under rule 16.

“Special Resolution” means a resolution of Activ passed at a General Meeting by not less than 75% of the Council Members entitled to vote, present and voting at the General Meeting, of which written notice has been provided in accordance with rule 18.3.

“Support Groups” means a list of Activ approved support groups established by resolution of the Board and as maintained by the Chief Executive Officer.

1.2 INTERPRETATION

In this Constitution, unless the context requires otherwise:

- (a) references to rules mean rules in this Constitution;
- (b) a reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either;
- (c) a reference to a person includes a reference to a company, body corporate, trust, partnership, incorporated association, joint venture, organisation and any other form of entity;
- (d) a reference to a Council Member present at a General Meeting is a reference to a Council Member present in person, by technology or by proxy;
- (e) a reference to a Board Member present at a Board Meeting is a reference to a Board Member present in person or by technology;
- (f) a reference to writing and written includes printing, electronic documents and other ways of representing or reproducing words in a visible form;
- (g) the singular (including defined terms) includes the plural and the plural includes the singular;
- (h) the words “includes”, “including” and similar words, are not words of limitation and do not restrict the interpretation of a word or phrase in these rules;
- (i) a word importing any gender includes every other gender;
- (j) if the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day;
- (k) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- (l) headings are used for convenience only and do not affect the interpretation of these rules; and
- (m) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning.

2. OBJECTS & PURPOSE

Activ’s purpose is to offer people living with Disability opportunities to enjoy full participation in their community and empower them to pursue the life they choose.

The general object is supported by the specific objects.

2.1 PROVIDE SERVICES

To provide services and supports to meet the needs and choices of people living with Disability, including but not limited to:

- (a) employment;
- (b) accommodation;
- (c) respite;
- (d) education and training;
- (e) community participation and inclusiveness; and
- (f) advocacy,

and to develop and promote access to generic services and supports to meet such needs and choices.

2.2 MAXIMISE OPPORTUNITIES

To maximise opportunities for persons living with Disability to participate in determining Activ's policies.

2.3 REPRESENT INTERESTS

To represent and advocate for the interests of persons living with Disability in the development of government social and economic policy.

2.4 PROMOTE COMMUNITY UNDERSTANDING

To promote and advocate at all levels of the community and government an understanding and acceptance of the aspirations, rights and responsibilities of people living with a Disability.

2.5 ADVANCE SELF DETERMINATION

To advance self determination by people living with a Disability.

2.6 OTHER

To improve the quality of life for people living with Disability. To harness the resources of the community to make a positive difference in the lives of people with Disability. To enable people living with Disability to pursue the life they choose.

2.7 ACTIVITIES OF ACTIV

Activ must operate solely for the purpose of promoting and advancing the Objects. However, Activ is not required to promote all of the particular Objects at the same time or in any particular order and may, in its absolute discretion, determine the level and amount of promotion, funding or any other support which should be applied to any of the particular Objects at any given time.

3. POWERS

Activ has the powers conferred on it by the Act, including the power to:

- (a) acquire, hold, deal with, and dispose of any real or personal property;
- (b) open and operate bank accounts;
- (c) invest Activ's money upon such terms and conditions as the Board thinks fit;
- (d) borrow money upon such terms and conditions as the Board thinks fit;
- (e) give such security for the discharge of liabilities incurred by Activ as the Board thinks fit;
- (f) appoint agents to transact any business of Activ on its behalf;
- (g) enter into any contract it considers necessary or desirable;
- (h) appoint, employ and dismiss any staff of Activ as required and on such terms and conditions as the Board sees fit;
- (i) to elect Patron or Patrons and vice Patrons for a defined period;
- (j) to appoint an Auditor for such periods as the Board determines;
- (k) subscribe or donate to or become a member of and co-operate with any other body whose objects are altogether or in part similar to those of Activ, and in particular a federation with similar bodies in Australia and/or elsewhere; and
- (l) do all such other things as the Board deems to be necessary, incidental or conducive to the attainment of the Objects and the exercise of the above powers.

4. STRUCTURE & ROLE

4.1 ACTIV COUNCIL

- (a) The Council assumed the responsibility and obligations that previously sat within the membership of Activ on 26 October 2014.
- (b) The role of the Council is to promote the interests of Activ and to review the Board and Activ's adherence to this Constitution, the Objects set out in this Constitution and Activ's outcomes. The Council shall exercise such powers as described in this Constitution but, in particular, the following:
 - (i) The Council shall receive Activ's annual financial statements and the Board's annual reports and shall consider these against the Objects of Activ set out in this Constitution.
 - (ii) The Council shall appoint members to the Board in accordance with this Constitution.
 - (iii) The Council may remove the Board in accordance with this Constitution.
- (c) Council Members are the members of Activ for the purposes of the Act.

4.2 ACTIV BOARD

The Board is responsible for the overall performance of Activ, setting its strategic direction, establishing policies and overseeing Activ's financial position. The Board may approve a Board Charter which sets out the separation of authority, establishes the relationship between the Board and management and includes a description of their respective functions and responsibilities.

4.3 CHIEF EXECUTIVE OFFICER

The Chief Executive Officer is responsible to the Board for the day-to-day management of the Organisation.

5. PROPERTY AND INCOME

5.1 COUNCIL MEMBERS NOT TO PROFIT

The property and income of Activ must be applied solely towards the promotion of the Objects of Activ and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to any Council Member, except in good faith in the promotion of those Objects.

5.2 REMUNERATION

Rule 5.1 does not prevent:

- (a) the payment in good faith of remuneration to any Council Member, officer, employee or agent of Activ or other person in return for services authorised by the Board and rendered to Activ;
- (b) the payment of interest at a rate not exceeding the amount charged by the bank for the time being of Activ on overdraft accommodation of the same amount on any money lent by a Council Member to Activ;
- (c) the payment of reasonable and proper rent for premises leased or let by a Council Member to Activ;
- (d) the payment of out of pocket expenses incurred by an authorised Council Member or other authorised person on behalf of Activ; or
- (e) the payment of out of pocket expenses incurred by a Board Member for travel and accommodation in connection with the performance of that Board Member's functions.

6. APPOINTMENT OF COUNCIL MEMBERS

6.1 COUNCIL COMPOSITION

- (a) The Council will comprise of up to twelve (12) persons, inclusive of three (3) Board Members.
- (b) At least three (3) of the Council Members will have a family member living with a Disability, which includes the one (1) Board Council Member who is required to have a family member living with a Disability in accordance in rule 6.4(c).

6.2 ELIGIBILITY

- (a) Membership of Council is open to, subject to rule 6.10, Board Members and individuals who have satisfied the Employee Moratorium Period
- (b) A Council Member who ceases to meet the criteria in rule 6.2(a) must notify Activ as soon as possible, and in any event, within 7 days of the change taking effect. The Council Member will cease to be a member upon such notification.

6.3 COUNCIL MEMBERSHIP FEES

There are no fees applicable for Council membership

6.4 NOMINATION OF BOARD MEMBERS TO COUNCIL

- (a) The Board Members to be nominated to Council are identified as Board Council Members.
- (b) The Board Council Members shall be nominated by the Board and shall include the Chair of the Board.
- (c) At least one of the three (3) Board Council Members is to be a person who has a family member living with a Disability.

6.5 DURATION OF OFFICE OF BOARD MEMBERS ON COUNCIL

- (a) Subject to remaining on the Board, Board Council Members will hold office on the Council for a maximum period of 10 years and are not required to stand down every three years for reappointment.
- (b) If a Board appointed Council Member's tenure on Council expires and the person is subsequently appointed to Council, their Council tenure begins again and they hold office as prescribed under rule 6.8 and this Constitution, up to a maximum of 12 consecutive years.

6.6 NOMINATION OF NON-BOARD COUNCIL MEMBERS

- (a) Council Members may invite persons to be considered for appointment to Council through nomination pursuant to this rule 6.6.
- (b) At least two (2) of the nine (9) non-Board Members of the Council shall be persons who have a family member living with a Disability.
- (c) A person is not eligible for appointment to the Council unless a nomination form is delivered to the Council at least fourteen (14) days prior to the General Meeting and is signed by:
 - (i) two (2) Council Members; and
 - (ii) the nominee signifying his or her willingness to stand for appointment to the Council.

6.7 APPOINTMENT OF NON-BOARD COUNCIL MEMBERS

- (a) The appointment of individual non-Board Council Members is by a majority vote of Council Members present and voting at a General Meeting (which includes proxy votes).
- (b) If the number of persons nominated for appointment exceeds the number of vacancies to be filled, the Council Members must vote, in accordance with procedures that have been determined by the Board, to decide the persons who are to be appointed as Non-Board Council Members.

6.8 DURATION OF OFFICE NON BOARD COUNCIL MEMBERS

- (a) All non-Board Council Members will hold office for a period of three (3) years starting from the conclusion of the General Meeting at which they were appointed as a Council Member.
- (b) A retiring Council Member is eligible for re-appointment, but only up to a maximum of twelve (12) consecutive years.

6.9 CHAIR AND DEPUTY CHAIR OF THE COUNCIL

- (a) The Council will elect the Chair and the Deputy Chair of the Council from among Council Members at an Annual General Meeting.
- (b) The Chair and the Deputy Chair of the Council will hold office for a period of three (3) years from the conclusion of the Annual General Meeting in the year of their appointment until the conclusion of the Annual General Meeting at the end of that period, or for the remainder of their current term as a Council Member, whichever occurs first.

6.10 FORMER BOARD MEMBERS AS COUNCIL MEMBERS

- (a) Former Board Members may be appointed as members of the Council.
- (b) The Employee Moratorium Period does not apply to former Board Members.

6.11 RESIGNATION AND CESSATION OF COUNCIL MEMBER

- (a) A Council Member immediately ceases to be a Council Member, if the Council Member:
 - (i) dies;
 - (ii) ceases to be Council Member under rule 6.2(b);
 - (iii) resigns as a Council Member under rule 6.12;
 - (iv) is expelled from membership of Activ under rule 6.13; or who was appointed by the Board as a Board Council Member, ceases to be a Board Member;
 - (v) behaves in a manner which, in the reasonable opinion of the Council, may reflect discreditably upon Activ and the Council declares the Council Member's position vacant;

- (vi) is removed by a Special Resolution of Council, which resolves that the Council Member must vacate the position;
 - (vii) is an undischarged bankrupt under the laws of Australia; or
 - (viii) is absent without leave or reasonable excuse from four (4) consecutive General Meetings and the Council determines that the Council Member must vacate the position.
- (b) Activ must remove a person from the Register of Council Members within twenty eight (28) days of an event referred to in rule 6.11(a) occurring.

6.12 RESIGNING AS A COUNCIL MEMBER

- (a) A Council Member may resign from membership by giving written notice of their resignation to the Chief Executive Officer.
- (b) The Council Member's resignation will be effective from the date of the notice of resignation.

6.13 SUSPENSION OR EXPULSION OF COUNCIL MEMBERS

- (a) If an event in rules 6.13(c)(i)(A), 6.13(c)(i)(D) and 6.13(c)(i)(E) applies, Council must take all reasonable steps to immediately suspended or expel the Council Member from Activ.
- (b) If an event in rules 6.13(c)(i)(B), 6.13(c)(i)(C) and 6.13(c)(i)(F) applies, Council must within a reasonable time meet and consider whether to suspend or expel the Council Member from Activ. If Council resolves to suspend or expel the Council Member from Activ, Council must take all reasonable steps to suspend or expel the Council Member depending on the circumstances.
- (c) A Council Member is suspended or expelled from Activ if:
 - (i) the Council Member:
 - (A) is convicted of an indictable offence or an offence that involves dishonesty that is punishable by imprisonment;
 - (B) behaves in a manner which, in the reasonable opinion of the Council, may reflect discreditably or is prejudicial or detrimental upon Activ and the Council declares the Council Member's position vacant;
 - (C) the Council Member's failure to comply with these Rules
 - (D) is an undischarged bankrupt under the laws of Australia;
 - (E) has been convicted of an offence in connection with the promotion, formation or management of a body corporate; or
 - (F) is absent without leave or reasonable excuse from four consecutive General Meetings and the Council determines that the Council Member must vacate the position;

- (d) The Council must give a Council Member who is the subject of a proposed resolution under rule 6.13(b) written notice of the proposed suspension or expulsion, specifying:
 - (i) the time, date and place of the General Meeting at which the question of the suspension or expulsion will be considered; and
 - (ii) particulars of the Council Member's conduct which is the subject of the notice,not less than twenty one (21) days prior to the date of such General Meeting.
- (e) A Council Member who is the subject of a proposed resolution under rule 6.13(b) may:
 - (i) make written representations (of a reasonable length) and provide these to Activ for circulation to the Council Members;
 - (ii) speak to the motion at the relevant General Meeting; and
 - (iii) elect to bring a support person, who is not a legal representative, to the relevant General Meeting.
- (f) Activ must give a copy of the representations referred to in rule 6.13(e)(i) to each Council Member, unless those representations are defamatory.
- (g) The Council must decide whether to suspend, expel or decline to suspend or expel the Council Member at the General Meeting referred to in rule 6.13(b) and must communicate that decision to the relevant Council Member as soon as possible after the decision is made.
- (h) A Council Member may be suspended for such period of time as the Council sees fit in its absolute discretion.
- (i) A decision of the Council to suspend or expel a Council Member takes effect fourteen (14) days after the day on which the decision to is communicated to the Council Member under rule 6.13(g).

6.14 CONSEQUENCES OF SUSPENSION

- (a) During the period of suspension, the Council Member loses any rights (including voting rights) arising as a result of membership.
- (b) When a person's membership is suspended, the Council must ensure it is recorded in the Register of Council Members:
 - (i) that the person's membership is suspended;
 - (ii) the date on which the suspension takes effect; and
 - (iii) the period of the suspension.
- (c) When the period of the suspension ends, the Council must record in the Register of Council Members that the person's membership is no longer suspended.

7. REGISTER OF COUNCIL MEMBERS

7.1 MAINTAINING A REGISTER OF COUNCIL MEMBERS

- (a) Activ must maintain a Register of Council Members in accordance with the Act.
- (b) The Register of Council Members must include each Council Member's name, date of appointment and:
 - (i) residential address;
 - (ii) postal address; or
 - (iii) email address.
- (c) The Register of Council Members must be kept at a location determined by the Chief Executive Officer from time to time.

7.2 INSPECTION OF REGISTER OF COUNCIL MEMBERS

- (a) A Council Member may request to inspect the Register of Council Members.
- (b) Activ must make the Register of Council Members available for inspection upon such a request by a Council Member.
- (c) Subject to rules 7.3 and 7.4, a Council Member inspecting the Register of Council Members may make a copy of, or take an extract from the Register of Council Members but is not entitled to remove the Register of Council Members for that purpose.

7.3 COPY OF REGISTER OF COUNCIL MEMBERS

- (a) A Council Member may make a request in writing to the Chief Executive Officer for a copy or extract of the Register of Council Members.
- (b) The Chief Executive Officer may require a Council Member who requests a copy of the Register of Council Members to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is directly connected with the affairs of Activ.

7.4 WHEN USING THE INFORMATION IN THE REGISTER OF COUNCIL MEMBERS IS PROHIBITED

A Council Member must not use or disclose the information on the Register of Council Members:

- (a) to gain access to information that a Council Member has deliberately denied them;
- (b) to contact or send material to Activ or a Council Member for the purpose of advertising for political, religious, charitable or commercial purposes unless the use of the information is approved by the Board; or
- (c) for any other purpose, unless the purpose:
 - (i) is directly connected with the affairs of Activ; or
 - (ii) is related to the administration of the Act.

8. CASUAL VACANCIES

(a) Non-Board Council Members

Subject to rule 8(c), any non-Board Member vacancy on the Council caused otherwise than by the expiration of the term of office, may be filled by the Council at the next General Meeting, subject to the provisions of this Constitution.

(b) Board Council Members

Any Board Council Member vacancy on the Council caused otherwise than by the expiration of term of the office, may be filled through nomination by the Board.

(c) Chair and Deputy Chair of the Council

(i) Any Chair or Deputy Chair of Council vacancy caused otherwise than by the expiration of the term of the office, may be filled through nomination by Council at the next General Meeting.

(ii) The term of the replacement Chair or Deputy Chair in accordance with rule 8(c)(i) will be for the remaining term of that persons current term in office as a Council Member.

9. REMUNERATION OF THE COUNCIL MEMBERS

Subject to rule 5.2 and provided such payment is in good faith to the Council Member as reasonable remuneration for any services provided to Activ, or for the goods supplied to Activ, in the ordinary course of business, Council Members are entitled to receive remuneration for his or her services and authorised by way of resolution of the Board.

10. BOARD

10.1 MANAGEMENT OF ACTIV

(a) The Board is vested with the management of Activ's affairs and the control of the funds and other property of Activ.

(b) The Board may exercise all of the powers of Activ except those which must, under this Constitution or the Act, be exercised by the Council Members at a General Meeting.

(c) If, at any time, the membership of Activ is less than 6 full voting Council Members, the Board may act only for the purpose of increasing the number of Council Members to a number sufficient to meet the minimum requirements of the Act.

(d) The Board must comply with any Board policies, governance rules and codes of conduct as developed by the Board from time to time.

10.2 COMPOSITION

- (a) The Board may consist of up to ten (10) members who are to be appointed by Council Members at the Annual General Meeting.
- (b) The Board must consist of the following office bearers:
 - (i) Chair; and
 - (ii) minimum of one (1) Deputy Chair and a maximum of up to two (2) Deputy Chairs (at the sole discretion of the Board).

10.3 ELIGIBILITY

- (a) Membership of the Board is open to any person who:
 - (i) is at least 18 years of age;
 - (ii) has satisfied the Employee Moratorium Period;
 - (iii) is eligible to serve as a Board Member under the requirements of the Act;
 - (iv) has not been disqualified from being a Board Member by the ACNC Commissioner; and
 - (v) meets any additional eligibility criteria, qualification or experience requirements determined by the Board from time to time as specified in the Association's selection skills matrix criteria (if any).
- (b) At least one (1) Board Member is to be a person who has a family member living with a Disability.
- (c) Any person who has served as a Board Member for a period of ten (10) consecutive years is not eligible for membership to the Board until the Board Moratorium Period expires.
- (d) Before being appointed to the Board, the Board may require that a person sign a statutory declaration stating that they meet the eligibility requirements set out in rule 10.3(a)(iii).

10.4 NOMINATION OF BOARD MEMBERS

A person is not eligible for appointment to the Board unless a nomination form is delivered to Council Members with the notice calling the Annual General Meeting and is signed by:

- (a) two (2) Board Members; and
- (b) the nominee signifying his or her willingness to stand for appointment to the Board.

10.5 APPOINTMENT OF BOARD MEMBERS

- (a) Subject to rule 10.3, Council Members may appoint Board Members at an Annual General Meeting.
- (b) The appointment of individual Board Members is by a majority vote of Council Members present and voting at the Annual General Meeting and the vote count is to include proxy votes.

10.6 APPOINTMENT OF OFFICE BEARERS

- (a) The Board must elect the office bearers stated in rule 10.2(b), among the Board Members by nomination during the relevant Board Meeting following the expiration of the term of the office bearer.
- (b) The office bearers will hold office so long as they remain a Board Member until the conclusion of the next Annual General Meeting.

10.7 DURATION OF OFFICE

- (a) Subject to rules 11.1 and 12.1 all Board Members will hold office for a period of two (2) years from the conclusion of the Annual General Meeting in the year of their appointment until the conclusion of the Annual General Meeting at the end of that period.
- (b) A retiring member is eligible for re-appointment, but only up to a maximum of five (5) consecutive two (2) year terms or ten (10) consecutive years.
- (c) A Board Member must not hold office for a continuous period of more than ten (10) consecutive years.

10.8 CHIEF EXECUTIVE OFFICER

- (a) The Chief Executive Officer may speak but is ineligible to vote at Board meetings.
- (b) The Delegate may only speak at Board Meetings if the Chair has agreed in writing

10.9 BOARD CHAIR REMUNERATION

The Chair of the Board is entitled to receive a Board Chair remuneration for his or her services which will be reviewed and reconsidered on an annual basis in accordance with the annual Consumer Price Index (CPI) and must be authorised by resolution of the Board and approved by Council Members.

11. BOARD VACANCIES

11.1 VACATION OF POSITION

The position of any Board Member will be vacated if the holder of that position:

- (a) resigns by notice in writing to the Chief Executive Officer and it is accepted by the Board at its next meeting. The Board, however, may request withdrawal of the resignation and the Board Member may do so;
- (b) behaves in a manner which may reflect discredibly upon Activ and the Board declares the Board Member's position vacant;
- (c) fails to observe, comply with or conform to the Constitution;
- (d) is absent for more than four (4) Board Meetings in the same Financial Year, of which he or she has received notice, without a reason which is accepted by the Chair of the Board;
- (e) is incapacitated by physical ill health or certified as unfit;
- (f) is no longer eligible to be a Board Member under rule 10.3; or
- (g) is removed under by Special Resolution by the Council under rule 12.

11.2 BOARD MAY ACT NOTWITHSTANDING VACANCY

The Board may act notwithstanding a vacancy occurring in any position on the Board.

11.3 CASUAL VACANCIES

Any vacancy on the Board caused otherwise than by the expiration of the term of office may be filled by the Board and the Board Member so appointed will hold office until the next Annual General Meeting where the appointment will be affirmed by Council, subject to the provisions of this Constitution.

11.4 RETURNING THE BOOKS OF ACTIV

Within fourteen (14) days of ceasing to be a Board Member, the outgoing Board Member must transfer all relevant documents, records and assets of Activ in their possession, custody or control (if any) to the Chair of the Board, or other Board Member nominated and authorised by the Board from time to time.

12. REMOVAL OF BOARD MEMBERS

12.1 REMOVAL BY COUNCIL MEMBERS

- (a) If a Special Resolution of Council Members expresses a vote of no confidence in the Board, all Board positions will be declared vacant and new Board Members shall be appointed by the Council Members in accordance with this Constitution.

- (b) Until the appointment of a new Board, the Council Members as at the date of the resolution must assume the powers of the Board, limited to:
 - (i) the filling of vacancies of the Board.
 - (ii) the execution of the powers of the Board which are necessary to ensure the continued operation of Activ.
 - (iii) the period of time until new Board Members are sourced and appointed.
- (c) Of the up to ten (10) newly appointed Board Members in accordance with this rule, five (5) shall hold office from the date of appointment until the conclusion of the Annual General Meeting in the year of their appointment and the remaining five (5) shall hold office until the conclusion of the Annual General Meeting the year after.

12.2 PROCEDURE

A Board Member who is the subject of a proposed resolution under rule 12.1 may:

- (a) make written representations (of a reasonable length) and provide these to Activ for circulation to the Council Members fourteen (14) days prior to the General Meeting;
- (b) speak to the motion at the General Meeting; and
- (c) elect to bring a support person, who is not a legal representative, to the relevant General Meeting.
- (d) Activ must give a copy of the representations referred to in rule 12.2(a) to each Council Member, unless those representations are defamatory.

13. REGISTER OF BOARD MEMBERS

The Chief Executive Officer or the Delegate shall ensure that a Register of Board Members is kept in accordance with the Act, showing the:

- (a) name;
- (b) address; and
- (c) date of appointment to the Board.

14. DUTIES OF THE BOARD

The Board has the following duties, which it may delegate to a Board Member, office-bearer or other person appointed by the Board:

- (a) co-ordinating the correspondence of Activ;
- (b) consulting with the Chair of the Board regarding the business to be conducted at each Board Meeting and General Meeting;
- (c) preparing the notices required for General Meetings and Board Meetings and for the business to be conducted at General Meetings and Board Meetings;

- (d) maintaining on behalf of Activ the Register of Council Members, and recording in the Register of Council Members any changes in the membership, as required under the Act and this Constitution;
- (e) maintaining on behalf of Activ an up-to-date copy of these rules, as required under the Act;
- (f) maintaining on behalf of Activ a record of the date of appointment, the names and address of persons who:
 - (i) are Board Members; and
 - (ii) are office-bearers.
- (g) cause proper accounts in compliance with Act;
- (h) keep in their custody or under their control all books, documents and securities of Activ;
- (i) ensuring the safe custody of the books of Activ, other than the financial records, financial statements and financial reports, as applicable to Activ; and
- (j) maintaining full and accurate electronic minutes of Board Meetings and General Meetings.

14.2 FINANCIAL MANAGEMENT

The Board has the following duties, which it may delegate to a Board Member, office-bearer or other person appointed by the Board:

- (a) ensuring that any amounts payable to Activ are collected and issuing receipts for those amounts in Activ's name;
- (b) ensuring that any amounts paid to Activ are credited to the appropriate account of Activ, as directed by the Board;
- (c) ensuring that any payments to be made by Activ that have been authorised by the Board or at a General Meeting are made on time;
- (d) ensuring that Activ complies with the relevant requirements of Part 5 of the Act;
- (e) ensuring the safe custody of Activ's financial records, financial statements and financial reports, as applicable to Activ;
- (f) coordinating the preparation of Activ's financial statements before their submission to the Annual General Meeting; and
- (g) providing any assistance required by an Auditor or Reviewer conducting an audit or review of Activ's financial statements or financial report under Part 5 Division 5 of the Act.

15. PROCEEDINGS OF THE BOARD

15.1 MEETINGS

- (a) The Board will meet together to conduct Activ's business as often as the Chair of the Board, or in the Chair of the Board's absence, the Deputy Chair(s) of the Board determine, provided that the Board must meet at least eight (8) times annually at intervals of not more than ninety (90) days and may adjourn and otherwise regulate their meetings as they think fit.
- (b) Subject to this Constitution, the Board Members present at a Board Meeting must determine the procedure and order of business to be followed at the Board Meeting.
- (c) The Chair or any three (3) Board Members may at any time summon a Board Meeting.

15.2 NOTICE OF BOARD MEETINGS

- (a) The Chief Executive Officer or such other person as nominated and authorised by the Board, must give notice of every Board Meeting to the Board Members thereof in such form and in such manner as the Board determines.
- (b) The nominated person referred to in rule 15.2(a) must give all Board Members not less than seven (7) days' notice of every Board Meeting, except where all of the Board Members unanimously consent to shorter notice being given.

15.3 QUORUM

- (a) The quorum at Board meetings is the lowest integer which is equal to or greater than fifty percent (50%) of the number of Board members at that time, but in any event shall be not less than five (5).
- (b) Where a quorum is not present at any Board Meeting within thirty (30) minutes after the time appointed, the meeting shall stand adjourned to the same time and day in the following week. If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the commencement of the meeting, the Board Members present are to constitute a quorum.
- (c) Board Members are present in person where Board Members are able to communicate by using any technology that reasonably allows the Board Member to participate fully in discussions as they happen in the Regular Meetings and in making any decisions, provided that participation of the Board Member in the Regular Meeting must be made known to all other Board Members.

15.4 CHAIR OF BOARD MEETINGS

- (a) Subject to rule 15.4(b), at every Board Meeting the Chair of the Board, or in the Chair of the Board's absence the Deputy Chair(s) of the Board, will preside as chair of the Board Meeting.
- (b) In the absence of both the Chair of the Board and the Deputy Chairs of the Board, the remaining Board Members must elect a Board member to preside as the chair.

15.5 VOTING AT BOARD MEETINGS

- (a) Every Board Member present at a Board Meeting has a deliberative vote.
- (b) Any resolution put forward at a Board Meeting must be passed by a majority of the Board Members present and voting at the Board Meeting.

15.6 CHAIR HAS CASTING VOTE

Subject to this Constitution, questions arising at any meeting of the Board will be decided by a majority of members of the Board present. In the event of an equality of votes, the Chair of the Board shall have a second or casting vote.

15.7 CONFLICT OF INTEREST

- (a) A Board Member who has any material personal interest in a matter being considered at a Board Meeting must:
 - (i) as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Board;
 - (ii) not be present while the matter is being considered at the Board Meeting or vote on the matter; and
 - (iii) disclose the nature and extent of the interest at the next General Meeting of Council.
- (b) Rule 15.7(a) does not apply in respect of a material personal interest that:
 - (i) exists only because the Board Member is a member of a class of persons for who benefits Activ is established; or
 - (ii) the Board Member has in common with all, or a substantial proportion of, the Members.

15.8 VALIDITY OF ACTS OF THE BOARD

All acts done at any Board Meeting, or by the Board, will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Board Member or that any Board Member was disqualified, be valid as if such defect did not in fact exist or such Board Member was not disqualified, as the case may be.

15.9 USE OF TECHNOLOGY AT BOARD MEETINGS

- (a) Activ may hold a Board Meeting at 2 or more venues using any technology that gives the Board Members entitled to be heard at a Board Meeting, a reasonable opportunity to participate.
- (b) The Board Members may only withdraw their consent for the use of technology by a resolution of the Board at a Board Meeting.

15.10 MINUTES OF BOARD MEETINGS

- (a) Subject to rule 15.10(c), the Board must cause proper electronic minutes of all proceedings of every Board Meeting to be entered into a minute book within a reasonable time after the holding of each such Board Meeting.

- (b) The electronic minutes referred to under rule 15.10(a) must contain:
 - (i) the names of all Board Members present and those whose apologies for non-attendance were accepted by the Board Meeting;
 - (ii) details of any material personal interest disclosed by a Board Member under rule 15.7(a)(i); and
 - (iii) all resolutions made or passed by the Board at the Board Meeting.
- (c) If the Chief Executive Officer is not present at the Board Meeting, the Board must nominate and authorise a person to be responsible for complying with the requirements set out in rule 15.10(a) in relation to that particular Board Meeting.
- (d) The electronic minutes created under rule 15.10(a) when signed by the Chair of the Board will be, until the contrary is proved, evidence that:
 - (i) the Board Meeting was duly convened and held;
 - (ii) all proceedings recorded as having taken place at the Board Meeting did in fact take place; and
 - (iii) all appointments reported to have been made at the Board Meeting have been validly made.

15.11 RESOLUTIONS

- (a) Subject to this Constitution and the Act, the Board may pass a circular resolution without a Board Meeting being held.
- (b) A circular resolution is passed if all of the Board Members entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in rule 15.11(c) or 15.11(d).
- (c) Each Board Member may sign (including by way of electronic signature):
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, provided that the wording of the resolution is the same in each copy.
- (d) Activ may send a circular resolution by electronic means to the Board Members and the Board Members may agree to the resolution by sending an electronic reply to that effect, including the text of the resolution in their reply.

15.12 INSPECTION OF RECORDS BY COUNCIL

Council Members are entitled to inspect records and documents of Activ at any reasonable time.

In accordance with the requirements of the Act, a Council Member may inspect:

- (a) this Constitution;

- (b) the Register of Council Members in accordance with rule 7.2; and
- (c) the record of Board Members in accordance with rule 17.2(k).

16. SUBCOMMITTEE

16.1 ESTABLISHMENT OF SUBCOMMITTEES

The Board may establish Subcommittees to advise Activ on any matter relating to Activ.

16.2 COMPOSITION AND ROLE OF SUBCOMMITTEE

Unless inconsistent with this Constitution, the Board may:

- (a) appoint and remove Subcommittee members, or make provision for the appointment and removal of Subcommittee members;
- (b) specify that the Subcommittee consists of a single individual or a number of individuals;
- (c) determine the functions of any Subcommittee; and
- (d) determine the remuneration (if any) of any Subcommittee members.

16.3 SUBCOMMITTEE DECISIONS

- (a) If the Board establishes a Subcommittee for a particular matter then the Board may obtain the opinion of that Subcommittee before the Board makes any decision on that matter.
- (b) The opinion or decisions of a Subcommittee are recommendations only and do not bind the Board in any way.

16.4 SUBCOMMITTEE RULES

- (a) The Board may make and amend rules for each Subcommittee.
- (b) Subject to any conditions imposed on it by the Board, a Subcommittee may meet and adjourn as it thinks fit, and may recommend to Board for appointment of a chair and deputy chair.
- (c) Decisions arising at any meeting of a Subcommittee must be determined by a majority of votes of the Subcommittee members present, with the chair having a second or casting vote in the case of an equality of votes.

17. CHIEF EXECUTIVE OFFICER

17.1 APPOINTMENT

The Board shall appoint a Chief Executive Officer who shall be responsible for the day to day management of the business and affairs of Activ and shall have the powers and undertake the responsibilities as determined and in the manner determined, from time to time by the Board.

17.2 DUTIES

In addition to rule 4.3, the duties of the Chief Executive Officer includes the following duties, amongst others which can be delegated at the discretion of the Chief Executive Officer:

- (a) managing Activ's affairs;
- (b) attend or be represented at all Board Meetings;
- (c) engagement and dismissal of people to enable effective management of Activ;
- (d) co-ordinating the correspondence of Activ;
- (e) consulting with the Chair of the Board regarding the business to be conducted at each Board Meeting and General Meeting;
- (f) preparing the notices required for General Meetings and Board Meetings and for the business to be conducted at General Meetings and Board Meetings;
- (g) maintenance and continual updating of an inventory of the furniture, fittings, goods, chattels, machines, vehicles and other property of all kinds belonging to Activ;
- (h) maintenance of records and books of accounts, also the preparation and rendition of the annual audited balance sheet of assets and liabilities and statement of income and expenditure;
- (i) maintaining a list of Support Groups as approved by the Board;
- (j) maintaining on behalf of Activ an up-to-date copy of these rules, as required under the Act;
- (k) unless another Board Member is authorised by the Board to do so, maintaining on behalf of Activ a record of the names and address of persons who:
 - (i) are Board Members; and
 - (ii) are office-bearers.
- (l) ensuring the safe custody of the books of Activ, other than the financial records, financial statements and financial reports, as applicable to Activ; and
- (m) maintaining full and accurate electronic minutes of Board Meetings and General Meetings.

17.3 TERMS OF APPOINTMENT

The Chief Executive Officer shall:

- (a) be subject to a probationary period of six (6) months; and
- (b) be remunerated in such manner and in such amount as the Board shall from time to time determine.

18. GENERAL MEETINGS – COUNCIL MEETINGS

18.1 ANNUAL GENERAL MEETINGS AND SPECIAL GENERAL MEETINGS

- (a) The Board:
 - (i) must convene an Annual General Meeting within six (6) months after the end of the Financial Year and at such time and place as the Board shall determine.
 - (ii) may at any time convene a Special General Meeting of Activ; and
 - (iii) must give notice under rule 18.3 to convene a Special General Meeting of Activ, for the purpose which will be specified in the request, within forty two (42) days of receiving a written request to do so signed by not less than twenty percent 20% of the Council Members (**Percentage**), unless this Percentage is greater than the prescribed percentage under the Act, in which case the prescribed percentage under the Act will apply.
- (b) Board Members who are not Council Members may attend the Annual General Meeting, but are not entitled to vote.

18.2 RIGHTS OF COUNCIL MEMBERS CONVENING SPECIAL GENERAL MEETING

When a Special General Meeting is convened under rule 18.1(a)(iii):

- (a) the Board must:
 - (i) provide notice to all Council Members of the Special General Meeting in accordance with rule 18.4; or
 - (ii) ensure that the Council Members convening the Special General Meeting are supplied with the Register of Council Members in accordance with rule 7 for the purpose of convening the Special General Meeting.
- (b) Activ must pay the reasonable expenses of convening and holding the Special General Meeting.

18.3 SUMMONING BY THE CHAIR OF THE COUNCIL, THE BOARD OR THE CHAIR

The Chair of the Council, the Board or the Chair of the Board may request and call a General Meeting whenever they consider necessary, in the manner under rule 18.

18.4 NOTICE OF GENERAL MEETING

- (a) A notice of every General Meeting must:
 - (i) be given to all Council Members and the Auditor or Reviewer (if any) at least fourteen (14) days prior to the date of the General Meeting, except in the case of a General Meeting at which a Special Resolution is to be considered, in which case at least twenty one (21) days' notice must be given;

- (ii) state the time, date and place of the General Meeting and the particulars of the business to be transacted at the General Meeting, including (where applicable), the wording of any proposed Special Resolutions, and the order in which the business is to be transacted;
 - (iii) state that Council Members may appoint another Council Member as a proxy for the General Meeting and include a copy of any form that the Board has approved for the appointment of a proxy;
 - (iv) contain details of Activ's voting procedures, including how to vote by post, electronic transmission, and proxy; and
 - (v) be delivered by hand, sent by prepaid post or sent by electronic transmission to every Council Member in accordance with each Council Member's contact details appearing in the Register of Council Members in accordance with rule 7.
- (b) The General Meeting agenda and supporting papers should, as far as possible, be dispatched at least seven (7) days prior to the relevant meeting.
 - (c) The Board is to distribute a statement of income and expenditure of a balance sheet of assets and liabilities together with the Auditor's report thereon and the Board's report against Activ's purpose and objects of this Constitution to Council Members prior to the Annual General Meeting.

18.5 QUORUM

- (a) A quorum at any General Meeting is the lowest integer which is equal to or greater than fifty per cent (50%) of the number of Council Members as at the date of the meeting, present in person or by proxy.
- (b) Where a quorum is not present at any General Meeting within thirty (30) minutes after the time appointed, the meeting shall stand adjourned to the same time and day in the following week. If at the adjourned meeting a quorum is not present within thirty (30) minutes of the time appointed for the commencement of the meeting, the Council Members present are to constitute a quorum.
- (c) There will not be transacted at any adjourned General Meeting any business other than the business left unfinished at or on the agenda of the General Meeting which was adjourned.
- (d) When a General Meeting is adjourned for a period of thirty (30) days or more, Activ must give notice under rule 18.4 of the adjourned General Meeting as if that General Meeting was a new General Meeting.

18.6 CHAIR OF GENERAL MEETINGS

- (a) All General Meetings will be chaired by the Chair of the Council or if absent the Deputy Chair of the Council.
- (b) In the absence of the Chair of the Council and the Deputy Chair of the Council, a chair for the meeting must be elected by the Council Members present and voting.

- (c) The Chair of the Council may:
 - (i) with the consent at the General Meeting, adjourn any General Meeting from time to time and from place to place; and
 - (ii) impose reasonable time limits on the speakers on any motion.

18.7 VOTING AT GENERAL MEETINGS

- (a) Only Council Members may vote.
- (b) Each Council Member has one (1) vote and the vote shall include proxies (if applicable).
- (c) Every Council Member present at a General Meeting has a deliberative vote.
- (d) Unless otherwise provided in this Constitution or the Act, any resolution at a General Meeting will be carried by a simple majority of the Council Members present on a show of hands.
- (e) Where there is an equality of votes, the Chair of the Council has a casting vote in addition to their deliberate vote.
- (f) At any General Meeting, a declaration by the Chair of the Council that a resolution has been carried and an entry to that effect in the minute book of the proceedings of Activ under rule 18.13, is conclusive evidence of the fact unless, during the General Meeting at which the resolution is considered, a poll is demanded in accordance with rule 18.7(h).
- (g) At a General Meeting, a poll may be demanded by the Chair of the Council or by three or more Council Members present and, if so demanded, must be taken in such manner as the Chair of the Council directs.
- (h) If a poll is demanded and taken under rule 18.7(h), a declaration by the Chair of the Council of the result of the poll is evidence of the matter so declared.

18.8 PROXIES

- (a) A Council Member may appoint an individual who is a Council Member as his or her proxy to exercise a vote by proxy in respect of any motion before a General Meeting, only when that motion has been detailed in the Notice of Meeting.
- (b) No amendment to a motion contained in a notice of meeting is permitted at that meeting. The Council Member may appoint the Chair of the Council of the meeting as a proxy, and may indicate whether the proxy vote is in favour of or opposed to the motion.
- (c) A written instrument appointing any such proxy must be deposited with the Chair of the Council at least forty eight (48) hours prior to the commencement of the meeting otherwise it will have no effect.
- (d) The proxy must take the form as determined by the Council from time to time.
- (e) The proxy must be announced by the Chair of the Council of the meeting. Proxy votes will be available at the meeting for scrutiny by Council Members.

- (f) The Council Member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.
- (g) If not instructions are given to the proxy, the proxy may vote as the proxy sees fit.

18.9 AUDITOR OR REVIEWER'S RIGHT TO BE HEARD

The Auditor or Reviewer (if any) is entitled to attend and be heard at a General Meeting on any part of the business of that meeting that concerns the Auditor or Reviewer (if any) in their professional capacity.

18.10 USE OF TECHNOLOGY AT GENERAL MEETING

- (a) Activ may hold a General Meeting at 2 or more venues using any technology that gives the Council Members entitled to be heard at a General Meeting, a reasonable opportunity to participate.
- (b) The Council Members may only withdraw their consent for the use of technology by a resolution of Activ at a General Meeting.

18.11 POSTPONING OR CANCELLING A MEETING

- (a) Subject to rule 18.11(b), the Board may change the venue for, postpone or cancel a General Meeting at its own discretion.
- (b) If a Special General Meeting is called under rule 18.1(a)(iii), the Board must not cancel it without the consent of the relevant Council Members.

18.12 ANNUAL GENERAL MEETING

Every Annual General Meeting must consider the following business in the following order:

- (a) the disclosure of the nature and extent of all material personal interests required to be disclosed under rule 15.7(a) (if any);
- (b) appointment of Board Members;
- (c) the presentation of the financial accounts of Activ and reports of the Board; and
- (d) any other business specified in the notice convening the Annual General Meeting.

18.13 MINUTES OF GENERAL MEETINGS

- (a) The Chief Executive Officer, or such other person nominated and authorised by the Board, must cause proper electronic minutes of all proceedings of every General Meeting to be entered into a minute book within a reasonable time after the holding of each such General Meeting.
- (b) The minutes referred to under rule 18.13(a) must record:
 - (i) the names of all Council Members who attended the meeting;

- (ii) any proxy forms validly received in accordance with rule 18.8;
 - (iii) details of any material personal interest disclosed by a Council Member at the General Meeting; and
 - (iv) all resolutions passed by the General Meeting.
- (c) The minutes created under rule 18.13(a) when signed by the Chair of the Council of the General Meeting are, until the contrary is proved, evidence that:
- (i) the General Meeting was duly convened and held;
 - (ii) all proceedings recorded as having taken place at the General Meeting did in fact take place; and
 - (iii) all appointments reported to have been made at the General Meeting have been validly made.

19. DISPUTE RESOLUTION

- (a) The dispute resolution procedure set out in this rule 19 applies to disputes arising under or in relation to this Constitution between:
- (i) a Council Member and another Council Member; and
 - (ii) a Council Member and Activ.
- (b) The parties to a dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all of the parties.
- (c) 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 ten (10) days, arrange to hold a meeting in the presence of a registered mediator.
- (d) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (e) The mediator, in conducting the mediation, must:
- (i) give the parties to the mediation process every opportunity to be heard;
 - (ii) allow due consideration by all parties of any written statement submitted by any party; and
 - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (f) The mediator must not determine the dispute.
- (g) The mediation must be confidential and without prejudice.
- (h) 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.

20. ADMINISTRATION

The Council is to receive all necessary secretarial and administrative support from Activ.

21. INDEMNITIES

21.1 COUNCIL MEMBERS BOUND BY RULES AND DECISIONS OF THE BOARD

- (a) Every Council Member agrees to comply with this Constitution.
- (b) The Council is bound by the decisions of the Board.

21.2 BOARD MEMBERS NOT LIABLE

No Board Member or officer or employee of Activ shall be liable for the acts, error, omission, conduct, misstatement, misleading statement, neglects, defamation, infringement of rights of intellectual property or breach of duty; trust; contract, warranty of authority; statute or confidentiality, actually or allegedly committed or defaults of any other member, officer or servant of Activ or for joining in any receipt or other act of conformity or for any loss or expense incurred by Activ through the insufficiency and/or deficiency of title to any property acquired by order of the officer for or on behalf of Activ or for the insufficiency and/or deficiency of any security in or upon which any of the moneys of Activ shall be invested or for any loss or damage arising from the bankruptcy, insolvency or the unlawful act of any person with whom any moneys, securities or assets shall be deposited or from any loss occasioned by any error of judgment or oversight on his or her part or for any other loss, damage or misfortune whatever which shall happen in the execution of his or her duties or in relation thereto unless the same shall occur through his or her own dishonesty, wilful negligence, default, breach of duty or breach of trust.

21.3 INDEMNIFICATION OF BOARD MEMBERS

Every Board Member and other officer or employee of Activ shall be indemnified by Activ against any claims, demands, actions or suits made against that person by reason of any act or thing done by him or her as a Board Member, officer or servant in the proper and lawful discharge of his or her duties for and on behalf of Activ and it shall be the duty of the Board to pay out of the funds of Activ all costs necessarily or incidentally incurred (including travelling expenses) which that person may suffer as a result thereof.

22. DISSOLUTION, WINDING UP OR AMALGAMATION

22.1 SPECIAL RESOLUTION NECESSARY

Activ may be cancelled, wound up or amalgamated with another institution, association, society or other body if a Special Resolution is passed at any General Meeting.

22.2 NOTICE REQUIRED

- (a) Where, in any case, it is proposed that the affairs of Activ be amalgamated with those of any other institution, association, society or other body, and as a result of such amalgamation, Activ ceases to exist as a separate body, notice of the proposal must be given to the Council Members.

- (b) Notices are deemed to have been served on any Council Member when delivered personally, sent by a prepaid letter or electronic means, addressed to the Council Member at the address as shown in the register.

22.3 DISTRIBUTION OF SURPLUS

- (a) Surplus property, in relation to Activ, means property remaining after the satisfaction of:
 - (i) the debts and liabilities of Activ; and
 - (ii) the costs, charges and expenses of winding up or cancelling the incorporation of Activ,but does not include books relating to the management of Activ or Community Housing Assets.
- (b) Immediately prior to the cancellation of the incorporation or the winding up of Activ, all Community Housing Assets in which the Housing Authority has a legal interest under a legal agreement with Activ, are to be, in accordance with the legal agreement and as directed by the Housing Authority, transferred to:
 - (i) the Housing Authority; or
 - (ii) another registered Community Housing Provider in Western Australia.
- (c) On the cancellation of the incorporation, the winding up of Activ or upon Activ ceasing to be endorsed as a Deductible Gift Recipient, the surplus property (including any gifts, deductible contributions and money received from such gifts and contributions) must not be paid to or distributed among the Council Members, or former Council Members, but must be transferred to an entity of the type referred to under section 24(1) of the Act which:
 - (i) has similar objects to the Activ's objects;
 - (ii) is approved as a Deductible Gift Recipient and a Registered Public Benevolent Institution; and
 - (iii) prohibits distribution of its income and property among its members and directors (if any) to an extent at least as great as is imposed on Activ by rule 5.2.
- (d) The identity of the organisation referred to in rule 22.3(c) must be determined by the Council Members in a General Meeting before a dissolution.

23. AUDITOR OR REVIEWER

- (a) Activ must have its financial report for each Financial Year audited or reviewed in accordance with the provisions of the Act.
- (b) Activ must appoint an Auditor or Reviewer, as the case may be, in accordance with the provisions of the Act.

24. NOTICES

24.1 SERVICE ON COUNCIL MEMBERS OR BOARD MEMBERS

- (a) A notice under this Constitution is deemed to be properly served if the notice is addressed and delivered to the Council or Board Member in person, by pre-paid post or by email as per the details contained in the Register of Council Members.
- (b) The non receipt of, or the omission to send to any Council Member or Board Member, any notice or other document required to be sent to a Council or Board Member under this Constitution does not invalidate any General Meeting or Board Meeting.

24.2 SERVICE ON ACTIV

A notice may be served on Activ by either email, post or personal delivery to the Chief Executive Officer.

24.3 TIME FOR SERVICE OF NOTICE

- (a) A notice is deemed to have been received by a Council or Board Member or other person if:
 - (i) personally delivered, on the day of delivery;
 - (ii) served by pre-paid post, on the day following that upon which it is posted;
or
 - (iii) sent electronically, on the date that the electronic communication was sent,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

25. ALTERATION/CHANGES OF THE CONSTITUTION

- (a) Subject to this Constitution Activ may, by Special Resolution, resolve to amend this Constitution.
- (b) All previous acts and appointments legal and valid under this Constitution, prior to the amendment or repeal of the rules or under the former Rules (subject to any later rules), will remain legal and valid.
- (c) Any amendment or repeal of this Constitution or any new rules only has force or effect as set out under the Act.
- (d) Activ must notify the Australian Tax Office, the Australian Charities and Not-for-profits Commission and the Commissioner for Consumer Protection of any amendments to this Constitution.

26. EXECUTING DOCUMENTS

- (a) Subject to this Constitution, Activ may execute a document without using a common seal if the document is executed by:
- (i) 2 Board Members;
 - (ii) 1 Board Member and a person authorised by the Board;
 - (iii) the Chief Executive Officer as authorised by the Board;
 - (iv) a person authorised by the Board; or
 - (v) as set out in the Delegations Policy.
- (b) Activ must execute a document using a common seal if:
- (i) the document to be executed relates to real property; or
 - (ii) as otherwise stipulated in the Delegations Policy.
- (c) In relation to the common seal:
- (i) the name of Activ must appear in legible characters on the common seal; and
 - (ii) a document may only be sealed with the common seal by the authority of the Board and in the presence of:
 - (A) 2 Board Members; or;
 - (B) 1 Board Member and Chief Executive Officer; or
 - (C) 1 Board Member and an executive manager of the Association; or
 - (D) as set out in the Delegations Policy,and each of them is to sign the document to attest that the document was sealed in their presence.
- (d) The Chief Executive Officer must make a written record of each use of the common seal.
- (e) The common seal must be kept in the custody of the Chief Executive Officer or another Board Member authorised by the Board.

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