

## 1 Constitution

# Ballaarat Mechanics' Institute 2021

Registered in Victoria 11 October 1888 under Act 764, new section 181 of the Companies Act 1890.,

Amended to 24 June 1946

Amended 15 January 1951

Amended January 1998

Amended December 2009

Amended June 2011

Amended June 2012

Amended June 2021

Document Control

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DRAFT FOR General Meeting

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## 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Constitution and the Ballaarat Mechanics' Institute (BMI) by-laws unless a contrary intention appears:

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

**Annual General Meeting** has the same meaning as the term 'AGM' in the Corporations Act.

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

**By-law** means a by-law made by the Directors in accordance with clause 15.

**Institute** means The Ballaarat Mechanics' Institute being an Australian public company limited by guarantee established under the Corporations Act which bears the ABN 53 004 034 575

**CEO** means the highest ranking employee of the BMI

**Constitution** means this constitution as amended from time to time.

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

**Deductible Contributions** means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for that purpose.

**Director** means an individual holding office as director of the Institute.

**Directors** means some or all of the Directors acting as a board.

**General Meeting** means a meeting of the Members of the Institute and includes an Annual General Meeting.

**Gifts** means gifts of money or property for the principal purpose of the Institute.

**Gift Fund** means a management account established in accordance with clause 28.

**Life Member** means a Member honoured as a life member under clause [7.7](#).

**Patron** means a Director or former director of the Institute or any other person honoured as a patron under clause 7.8

**Member** means a person entered on the Register of the Institute as a member, and includes a Life Member and a Patron.

**Object** means the object of the Institute as set out in clause [3](#).

**Register** means the register of members under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office for the time being of the Institute.

**Related Body Corporate** has the same meaning it has in the Corporations Act.

**Schedule** means a Schedule to this Constitution.

**Secretary** means an individual appointed as a secretary of the Company in accordance with clause [17](#).

**Special Resolution** takes the meaning given by Section 9 of the Corporations Act.<sup>1</sup>

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

## 2.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (g) a reference to a person being present in person includes an individual participating in a meeting as described in clause [2.2\(f\)](#);
- (h) a reference to a person being present includes an individual participating in a meeting in person or through a proxy;
- (i) a reference to a person includes a natural person, corporation or other body corporate;
- (j) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (k) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.
- (l) The requirements of this Constitution will take effect immediately on the date of adoption.

## 2.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

## 2.4 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;

<sup>1</sup> At the time of adoption of this Constitution, section 9 provides that a Special Resolution is a resolution:

- (a) of which notice has been given to the Members in accordance with [clause 9.4](#) and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

- (b) “section” means a section of the Corporations Act; and
- (c) while the Company is a registered charity under the ACNC Act:
  - (i) subject to clause [2.4\(c\)\(ii\)](#), the provisions of the Corporations Act in Part 2G.2 and Part 2G.3 (except sections 249D, 249F and 249X) apply as if section 111L(1) of the Corporations Act was not enacted; and
  - (ii) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the Institute.

## **2.5 Headings**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

## **2.6 Replaceable rules do not apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Institute.

# **3 OBJECT OF THE INSTITUTE**

## **3.1 The objects of the Institute are:**

To promote an inclusive and diverse community. This is achieved through sharing knowledge, providing a unique place to engage with history, and a vibrant hub for community events. We promote and work in partnership with our members and the community to achieve our goals.

# **4 POWERS**

The Institute has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

# **5 APPLICATION OF INCOME FOR OBJECT ONLY**

## **5.1 Application of income and property**

The income and the property of the Institute however derived:

- (a) must be applied solely towards the promotion of the Object; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus, benefit or otherwise.

## **5.2 Payment in good faith**

Clause [5.1](#) does not prevent payment, directly or indirectly, in good faith to a Member:

- (a) of reasonable remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause [5.2\(c\)](#) by the Institute in a General Meeting;
- (d) of reasonable rent for premises let by a Member; or

- (e) in furtherance of the Object.

## 6 WINDING UP

### 6.1 Guarantee by Members

- (a) Each Member undertakes to contribute to the Institute's property if the Institute is wound up while they are a Member, or within 1 year after they cease to be a Member.
- (b) This contribution is for:
  - (i) payment of the Institute's debts and liabilities contracted before they ceased to be a Member;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$20.

### 6.2 Application of property

- (a) If any property remains on the winding up or dissolution of the Institute and after satisfaction of all its debts and liabilities, then, subject always to clause 6.3, that property may not be paid to or distributed among the Members but must be transferred to one or more funds or institutions:
  - (i) that have charitable purposes similar to, or inclusive of, the Object; and
  - (ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to an extent at least as great as imposed on the Company under this Constitution.
- (b) The funds or institutions will be determined by the Members at or before the time of dissolution.

### 6.3 Transfer of surplus assets – deductible gift recipients

- (a) Where the Company:
  - (i) has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act; and
  - (ii) does not operate a Gift Fund;then where:
  - (iii) the Institute is wound up; or
  - (iv) the endorsement under Subdivision 30-BA of the Tax Act is revoked;any surplus:
  - (v) Gifts;
  - (vi) Deductible Contributions; and

- (vii) money received by the Institute because of such Gifts or Deductible Contributions

remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause [6.2](#) and are each deductible gift recipients.

- (b) Where the Institute:

- (i) has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act; and
- (ii) operates a Gift Fund;

then where:

- (iii) the Institute is wound up; or
- (iv) the endorsement under Subdivision 30-BA of the Tax Act is revoked;

any surplus assets of the Gift Fund remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause [6.2](#) and are each deductible gift recipients.

## 7 MEMBERSHIP

### 7.1 Number of Members

- (a) The minimum number of Members of the Institute will be 25.
- (b) The Members, Life Members and Patrons at the date of adoption of this Constitution and any person the Directors admit to membership under clause [7.2](#) are the Members of the Institute.

### 7.2 Admission as a Member

The Directors may admit any person as a Member if the person is eligible under clause [7.3](#), and makes an application in accordance with clause [7.4](#).

Member refers to Institute membership unless otherwise qualified.

Other forms of membership categories may be considered by the Board from time to time.

### 7.3 Membership criteria

Unless the person has become a Member because the person is a Member, Life Member or Patron as at the date of adoption of this Constitution under clause [7.1\(b\)](#), to be eligible to be a Member, a person must:

- (a) be an individual that is at least 18 years of age;
- (b) be nominated by an existing Member;
- (c) consent in writing to become a Member; and
- (d) agree to be bound by this Constitution and the By Laws.

### 7.4 Membership process

- (a) The application for membership must be made:
  - (i) in writing, signed by the applicant;



- (ii) in such form as the Directors may from time to time prescribe; and
  - (iii) accompanied by the membership fee, if any, determined by the Directors.
- (b) Each application for membership must be considered by the Directors within a reasonable time after the application is made.
- (c) When an applicant has been accepted or rejected for membership the Secretary must notify the applicant of the decision of the Directors within a reasonable period.

#### **7.5 Directors' discretion to admit or refuse admission as a Member**

The Directors have the discretion to refuse any person admission as a Member without giving any reason for refusing.

#### **7.6 Registration as Member**

If the Directors accept an application for membership, as soon as practicable, the Directors must cause the name of the person to be entered in the Register at which that person becomes a member.

#### **7.7 Life Members**

- (a) The Directors may honour any Member or former Member (who is a natural person) as a Life Member, who:
- (i) has rendered long and valued service to the Institute; or
  - (ii) has demonstrated exceptional commitment to pursuing the Institute's Object over time.
- (b) Life members of the Company immediately prior to adoption of this Constitution are Life Members.
- (c) Life Members are not a separate class of Member under this Constitution. A Member that is honoured as a Life Member continues to have the same rights as a Member under this Constitution.
- (d) Clause [7.8\(f\)\(vi\)](#), of this Constitution does not apply to Life Members.
- (e) A Life Member ceases to be a Life Member on:
- (i) the Life Member's death;
  - (ii) the Life Member resigning by written notice to the Institute having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;
  - (iii) the Life Member becoming of unsound mind or a person whose personal estate is liable to be dealt with in any way under a law related to mental health;
  - (iv) the Directors passing a resolution to remove the life membership of a Life Member; or
  - (v) the Life Member's membership ceasing under clause [8.1](#).

#### **7.8 Patrons**

- (a) The Directors may honour a former director or any other person,
- (b) as a Patron, for up to a five year term, or by resolution of the Board, up to three additional one year terms ,who
  - (i) has rendered long and valued service to the Institute; or
  - (ii) has demonstrated exceptional commitment to pursuing the Institute's Object over time or.
  - (iii) holds a prominent leadership position in the Ballarat community
- (c) Patrons of the Institute immediately prior to adoption of this Constitution are Patrons.
- (d) Patrons are not a separate class of Member under this Constitution. A Member that is honoured as a Patron continues to have the same rights as a Member under this Constitution.
- (e) Clause [7.8\(f\)\(vi\)](#), of this Constitution does not apply to Patrons.
- (f) A Patron ceases to be a Patron on
  - (i) the expiry of their five year term;
  - (ii) the Patron's death;
  - (iii) the Patron resigning by written notice to the Institute having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;
  - (iv) the Patron becoming of unsound mind or a person whose personal estate is liable to be dealt with in any way under a law related to mental health;
  - (v) the Directors passing a resolution to remove the patronship of a Patron; or
  - (vi) the Patron's membership ceasing under clause [8.1](#).

## 2 Civic Patrons.

- (a) The Directors may appoint the incumbent of a prominent community office bearer as a Civic Patron. Civic Patrons hold this position for the period of their civic appointment only.
- (b) A Civic Patron is appointed as an honorary member and has the same rights as a member under this constitution.

Note Clause 8.9 of this constitution does not apply to a Civic Patron.

## 7.9 Membership fees

The Members must pay such membership fees as prescribed from time to time by the Directors.

### 7.10 Register

- (a) The Institute must establish and maintain a Register. The Register must be kept by the Secretary and must contain:
  - (i) for each current Member:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notice; and
    - (D) date the Member was entered on to the Register.
  - (ii) for each person who stopped being a Member in the last 7 years:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notices; and
    - (D) date the membership started and ended.
- (b) The Institute must provide access to the Register in accordance with the Corporations Act.

Members of the Institute shall:

- (a) Be eligible for election to the Board,
- (b) Be entitled to vote in elections for the Board and on any other matter voted on at a general meeting,
- (c) Have library borrowing rights
- (d) Be entitled to any other benefits for members determined by the Board from time to time

## 8 CEASING TO BE A MEMBER

### 8.1 Cessation of membership

A Member ceases to be a Member on:

- (a) death;
- (b) resignation by written notice to the Institute having immediate effect or with effect from a specified date occurring not more than 7 days after the service of the notice;
- (c) failing to pay any fee that may be prescribed by the Directors from time to time within 3 months after the fee was due and payable;
- (d) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health;

- (e) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally;
- (f) the passing of a resolution by the Directors or Members in General Meeting in accordance with clause [8.2](#);

## **8.2 Termination of membership**

- (a) Subject to this Constitution, the Directors or Members in General Meeting may at any time terminate the membership of a Member if the Member:
  - (i) refuses or neglects to comply with this Constitution or any applicable By-laws made by the Directors;
  - (ii) engages or is suspected on reasonable grounds of engaging in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Institute; or
  - (iii) fails to pay any debt due to the Institute within a period of 3 months after the date for payment (such debt not including a fee referred to in clause [8.1\(c\)](#)).
- (b) For a decision of the Directors or the Members in General Meeting under clause [8.2\(a\)](#) to be effective, the general nature of the allegations made against the Member must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.
- (c) If a dispute arises regarding the termination of a Member's membership under this clause [8.2](#), the dispute resolution procedure contained in clause 25 must be followed and, for the purposes of clause 25.1, written notification under clause [8.2\(b\)](#) will be the notice of the dispute (as defined in clause 25.1).

## **8.3 Limited liability**

The Members have no liability as Members except as set out in clause [6.1](#).

## **8.4 General rights of members**

- (1) A member of the Institute who is entitled to vote has the right—
  - (a) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
  - (b) to submit items of business for consideration at a general meeting; and
  - (c) to attend and be heard at general meetings; and
  - (d) to vote at a general meeting; and
  - (e) to have access to the minutes of general meetings and other documents of the Institute as provided under rules 7.4,30.1 and 30.2; and
  - (f) to inspect the register of members.
- (2) A member is entitled to vote if—
  - (a) more than 10 business days have passed since he or she became a member of the Institute, and
  - (b) the member's membership rights are not suspended for any reason.

## 8.5 Rights not transferable

The rights of a member are not transferable and end when membership ceases.

### Ceasing membership

- (1) The membership of a person ceases on resignation, expulsion or death.
- (2) If a person ceases to be a member of the Institute, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

## 8.6 Resigning as a member

- (1) A member may resign by notice in writing given to the Institute.
- (2) A member is taken to have resigned if—
  - (a) the member's fee payment is more than 3 months in arrears; or
  - (b) where,
    - (i) the Secretary has made a written request to the member to confirm that he or she wishes to remain a member; and
    - (ii) the member has not, within 3 months after receiving that request, confirmed in writing that he or she wishes to remain a member

## 9 GENERAL MEETINGS

### 9.1 Annual General Meetings

Annual General Meetings of the Institute are to be held in accordance with the Corporations Act.

### 9.2 General Meetings called by Directors

- (a) The Directors may convene and arrange to hold a General Meeting when they think fit and must do so if required to do so under the Corporations Act.
- (b) If Members with at least 20% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Directors must:
  - (i) within 21 days of the Members' request, give all Members notice of a General Meeting; and
  - (ii) hold the General Meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members have in clause 9.2(b) is to be worked out as at midnight before the Members request the meeting.
- (d) The Members who make the request for a General Meeting must:
  - (i) state in the request any resolution to be proposed at the meeting;
  - (ii) sign the request; and

- (iii) give the request to the Institute
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

### **9.3 General Meetings called by Members**

- (a) If the Directors do not call the meeting within 21 days of being requested under clause [9.2\(b\)](#), 50% or more of the Members who made the request may call and arrange to hold a General Meeting.
- (b) To call and hold a meeting under clause [9.3\(a\)](#), the Members must:
  - (i) as far as possible, follow the procedures for General Meetings set out in this Constitution;
  - (ii) call the meeting using the list of Members on the Register, which the Institute must provide to the Members making the request at no cost; and
  - (iii) hold the General Meeting within three months after the request was given to the Institute.

### **9.4 Notice of a General Meeting**

- (a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 31.
- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

### **9.5 Calculation of period of notice**

In computing the period of notice under clause [9.4](#), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **9.6 Cancellation or postponement of General Meeting**

- (a) Where a General Meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause [9.6](#) does not apply to a meeting convened in accordance with the Corporations Act by Members, by the Directors on the request of Members or to a meeting convened by a Court.

### **9.7 Notice of cancellation or postponement of a meeting**

Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

### **9.8 Contents of notice of postponement of meeting**

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting;

- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **9.9 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the General Meeting required to be given under clause [9.4](#).

#### **9.10 Business at postponed meeting**

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

#### **9.11 Proxy at postponed meeting**

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at one or more General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by operation of this clause [9.11](#), that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Institute at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **9.12 Non-receipt of notice**

The non-receipt of notice of a General Meeting or the convening, cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or the convening, cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the convening, cancellation or postponement of a meeting.

### **10 PROCEEDINGS AT GENERAL MEETINGS**

#### **10.1 Number of a quorum**

- (a) A majority or 20 Members, whichever is the lesser number, present is a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy appointed under clause 9.11 is to be counted, except that:
  - (i) where a Member has appointed more than one proxy, only one is to be counted; and
  - (ii) where a Member is attending holding more than one proxy, that Member is to be counted only once.

## 10.2 Requirement for a quorum

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairperson of the meeting (on the chairperson's own motion or at the request of a Member or proxy who is present) declares otherwise.

## 10.3 If quorum not present

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## 10.4 Adjourned meeting

At a meeting adjourned under clause [10.3\(b\)](#), 20 Members present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## 10.5 Appointment and powers of chairperson of General Meeting

If the Directors have elected one of their number as chairperson of their meetings under clause 20.1, that person is also entitled to preside as chairperson at a General Meeting.

## 10.6 Absence of chairperson at General Meeting

If a General Meeting is held and:

- (a) a chairperson has not been elected by the Directors; or
- (b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following persons may preside as chairperson of the meeting (in order of precedence):

- (c) the deputy chairperson if a Director has been so elected by the Directors under clause 20.1; or
- (d) a Director or Member elected by the Members present in person to preside as chairperson of the meeting.

## 10.7 Conduct of General Meetings

- (a) The chairperson of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and



(iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.

(b) A decision by the chairperson under this clause [10.7](#), is final.

### **10.8 Adjournment of General Meeting**

(a) The chairperson of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

(i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present; and

(ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

(b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

### **10.9 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 1 month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **10.10 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **10.11 Equality of votes – no casting vote for chairperson**

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy, and consequently the resolution fails.

### **10.12 Voting on show of hands**

(a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands (or, where the meeting is being conducted by technology, such other similar method as determined by the chairperson) unless a poll is properly demanded and the demand is not withdrawn.

(b) 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, is conclusive evidence of the fact.

(c) Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### 10.13 Poll

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairperson or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### 10.14 Votes of Members

- (a) Every Member has one vote.
- (b) Subject to this Constitution:
  - (i) on a show of hands, each Member present in person has one vote; and
  - (ii) on a poll, each Member present in person has one vote.

### 10.15 Right to appoint proxy

- (a) Subject to the Corporations Act, a Member entitled to attend a meeting of the Company is entitled to appoint the chairperson or any other Member as the Member's proxy. The proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (b) The instrument appointing the proxy must be in writing signed by the appointor duly authorised in writing or, if the appointor is a corporation, either under seal or signed by an officer duly authorised.
- (c) The instrument appointing the proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) A Member is entitled to instruct their proxy to vote in favour of or against any proposed resolutions. The proxy may vote as they think fit unless otherwise instructed.
- (e) The instrument appointing the proxy may be in the form set out in the Schedule to this Constitution.
- (f) The instrument appointing the proxy (along with a certified copy of the power of attorney or other authority, if any, under which it is signed) must be received at the address stated in the notice or the Registered Office not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. Documents received after this time will not be treated as valid.

### 10.16 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;

- (b) the Member revokes the appointment or authority; or
- (c) the Member is mentally incapacitated.

#### **10.17 Objection to voting qualification**

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
  - (i) may not be raised except at that meeting or adjourned meeting; and
  - (ii) must be referred to the chairperson of that meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

#### **10.18 Postal and electronic ballots**

- (a) Subject to the provisions of the Corporations Act and this Constitution, whenever the Directors think fit, they may submit any question or resolution to the vote of all Members entitled to vote at a general meeting of the Company by means of a postal ballot or electronic ballot in such form and returnable in the manner set out in the By-laws.
- (b) A resolution approved by the Members voting by such postal ballot or electronic ballot shall have the same force and effect as such a resolution would have if carried at a duly constituted general meeting of the Company competent to pass such a resolution.

#### **10.19 Member to act in best interest of the Institute**

A Member must act and make decisions in the best interests of the Institute and not in the interests of any other person or party.

### **11 DIRECTORS**

#### **11.1 Number of Directors**

Subject to the Corporations Act, the number of Directors must be such number between 5 and 9 as the Directors determine..

#### **11.2 Nomination for election**

Nomination for election as a Director will be as set out in the By-laws.

#### **11.3 Directors elected at General Meeting**

The Company may, at a General Meeting at which:

- (a) a Director retires or otherwise vacates office; or
- (b) a Director vacancy exists by operation of clause [11.1](#), or otherwise,

by resolution fill the vacated office by electing an individual to that office.

#### **11.4 Qualification of Directors**

- (a) To be eligible for the office of Director a person must:
  - (i) For a period of three months prior to appointment and during their term as a Director be a Member;

- (ii) be proposed by two Members entitled to vote;
  - (iii) be prepared to submit to such application or probity or similar checks as may be usual and necessary for the Institute, including while the Institute is the holder of a licence under the *Liquor Control Reform Act 1998* (Vic), have been approved by the Victorian Commission for Gambling and Liquor (or its successor) in accordance with section 18(1) of that Act;
  - (iv) not, nor will their elections as a Director, prejudice the holding by the Institute of any governmental licence, consent or authority necessary or proper for the conduct of any of its activities;
  - (v) be eligible to act as a Director in accordance with the Corporations Act2001
  - (vi) not hold an elected federal, state or local government position or office or is not a candidate for such position or office
  - (vii) not have served as a Board member for more than nine years
  - (viii) consent in writing to act as a Director.
- (b) At all times, at least 50% of the Directors in office must be residents of Ballarat or individuals with a long term commitment to Ballarat. The Directors will decide whether an individual meets these qualifications.
- (c) In the event that it is required under a law, regulation or guideline applicable to the Institute, the Institute must ensure that a majority of the Directors are persons who have the requisite level or degree of responsibility to the general public.

#### 11.5 Terms and retirement of Directors

- (a) Subject to clause [11.6](#), Directors are elected for terms of 3 years.
- (b) At each Annual General Meeting, any Director who has held office for 3 years or more since last being elected, must retire from office but subject to clause [11.6](#), is eligible for reappointment. A retiring Director holds office until the conclusion of the meeting at which that Director retires.

#### 11.6 Reappointment of Directors

- (a) Directors are entitled to seek reappointment as Directors on 1 occasion provided that a Director's period of service to the Institute does not exceed a period of 6 years unless the Directors by unanimous resolution (excluding the retiring Director) elect to waive this requirement for a particular Director on a year by year basis following the expiry of 6 years in office, up to 3 occasions.

#### 11.7 Casual vacancy or additional Director

- (a) The Directors may at any time appoint any person meeting the requirements of clause [11.4](#), (except the requirements of clause [11.4\(a\)\(ii\)](#)) to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number in clause [11.1](#).
- (b) A Director appointed under clause [11.7\(a\)](#) holds office until the conclusion of the next Annual General Meeting of the Institute but is eligible for election at that meeting.

## 12 REMUNERATION OF DIRECTORS

- (a) Subject to clause 12(b), the Directors must not be paid any fees (whether as remuneration or an honorarium, or by any other description) for their services as Directors.
- (b) The chairperson may, with the prior approval of the Members, be paid reasonable fees by way of a honorarium for their services as a Director and chairperson.

## 13 EXPENSES OF DIRECTORS

- (a) A Director is entitled to be reimbursed out of the funds of the Institute when otherwise engaged on the business of the Institute.
- (b) Any payment to a Director must be approved by the Directors.

## 14 VACATION OF OFFICE OF DIRECTOR

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be eligible under clause [11.4](#);
- (b) resigns from the office by notice in writing to the Institute;
- (c) is not present at 3 successive meetings of the Directors without leave of absence from the Directors;
- (d) 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;
- (e) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;
- (f) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator; or
- (g) dies.

## 15 POWERS AND DUTIES OF DIRECTORS

### 15.1 Directors to manage the Institute

The Directors are to manage the business of the Institute and may exercise all the powers of the Institute that are not, by the Corporations Act or by this Constitution, required to be exercised by the Institute in General Meeting.

### 15.2 Specific powers of Directors

Without limiting the generality of clause [15.1](#), and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Institute to:

- (a) borrow or raise money;
- (b) charge any property or business of the Institute; and
- (c) give any security for a debt, liability or obligation of the Institute or of any other person.

### 15.3 Compliance with duties under the Law

Each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the Corporations Act from time to time.

### 15.4 Delegation

- (a) The Directors may resolve to delegate any of their powers to:
  - (i) a committee in accordance with clause 22;
  - (ii) a Director;
  - (iii) an employee of the Institute ; or
  - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

## 16 BY-LAWS

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter By-laws which are binding on Members for the management and conduct of the business of the Company.

## 17 CHIEF EXECUTIVE OFFICER, SECRETARY AND PUBLIC OFFICER

### 17.1 Chief Executive Officer

- (a) The Directors may appoint a Chief Executive Officer on such terms and conditions (including as to remuneration) as they think fit.
- (b) The Directors may delegate any of their powers to the Chief Executive Officer:
  - (i) on the terms and subject to any restrictions they decide; and
  - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board,and may revoke the delegation at any time.
- (c) The Chief Executive Officer may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

### 17.2 Secretary

- (a) There must be at least one Secretary who may also be a director and who is to be appointed by the Directors.
- (b) The Directors may suspend or remove a Secretary from that office.
- (c) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The

exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

### 17.3 Public officer

The Directors must appoint a person as Public Officer of the Company in accordance with the *Income Tax Act Assessment Act 1936* (Cth).

## 18 CONFLICTS OF INTEREST

### 18.1 Disclosure of conflict of interest

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

- (a) to the Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

### 18.2 Disclosure recorded in minutes

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

### 18.3 Material personal interest

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause [18.4](#):

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

### 18.4 Present and voting

A Director with a material personal interest in a matter may still be present and vote if:

- (a) their interest arises because they are a Member of the Institute and the other Members have the same interest;
- (b) their interest arises in relation to remuneration as a Director of the Institute;
- (c) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Institute (see clause 32.2);
- (d) their interest relates to a payment by the Institute under clause 32.1, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (e) ASIC makes an order allowing the Director to vote on the matter; or
- (f) the Directors who do not have material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Institute; and

- (ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## 19 PROCEEDINGS OF DIRECTORS

### 19.1 Directors' meetings

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

### 19.2 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

## 20 CHAIRPERSON AND DEPUTY CHAIRPERSON OF DIRECTORS

### 20.1 Election of chairperson and deputy chairperson

- (a) The Directors at their first meeting after the AGM, shall elect from their number a Chairperson and Deputy Chairperson
- (b) Those elected shall hold these positions for up to two years
- (c) Directors elected as chairperson and deputy chairperson under clause 20.1(a) may also be referred to as the President and Vice-President, respectively.

### 20.2 Absence of chairperson at Directors' meeting

If a Directors' meeting is held and:

- (a) a chairperson has not been elected under clause 20.1; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 20.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

### 20.3 No casting vote for chairperson at Directors' meetings

In the event of an equality of votes cast for and against a resolution, the chairperson of the Directors' meeting does not have a second or casting vote, and consequently the resolution will not be passed.

## 21 QUORUM FOR DIRECTORS' MEETING

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is set out in the By Laws.
- (b) The Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause [11.1](#), the Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.



## 22 COMMITTEES

### 22.1 Delegation to committees

- (a) The Directors may delegate any of their powers, to a committee consisting of one or more Directors and such other persons as they think fit.
- (b) A committee to which any powers have been delegated under clause 22.1(a) must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

### 22.2 Meetings of committees

A committee may meet and adjourn as it thinks proper.

### 22.3 Chairperson of a committee

The President shall appoint a Board member to the position of Committee Chair.

If the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act; then the committee members involved may elect one of their number to be chairperson of the meeting.

### 22.4 Determination of questions

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting.
- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

## 23 CIRCULAR RESOLUTIONS

- (a) The Directors may pass a resolution without a Directors' meeting being held if at least 75% of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director comprising at least 75% of the Directors signs.

## 24 VALIDITY OF ACTS OF DIRECTORS

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director, are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote.

## **25 DISPUTE RESOLUTION**

### **25.1 The method Handling a dispute is included in the By Laws at 5.2**

## **26 EXECUTION OF DOCUMENTS**

Documents executed for and on behalf of the Institute must be executed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Directors by resolution appoint from time to time.

## **27 ACCOUNTS**

- (a) The Directors must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Institute or otherwise considered by the Directors to be appropriate, cause the accounts of the Institute to be audited or reviewed accordingly.
- (b) The Directors must distribute to the Members copies of the annual financial reports of the Institute accompanied by a copy of the report of the auditor or reviewer (as required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.

## **28 GIFT FUND**

- (a) Without limiting clause 8, the Institute may maintain a Gift Fund:
  - (i) to identify and record Gifts and Deductible Contributions;
  - (ii) to identify and record any money received by the Company because of those Gifts and Deductible Contributions; and
  - (iii) that does not identify and record any other money or property.
- (b) The Directors must use the Gift Fund only for purposes of receiving Gifts and Deductible Contributions for the objects of the Institute.
- (c) The Gift Fund forms part of the accounts of the Institute.

## **29 SEALS**

### **29.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Institute.

### **29.2 Use of common seal**

If the Institute has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

## 30 INSPECTION OF RECORDS

### 30.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Institute or any of them will be open to inspection by the Members (other than Directors).

### 30.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Institute except as provided by law or authorised by the Directors or by the Institute in General Meeting.

## 31 SERVICE OF DOCUMENTS

### 31.1 Document includes notice

In this clause 31, a reference to a document includes a notice.

### 31.2 Methods of service

- (a) The Company may give a document to a Member:
- (i) personally;
  - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
  - (iii) by sending it to an electronic address nominated by the Member.
- (b) A document sent by post:
- (i) if sent to an address in Australia, may be sent by ordinary post and is taken to have been received five business days after the date of its posting; and
  - (ii) if sent to an address outside Australia, must be sent by airmail and is taken to have been received on the 7<sup>th</sup> business day after the date of its posting.
- (c) If a document is sent by electronic transmission, delivery of the document is taken:
- (i) to be effected by properly addressing and transmitting the electronic transmission; and
  - (ii) to have been delivered on the day following its transmission.

### 31.3 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

## 32 INDEMNITY AND INSURANCE

### 32.1 Indemnity

- (a) The Company must indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:
  - (i) every liability incurred by the person in that capacity; and
  - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;
  - (iii) except to the extent it is forbidden by law (including the Corporations Act) to indemnify the person against the liability or legal costs
  - (iv) an indemnity by the Institute of the person against the liability or legal costs would, if given, be made void by any law; or
  - (v) the person is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).
- (b) The indemnity is a continuing obligation and is enforceable by a person even though they are no longer a Director, Secretary or executive officer of the Institute, or of a wholly owned subsidiary.

### 32.2 Insurance

The Institute may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Institute or of a Related Body Corporate of the Institute against liability arising out of conduct by the person in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

- (a) the Institute is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or
- (b) the contract would, if the Institute paid the premium, be made void by any law (including the Corporations Act).

### 32.3 Contract

The Institute may enter into an agreement with a person referred to in clauses 32.1 and 32.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 32 may include provisions relating to rights of access to the books of the Institute conferred by the Corporations Act or otherwise by law.

## 33 AMENDMENT TO CONSTITUTION

- (a) Subject to clause 33(c), this Constitution may only be amended by Special Resolution of the Members of the Institute.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Institute to no longer be a charity.
- (c) Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.

## SCHEDULE

Appointment of Proxy - (see clause [10.15\(e\)](#))

Deleted:

**The Ballaarat Mechanics' Institute**  
**ACN xxxxxxxxx**

I/We, ..... (name)  
of ..... (address)  
being a member/members of the abovenamed Institute hereby appoint  
..... (name of Member / Chairperson)  
of ..... (address)  
as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the Institute  
to be held on the ..... day of ..... 20 ..... and at any  
adjournment of that meeting.

[TO BE INSERTED IF DESIRED] This form is to be used in favour of / against the resolution  
(Strike out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed: .....  
Name: .....  
Dated: .....

This notice must be returned to The Ballaarat Mechanics' Institute ACN xxxxxxxxx at:

[ADDRESS/EMAIL ADDRESS/FAX No]

by [TIME] on [DATE]

[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME  
FOR THE MEETING]