

# CONSTITUTION

Adopted at Special General Meeting held 22nd November 2016



**YUMBA-META**

Yumba-Meta Housing Association Limited ACN 009 917 293

## **1. Nature of Company**

- 1.1 Yumba-Meta is a public company limited by guarantee.
- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$10 to the assets of Yumba-Meta if it is wound up while the person/organisation is a Member, or within one (1) year after the person/organisation ceases to be a Member.

## **2. Objects**

- 2.1 The objects for which Yumba-Meta is established are:
- (a) to relieve poverty, homelessness, suffering, distress or misfortune of disadvantaged North Queensland residents, and in particular Aboriginal and Torres Strait Islanders, by assessing residents' short, medium and long term housing needs;
  - (b) to provide support for Clients who require personal and social assistance and services such as home-based aged care and assistance in maintaining sustainable living conditions;
  - (c) to promote awareness of and improve the mental health, quality of life and wellbeing of Clients;
  - (d) to promote, provide support services to, and facilitate improvements for Clients with disabilities by providing housing options and support services;
  - (e) to develop appropriate strategies and capability to assist Clients to move from community and social housing into long term affordable, appropriate and secure housing;
  - (f) to extend the supply of supported accommodation for Clients through constructing, renovating, managing, purchasing and head-leasing properties;
  - (g) to develop properties for commercial sale or rent with reinvestment of proceeds in the provision of community housing;
  - (h) to advocate for greater Government support and more effective policies and programs, in relation to affordable housing and support services for North Queensland residents;
  - (i) to collaborate with other homelessness services and Government agencies or departments to increase housing options and support services for disadvantaged persons in the community;
  - (j) to provide safety and emergency shelter and transitional housing for women and children at risk of domestic or family violence;
  - (k) to operate short term accommodation and care centres to persons at risk of incarceration, injury or causing harm to others due to intoxication;
  - (l) to administer funding programs provided by any Government agency;
  - (m) to sign and execute all deeds, documents and other instruments of every nature and kind whatsoever for carrying out the objects of Yumba-Meta; and
  - (n) to do all such other lawful things as may appear to be incidental or conducive to the above objects or any of them.

### **3. Not for Profit**

#### **No Profits for Members**

- 3.1 Subject to clause 3.2, all of the assets and income of Yumba-Meta must be applied only to fulfil the objects of Yumba-Meta and no portion may be distributed directly or indirectly to any Member.
- 3.2 However, payments may be made to Members in good faith, if calculated on commercial (arms-length) terms, in respect of:
- (a) remuneration payable to an employee of Yumba-Meta who is also a Member, for services they provide to Yumba-Meta; or
  - (b) goods or services actually supplied by a Member to Yumba-Meta in the ordinary and usual course of the Member's business;
  - (c) interest (at a rate not exceeding interest at the rate for the time being charged by Yumba-Meta's bankers for overdrawn accounts) on money borrowed from a Member;
  - (d) rent for premises that a Company may rent from a Member; or
  - (e) payment to a Member in his or her capacity as a Director (clauses 8.29 or 8.30).

### **4. Members**

#### **Membership**

- 4.1 The Members of Yumba-Meta are the persons that were members of Yumba-Meta immediately prior to the end of the General Meeting at which this Constitution is adopted, and such other persons/organisations as the Board admits to membership in accordance with this Constitution.
- 4.2 Membership of Yumba-Meta shall be unlimited in number.
- 4.3 There is one class of voting membership of Yumba-Meta, comprised of the following categories:
- (a) Ordinary Members;
  - (b) Life Members;
  - (c) Honorary Members;
  - (d) Employee Members; and
  - (e) such other category of membership that the Board may determine from time to time.

#### **Ordinary Member**

- 4.4 Ordinary Member means a person/organisation that is committed to Yumba-Meta's objects and has applied for and been granted membership of Yumba-Meta in accordance with this Constitution.

- 4.5 Ordinary Members must pay the annual membership fee to remain a member of Yumba-Meta.
- 4.6 An Ordinary Member retains membership subject to the terms and conditions set out in this Constitution.
- 4.7 Subject to the terms and conditions set out in this Constitution, an Ordinary Member may attend and cast one vote at General Meetings, and be elected and/or appointed to the Board.
- 4.8 On adoption of this Constitution, all persons that were ordinary members of Yumba-Meta immediately prior to the end of the General Meeting at which this Constitution was adopted will remain Ordinary Members.

#### **Life Member**

- 4.9 Life Member means a person who has applied for and been granted membership of Yumba-Meta in accordance with this Constitution.
- 4.10 Life Members pay a once off membership fee to Yumba-Meta and retain membership of Yumba-Meta subject to the terms and conditions set out in this Constitution.
- 4.11 Life Members may attend and cast one vote at General Meetings, and be elected and/or appointed to the Board.
- 4.12 On adoption of this Constitution, all persons that were Life Members of Yumba-Meta immediately prior to the end of the General Meeting at which this Constitution was adopted will remain Life Members.

#### **Honorary Member**

- 4.13 Honorary Member means a person who the Board considers has given exceptional service and/or contributed to the growth of Yumba-Meta and is therefore granted honorary membership by way of acknowledgement for their contribution.
- 4.14 Honorary Members do not pay membership fees and will retain membership of Yumba-Meta subject to the terms and conditions set out in this Constitution.
- 4.15 Honorary Members may attend and cast one vote at General Meetings, and be elected and/or appointed to the Board.
- 4.16 On adoption of this Constitution, all persons that were Honorary Members of Yumba-Meta immediately prior to the end of the General Meeting at which this Constitution was adopted will remain Honorary Members.

#### **Employee Member**

- 4.17 Employee Member means a person employed by Yumba-Meta or any related entity employing staff of Yumba-Meta, and has applied for and been granted membership of Yumba-Meta in accordance with this Constitution.
- 4.18 An Employee Member must pay the annual membership fee to remain a member of Yumba-Meta.



- 4.19 An Employee Member retains membership subject to the terms and conditions set out in this Constitution.
- 4.20 Employee Members may attend and cast one vote at General Meetings, but may not be elected and/or appointed to the Board.

#### **Membership By-Laws**

- 4.21 In addition to the criteria set out above, the Board may make and adopt By-Laws setting out, for each class and category of membership:
- (a) any additional eligibility criteria for each class and category;
  - (b) any Entrance Fee and/or Membership Fee payable by Members in each class and category; and
  - (c) the rights, if any, of Members in each class and category, provided the By-Laws do not affect the rights and obligations of Members as set out in this Constitution.

#### **Application for Membership**

- 4.22 Subject to the membership eligibility requirements, Membership is open to any person or organisation who:
- (a) subject to clause 4.24, is an Aboriginal or Torres Strait Islander or other person;
  - (b) if a person, they are 18 years of age or over;
  - (c) has their application proposed by 1 Member;
  - (d) demonstrates to the satisfaction of the Board that they are supportive of or have a bona fide interest in the achievement of the objects of Yumba-Meta;
  - (e) completes and lodges an application for membership:
    - (i) in the form and manner, and providing such supporting information, as may be required by the Board; and
    - (ii) signed by the applicant and each proposer;
  - (f) reads the Constitution, and declares in writing in the presence of the CEO or other staff of Yumba-Meta, that they agree to be bound by the Constitution;
  - (g) pays any entrance fee and annual membership fee, if any, from time to time set by the Board when lodging the application for membership; and
  - (h) is accepted to membership by the Board.
- 4.23 In respect of each application for membership made in accordance with this Constitution:
- (a) the Board must consider the application promptly and, after considering it, determine in the Board's sole and absolute discretion whether to accept or reject the application;
  - (b) if the application is accepted, the applicant must be admitted immediately as a Member and the Secretary must:
    - (i) notify the applicant in writing of the admission to membership and the category, if any, of that membership; and

- (ii) issue a receipt for the membership fee paid by the Member; and
- (iii) enter the member's details in the Register;
- (c) if the application is rejected the Board is not required to give reasons for accepting or rejecting the application. The Secretary must then:
  - (i) notify the applicant in writing of the rejection;
  - (ii) notify the applicant that they may not apply for membership again within 6 months.
  - (iii) refund in full the membership fee paid with the application.

#### **Aboriginal or Torres Strait Islanders Members**

- 4.24 The membership of Yumba-Meta must at all times comprise at least seventy-five per cent (75%) of Aboriginal or Torres Strait Islander people.
- 4.25 If at any time the membership of Yumba-Meta ceases to comprise at least seventy-five per cent (75%) of Aboriginal or Torres Strait Islanders, the Board may in its absolute discretion decline to accept membership applications from persons who are not Aboriginal or Torres Strait Islanders until such time that the membership of Yumba-Meta becomes constituted by seventy-five per cent (75%) of Aboriginal or Torres Strait Islanders.

#### **Members' Obligations and Rights**

- 4.26 The Members agree to be bound by the provisions of this Constitution.
- 4.27 For so long as a Member abides by the terms and conditions set out in this Constitution, the Member will enjoy the rights and privileges of membership.
- 4.28 Members have the rights to:
  - (a) receive notices of, attend and be heard at any General Meeting; and
  - (b) cast 1 vote in person or by proxy at any properly convened general meeting of Members.

#### **Membership Fees**

- 4.29 Any entrance fees and/or annual membership fees for Members, and the time and payment method is to be determined by the Board from time to time.
- 4.30 If a Member's membership fee or any part of it remains unpaid for thirty (30) days after it becomes payable, the Board may give the Member a notice of default:
  - (a) requiring the Member to pay the unpaid membership fee within the time determined by the Board and specified in the notice; and
  - (b) informing the Member that the rights attached to their membership (under this Constitution or otherwise) may be suspended and they may be removed from membership if the membership fee remains unpaid within the time specified in the notice.

- 4.31 If a Member's membership fee or any part of it remains unpaid after the time specified in a notice given to the Member under clause 4.30, the Board may, in its absolute discretion and without any further recourse to the Member, suspend the Member's rights as a Member (under this Constitution or otherwise) until such time as the Member has paid all arrears of membership fees.
- 4.32 A Member who resigns or is removed from Membership or otherwise ceases to be a Member is not entitled to any refund of any entrance fee or annual membership fees.

### **Register of Members**

- 4.33 A Register of Members must be kept in accordance with the Act.
- 4.34 The following details must be entered and kept current in the Register in respect of each Member:
- (a) the Member's full name, residential address, postal address, telephone number and e-mail address;
  - (b) the date of admission to and cessation of membership;
  - (c) the category of membership; and
  - (d) such other information as the Board requires.
- 4.35 Members may inspect the Register in accordance with the Act.
- 4.36 Members must notify the Secretary in writing of any change in that Member's name, residential address, postal address, telephone number or e-mail address within 1 month after the change.

### **Resignation from Membership**

- 4.37 A Member may resign from membership by giving written notice to the Secretary.
- 4.38 A Member's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.
- 4.39 A Member's liability for any fees, subscriptions or other moneys in arrears at the date of resignation continues until payment is made.

### **Removal from Membership**

- 4.40 Subject to clause 4.41, if a Member or Member's Representative:
- (a) fails to comply with the terms and conditions set out in this Constitution; and/or
  - (b) conducts himself or herself in a manner considered to be injurious or prejudicial to the character or interests of Yumba-Meta; and/or
  - (c) shows behaviour which is causing or has caused, or is likely to cause harm to Yumba-Meta; and/or
  - (d) has membership fees in arrears following the giving of a notice to that Member under clause 4.30, the Member's membership may be suspended by the Board, until a determination is made regarding the removal of the Member from membership by ordinary resolution of Yumba-Meta.

- 4.41 A Member that has been suspended by the Board pursuant to clause 4.40(a)-(c), may only have their membership terminated if:
- (a) the Board has first given at least 2 months' written notice to the Member which:
    - (i) states the intention to terminate the Member's membership;
    - (ii) sets out the grounds of the intended termination;
    - (iii) invites the Member to provide to the Board (within a specified timeframe) any written representations which the Member wishes to be put to the General Meeting
  - (b) the Board has included in the notice of the meeting a copy of the Member's written representations (unless the written representations were not provided by the Member in the specified timeframe;
  - (c) whether or not the Member has provided written representations, the Member has been given a full and fair opportunity to address the meeting; and
  - (d) an ordinary resolution is passed by the membership at General Meeting, confirming the removal of the Member's membership.
- 4.42 If the membership does not pass an ordinary resolution at General Meeting to remove the Member's membership, that Member will have their membership reinstated and will enjoy all rights and privileges of membership of Yumba-Meta. However, all membership fees and any other monies outstanding will become immediately due and payable.

#### **Other Cessation of Membership**

- 4.43 A Member otherwise ceases to be a Member if the Member:
- (a) dies;
  - (b) becomes bankrupt;
  - (c) becomes of unsound mind or a person whose property is liable to be dealt with under a law regarding mental health; or
  - (d) is convicted of an indictable offence.

## **5. Members' Representatives**

- 5.1 Members that are organisations may only appoint one person as a Representative to exercise all or any of the powers of the Member under this Constitution or the Act.
- 5.2 An application must be forwarded to the CEO notifying of the appointment of such Representative. A person so nominated shall be a director, member, or executive member of the organisation which he she is to represent and the appointment of such Representative shall be approved by the Board before such Representative shall be entitled to exercise any rights or privileges as such Representative.
- 5.3 The appointment of a Representative may be a standing one.
- 5.4 The appointment may set out restrictions on a Representative's powers.



- 5.5 Unless otherwise specified in the appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.
- 5.6 Representatives of Members appointed under this clause shall be subject to the same disciplinary procedures as Members. The Board will have the power to determine that a person is not eligible to be a Representative of a Member.
- 5.7 A Member's Representative may be elected/appointed to the Board. However, they may only hold the role of Director whilst they remain the Member's Representative and/or the organisation remains a Member.

## **6. General Meetings**

### **Calling of General Meetings**

- 6.1 General Meetings of Yumba-Meta may be called and held at the times and places and in the manner determined by the Board.
- 6.2 Yumba-Meta must provide reasonable means by which Members have an adequate opportunity to raise with the Board concerns about the governance of Yumba-Meta.
- 6.3 Members may only call or requisition a General Meeting in accordance with the Act which shall apply as if Yumba-Meta were not an ACNC Registered Entity.

### **Notice of General Meetings**

- 6.4 Notice of every General Meeting must be given to every Member, Director and the auditor, if any, for the time being of Yumba-Meta. No other person is entitled to receive notices of General Meetings.
- 6.5 Notice of a General Meeting:
- (a) subject to the provisions of the Act permitting short notice, must be given not less than 21 days prior to the meeting;
  - (b) may be given by any form of communication permitted by the Act; and
  - (c) must specify:
    - (i) the place, the date and the time of the meeting;
    - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
    - (iii) the general nature of the business to be transacted;
    - (iv) if it is proposed to move a special resolution at the meeting, the intention to propose the special resolution and the resolution; and
    - (v) any other matters required by the Act.
- 6.6 The accidental omission to give notice of any General Meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the General Meeting.

### **Business at Annual General Meetings**

- 6.7 Except as permitted by the Act or with the approval of the Board, no person may move any business of which notice has not been given under clause 6.5, other than the following at an Annual General Meeting:
- (a) the receipt and consideration of the accounts and reports of the Board and the auditors;
  - (b) the appointment of an auditor; and
  - (c) the Chair's report on Yumba-Meta's activities during the preceding year.

### **Adjournment of General Meetings**

- 6.8 The chairperson of any General Meeting at which a quorum is present may, with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- 6.9 The only business that may be transacted at any adjourned General Meeting is the business left unfinished at the meeting from which the adjournment took place.
- 6.10 When a General Meeting is adjourned under clause 6.8 for thirty (30) days or more notice of the adjourned meeting must be given in the same manner as in the case of an original meeting.
- 6.11 When a General Meeting is adjourned under clause 6.8 for less than thirty (30) days, it is not necessary to give a further notice of the adjourned meeting.

### **Cancellation of General Meetings**

- 6.12 The Board may cancel or postpone any General Meeting (other than a meeting which has been called or requisitioned by Members) at any time prior to the date on which it is to be held.
- 6.13 If a General Meeting has been cancelled or postponed, notice of the cancellation or postponement must be given in the same manner as in the case of the original meeting.

### **Attendance at General Meetings**

- 6.14 A person, whether or not a Member, who is invited or requested by the Board to attend a General Meeting is entitled to attend that General Meeting. Any persons invited or requested to attend by the Board are not counted for the purpose of the quorum.
- 6.15 A person invited or requested by the Board to attend a General Meeting may carry out the role of chairperson at that General Meeting.

### **Quorum at General Meetings**

- 6.16 No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.
- 6.17 A quorum for the purposes of a General Meeting is the number of Directors then on the Board plus two (2).

- 6.18 For the purpose of calculation of a quorum, Members must be regarded as present whether present personally or by proxy.
- 6.19 If a quorum is not present within thirty (30) minutes from the time appointed for the meeting or a longer period allowed by the chairperson:
- (a) if the meeting was called or requisitioned by Members, it must be dissolved; or
  - (b) in any other case, it must be adjourned to the same day in the next week at the same time and place, or to another day, time and place determined by the Board.
- 6.20 Notwithstanding any other provision of this Constitution, if a General Meeting is adjourned under sub-clause 6.19(b):
- (a) not less than five (5) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting;
  - (b) a quorum for the purpose of the adjourned meeting is three (3); and
  - (c) if a quorum is not present within thirty (30) minutes after the time appointed for the adjourned meeting, the meeting must be dissolved.

#### **Chairperson of General Meetings**

- 6.21 The Chair is entitled to chair every General Meeting. However, if a majority of the Board agrees, the Board may appoint a person (who need not be a Member) to carry out the role of chairperson at a General Meeting.
- 6.22 The Directors present at a General Meeting must elect one (1) of the Directors present to chair the meeting if any of the following apply:
- (a) the Chair is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or the Chair is not willing to act; or
  - (b) the person appointed by the Board to carry out the role of chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, or the person is not willing to act.
- 6.23 Except as provided by the Act, the general conduct of each General Meeting and the procedures to be adopted at the meeting are as determined by the Chair.
- 6.24 The chairperson of a General Meeting may, in his or her discretion, refuse admission to, or expel from, the meeting any person:
- (a) using a recording device;
  - (b) in possession of a placard or banner;
  - (c) in possession of an object considered by the chairperson to be dangerous, offensive or liable to cause disruption;
  - (d) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
  - (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - (f) whose conduct, in the reasonable opinion of the chairperson, is inappropriate; or
  - (g) who is not a Member, Director or auditor of Yumba-Meta.

## **7. Voting at General Meetings**

- 7.1 At a General Meeting, a resolution put to the vote of the meeting must be decided by a majority vote of the Members present or represented and entitled to vote at the meeting. If the votes are equal, the question is decided in the negative.
- 7.2 The chairperson of a General Meeting is not entitled to a second or casting vote on any resolution, whether by show of hands or on a poll.
- 7.3 A Member whose membership fees are more than two (2) months in arrears at the date of a General Meeting is not entitled to vote at that meeting.

### **Show of hands**

- 7.4 At a General Meeting, a resolution put to the vote of the meeting, must be decided on a show of hands unless a poll is demanded in accordance with clause 7.8.
- 7.5 On a show of hands, every Member present in person and entitled to vote on the resolution has one (1) vote.
- 7.6 For the avoidance of doubt, on a show of hands a Member may not vote by proxy.
- 7.7 If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of Yumba-Meta, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **Poll**

- 7.8 A poll may be demanded in respect of a resolution at a General Meeting by:
- (a) at least 5 Members entitled to vote on the resolution;
  - (b) Members with at least 5% of the votes that may be cast on the resolution; or
  - (c) the chairperson.
- 7.9 A poll may be demanded in respect of a resolution at a General Meeting:
- (a) before the vote on that resolution is taken;
  - (b) before the voting result on a show of hands is declared; or
  - (c) immediately after the voting result on a show of hands is declared.
- 7.10 A poll cannot be demanded on the election of a chairperson or on the adjournment of a meeting.
- 7.11 Every Member present in person or by proxy has:
- (a) the right to join in the demand for a poll; and
  - (b) one (1) vote in the poll.
- 7.12 The demand for a poll may be withdrawn.

- 7.13 If a poll is duly demanded, it:
- (a) must be secret;
  - (b) must be taken in the manner directed by the chairperson, including either at once or after an interval or adjournment; and
  - (c) does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll is demanded.

7.14 In the case of any dispute as to the admission or rejection of a vote, the chairperson's determination in respect of the dispute is final.

7.15 The result of the poll is the resolution taken at the meeting at which the poll is demanded.

### **Proxies**

7.16 A Member entitled to vote at a General Meeting may appoint one (1) Member as his or her proxy, to attend and vote in his or her place at a General Meeting.

7.17 A Member may only be appointed to attend and vote at a General Meeting as the proxy holder for one (1) Member. That is, the maximum number of votes that a Member may cast at a General Meeting is two (2) votes – (one (1) vote in their capacity as Member and one (1) vote in their capacity as proxy).

7.18 The proxy must be appointed in writing, in the form from time to time required by the Board, and signed by the Member appointing the proxy.

7.19 A Member attending a General Meeting as proxy has all the rights and powers of the relevant Member, except where expressly stated to the contrary in:

- (a) the document appointing the proxy;
- (b) this Constitution; or
- (c) the Act.

7.20 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

7.21 A document appointing a proxy may only appoint a proxy for the meeting or adjourned meeting at which the proxy is proposed to vote. A proxy cannot be a standing one.

7.22 A document appointing a proxy is valid only if the document appointing the proxy is received at Yumba-Meta's registered office (or other address, facsimile number or electronic address specified for that purpose in the notice convening the meeting) at least forty-eight (48) hours (or lesser period specified in the notice convening the meeting) before the time for holding the meeting or adjourned meeting at which the proxy is proposed to vote.

7.23 A vote made under a proxy is valid despite any of the following facts, unless Yumba-Meta receives written notice before the commencement of the meeting at which the vote is cast:

- (a) the Member has died;
- (b) the Member has become mentally unfit to vote;
- (c) the proxy or authority under which the proxy was signed has been revoked.

7.24 A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is to be used.



## **8. Board of Directors**

### **Duties Owed by Directors**

- 8.1 The Directors are subject to and must comply with duties owed at law, including but not limited to the duties prescribed by the ACNC Governance Standards.

### **Number of Directors**

- 8.2 The number of Directors must be not less than 5 and not more than 7.
- 8.3 If the number of Directors is reduced below the minimum number prescribed by this Constitution, the continuing Director or Directors may act only to:
- (a) appoint additional Directors to the minimum number prescribed by this Constitution; or
  - (b) convene a General Meeting.
- 8.4 Yumba-Meta may, by ordinary resolution, increase the maximum number of Directors and may determine in what rotation the Directors appointed as the result of any such alteration are to go out of office.

### **Board Composition**

- 8.5 The Board shall comprise:
- (a) a minimum of five (5) Member Elected Directors; and
  - (b) up to two (2) Board Appointed Directors.

### **Director Eligibility Criteria**

- 8.6 The following director eligibility requirements apply to Member Elected Directors and Board Appointed Directors:
- (a) the election or appointment of a person must not result in more than two (2) Directors being related;
  - (b) if the person resigned as Director, twelve (12) months must have elapsed since the person's resignation;
  - (c) the person is not an employee of Yumba-Meta or any related entity employing staff of Yumba-Meta;
  - (d) the person has not been a director of a company that has been:
    - (i) wound up; and/or
    - (ii) the subject of review by a regulator, where such review has resulted in their removal from the Board;
  - (e) the person is of such character that their election/appointment will ensure Yumba-Meta continues to be well governed, responsibly managed, and they are able to carry out the duties required to ensure Yumba-Meta meets its obligations under the law;
  - (f) the person is not considered to be someone who may pose a risk to Yumba-Meta's financial position or the pursuit of its charitable work; and

- (g) the person is not prohibited by law from being a director of a company, and for so long as Yumba-Meta is an ACNC Registered Entity has not been disqualified by the Commissioner.

8.7 In addition to the requirements set out in clause 8.6 at least seventy-five percent (75%) (rounded up to the nearest whole number) of Member Elected Directors must be Aboriginal and Torres Strait Islander people.

8.8 A Director must notify the Board if any circumstances arise which have the potential to impact upon their eligibility to continue as a director.

#### **Member Elected Directors**

8.9 A Member Elected Director is appointed at an annual General Meeting as follows:

- (a) the Board must call for nominations no earlier than two (2) months before the annual General Meeting;
- (b) any Member may nominate a person to be elected as a Member Elected Director;
- (c) the nomination must be:
  - (i) in the form prescribed by the Board;
  - (ii) signed by the nominee and each proposer; and
  - (iii) received by Yumba-Meta at least one (1) month prior to the annual general meeting;
- (d) if the number of candidates who are eligible for appointment is less than or equal to the number of vacancies, the candidates are automatically appointed as a Member Elected Director from the close of the meeting;
- (e) if the number of candidates who are eligible for appointment is more than the number of vacancies:
  - (i) a list of the names of all candidates who are eligible for appointment, including the name of the Member who nominated the candidate, must be provided to all Members at least fourteen (14) days before the meeting;
  - (ii) a secret ballot will be held for the election of Member Elected Directors at the annual General Meeting;
  - (iii) each Member who is eligible to vote may vote for such number of candidates as there are vacant positions of Directors; and
  - (iv) at the meeting, the Secretary must announce which persons have been appointed as Member Elected Directors under this clause.

#### **Tenure for Member Elected Directors**

8.10 Each Member Elected Director will serve for a term of approximately three (3) years commencing from the annual General Meeting at which the Member Elected Director was appointed, but is eligible for re-election as a Director if not then disqualified by this Constitution or the Act from being re-elected.

- 8.11 A Member Elected Director may serve a maximum of two (2) terms in office (that is approximately 6 years) unless twelve (12) months has elapsed since the end of the person's last term of office in which case they will be re-eligible for election.

#### **Rotation of Member Elected Directors**

- 8.12 There will be a staggered rotational system of appointment of Member Elected Directors such that at each annual General Meeting, approximately one-third of Member Elected Directors, each of whom has served a term of approximately three (3) years, must retire from office.
- 8.13 In order to transition to the staggered three (3) year rotational system the Directors who were on the Board following adoption of this Constitution will hold office until they are required to retire as follows:
- (a) the two Member Elected Directors who have served the longest time on the Board will be the 'First Resigning Directors' and shall retire at the first annual General Meeting following adopting of the Constitution but (if not otherwise disqualified by this Constitution or the Act) are eligible for re-election or re-appointment at or after that meeting. The remaining Directors will be the 'Remaining Member Elected Directors';
  - (b) the two Member Elected Directors who have served the longest time from the Remaining Member Elected Directors on the Board will be the 'Second Resigning Directors' and shall retire at the second annual general meeting following adopting of the Constitution but (if not otherwise disqualified by this Constitution or the Act) are eligible for re-election or re-appointment at or after that meeting. the remaining Directors will be the 'Continuing Member Elected Directors';
  - (c) at the third annual General Meeting following adoption of this Constitution, all of the Continuing Member Elected Directors must retire, but (if not otherwise disqualified by this Constitution or the Act) are eligible for re-election or re-appointment at or after that meeting.

#### **Board Appointed Directors**

- 8.14 The Board may appoint up to two (2) Board Appointed Directors.
- 8.15 The Board may only appoint a person as a Board Appointed Director if that person is eligible for appointment in accordance with the board composition and director eligibility requirements. A Board Appointed Director need not be an Aboriginal or Torres Strait Islander person.
- 8.16 Each Board Appointed Director will serve for a term of 3 years, or such lesser period as the Board may determine, but is eligible for re-appointment as a Director if not then disqualified by this Constitution or the Act from being re-appointed.

#### **Resignation from Office**

- 8.17 A Director may resign from office by giving written notice to the Secretary.
- 8.18 A Director's resignation takes effect at the time the notice is given to the Secretary or such later date as may be specified in the notice.
- 8.19 A person is not eligible for re-election or re-appointment as a Director until twelve months has elapsed since the person's resignation;

### **Removal from Office**

- 8.20 A Director may be removed from office by ordinary resolution of the members.
- 8.21 At any General Meeting at which it is proposed to remove a Director under clause 8.20, the Director must be given the opportunity to present his or her case, orally or in writing or by both of those means.
- 8.22 A Director who is removed under clause 8.20 retains office until the end or adjournment of the General Meeting at which the Director is removed.
- 8.23 If a Director removed under clause 8.20 was a Member Elected Director, the members may, by ordinary resolution, appoint a person to take that Director's place.
- 8.24 The term of appointment of a Director appointed under clause 8.23 continues until the annual General Meeting at which the person who was removed from office would have been required to retire pursuant to this Constitution if he or she had not been removed.

### **Vacation of Office**

- 8.25 The office of a Director becomes vacant if the Director:
- (a) becomes prohibited from being a director of a company by reason of the Act or the ACNC Act, any order made under the Act or otherwise at law;
  - (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
  - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (d) is a Member's Representative and the Member withdraws the authority for the person to act as the Member's Representative and/or the Member does not retain membership;
  - (e) becomes an employee of Yumba-Meta or any related entity employing staff of Yumba-Meta;
  - (f) fails to pay any debt outstanding to Yumba-Meta and that debt remains due and owing to Yumba-Meta for a period exceeding thirty (30) days and within that thirty (30) day period the Secretary has issued a further notice in writing to the Director advising that the debt is payable and if it has not been paid by the end of that thirty (30) day period then the Director's office will become vacant;
  - (g) fails to attend three (3) consecutive meetings without leave of absence from the Board;
  - (h) the Director misses a total of five meetings in any one year without adequate reason given in writing to the Board;
  - (i) the Director is removed from office at a General Meeting.

### **Casual Vacancies**

- 8.26 If a casual vacancy arises in relation to a Member Elected Director, the Board may appoint a person who is eligible for appointment to fill the casual vacancy until the next annual general meeting.
- 8.27 The appointment of Member Elected Directors for the next annual General Meeting must include the appointment of a person to fill the vacancy (but such vacancy is not to be taken into account in determining the number of directors who must retire by rotation at the annual General Meeting). Any person appointed under clause 8.26 is eligible as a candidate in that election if not then disqualified by this Constitution or the Act.
- 8.28 The term of appointment of a Director appointed under clause 8.27 continues until the annual General Meeting at which the person who vacated office early would have been required to retire pursuant to this Constitution if he or she had not vacated office early.

### **Directors' Remuneration and Expenses**

- 8.29 Directors shall be entitled to be remunerated for their role as Directors provided that such fees are approved annually in advance by the Board.
- 8.30 In addition to remuneration approved by the Board, Directors may at the discretion of the Board be entitled to be paid all reasonable travelling, accommodation and other expenses properly incurred by them in attending and returning from meetings of the Board or any of its committee or General Meetings or otherwise in the execution of their duties as Directors provided that such expenses have first been approved by the Board.

## **9. Chair**

### **Eligibility for Appointment to Chair**

- 9.1 A Director must be an Aboriginal or Torres Strait Islander person to be eligible for appointment as Chair of the Board.

### **Election**

- 9.2 The election of the Chair (if any) may be held by any means determined by the Board, but in the event of an equality of votes, the matter must be determined by the drawing of lots.
- 9.3 A Director elected by the Board as Chair holds that office until:
- (a) the expiration of that Director's current term of office as Director;
  - (b) the Director ceases to be a Director in accordance with this Constitution;
  - (c) the Director resigns from the office of Chair by written notice to the Secretary; or
  - (d) the Board, by ordinary resolution excluding the relevant Director, removes the Director from the office of Chair (as the case may be).
- 9.4 At the first Board meeting held after the vacation of office of the Chair under clause 9.3, the Board must elect a Director as Chair.
- 9.5 A Director who is re-appointed or re-elected as a Director following expiration of the term during which the Director was elected as Chair is eligible for re-election as Chair.



- 9.6 The Directors present at a Board meeting must elect one (1) of the Directors present to chair the meeting if any of the following apply:
- (a) there is not then a Chair;
  - (b) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting; or
  - (c) the Chair is not willing to act.

#### **Role of the Chair**

- 9.7 The Chair is entitled to preside as chairperson at every Board meeting.

### **10. Powers of the Board**

- 10.1 The governance of Yumba-Meta is the responsibility of the Board of Directors duly appointed under and in accordance with this Constitution.
- 10.2 The Board may exercise all the powers of Yumba-Meta which are not, by the Act or by this Constitution, required to be exercised by the members in General Meeting.
- 10.3 If Yumba-Meta holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board may exercise any and all voting rights conferred by the membership, shares or interests in any manner it considers fit.

### **11. Board Meetings**

#### **Convening of Board Meetings**

- 11.1 Subject to the provisions of the Act and this Constitution, the Board may meet for the dispatch of business and regulate its meetings as it thinks fit.
- 11.2 The Board must meet at least nine (9) times in each financial year.
- 11.3 Any Director may request the Secretary to convene a Board meeting at any time and the Secretary must comply with such request.

#### **Notice of Board Meetings**

- 11.4 Notice of each Board meeting must be given to each Director at least twenty-four (24) hours before the meeting or otherwise as determined by the Board, except all Directors may waive in writing the required period of notice for a particular meeting.
- 11.5 Notice of Board meetings may be given to a Director by mail, delivery, facsimile transmission or e-mail to any address, facsimile number or e-mail address given by the Director to the Secretary for that purpose (unless and until the Director informs the Secretary that he or she may not be contacted at that address, facsimile number or e-mail address).

### **Mode of Board Meetings**

- 11.6 A Board meeting may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable time before the meeting.

### **Quorum at Board Meetings**

- 11.7 A quorum for the purposes of a Board meeting is half the number of Directors then on the Board plus one (1), rounded up to the nearest whole number.
- 11.8 If a quorum is not present within thirty (30) minutes from the time appointed for a Board meeting or a longer period allowed by the chairperson:
- (a) the meeting must be adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the chairperson may determine; and
  - (b) if at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting lapses.

### **Voting at Board Meetings**

- 11.9 Questions arising at a Board meeting must be decided by a majority vote of Directors present and voting. If the votes are equal, the question is decided in the negative.
- 11.10 The chairperson does not have a second or casting vote at Board meetings.

### **Resolution in Writing**

- 11.11 The Directors may pass a resolution in writing without holding a meeting if the following conditions are met:
- (a) all Directors who are entitled to vote on the resolution are provided with a copy of the resolution;
  - (b) reasonable attempts have been made to contact all Directors to obtain their response;
  - (c) at least eighty percent (80%) of all Directors (excluding Directors who have been given leave of absence) sign the document or documents or identical copies of it or them; and
  - (d) a copy of any resolution passed in writing is provided to those Directors who did not respond.
- 11.12 A resolution in writing may consist of several documents in like form, including facsimile and email copies, each signed by one or more Directors and the resolution takes effect on the latest date on which a Director signs one of the documents.
- 11.13 For the purpose of this clause, a resolution bearing an electronic copy of a signature is deemed to be signed.
- 11.14 The resolution will be valid and effectual as if it had been passed at a Board meeting duly convened and held.

### **Validity of Acts**

- 11.15 All acts done by the Board or a Committee or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person as a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

### **Conflicts of Interest**

- 11.16 The Board must agree from time to time in writing as to how to manage conflicts of interest.
- 11.17 If there are not enough Directors to form a quorum as a result of one (1) or more Directors having an interest which disqualifies them from voting, then one (1) or more of the Directors (including those who have the disqualifying interest in the matter) may call a General Meeting and Yumba-Meta in General Meeting may pass a resolution to deal with the matter.
- 11.18 At a minimum, the policy must provide that a Director may only be engaged to provide goods or services to or on behalf of Yumba-Meta if:
- (a) that Director is for bona fide reasons considered by Board, agreed to be a suitable person to provide, such goods or services;
  - (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
  - (c) the goods or services are provided on arms-length terms;
  - (d) the provision of the goods and services is disclosed clearly and expressly to the Members in Yumba-Meta's annual report; and
  - (e) the Board agrees, by ordinary resolution excluding the interested Director, to the provision of the goods or services by the Director.

## **12. Committees**

- 12.1 The Board may appoint one or more committees consisting of such Directors, Members or other persons as the Board thinks fit.
- 12.2 The Board may appoint the chairperson of a Committee, but if it does not do so, the Committee members present must elect a chairperson.
- 12.3 The Board may delegate any of its powers, except this power to delegate, to a Committee.
- 12.4 In the exercise of any powers delegated to it, a Committee must:
- (a) conform to the directions of the Board;
  - (b) only act within its delegated powers;
  - (c) report to the Board; and
  - (d) otherwise conduct its meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.
- 12.5 Unless otherwise determined, the quorum for committee meetings will be half the number of persons appointed to the Committee, plus one (1).

### **13. Advisory Reference Groups**

- 13.1 The Board may appoint Advisory Reference Groups as standing or ad-hoc working groups to advise or make recommendations to the Board.
- 13.2 The composition of an Advisory Reference Group must be considered having regard to the purpose for which the Advisory Reference Group is established. The Board may appoint appropriately qualified and experienced people to serve on any Advisory Reference Group established.
- 13.3 The purpose of an Advisory Reference Group shall be set out in a terms of reference, but at a minimum, the purposes should be to:
- (a) provide an arena for ongoing review and involvement of stakeholders to address the key issues and challenges relating to the matters for which the group has been established;
  - (b) inform and provide feedback to the Board; and
  - (c) advance Yumba-Meta's public image.

### **14. Secretary**

- 14.1 The Board may appoint an external independent person as Secretary to carry out all acts and deeds required by this Constitution or the Act.
- 14.2 The Board may set the terms and conditions of the Secretary's engagement, and terminate the appointment of the Secretary.

### **15. Chief Executive Officer**

- 15.1 The Board may appoint any person to the position of chief executive officer for the period and on the terms and conditions (including as to remuneration) the Board sees fit.
- 15.2 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on the CEO any of the powers that the Board can exercise.
- 15.3 The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.
- 15.4 If the CEO becomes incapable of acting in that capacity, the Directors may appoint any other person other than a Director to act temporarily as CEO until such time as the position can be filled permanently.

### **16. By-Laws**

- 16.1 The Board may make, adopt, amend and repeal By-Laws to give effect to any provision of this Constitution or generally for the purposes of carrying out the objects of Yumba-Meta.
- 16.2 Any By-Laws adopted by the Board will be binding on the Members.
- 16.3 To the extent of any inconsistency, this Constitution prevails over any By-Laws.

## **17. Confidential Information**

- 17.1 All Board related documents and materials and all matters discussed or business transacted at meetings of the Board is confidential information and must remain confidential unless otherwise resolved by the Board.
- 17.2 Confidential information may only be disclosed if:
- (a) reasonable notice is given to Yumba-Meta to allow Yumba-Meta to legally challenge the required disclosure; or
  - (b) it is required to comply with an applicable law or legally binding order of any court, government or semi-government authority, administrative or judicial body, or a requirement of a regulator, as long as only the minimum amount of confidential information is disclosed to satisfy the law; or
  - (c) it is information available in the public domain (which did not result from a breach of this clause or other obligation of confidence).

## **18. Indemnities and insurance**

### **Officers' Liabilities to Third Parties**

- 18.1 Every officer and past officer of Yumba-Meta is indemnified against a liability incurred by that person as an officer, other than a liability:
- (a) to Yumba-Meta or a related body corporate;
  - (b) for a pecuniary penalty under section 1317G of the Act or for compensation under section 1317H of the Act; or
  - (c) which arises from conduct that involves a lack of good faith.

### **Officers' Costs and Expenses**

- 18.2 Every officer and past officer of Yumba-Meta is indemnified by Yumba-Meta against a liability for costs and expenses incurred by that person as an officer, other than legal costs incurred:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which the person could not be indemnified under clause 18.1;
  - (b) in defending or resisting proceedings in which judgement is made against the person or the person is found guilty;
  - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this sub-clause does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order); or
  - (d) in connection with any application in relation to those proceedings in which the Court denies relief to the person.



### **Insurance Premiums**

- 18.3 Yumba-Meta may pay the premium on a contract insuring a person who is or has been an officer of Yumba-Meta against:
- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
  - (b) any other liability incurred by the person as an officer of Yumba-Meta, except a liability which arises from conduct that involves a wilful breach of duty in relation to Yumba-Meta or a contravention of sections 182, 183 or 184(2) or (3) of the Act.

## **19. Seal and Execution of Documents**

- 19.1 The Board must provide for the safe custody of the Seal and it may only be used by authority of the Board.
- 19.2 Yumba-Meta may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
- (a) two (2) Directors;
  - (b) a Director and the Secretary; or
  - (c) a Director and some other person appointed by the Board for the purpose.
- 19.3 Yumba-Meta may execute a document, including a deed, without use of the Seal if the document is signed by:
- (a) 2 Directors; or
  - (b) a Director and the Secretary.
- 19.4 Notwithstanding clauses 19.2 and 19.3, any document, including a deed, may be executed by Yumba-Meta in any other manner permitted by law.

## **20. Accounts, Audit and Records**

### **Financial Year**

- 20.1 The financial year of Yumba-Meta commences on the 1st day of July and ends on the thirtieth (30th) day of June in the following calendar year.

### **Banking of Monies**

- 20.2 All monies of Yumba-Meta must be banked in a bank account in the name of Yumba-Meta at such bank as the Board may from time to time direct.

### **Accounts, Records and Reports**

- 20.3 The Board must cause proper accounting and other records to be kept in accordance with the Act and must comply with the requirements of the Act in respect of reporting and providing accounts to Members.
- 20.4 The Board must provide for the safe custody of the books, records, documents, instruments of title and securities of Yumba-Meta.

### **Audit**

- 20.5 A registered company auditor must be appointed to Yumba-Meta.
- 20.6 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.
- 20.7 The auditor or his or her representative is entitled to attend any General Meeting and be heard on any part of the business of the meeting which concerns the auditor. The auditor or his or her representative, if present at the meeting, may be questioned by the Members about the audit.

### **Rights of Inspection**

- 20.8 Subject to the Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of Yumba-Meta or any of them are open to the inspection of Members. A Member does not have the right to inspect any document of Yumba-Meta except as provided by the Act or authorised by the Board.

## **21. Notices**

### **Persons Authorised to Give Notices**

- 21.1 A notice given under this Constitution may be given:
- (a) on behalf of Yumba-Meta by a solicitor for Yumba-Meta, the Secretary or a Director; or
  - (b) on behalf of a Member by a solicitor, secretary or director of the Member.
- 21.2 The signature of a person on a notice given by Yumba-Meta or a Member may be written, printed or stamped.

### **Method of Giving Notices**

- 21.3 A notice by Yumba-Meta or a Member may be given under this Constitution by any of the following means:
- (a) by delivering it to the street address of the addressee;
  - (b) by sending it by prepaid ordinary post (or by airmail if outside Australia) to the street or postal address of the addressee; or
  - (c) by sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

### **Address for Notices**

21.4 For the purposes of clause 21.3:

- (a) the street and postal address of Yumba-Meta is the registered office of Yumba-Meta, or such other address as was last formally notified by Yumba-Meta to the Member;
- (b) the facsimile number and e-mail address of Yumba-Meta are the details last formally notified by Yumba-Meta to the Member;
- (c) the street and postal addresses, facsimile number and e-mail address of a Member are the details last formally notified by the Member to the Secretary.

### **Time Notice is Given**

21.5 A notice given in accordance with this Constitution is deemed to be given, served and received at the following times:

- (a) if delivered to the street address of the addressee, at the time of delivery;
- (b) if sent by post to the street or postal address of the addressee, on the fifth (5th) business day after posting; or
- (c) if sent by facsimile or e-mail, at the time transmission is completed.

### **Proof of Giving Notices**

21.6 The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgement of receipt of the e-mail or equivalent proof that the email was successfully transmitted.

## **22. Interpretation**

22.1 In this Constitution, unless the context requires otherwise:

- (a) a reference to any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation and a reference to a specific provision of such legislation is a reference to the equivalent provision in any later amended, re-enacted or replacement legislation;
- (b) a reference to this Constitution, where amended, means this Constitution as so amended;
- (c) a reference to a clause, sub-clause or schedule is a reference to a clause, sub-clause or schedule of this Constitution;
- (d) a word which denotes:
  - (i) the singular denotes the plural and vice versa;
  - (ii) any gender denotes the other genders; and

(iii) a person denotes an individual and an organisation (where appropriate);

(e) where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

(f) an expression used but not defined in this Constitution has the same meaning as given in the Act;

(g) writing includes any mode of representing or reproducing words in a visible form; and

(h) a reference to 'dollars' or '\$' means Australian dollars.

22.2 Headings and any table of contents must be ignored in the interpretation of this Constitution.

### **Calculation of Time**

22.3 In this Constitution, unless the context requires otherwise:

(a) a reference to a time of day means that time of day in Queensland;

(b) a reference to a business day means a day during which banks are open for general banking business in Queensland;

(c) for the purposes of determining the length of a period (but not its commencement) a reference to:

(i) a day means a period of time commencing at midnight and ending twenty-four (24) hours later; and

(ii) a month means a calendar month which is a period commencing at the beginning of a day of one (1) of the twelve (12) months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month;

(d) where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event; and

(e) a provision of this Constitution, except that specifying the time for deposit of proxies with Yumba-Meta, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

### **Replaceable Rules**

22.4 Each of the provisions of the Act which would but for this clause apply to Yumba-Meta as a replaceable rule within the meaning of the Act are displaced and do not apply to Yumba-Meta.

## **23. Winding up**

23.1 Subject to clause 25.5 and 25.6, upon the winding up or dissolution of Yumba-Meta, any remaining property after satisfaction of all debts and liabilities must not be paid to or distributed among the Members, but must be given or transferred to some other institution or organisation:

- (a) to which gifts and contributions are deductible under division 30 of the Income Tax Assessment Act 1997,
- (b) which is a public benevolent institution for the purposes of any Commonwealth Taxation Act;
- (c) which has objects similar to the objects of Yumba-Meta;
- (d) which is, to the extent possible, an incorporated Aboriginal or Torres Strait Islander housing association within the State of Queensland; and
- (e) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 3.1; and as determined by the Members at or before the time of winding up or dissolution of Yumba-Meta and, in default of any such determination, by the Supreme Court of Queensland.

## **24. National Regulatory System for Community Housing Winding Up Requirements**

- 24.1 In clause 24.2, Community Housing Asset, Corresponding Law, Housing Agency, Participating Jurisdiction, and Registered Provider have the same meanings as in the Housing Act 2003 (Qld).
- 24.2 Despite clause 23.1, each Community Housing Asset remaining after satisfaction of Yumba-Meta's liabilities must be transferred as follows:
- (a) each remaining Community Housing Asset of Yumba-Meta in Queensland must be transferred under section 37H(2)(a) of the Housing Act 2003 (Qld); and
  - (b) each remaining Community Housing Asset of Yumba-Meta located in a Participating Jurisdiction must be transferred under the Corresponding Law of that Participating Jurisdiction to:
    - (i) the Housing Agency in the Participating Jurisdiction;
    - (ii) another Registered Provider in the Participating Jurisdiction; or
    - (iii) another entity as prescribed under the Corresponding Law.

## **25. Gift Fund Requirements**

- 25.1 Yumba-Meta may establish one or more Gift Funds.
- 25.2 The following rules apply to any Gift Fund established and maintained by Yumba-Meta:
- (a) the Gift Fund must have a name;
  - (b) Yumba-Meta must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations;
  - (c) Yumba-Meta must maintain a separate bank account for the Gift Fund; and
  - (d) Yumba-Meta must ensure that the Gift Fund otherwise complies to the relevant extent, with all requirements of the ITAA 97.



- 25.3 The following must be credited to the Gift Fund:
- (a) all gifts of money or property to Yumba-Meta for the Principal Purpose;
  - (b) all money or property received by Yumba-Meta because of those gifts;  
and
  - (c) no other money or property may be credited to the Gift Fund.
- 25.4 Yumba-Meta must use any gifts, money or property of the kind referred to above only for the Principal Purpose.
- 25.5 Despite clause 23.1, if the Gift Fund is wound up or Yumba-Meta ceases to be a DGR for any reason, including revocation of endorsement under subdivision 30-BA of the ITAA 97, any surplus assets after satisfaction of all debts and liabilities must be transferred to a fund, authority or institution which is a public benevolent institution for the purposes of any Commonwealth Taxation Act to which income tax deductible gifts can be made and where possible to an incorporated Aboriginal or Torres Strait Islander housing association within the State of Queensland.
- 25.6 For the avoidance of any doubt, if a Gift Fund operated by Yumba-Meta is wound up but Yumba-Meta remains a DGR and operates any other Gift Fund in accordance with this clause 23, any surplus assets of the Gift Fund that is being wound up may be transferred to any other Gift Fund operated by Yumba-Meta.
- 25.7 In this clause, the following definitions apply:
- DGR** means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.
- Gift Fund** means a fund that is maintained for the Principal Purpose.
- ITAA 97** means **Income Tax Assessment Act 1997** (Cth).
- Principal Purpose** means the purposes of the Gift Fund as reflected in the documents establishing the purpose and operations of the Gift Fund (see clause 25.2).

## 26. Definitions

26.1 In this Constitution, unless the context requires otherwise:

- (a) **Aboriginal and Torres Strait Islander** means a person who is of Aboriginal or Torres Strait Islander descent who identifies as such and who is generally recognised by his or her community as such;
- (b) **ACNC Act** means the Australian Charities and Not-for-profit Commission Act 2012 (Cth).
- (c) **ACNC Governance Standards** means the governance standards prescribed by Division 45 of the Australian Charities and Not-for-profit Commission Regulation 2013 (Cth).
- (d) **ACNC Registered Entity** means an entity which is registered with the Australian Charities and Not-for-profit Commission pursuant to the ACNC Act;
- (e) **Act** means the Corporations Act 2001 2001 (Cth);
- (f) **Board** means the Board of Directors of Yumba-Meta;
- (g) **Board Appointed Director** means a person appointed to the Board in accordance with clause 8.14;
- (h) **By-Laws** means by-laws made or adopted by the Board under clause 16;
- (i) **CEO** means the chief executive officer of Yumba-Meta, appointed under clause 15.1;
- (j) **Chair** means the chair of the Board, elected from time to time under clause 9.2;
- (k) **Chairperson** means the person entitled to preside as chair at a particular:
  - (i) Board meeting, as determined under clauses 9.6 and 9.7;
  - (ii) Committee meeting, as determined under clause 12.2; or
  - (iii) General Meeting, as determined under clauses 6.21 to 6.22(b);
- (l) **Client** means a user of Yumba-Meta's services;
- (m) **Commissioner** means the Commissioner of the Australian Charities and Not-for-profit Commission as established by the ACNC Act;
- (n) **Committee** means a committee appointed by the Board under clause 12.1;
- (o) **Director** means a Member Elected Director or Board Appointed Director elected or appointed in accordance with this Constitution to perform the duties of a director on the Board of Yumba-Meta;
- (p) **Government** means any local Government, state Government or Federal Government.
- (q) **Member** means a person who, at the relevant time, is a member of Yumba-Meta in accordance with this Constitution (whether an Ordinary Member, Life Member, Honorary Member or Employee Member, unless otherwise specified);
- (r) **Member Elected Director** means a Member or Member's Representative elected to the Board in accordance with clause 8.9;

- (s) **Organisation** means company, firm, partnership, incorporated body or unincorporated body;
- (t) **Register** means the register of Members kept by Yumba-Meta under the Act;
- (u) **Related** means a parent, child, sibling, spouse/partner, brother or sister-in-law by marriage or defacto; an uncle or aunt or first cousin by blood or marriage; persons associated by way of partnership, shareholding or beneficial interest, or persons associated in any other way that shall be deemed to be material and/or create a personal interest at law;
- (v) **Seal** means the common seal of Yumba-Meta (if any);
- (w) **Secretary** means the person appointed as secretary of Yumba-Meta under clause 14.1; and
- (x) **Yumba-Meta** means Yumba-Meta Housing Association Limited (ACN 009 917 293).