

Constitution of  
Yooralla  
ACN 005 304 432

The Corporations Act  
A company limited by guarantee  
Registered in Victoria

9 November 2016

# Preamble

Yooralla promotes an inclusive Australian society that enables people with disability to fulfil their own best interests as equal citizens.

Founded in 1918, Yooralla provides supports for people with disability to achieve goals in many aspects of their lives, including independence, involvement in community, education, employment and health and wellbeing.

## Our vision

A world where people with disability are equal citizens.

## Our mission

To provide quality, sustainable and flexible services that uphold human rights and create opportunities, empowering individuals to live the life they choose.

## Our values

In all our work, our values are at the centre of everything we do. We are:

- **Customer** focused in our service, creative in our solutions.
- **Courageous** in speaking up, determined in facing challenges.
- **Authentic** in our relationships, honest in our conduct.
- **Accountable** in our work, responsible for our actions.
- **Respectful** of choices, embracing of diversity.
- **Passionate** about our work, driven by our vision and values.

Our values drive our dedication to the achievement of human rights for every person with disability.

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## PRELIMINARY

Constitution of Yooralla ACN 005 304 432 (*Yooralla*), a public company limited by guarantee.

## PURPOSE AND AIMS

### 1. Purpose and Aims

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It is Yooralla's purpose and aim to:

- (a) improve the lives of people with disability;
- (b) facilitate the same right of access to services as all Australians;
- (c) give people choice and control over how, when and where supports are provided;
- (d) provide tailored, reasonable and necessary supports for people to achieve their goals and aspirations;
- (e) value the views, knowledge and experience of families and carers
- (f) extend the use of Yooralla's resources to meet the needs of other vulnerable people.

## INCOME AND PROPERTY

### 2. Application of Income and Property

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- (a) Yooralla may charge reasonable fees for the services it provides.
- (b) Subject to paragraph (c), the profits (if any) or other income and property of Yooralla must be applied solely towards the purpose of Yooralla set out in rule 1 ('Purpose and Aims') and no part of them may be paid or transferred, directly or indirectly, to any Member of Yooralla, whether by way of Dividend, bonus or otherwise.
- (c) Subject to paragraph (d), nothing in paragraph (b) prevents any payment in good faith by Yooralla of:
  - (i) reasonable and proper remuneration to any Member for any services actually rendered or goods supplied in the ordinary and usual course of business to Yooralla;
  - (ii) reasonable and proper rent for premises let by a Member to Yooralla; or
  - (iii) interest at a commercial rate on money borrowed from Members.
- (d) No payments may be made by Yooralla to a Director apart from:
  - (i) the payment or reimbursement of out-of-pocket expenses incurred by a Director in the performance of any duty as Director where the amount payable does not exceed an amount previously approved by the Board; and
  - (ii) payment for any service rendered to Yooralla by the Director in a professional or technical capacity, other than in the capacity of Director, where the

provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service.

- (iii) where the Chief Executive Officer has been appointed as a Director under rule 24(c) ('Appointment and Removal'), payment of any salary, wage or other benefit due to the Chief Executive Officer as an employee of Yooralla on the terms of the Chief Executive Officer's appointment and employment which were approved by the Board.

## **MEMBERSHIP**

### **3. Membership**

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- (a) Subject to rules 4 ('Categories of Members') and 6 ('Subscription'), the Members of Yooralla are such natural persons as the Board admits to membership and who have consented in writing to be Members.
- (b) A natural person who wants to become a Member must:
  - (i) be over the age of 18 years and not employed by Yooralla, other than on the occasion on which the Chief Executive Officer has been appointed as a Director under rule 24(c); and
  - (ii) apply to the Board in writing and state that they:
    - (A) want to become a Member;
    - (B) support the purpose of Yooralla; and
    - (C) agree to comply with this Constitution.
- (c) The Board may, in its complete discretion, either accept or reject the application. The Board is not required to provide reasons as to why an application was not approved.

### **4. Categories of Members**

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- (a) There will be a class of Members known as Ordinary Members. Ordinary Members are people who have applied in the correct form and whose applications have been approved by the Board under rule 3 ('Membership').
- (b) There will be a class of Members known as Life Members. Life Members are people whom the Board decides have given such good service to Yooralla, or to people with disabilities, that they should be invited to accept life membership and who accept.
- (c) The Board may determine and admit different classes of Members. The Board may vary or cancel the rights of Members in any class.

### **5. Role of Members**

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The role of the Member is furtherance of the purpose of Yooralla. Further:

- a) a Member is entitled to make decisions about the company by voting on resolutions at a General Meeting of Members, including the appointment and/or removal of Directors;
- b) a Member is entitled to receive the financial accounts of a company at least 21 days before the annual General Meeting;
- c) a Member is entitled to speak at General Meetings;
- d) a Member has the right to request a copy of the Constitution;
- e) a Member is not liable for the company's debts in excess of their liability under rule 50 ('Members' Liability on Winding Up').

## **6. Subscription**

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- (a) The Board may from time to time prescribe an Annual Subscription for Ordinary Members and the terms of payment of such Annual Subscriptions. Each Ordinary Member must pay the Annual Subscription. No subscription is payable by Life Members.
- (b) The Board may in its absolute discretion vary the amount of any Annual Subscriptions and may determine that a different amount is payable by different classes of Members.

## **7. Cessation of Membership**

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### **7.1 Resignation**

A Member may resign from Yooralla by giving one month's notice in writing to the Board. The Board may consent to a shorter notice period.

### **7.2 Failure to pay Annual Subscription**

A Member who fails to pay an annual subscription set by the Board within six months of the due date is deemed to have resigned from Yooralla.

### **7.3 Misconduct**

If any Member:

- (a) is in breach of the provisions of this Constitution; or
- (b) has, in the opinion of the Board, engaged in an act or omission which is unbecoming to a Member or prejudicial to the interests of Yooralla,

the Board may, in its absolute discretion, discontinue the membership of the Member by giving the Member written notice of the discontinuance of his or her membership. If a Member's membership of Yooralla is discontinued or if the Member has resigned, that Member's name will be removed from the register of Members kept by the Secretary under rule 8 ('Members' Register').

## **8. Members' Register**

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The Board must cause the Secretary to keep a register of Members containing full names and addresses of the Members and such other particulars as the Board may prescribe.

## **9. Address of Members**

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Every Member must communicate any change in his or her address to Yooralla in writing and any such change of address must be entered in the Members' Register. The latest address in the Members' Register is deemed to be the Member's registered address.

# **GENERAL MEETINGS**

## **10. General Meetings**

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- (a) Yooralla must hold a General Meeting at least once in each calendar year and within the period of five months after the end of every financial year of Yooralla.
- (b) Any three Directors (or such fewer number as prescribed by the Corporations Act or the ACNC Act) may convene a General Meeting of Yooralla whenever the Directors think fit.
- (c) Any three Directors (or such fewer number as prescribed by the Corporations Act or ACNC Act) may cancel or postpone any General Meeting convened by those Directors by notice in writing to all persons who were entitled to receive notice of that General Meeting, except where the cancellation or postponement would be contrary to the Corporations Act or the ACNC Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed General Meeting once held.

## **11. Notice of General Meetings**

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- (a) Each notice convening a General Meeting must contain the information required by the Corporations Act and the ACNC Act.
- (b) The non-receipt of a notice convening a General Meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings or any resolution passed at the meeting.

## **12. Business of General Meetings**

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Notice of an Annual General Meeting and the Annual General Meeting Agenda shall be provided 21 days prior to the date of the meeting. Unless notice of special business is received by Yooralla at least 14 days prior to the General Meeting, business will not be transacted at any General Meeting except as set out in the notice of meeting.

### **13. Quorum**

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- (a) No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, 15 Members Present constitutes a quorum.
- (c) If a quorum is not present within 20 minutes after the time appointed for the General Meeting:
  - (i) where the General Meeting is convened on the requisition of Members, the proposed meeting is automatically dissolved (subject to rule 15 ('Adjournments'));
  - (ii) in any other case:
    - (A) the General Meeting stands adjourned to a day and at a time and place as the Directors decide or, if no decision is made by the Directors, to the same day in the next week at the same time and place; and
    - (B) If no quorum is present at the resumed meeting within 20 minutes after the time appointed for that meeting, the meeting will be cancelled.

### **14. Chair of General Meetings**

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- (a) Subject to paragraph (b), the Chair or in the Chair's absence, the Deputy Chair is entitled to preside as chair at every General Meeting.
- (b) Where a General Meeting is held and:
  - (i) there is no Chair or Deputy Chair; or
  - (ii) the Chair or Deputy Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present may elect one of their number to be chair of the General Meeting.

### **15. Adjournments**

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- (a) The Chair may and must if so directed by the General Meeting adjourn the meeting from time to time and from place to place. However, the Chair must not adjourn the General Meeting if the majority of the Members Present do not want the meeting adjourned.
- (b) The only business which may be transacted at any adjourned General Meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

- (d) Except as provided by paragraph (c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned General Meeting.

## **16. Minutes**

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Yooralla must keep minutes of all General Meetings in accordance with the Corporations Act and the ACNC Act.

## **17. Voting at General Meetings**

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- (a) Each resolution submitted to a General Meeting is to be decided by a show of hands of the Members Present and entitled to vote, unless a poll is required.
- (b) For the determination of an ordinary resolution, a simple majority is required to pass (i.e. more than 50% of the Members Present at the General Meeting. Matters requiring ordinary resolution include: election/re-election of Directors, appointment of an auditor, acceptance of reports at the Annual General Meeting, strategic or commercial decisions, an increase or reduction in the number of Directors or passing a board limit resolution.
- (c) For the determination of a special resolution, Members must be given notice of a General Meeting at least 21 days before the meeting. At least 75% of the votes cast by members entitled to vote on a special resolution must be in favour of the resolution for it to be passed. Members must physically meet in order to consider a special resolution. A special resolution includes a change to this Constitution and removal of a Director or auditor.
- (d) In the case when a deciding vote is required, the Chair has, both on a show of hands and on a poll, a casting vote in addition to the vote or votes to which the Chair may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.
- (e) Unless a poll is demanded, a declaration by the Chair following a vote on a show of hands that a resolution has been passed or lost and an entry in the minutes of the General Meeting are conclusive evidence of the fact. For the avoidance of doubt, it is not necessary to show the number or proportion of the votes recorded in favour of or against a resolution.
- (f) A poll may be demanded by at least five Members present and entitled to vote on the resolution or by the Chair.
- (g) A poll may not be demanded on the election of a Chair of a General Meeting or on a resolution for adjournment.
- (h) A demand for a poll may be withdrawn.

## **18. Procedure for Polls**

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- (a) When demanded, a poll may be taken in the manner and at the time the Chair directs.

- (b) The result of the poll is the resolution of the General Meeting at which the poll was demanded.
- (c) If a poll has been demanded at a General Meeting, the meeting may continue with the transaction of business other than the resolution on which the poll was demanded.

## **19. Representation and Voting of Members**

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Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of Members:

- (a) each Member entitled to attend and vote may vote in person, by proxy or by attorney; and
- (b) on a show of hands and a poll, each Member Present having the right to vote at the General Meeting has one vote.

## **20. Objections to Qualification to Vote**

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An objection to the qualification of a person to vote may be raised only at the General Meeting or adjourned General Meeting at which the vote objected to is tendered. Any objection must be referred to the Chair of the meeting, whose decision is final. A vote allowed after an objection is valid for all purposes.

## **21. Voting by Proxy**

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- (a) A Member may appoint one proxy for the purposes of voting. A proxy need not be a Member.
- (b) An instrument appointing a proxy must be in writing and signed by the appointor or by the appointor's attorney duly authorised in writing, but may otherwise be in any form (including electronic) that the Board may accept or stipulate.
- (c) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (d) An instrument appointing a proxy or an attorney to act on behalf of a Member must be received by Yooralla at least 48 hours (or any shorter period as the Board may permit) before the commencement of the General Meeting or adjourned General Meeting at which the proxy or attorney proposes to vote. The Board may require evidence of the validity and non-revocation of a power of attorney.
- (e) For the purposes of paragraph (d), Yooralla receives these documents when they are received at any of the following:
  - (i) Yooralla's registered office;
  - (ii) a fax number at Yooralla's registered office; or
  - (iii) a place, fax number or electronic address specified for the purpose in the notice of General Meeting.

- (f) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
  - (i) the previous death or unsoundness of mind of the principal; or
  - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power,if no notice in writing of the death, unsoundness of mind or revocation has been received by Yooralla at its registered office not less than 48 hours (or any shorter period as the Board may permit) before the commencement of the General Meeting, or adjourned General Meeting, at which the instrument is used or the power is exercised.
- (g) A proxy is not revoked by the principal attending and taking part in the General Meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.
- (h) No instrument of proxy is treated as invalid merely because it does not contain:
  - (i) the address of the appointor or of a proxy;
  - (ii) the proxy's name or the name of the office held by the proxy; or
  - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (i) Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the chair of the General Meeting.

## **22. Right of Non-Members to Attend General Meeting**

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Any person (whether a Member or not) requested by the Board or the Chief Executive Officer to attend any General Meeting is entitled to be present at and, at the request of the chair, to speak at that General Meeting.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **23. Composition of Board**

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- (a) The Board will be a skill-based Board. Directors will be selected using a professional open application recruitment process and selection based on a recognised skills matrix. Board governance processes will ensure customer and community engagement and partnership (refer also to rule 35, 'Committees').
- (b) The number of Directors must be not less than seven nor more than 10.
- (c) If the Board has fewer than seven Directors, it may still act. However, if the number of Directors is reduced below seven, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of calling a General Meeting of Yooralla but for no other purpose.

## **24. Appointment and Removal**

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Subject to the Corporations Act and ACNC Act, the following provisions apply to the appointment and removal of Directors.

- (a) At any General Meeting of Yooralla, the Members Present who are entitled to vote may, by resolution, appoint any Eligible Person as a Director, provided that the person aligns with the recognised skills matrix (refer 23(a)) and does not exceed the limit of number of directors as outlined at 23(b). If there are more candidates than positions, those candidates with the most votes become Directors.
- (b) At any General Meeting of Yooralla, the Members Present who are entitled to vote may, by resolution, remove a Director and appoint an Eligible Person to replace that Director.
- (c) The Board may at any time appoint an Eligible Person as a Director, either to fill a casual vacancy or as an addition to the Board. Any Director appointed under this rule 24(c) may hold office only until the next Annual General Meeting of Yooralla and is then eligible for formal election at that meeting. Subject to rule 32(c) ('Appointment of Chief Executive Officer'), the Board may at any time appoint the Chief Executive Officer as a Director.
- (d) Where the Chief Executive Officer is appointed as a Director pursuant to rule (c), he or she will cease to be a Director if he or she ceases to be the Chief Executive Officer.

## **25. Persons Eligible for Appointment to the Board**

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- (a) Subject to paragraphs (b) and (c), the following persons are Eligible Persons:
  - (i) A Member recommended by the Board; and
  - (ii) a Member nominated by another Member
- (b) Unless the Board otherwise resolves, a person who has been an employee of Yooralla is not an Eligible Person unless five years have elapsed since he or she ceased being an employee of Yooralla.
- (c) For the avoidance of doubt, the reference to 'employee' in paragraph (b) above includes the Chief Executive Officer, whether or not he or she was appointed as a Director under rule 24(c) ('Appointment and Removal') and notwithstanding rule 24(d).
- (d) For the avoidance of doubt, a person who is not a Member is not an Eligible Person.

## **26. Vacation of Office**

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In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act or ACNC Act, rule 24(d) ('Appointment and Removal') above and rules 27 ('Voluntary Retirement of Director') and 28 ('Terms of Appointment of Directors') below, the office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or insolvent;

- (b) becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) is absent without the consent of the Board from meetings of the Board held during a continuous period of 6 months;
- (d) dies; or
- (e) ceases to be a Member of Yooralla.

## **27. Voluntary Retirement or Resignation of Directors**

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A Director may retire or resign from the Board by giving one month's written notice to the Board. The retirement or resignation takes effect on the day that the notice expires or any earlier time accepted by the Board.

## **28. Terms of Appointment of Directors**

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- (a) Directors shall be appointed for a three-year term.
- (b) Directors may be appointed for a maximum of three terms of three years each (total of nine years).
- (c) Under exceptional circumstances, the Board may agree to a one year extension (from an upper limit of 9 to 10 years) to ensure appropriate transition and Board succession.

## **OFFICE BEARERS**

### **29. Appointment of Office Bearers**

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- (a) At the first Board meeting after each Annual General Meeting, the Board must elect a Chair and a Deputy Chair. The persons elected hold those positions until their replacements are elected at the first Board meeting after the next Annual General Meeting, even if rule 28 ('Terms of Appointment of Directors') requires them to retire at that Annual General Meeting.
- (b) If a position referred to in paragraph (a) is vacant for any reason the Board must appoint a Director to that position at the first Board meeting after the position becomes vacant. The Director so appointed may hold office until the first Board meeting after the next Annual General Meeting.

## **POWERS AND OBLIGATIONS OF DIRECTORS**

### **30. Powers and Obligations of Directors**

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Subject to the Corporations Act, the ACNC Act and this Constitution, the business of Yooralla is managed by the Board, which may exercise all powers of Yooralla which are not, by the

Corporations Act, the ACNC Act or this Constitution, required to be exercised by Yooralla in General Meeting. Directors are obliged and bound to comply with the requirements of Members under Rule 3 of the Constitution and are further obliged to comply with Yooralla's policies.

### **31. Delegation**

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The Board may delegate any of its powers which are delegable at law, except the power of delegation.

### **32. Appointment of Chief Executive Officer**

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- (a) The Board will appoint a suitably skilled and qualified person to be the Chief Executive Officer of Yooralla.
- (b) Without limiting rule 31 ('Delegation'), the Board may delegate to the Chief Executive Officer any of its powers which are delegable at law, except the power of delegation.
- (c) Provided that the Board has first determined that it is in the best interests of Yooralla, the Board may appoint the Chief Executive Officer as a Director pursuant to rule 24(c) ('Appointment and Removal').
- (d) If the Chief Executive Officer is not a Director, he or she may still attend Board meetings.

### **33. Appointment of Secretary**

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The Board must appoint a person to act as Secretary of Yooralla and may determine the terms and conditions of the appointment as it sees fit.

### **34. Appointment of Attorneys**

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- (a) The Board may, by power of attorney, appoint any person to be the attorney of Yooralla for the purposes, with the powers, authorities and discretions vested in or exercisable by the Board for any period and subject to any conditions as they think fit.
- (b) Any appointment under paragraph (a) above may be made on terms for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **35. Committees**

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- (a) The Board may delegate any of its powers (except the power of delegation) to committees consisting of any one or more Directors and any other person or persons as the Board thinks fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Board.

- (b) Subject to paragraph (c), the meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors (under rules 37 to 44 ('Proceedings of Board Meetings')) so far as they are applicable and are not in conflict with or superseded by, any regulations made by the Directors under rule 35 (a).
- (c) Until otherwise determined by the Directors, two members of a committee form a quorum of that committee.
- (d) Without limiting rule 35(a), the Board will ensure governance committee processes enable customer and community engagement and partnership with Yooralla.
- (e) Nothing in this rule 35 limits the power of the Board to delegate.

### **36. Appointment of Patrons and Deputy Patrons**

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The Board may appoint Patrons and Deputy Patrons on the terms and conditions it sees fit.

## **PROCEEDINGS OF BOARD MEETINGS**

### **37. Proceedings**

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- (a) The Board may meet for the dispatch of business and adjourn and otherwise regulate their meetings as they determine.
- (b) Any Director may at any time convene a meeting of the Board or instruct the Secretary to convene a meeting of the Board. The Secretary must comply with such a request.
- (c) Reasonable notice must be given to every Director of the place, date and time of every meeting of the Board. If a Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been given, but notice must always be given to any alternate Director in Australia whose appointment by that Director is for the time being in force.
- (d) Notice of meeting of the Directors may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

### **38. Meetings by Technology**

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- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) electronic mail;

- (iv) any other technology which permits each Director to communicate with every other Director; or
- (v) any combination of these technologies.

A Director may withdraw the consent given under this rule 38 (a) in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
  - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.

### **39. Quorum at Board Meetings**

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- (a) The quorum for a Board Meeting is 50% of directors, Where there is an odd number of Board directors appointed to the Board, a quorum shall be 50% rounded up to the nearest whole number.
- (b) Meetings must not begin until a quorum is present and if a quorum is not present half an hour after the time the meeting was supposed to start, the meeting must be adjourned.

### **40. Chair to Chair Board Meetings**

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- (a) The Chair is to chair meetings of the Board.
- (b) Where a Board meeting is held and the Chair is not present within 15 minutes after the time appointed for holding the meeting or does not wish to chair the meeting, the person first on the following list who is present is to chair the meeting:
  - (i) Deputy Chair;
  - (ii) a Director elected by the Directors present.

### **41. Directors' Voting Rights and Exercise of Powers**

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- (a) Subject to this Constitution, questions arising at a meeting of the Board are decided by a majority of votes of Directors present and voting and for all purposes any such decision is taken to be a decision of the Board. Each Director has one vote.
- (b) In the case of an equality of votes, the chair of the meeting has a casting vote.
- (c) Subject to rule 42 ('Material Personal Interest') and the Corporations Act and ACNC Act, a Director:
  - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum; and

- (ii) may enter into contracts with, or otherwise have dealings with, Yooralla.
- (d) A Director is not liable to account to Yooralla for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (e) Despite having an interest in any contract or arrangement, a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

## **42. Material Personal Interests**

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- (a) A Director is not disqualified from the Director's office by contracting with Yooralla in any capacity by reason of holding the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
  - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (ii) a contract or arrangement made by Yooralla with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (iii) the Director will not be liable to account to Yooralla for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (c) Subject to paragraph (d), a Director who has a material personal interest in a matter that relates to the affairs of Yooralla must give the other Directors notice of his or her interest.
- (d) A Director with a material personal interest in a matter that relates to the affairs of Yooralla is not required to give notice in the following circumstances:
  - (i) if all of the following conditions are met:
    - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of Yooralla;
    - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
    - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
  - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Corporations Act and ACNC Act and that standing notice is still effective in relation to the interest; or
  - (iii) as otherwise permitted under the Corporations Act and ACNC Act.
- (e) Notices of material personal interest given by Directors must:
  - (i) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of Yooralla ;

- (ii) be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
  - (iii) be recorded in the minutes of the Board meeting at which the notice is given.
- (f) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
- (i) if the material personal interest is not required to be disclosed under this clause or under the Corporations Act or ACNC Act; or
  - (ii) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
    - (A) identified the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of Yooralla; and
    - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
  - (iii) as otherwise permitted under the Corporations Act or ACNC Act.
- (g) Nothing in this clause affects the duty of a Director:
- (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of the Board, the fact and the nature, character and extent of the conflict; or
  - (ii) to comply with the Corporations Act, or the ACNC Act or any policy prescribed by the Board.

#### **43. Written Resolutions**

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- (a) If a document:
- (i) is sent to all those entitled to receive notice of a meeting of the Board at which a resolution could be put;
  - (ii) contains a statement that the signatories to it are in favour of that resolution;
  - (iii) sets out or identifies the terms of the resolution; and
  - (iv) has been signed by a majority of the Directors entitled to vote on that resolution,
- a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of Directors and the document has effect as a minute of the resolution.
- (b) For the purposes of paragraph (a):
- (i) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director; and

- (ii) an electronic communication which is received by Yooralla or an agent of Yooralla and is sent for or on behalf of a Director is taken to be signed by that Director or alternate Director not later than the time of receipt of the electronic communication by Yooralla or its agent in legible form.
- (iii) a Director may apply an electronic signature to a document, or may confirm their acceptance or rejection in writing by electronic communication.

#### **44. Defects in Appointments**

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All acts done by any meeting of the Board, a committee or by any person acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of the committee even if it is afterwards discovered that there was some defect in the appointment of that person or that a person so appointed had been disqualified.

### **SEALS**

#### **45. Seals and their Use**

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- (a) Yooralla may have a Seal. If Yooralla has a Seal it may also have a duplicate common seal.
- (b) A Seal may be used only by the authority of the Board or a committee authorised by the Board to authorise the use of the Seal. Every document to which the Seal is affixed must be signed by:
  - (i) two Directors; or
  - (ii) a Director and a Secretary (or another person appointed by the Board to countersign that document or a class of documents in which that document is included).
- (c) This rule 45 does not limit the ways in which:
  - (i) Yooralla may execute a document; or
  - (ii) a person may execute a document on behalf of Yooralla.

### **ACCOUNTS**

#### **46. True and Proper Accounts**

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- (a) The Board must cause proper accounting and other records to be kept. The Board must cause to be made out and laid before each Annual General Meeting financial reports in accordance with the Corporations Act and the ACNC Act.
- (b) The accounting records must be available for inspection by the Members. Yooralla may set reasonable restrictions on the time and manner of inspection.

## NOTICES

### 47. Notices Generally

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- (a) Any Member who has not provided to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of Yooralla may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by Yooralla to any Member by, in its discretion:
  - (i) serving it on the Member personally;
  - (ii) sending it by post to the Member or leaving it at the Member's address as shown in the Members' register or the address supplied by the Member to Yooralla for the giving of notices;
  - (iii) sending it to the fax number supplied by the Member to Yooralla for the giving of notices;
  - (iv) sending it electronically to the electronic mail address given by the Member to Yooralla for giving notices; or
  - (v) serving it in any manner contemplated in this rule 47(b) on a Member's attorney as specified by the Member in a notice given under rule 47(c).
- (c) A Member may, by written notice to a Secretary left at or sent to the registered office, require that all notices to be given by Yooralla or the Board be served on the Member's attorney at an address specified in the notice.
- (d) Notice to a Member whose address for notices is outside Australia may be sent by airmail, fax or electronic mail.
- (e) If a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting the letter containing the notice and to have been effected:
  - (i) in the case of a notice of a General Meeting, on the day after the date of its posting; and
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (f) If a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.

### 48. Notices of General Meeting

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- (a) Notice of every General Meeting must be given:
  - (i) in the manner authorised under rule 47 ('Notices Generally');
  - (ii) to every Member and to each Director; and
  - (iii) to the auditor of Yooralla (if any).
- (b) No other person is entitled to receive notice of General Meetings.

## LIABILITY OF MEMBERS

### 49. Limited Liability

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The liability of the Members of Yooralla is limited.

### 50. Members' Liability on Winding Up

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Each Member of Yooralla undertakes to contribute to the assets of Yooralla in the event of Yooralla being wound up while he, she or it is a Member or within one year after he, she or it ceases to be a member for payment of the debts and liabilities of Yooralla (contracted before he, she or it ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories amongst themselves, such amounts as may be required not exceeding \$50.

## WINDING UP

### 51. Winding Up

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If, on the winding up or dissolution of Yooralla by any means and for any reason, there remains any property, after satisfaction of all Yooralla's debts and liabilities, the property must not be paid to or distributed amongst the Members but must be given or transferred to:

- (a) one or more corporations having purposes similar to the purpose of Yooralla set out in rule 1 ('Purpose and Aims'):
  - (i) having objects similar to the objects of Yooralla;
  - (ii) whose constitution prohibits the distribution of its or their income and property to an extent at least as great as that imposed on Yooralla under rule 2 ('Application of Income and Profit'); and
  - (iii) having been endorsed by the Commissioner of Taxation as a public benevolent institution, gifts to which are deductible pursuant to Division 30 of the Tax Act; or
- (b) if there are no public benevolent institutions meeting the requirements of paragraph (a), to one or more other institutions, associations or bodies selected by the Members of Yooralla at or before the dissolution of Yooralla, the objects of which are the promotion of charity, which by its constitution is required to apply its profits or other income in promoting its objects and is prohibited from paying any dividend to its members, and gifts to which are allowable deductions under the Tax Act; or
- (c) if the Members do not make a selection pursuant to paragraphs (a) or (b) for any reason, Yooralla must apply to the Supreme Court of Victoria to decide.

## INDEMNITY

### 52. Indemnity of Officers, Insurance and Access

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- (a) Yooralla is to indemnify each Officer of Yooralla out of the assets of Yooralla To the Relevant Extent (see rule 55 'Definitions') against any Liability incurred by the Officer in or arising out of the conduct of the business of Yooralla or in or arising out of the discharge of the Duties of the Officer.
- (b) Where the Board considers it appropriate, Yooralla may execute a documentary indemnity in any form in favour of any Officer of Yooralla.
- (c) Where the Board considers it appropriate, Yooralla may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer of Yooralla against any Liability incurred by the Officer in or arising out of the conduct of the business of Yooralla or in or arising out of the discharge of the Duties of the Officer; and
  - (ii) bind itself in any contract or deed with any officer of Yooralla to make the payments.
- (d) The Board:
  - (i) will provide a former Director access on request to Board papers available to them during their tenure;
  - (ii) may provide certain papers, including documents provided or available to a Director or former Director and other papers referred to in those documents; and
  - (iii) may bind itself in any contract with a Director or former Director to give the access.

## AMENDMENT OF CONSTITUTION

### 53. Amendment of Constitution

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No addition, alteration or amendment of this Constitution will be effective unless:

- (a) such addition, alteration or amendment has been approved by special resolution of the Members; and
- (b) Yooralla has obtained any approval which is required by Law or by the Licence.

## REPLACEABLE RULES

### 54. Replaceable Rules

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The replaceable rules contained in the Corporations Act do not apply to Yooralla.

## GENERAL

### 55. Definitions

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The following definitions apply in this Constitution unless the context requires otherwise:

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

**Annual General Meeting** means the first General Meeting held by Yooralla in each financial year under rule 10 ('General Meetings').

**Annual Subscription** means any annual subscription set by the Board under rule 6 ('Subscription').

**ASIC** means the Australian Securities and Investments Commission.

**Chair** means the chair appointed by the Board under rule 29 ('Appointment of Office Bearers').

**Chief Executive Officer** means the chief executive appointed by the Board under rule 32 ('Appointment of Chief Executive Officer').

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

**Deputy Chair** means the deputy chair appointed by the Board under rule 29 ('Appointment of Office Bearers').

**Director** means a person appointed or elected to the office of director of Yooralla in accordance with this Constitution.

**Duties of the Officer**, for the purposes of rule 52 ('Indemnity of Officers, Insurance and Access'), includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by Yooralla.

**Dividend** includes an interim dividend.

**Eligible Person** means a person eligible to be appointed as a Director in accordance with rule 25 ('Persons Eligible for Appointment to the Board').

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

**Liability** means, for the purposes of rule 52 ('Indemnity of Officers, Insurance and Access'), all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

**Licence** means the licence granted to Yooralla by the Australian Securities and Investments Commission (previously the Australian Securities Commission) on 18 May 1994, pursuant to which Yooralla is entitled to omit the word 'Limited' from its name, and includes any modification of it and any licence substituted for it.

**Member** means a member of Yooralla in accordance with the Corporations Act.

**Member Present** means, in connection with a General Meeting, the Member present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by representative.

**Members' Register** means the register of Members which must be kept under rule 8 ('Members' Register').

**Officer** means, for the purposes of rule 52 ('Indemnity of Officers, Insurance and Access'), a Director or secretary, executive officer or employee, or a person appointed as a trustee by, or acting as a trustee at the request of, Yooralla, and includes a former officer.

**Person** and words importing persons means any person including partnerships, associations and bodies corporate, unincorporated bodies and all other entities or associations recognised by Law as well as individuals.

**Secretary** means the secretary appointed by the Board under rule 33 ('Appointment of Secretary').

**Seal** means any common seal or duplicate common seal of Yooralla.

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

**To the Relevant Extent** means, for the purposes of rule 52 ('Indemnity of Officers, Insurance and Access'):

- (a) to the extent Yooralla is not precluded by Law from doing so;
- (b) to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
- (c) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

**Yooralla** means Yooralla.

## **56. Interpretation**

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Headings are for convenience only and do not affect interpretation. The preamble does not form part of this Constitution and does not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise.

- (a) A gender includes all genders.
- (b) The singular includes the plural and conversely.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

- (e) Except in so far as a contrary intention appears in this Constitution, a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.