

Victorian AIDS Council Inc

Constitution

(November 2016)

CONTENTS

CONSTITUTION OF VICTORIAN AIDS COUNCIL INCORPORATED

as adopted at the Annual General Meeting 20 November 2016

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1 NAME AND PURPOSE

- 1.1 The name of the incorporated association is the Victorian AIDS Council Incorporated (in this Constitution called 'VAC').
- 1.2 This Constitution sets out the rules of VAC for the purposes of the Act.
- 1.3 The purposes and objectives of VAC are set out in Appendix 2.

2 INTERPRETATION

- 2.1 In this Constitution, unless the contrary intention appears:
- 2.1.1 'Act' means the Associations Reform Act 2012 (Vic) as in force from time to time.
- 2.1.2 'ACNC Act' means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).
- 2.1.3 'Annual General Meeting' means a meeting convened under Clause 11.
- 2.1.4 'Board' means the Board of Directors of VAC as established by Clause 25.
- 2.1.5 'Clause' means a clause contained in this Constitution.
- 2.1.6 'Commissioner' means:
- (a) the Commissioner of Taxation, a Second Commissioner of Taxation or a Vice Commissioner of Taxation for the purposes of the *Income Tax Assessment Act 1997* (Cth), if that Commissioner has responsibility for the tax or charitable status of VAC; or
 - (b) the Commissioner of the Australian Charities and Not-for-Profits Commission, if that Commissioner has responsibility for the tax or charitable status of VAC.
- 2.1.7 '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 Income Tax Assessment Act in relation to a fundraising event held for that purpose.
- 2.1.8 'Employee Representative' means the VAC staff member elected to that position pursuant to Clause 26.2.
- 2.1.9 'Executive Officer' means the association's senior employee whose job title may vary from time to time, for example, Chief Executive Officer, General Manager or Executive Director.

- 2.1.10 'General Meeting' means a general meeting of Members for which notice has been given in accordance with Clause 13.
- 2.1.11 'Gift' means gifts of money or property for the principal purpose of VAC.
- 2.1.12 'Gift Fund' means a fund established and maintained under clause 42.
- 2.1.13 'Income Tax Assessment Act' means the Income Tax Assessment Act 1997 (Cth).
- 2.1.14 'Liability' includes costs, charges, losses, damages, expenses and penalties.
- 2.1.15 'Member' means a member of VAC under Clause 5, whose membership has not terminated under Clause 9 or Clause 10.
- 2.1.16 'Objects' means the purposes and objectives of VAC set out in Appendix 2.
- 2.1.17 'Office Bearer' means a person elected or appointed to one of the positions named in Clause 24.
- 2.1.18 'Officer' has the meaning given to the term "Office Holder" in the Act.
- 2.1.19 'Police Check' means a formal inquiry made to the relevant police authority in each Australian State or Territory the person is known to have resided, designed to obtain details of the person's criminal convictions or a finding of guilt in all places (within and outside Australia).
- 2.1.20 'President' means the person elected or appointed as President under Clause 24.
- 2.1.21 'Register' means the register of Members.
- 2.1.22 'Regulations' means the Associations Incorporation Reform Regulations 2012 and such other regulations as may be made under authority of the Act.
- 2.1.23 'Returning Officer' means the person appointed as such under Clause 24.7.
- 2.1.24 'Secretary' means the person appointed by the Board to act as the secretary of VAC for the purposes of the Act, in accordance with Clause 24.3 or Clause 24.4.
- 2.1.25 'Special Business' means any business conducted at a General Meeting other than the ordinary business of an Annual General Meeting as set out in Clause 11.2.
- 2.1.26 'Special General Meeting' means any general meeting other than the Annual General Meeting convened under Clause 12.

- 2.1.27 'Special Resolution' means a resolution of Members:
- (a) notified as a proposed special resolution in the notice convening a General Meeting in accordance with Clause 13; and
 - (b) approved by 75 percent or more of the Members entitled to vote on the resolution in accordance with Clause 18.
- 2.1.28 'To the Relevant Extent' means:
- (a) to the extent VAC is not precluded by law from doing so;
 - (b) to the extent that a Liability:
 - (1) is not a Liability of the Officer to VAC;
 - (2) does not arise out of conduct involving a lack of good faith;
 - (3) is not a Liability for costs and expenses incurred by the Officer in defending civil or criminal proceedings in which judgement is given against the Officer or in which the Officer is not acquitted; or
 - (4) is not a Liability for costs and expenses incurred by the Officer in connection with an unsuccessful application for relief under the Act, in connection with proceedings referred to in Clause 2.1.28(b)(3); and/or
 - (c) to the extent, and for the amount that the Officer is not otherwise entitled, to be indemnified and is not otherwise actually indemnified.
- 2.1.29 'Treasurer' means the person elected or appointed by the Board under Clause 24 as treasurer.
- 2.1.30 'Unbiased Decision Maker' means a person who is a recognised decision-maker under the Act and appointed or employed by the Dispute Settlement Centre of Victoria (Department of Justice) or any similar body nominated by the Board.
- 2.1.31 'Vice-President' means the person elected or appointed as Vice-President under Clause 24.
- 2.1.32 'Volunteer' means a person assisting without salary in the performance of the work of VAC.
- 2.2 Words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Interpretation of Legislation Act 1984 and the Act as in force from time to time.

3 LEGAL CAPACITY AND POWERS

Solely for the purpose of carrying out the Objects, VAC may, in any manner permitted by the Act:

- 3.1 exercise any power;
- 3.2 take any action; or
- 3.3 engage in any conduct or procedure,

which, it may exercise, take or engage in if authorised by this Constitution.

4 NOT FOR PROFIT ORGANISATION

4.1 VAC must not distribute any surplus, income or assets directly or indirectly to its Members.

4.2 Clause 4.1 does not prevent VAC from paying a Member:

4.2.1 reimbursement for expenses properly incurred by the Member; or

4.2.2 for goods or services provided by the Member,

if this is done in good faith on terms no more favourable than if the Member was not a Member.

5 MEMBERSHIP

5.1 A natural person, body corporate, unincorporated association or business partnership who or which is approved for membership as provided in this Constitution is eligible to be a Member of VAC on payment of the entry fee and the annual subscription payable under this Constitution.

5.2 The members of VAC immediately prior to its incorporation shall continue as Members of the incorporated association subject to this Constitution. Other persons shall be admitted as Members as provided hereunder.

5.3 An application of a person for membership of VAC shall:

5.3.1 be made in writing in the form determined by the Board from time to time, which may, amongst other things, include a requirement for the applicant to support the Objects;

5.3.2 be lodged with the Secretary; and

5.3.3 be accompanied by any required entry fee (if any) and the annual subscription payable, as determined by the Board from time to time in accordance with Clause 7.

5.4 Subject to Clause 5.8, as soon as practicable after receiving an application for membership, the Secretary must refer the application to the Board which is to determine whether to approve or to reject the application.

- 5.5 As soon as practicable after the Board's determination under Clause 5.4, the Secretary must ensure that notice is given to the applicant in writing stating whether the membership application has been approved or rejected. The Board is not required to give any reasons for the approval of an application for membership. The Board shall provide a statement of reasons to an applicant whose application is rejected.
- 5.6 Once the applicant's application for membership is accepted, the Secretary must ensure that the applicant's name is entered in the Register and, on the name being so entered, the applicant becomes a Member.
- 5.7 If the applicant's application for membership is rejected, in addition to the notice required under Clause 5.5, the Secretary must ensure that any application fee or subscription fee received in connection with the application is refunded.
- 5.8 The Board may, from time to time and at its sole discretion:
- 5.8.1 nominate another person or persons to be responsible for receiving and approving applications for membership; and
 - 5.8.2 make policies, procedures and guidelines in relation to the receipt and assessment of applications for membership.
- 5.9 A decision to reject an application for membership must be made by the Board and cannot be delegated to another person or persons.

6 RIGHTS AND OBLIGATIONS OF MEMBERS

- 6.1 A Member who is entitled to vote has the right to:
- 6.1.1 receive notice of General Meetings and of proposed Special Resolutions in the manner and time prescribed by this Constitution;
 - 6.1.2 submit items of business for consideration at a General Meeting;
 - 6.1.3 attend and be heard at General Meetings;
 - 6.1.4 vote at a General Meeting;
 - 6.1.5 have access to the minutes of General Meetings and other documents of VAC as provided under Clause 37; and
 - 6.1.6 inspect the register of members in accordance with Clause 8.1.
- 6.2 The rights of Members are not transferable, and end when the Member ceases to be a Member in accordance with Clause 9 and 10.
- 6.3 Save as set out in this Constitution, the rights and benefits, duties and obligations, and status of Members, within the various classes of Membership which may exist from time to time will be defined by the By-Laws.

7 SUBSCRIPTIONS

- 7.1 The annual subscription shall be determined by the Board and shall be payable in advance on 1 July of each year.
- 7.2 The Board shall determine the payment rates and the grounds for waiving all or part of the annual subscription.
- 7.3 Payment of an annual subscription in advance of the date payable shall remain valid not-with-standing any subsequent alterations in the amount of the annual subscription.
- 7.4 The Board may determine a fee for entry to VAC membership. This entry shall be payable upon the first admission of a Member and upon the readmission of any former Member.
- 7.5 The Board may determine entitlements to waiving or payment at concessional rates of the entry fee (if any).

8 REGISTER OF MEMBERS

- 8.1 The Secretary shall keep and maintain a Register, or ensure that a Register is kept and maintained, in which shall be entered the preferred name, postal address and date of entry of the name of each Member and the Register shall be available for inspection by Members at the VAC office.
- 8.2 For the purposes of Clause 28.4.1, the Register shall close five working days before the mailing of ballot papers to Members for the Annual General Meeting of VAC.

9 CESSATION OF MEMBERSHIP

- 9.1 A Member may resign as a Member by notice in writing to the Secretary or to the Board.
- 9.2 A Member shall automatically cease to be a Member:
- 9.2.1 if the Member is a natural person, upon death; or
 - 9.2.2 if the Member is a body corporate, upon being wound up in accordance with the legislation under which it was incorporated; or
 - 9.2.3 if the Member is an unincorporated association or business partnership, upon the dissolution of that association or partnership.
- 9.3 A Member shall automatically cease to be a Member if an annual subscription payable by that Member remains unpaid after the expiry of six months from the date on which it became payable and not less than one month after notice of the amount due has been directed in writing to the last address of that Member known to the Secretary.
- 9.4 Upon any Member resigning or ceasing to be a Member in accordance with this Clause 9, or upon the expulsion of the Member in accordance with Clause 10, the

Secretary shall record, or cause to be recorded, in the Register the date on which that Member ceased to be a Member.

10 MISCONDUCT

- 10.1 Subject to this Constitution, the Board may by resolution expel a Member if the Board is of the opinion that the Member has been guilty of conduct prejudicial to the interests of VAC, whether such conduct involves a breach of this Constitution or otherwise. A resolution of the Board under this Clause 10.1 does not take effect unless and until:
- 10.1.1 confirmed by an Unbiased Decision Maker under Clause 10.3; or
 - 10.1.2 confirmed at a Special General Meeting under Clauses 10.4 to 10.6.
- 10.2 Where the Board passes a resolution under Clause 10.1, the Secretary shall, as soon as practicable, ensure that a notice in writing ("**Expulsion Notice**") is served on the Member:
- 10.2.1 setting out the resolution of the Board and the grounds on which it is based;
 - 10.2.2 stating the date, place and time of the hearing before an Unbiased Decision Maker, to be held not earlier than 14 and not later than 28 days after the date of service of the Expulsion Notice;
 - 10.2.3 informing the Member that he or she may elect to:
 - (a) attend the hearing before the Unbiased Decision Maker and address it; or
 - (b) lodge with the Secretary, before the proposed time of the hearing before the Unbiased Decision Maker, a notice ("**Appeal Notice**") that he or she appeals to a Special General Meeting against the resolution; and
 - 10.2.4 informing the Member that irrespective of the election under Clause 10.2.3, the Member can provide a written notice to the Unbiased Decision Maker or Special General Meeting (as the case may be), setting out any reasons why the Member should not be expelled.
- 10.3 If the Member has not lodged an Appeal Notice in accordance with Clause 10.2.3(b) then the resolution to expel the Member must be considered by an Unbiased Decision Maker appointed by the Board. At the hearing before the Unbiased Decision Maker, the Unbiased Decision Maker must:
- 10.3.1 give the Member, if present, an opportunity to be heard;
 - 10.3.2 give due consideration to any written statement submitted by the Member;
 - 10.3.3 give any Board member or representative appointed by the Board, if present, an opportunity to be heard;

- 10.3.4 give due consideration to the grounds for expulsion set out in the Expulsion Notice; and
 - 10.3.5 confirm in writing to the Board and the Member whether the Board has grounds to expel the Member under Clause 10.1.
- 10.4 Upon receiving an Appeal Notice, the Secretary shall notify the Board of the appeal and within 7 days the Board shall give notice to Members of a Special General Meeting to be held within 21 days.
- 10.5 At a Special General Meeting convened under Clause 10.4:
- 10.5.1 no business other than the question of the appeal shall be transacted;
 - 10.5.2 no proxy shall be bound by any direction to vote for confirmation or revocation of the resolution;
 - 10.5.3 the Board shall place before the meeting its reasons for passing the resolution;
 - 10.5.4 any written statement provided by the Member must be read out to the meeting;
 - 10.5.5 the Member shall be given the opportunity to be heard; and
 - 10.5.6 the Members entitled to do so shall vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- 10.6 If at the Special General Meeting:
- 10.6.1 two thirds or more of the Members entitled to vote, vote in favour of the confirmation of the resolution, the resolution is confirmed; and
 - 10.6.2 in any other case, the resolution is revoked.

11 ANNUAL GENERAL MEETINGS

- 11.1 The Annual General Meeting of Members shall be held on such a day as the Board decides, within five months after the end of its financial year.
- 11.2 The ordinary business of the Annual General Meeting is:
- 11.2.1 to confirm the minutes of the last preceding Annual General Meeting and of any General Meetings held since that meeting;
 - 11.2.2 to receive and consider reports from the Board for the year to the 30th of June preceding;
 - 11.2.3 to elect Board members;
 - 11.2.4 to receive and consider the financial statement required by the Act and detailed in Clause 23.4, which shall be audited by the auditor appointed by the previous Annual General Meeting; and

- 11.2.5 to appoint the auditor.
- 11.3 The Annual General Meeting may transact special business of which notice is given in accordance with Clause 13.1.
- 11.4 The Annual General Meeting shall be in addition to any other General Meetings that may be held in the same calendar year.

12 SPECIAL GENERAL MEETINGS

- 12.1 The Board may, whenever it thinks fit, convene a Special General Meeting.
- 12.2 The Board shall convene a Special General Meeting:
 - 12.2.1 if more than seventeen months would otherwise elapse between General Meetings;
 - 12.2.2 when required by Clause 10.4; and
 - 12.2.3 on requisition in writing by no fewer than five percent of the total number of Members.
- 12.3 A requisition by Members for a Special General Meeting:
 - 12.3.1 shall state the nature of the business to be transacted at the meeting;
 - 12.3.2 shall be signed by each of the Members making the requisition; and
 - 12.3.3 may consist of several documents identical in form or otherwise each seeking the transaction of business of a similar nature and each signed by one or more of the Members making the requisition; and
 - 12.3.4 shall be addressed to the Secretary at the VAC office.
- 12.4 If the Board does not convene a Special General Meeting within one month of a requisition being made under Clause 12.3, any of the members making the requisition may convene the meeting to be held not later than three months after the original requisition.
- 12.5 A Special General Meeting convened by Members under Clause 12.3.4 shall be convened and conducted as nearly as possible in the same manner as a Special General Meeting convened by the Board and all reasonable expenses incurred in convening the meeting shall be refunded by VAC to the persons incurring the expenses.

13 NOTICE OF GENERAL MEETINGS

- 13.1 The Secretary shall ensure that a notice is sent, not less than 21 days prior to the date fixed for holding a General Meeting, to each Member at his or her address appearing in the register. The notice is to be sent by pre-paid post stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

- 13.2 No business other than that set out in the notice convening the meeting shall be transacted at the meeting.
- 13.3 A Member desiring to bring any business before a meeting may give notice of that business in writing to the Secretary, who shall include that business in the next notice convening a General Meeting to be dispatched.

14 QUORUM AT GENERAL MEETINGS

- 14.1 No item of business shall be transacted at a General Meeting unless a quorum of Members entitled under this Constitution to vote is present during the time when the meeting is considering that item.
- 14.2 Five Members or five percent of the total number of Members, whichever is the greater (being present in person or by proxy) constitute a quorum for the transaction of business of a General Meeting.
- 14.3 If within half an hour after the appointed time for the start of a General Meeting a quorum is not present, the meeting:
- 14.3.1 if convened by or on the requisition of Members shall be dissolved; and
 - 14.3.2 in any other case shall stand adjourned to the same time of the same day in the next week and (unless another place is specified by the Chair at the time of adjournment) at the same place; and if at the adjourned meeting the quorum is not present within half an hour after the time for the start of the meeting, the Members present, being not fewer than three, shall be a quorum.

15 CHAIR AT GENERAL MEETINGS

- 15.1 The President, or if the President is absent or declines, the Vice President, may occupy the Chair at each General Meeting.
- 15.2 If both the President and the Vice President are either absent or decline to take the Chair, the Members present at a General Meeting shall, as the first item of business, elect one of themselves to occupy the Chair.
- 15.3 The occupant of the Chair at a General Meeting may, with the consent of the meeting, vacate the Chair either temporarily or until the end of the meeting, in favour of another Member present.

16 ADJOURNMENTS

The Chair of a General Meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

17 DETERMINATION OF QUESTIONS

- 17.1 A question arising at a General Meeting shall be determined on a show of hands unless a count of votes is demanded in accordance with Clause 19.

- 17.2 When a question is determined on a show of hands a declaration by the Chair that the proposition concerned has been carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the minutes of the meeting shall be evidence of the fact without proof of the number of votes cast for or against that proposition.

18 VOTING AT GENERAL MEETINGS

- 18.1 Each Member of VAC, regardless of category of membership, is entitled to one vote only upon any question arising at a General Meeting, provided that;
- 18.1.1 the Member is personally present at the meeting or has appointed a proxy in accordance with Clause 21; and
- 18.1.2 the Member has paid the annual subscription for the current year.
- 18.2 If the votes on a question arising at a General Meeting are equal, the Chair shall exercise a casting vote.

19 COUNT OF VOTES

- 19.1 If at a General Meeting a count of votes is demanded by not less than three Members before or on the declaration of the result of a show of hands on any question, then the count of votes shall be taken, in such a manner as the Chair shall direct.
- 19.2 A count of votes that is demanded on the election of the occupant of the Chair or on a procedural motion shall be taken immediately. A count of votes on any other question shall be taken at such a time before the close of the meeting as the Chair shall direct.
- 19.3 The result of a count of votes on any general question arising at a General Meeting shall be the decision of the meeting on that question.

20 SECRET BALLOTS

A question arising at a General Meeting shall be determined by secret ballot if -

- 20.1 it involves a resolution under Clause 10.5.6 or Clause 34.2.3 or any other Clause in which a secret ballot is required; or
- 20.2 a secret ballot is demanded by at least ten members personally present and entitled to vote.

21 PROXIES

- 21.1 Each Member shall be entitled to appoint another Member (being a natural person) as his, her or its proxy for a General Meeting, by written notice delivered to the Secretary at the VAC office no later than 48 hours before the time appointed for the start of the meeting.
- 21.2 A Member which is not a natural person may vote at a General Meeting only by proxy or in any other manner permitted by the Act.

- 21.3 The notice appointing a proxy shall be in the same or similar form as that set out in Appendix 1.
- 21.4 A Member appointing a person as a proxy may direct how the proxy vote is to be cast on any question, except where prohibited by Clause 10.5.2 or Clause 33.2.1.

22 PUBLIC MEETINGS

- 22.1 In addition to the General Meetings of its Members, VAC shall also convene from time to time public meetings of the gay community in Victoria.
- 22.2 Notice of the date, time and place of these public meetings shall be given in publications circulating in the gay community in Victoria.
- 22.3 At these public meetings VAC shall give an account of its work and of the policies and methods it has adopted to achieve the Objects for which it was formed.
- 22.4 VAC shall record, publicise and give due consideration to any resolution approved by a Public Meeting convened under this Clause.

23 RESPONSIBILITIES OF THE BOARD

- 23.1 The affairs of VAC shall be managed by a Board established pursuant to Clause 25.
- 23.2 The Board may, subject to this Constitution, the Regulations and the Act
- 23.2.1 exercise either directly or by delegation all powers and functions except those reserved to be exercised by a General Meeting; and
 - 23.2.2 perform all such lawful acts as it considers necessary or desirable to achieve the Objects of VAC.
- 23.3 Without limiting Clause 23.2, the Board may:
- 23.3.1 invest and deal with monies of VAC not immediately required in such a manner as is from time to time thought fit;
 - 23.3.2 raise or borrow money upon such terms and in such manner as it thinks fit;
 - 23.3.3 secure the repayment of monies so raised or borrowed or the repayment of VAC debts or liabilities by giving mortgages, charges or securities upon or over all or any of the property of VAC;
 - 23.3.4 enter agreements by which VAC may acquire or hold (whether on trust or absolutely) and dispose of property;
 - 23.3.5 enter agreements by which VAC may act as trustee and may accept and hold upon trust real and personal property;
 - 23.3.6 undertake any lawful commercial activities; and

- 23.3.7 give or lend moneys, services or real or personal property, being the property of VAC, where it considers necessary or desirable to achieve the Objects.
- 23.4 At each Annual General Meeting the Board shall submit to the Members an audited statement containing the following particulars:
- 23.4.1 the income and expenditure of VAC during its last financial year;
- 23.4.2 the assets and liabilities of VAC at the end of its last financial year;
- 23.4.3 the mortgages, charges and securities of any description affecting any of the property of VAC at the end of its last financial year; and
- 23.4.4 in respect of any trust of which VAC was a trustee during a period, being the whole or any part of VAC's last financial year:
- (a) the income and expenditure of the trust during that period;
- (b) the assets and liabilities of the trust at the end of that period; and
- (c) the mortgages, charges and securities of any description affecting any of the property of the trust at the end of that period.
- 23.5 The Board may, subject to this Constitution, the Regulations and the Act, delegate specified responsibilities to committees, working groups, staff and Members of VAC.
- 23.6 The Board shall make no resolution or decision contrary to the terms of any policy resolution approved by a General Meeting during the time that policy resolution remains current.

24 OFFICE BEARERS

- 24.1 The Office Bearers of VAC shall include:
- 24.1.1 a President;
- 24.1.2 a Vice President;
- 24.1.3 a Treasurer; and
- 24.1.4 such other office bearer positions as the Board determines from time to time.
- 24.2 The positions referred to in Clause 24.1 shall be elected at the first Board meeting following the Annual General Meeting, or the first Board meeting following a vacancy, by Board members from among Board members.
- 24.3 The Board shall appoint an Executive Officer, whom the Board also may appoint as Secretary.

- 24.4 Where the Board does not appoint the Executive Officer to the position of Secretary in accordance with Clause 24.3, the Board must elect a Secretary from the members of the Board, and determine the period for which they are to hold office as Secretary.
- 24.5 Each Office Bearer holds office until the conclusion of the next Annual General Meeting after the date of their election or appointment but is eligible for re-election.
- 24.6 The Office Bearers constitute the Executive, to which the Board shall delegate such powers and functions as the Board considers appropriate.
- 24.7 The Board may appoint a Returning Officer, and in the absence of doing so, or if the person so appointed ceases to act then the Board Executive shall appoint a Returning Officer.

25 BOARD MEMBERS

- 25.1 The Board of VAC must have a minimum of 5 members and a maximum of 10 members, unless otherwise determined by resolution of the Members.
- 25.2 Up to seven Board members may be appointed by way of election by the Members in accordance with Clause 28 (**'Elected Board Members'**), and up to 3 Board members may be appointed (excluding any Board members appointed to fill a casual vacancy for any reason) by resolution of the Board (**'Appointed Board Members'**) at any given time. The Board, through its ability to appoint Board members, must use all reasonable efforts to ensure that the Board comprises of at least two people living with the Human Immunodeficiency Virus, whether Elected Board Members or Appointed Board Members.
- 25.3 Subject to Clause 25.6, each Elected Board Member, elected at, or at an Annual General Meeting after the 2016 Annual General Meeting, holds office for one term commencing at the end of the Annual General Meeting at which the Elected Board Member was appointed and ending at the conclusion of the third Annual General Meeting following the Elected Board Member's appointment, unless the Elected Board Member retires or is removed earlier.
- 25.4 Subject to Clause 25.6, each Appointed Board Member holds office from the date they are appointed by the Board and ending on the conclusion of the third Annual General Meeting following the Appointed Board Member's appointment, unless the Appointed Board Member retires or is removed earlier, or has been appointed by Board resolution for a shorter period.
- 25.5 Where an Elected Board member retires or is removed prior to end of his or her term, the replacement Board member (if any) will serve the balance of the original Board member's term.
- 25.6 Unless otherwise determined by ordinary resolution of Members, no Board member may fill any Board position for more than six consecutive years. A person who has not held office as a Board member for twelve months is eligible for election or appointment (as the case may be).
- 25.7 At each Annual General Meeting, one-third of the Elected Board members, or if their number is not a multiple of three, then the number nearest to but not exceeding one-third, must retire from office, provided that any vacancies which have occurred since the previous Annual General Meeting will be counted as

retirements at the Annual General Meeting for the purposes of this rule and no Board member may retain office for more than three years without retiring and being submitted for re-election, even though this results in more than one-third of the Board member retiring from office.

- 25.8 The Elected Board member or Board members to retire at an Annual General Meeting are those who have been longest in office since their election to office.
- 25.9 As between or among 2 or more Board members who became Board members on the same day, the Board member or Board members to retire are determined by a resolution of the Board members, unless they otherwise agree between or among themselves. Voting on the resolution of the Board members required by this rule is to be conducted by secret ballot.

26 EMPLOYEE ENGAGEMENT

- 26.1 The Executive Officer shall have the right to receive notice of, and attend and be heard, but not vote at, all meetings of the Board.
- 26.2 One member of VAC staff, elected by VAC staff (**'Employee Representative'**), shall have the right to receive notice of and attend and be heard, but not vote at, all Board meetings and shall fill this role for two years unless he or she retires earlier or is otherwise removed by the staff.
- 26.3 Neither the Executive Officer nor the Employee Representative are Board members for any purpose.
- 26.4 The right to attend meetings as described in Clauses 26.1 and 26.2 above does not include the right to attend any "in-camera" sessions of the Board.

27 ELIGIBILITY FOR MEMBERSHIP OF BOARD

To be eligible for election or appointment as a Board member, a person shall:

- 27.1 not be an employee of the Victorian AIDS Council Incorporated or VAC;
- 27.2 be a resident of the State of Victoria;
- 27.3 be a financial Member of VAC; and
- 27.4 not be disqualified to act as a Board member by operation of any federal or state law which provides for disqualification to act in such a capacity or by a requirement imposed by a contract or agreement entered into by VAC and a federal or state government department, in each case, as evidenced by satisfactory completion of a Police Check.

28 ELECTIONS

- 28.1 Nominations of candidates for election as Board members:
- 28.1.1 shall be in writing, signed by two Members and accompanied by the written consent of the candidate;

- 28.1.2 shall be delivered to the Returning Officer at the VAC office not less than twenty-five days before the date fixed for holding the Annual General Meeting; and
- 28.1.3 shall comply with such other policies and procedures established by the Board from time to time.
- 28.2 If insufficient nominations are received to fill all the vacancies on the Board, the candidates nominated shall be deemed to be elected and further nominations shall be received at the Annual General Meeting;
- 28.3 If the number of nominations is equal to the number of vacancies to be filled, the persons nominated shall be deemed to be elected;
- 28.4 If the number of nominations exceeds the number of vacancies to be filled, a postal ballot shall be held. A postal ballot of Members shall be held in such usual and proper manner as the Board may direct subject to:
- 28.4.1 postal ballot papers shall be posted to Members at their address shown in the Register not less than twenty one days prior to the date of the Annual General Meeting;
- 28.4.2 the postal ballot shall be conducted as a secret ballot;
- 28.4.3 a candidate may provide information, not exceeding 250 words in length, as to the candidate's community service, policies and any special interests and such information shall be sent by the Returning Officer to Members with the postal ballot papers;
- 28.4.4 the postal ballot paper shall indicate the:
- (a) name of each candidate with a square opposite their name;
 - (b) number of vacancies to be filled in the election;
 - (c) method of voting;
- 28.4.5 the Returning Officer, or a person nominated by the Returning Officer, shall draw by lot the order in which the names of the candidates for election appear on the ballot paper;
- 28.4.6 a candidate or a nominee of their choice may be present to observe the draw of the lot used to determine the order in which the names of candidates appear on the ballot paper;
- 28.4.7 each Member may number any number of boxes in preferential order;
- 28.4.8 the method of counting the votes and ascertaining the result shall be the quota preferential (proportional representation) system;
- 28.4.9 a candidate may appoint one scrutineer to observe the counting of the votes;

- 28.4.10 only such completed ballot papers as are received by the Returning Officer 48 hours prior to the time and date of the Annual General Meeting shall be counted; and
- 28.4.11 the results of the postal ballot shall be announced at the Annual General Meeting.

29 VACANCY OF BOARD MEMBERSHIP

- 29.1 For the purposes of this Constitution, the office of Board member becomes vacant if the person occupying that position:
- 29.1.1 dies;
 - 29.1.2 resigns their office by writing under their hand addressed to the Board;
 - 29.1.3 is removed from office pursuant to Clause 29.2 or Clause 34;
 - 29.1.4 is disqualified from being a director pursuant to the Act, the *Corporations Act 2001 (Cth)* or the ACNC Act;
 - 29.1.5 becomes a bankrupt or makes any arrangement or composition with personal creditors generally;
 - 29.1.6 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;
 - 29.1.7 ceases to be a Member; or
 - 29.1.8 is ineligible to be elected or appointed under Clause 27.
- 29.2 The Board may by resolution declare vacant the position of a Board member who, without leave of the Board, fails to attend three consecutive meetings of the Board.
- 29.3 If a Board member becomes incapable of performing the duties of their position, the Board may appoint a Member to act in that position during that period of incapacity and the Member so appointed shall be deemed to be the occupant of that position during that time. The fact of the incapacity shall be determined by the unanimous decision of a meeting of the Board.
- 29.4 Subject to the Act, a Board member cannot appoint a person to be an 'Alternate Director' in the Board member's place without the unanimous consent of the Board.

30 BOARD MEETINGS

- 30.1 The Board shall meet at intervals of no longer than 60 days, at such times and places as it determines.
- 30.2 Meetings of the Board may be convened by the President or by any three Board members.

- 30.3 Written notice of each Board meeting, including special meetings, shall be given to each Board member at a reasonable time before the meeting.
- 30.4 Any five voting Board members constitute a quorum for the transaction of business of the Board.
- 30.5 The Board shall transact no business unless a quorum is present. If within half an hour after the time appointed for a Board meeting a quorum is not present, the meeting shall be adjourned to the same place and at the same time of the same day in the following week.
- 30.6 The Board may lay down rules of procedures to govern its meetings and those of any sub-committees established by it.
- 30.7 Subject to Clause 30.4, the Board may act notwithstanding any vacancy on the Board.
- 30.8 When any meeting is adjourned under Clause 30.5 the quorum for the re-convened meeting shall be four.
- 30.9 If there are insufficient Board members to constitute quorum then the remaining Board members may act, but only:
- 30.9.1 to call a General Meeting;
 - 30.9.2 to approve the appointment of such number of Board members as required to constitute quorum; or
 - 30.9.3 in the case of an emergency.
- 30.10 The contemporaneous linking together by a form of technology of a number of Board members sufficient to constitute a quorum, constitutes a meeting of the Board and all the provisions in rules relating to meetings of the Board apply, so far as they can and with such changes as are necessary, to meetings of the Board held using a form of technology.
- 30.11 A meeting by telephone or other electronic means is taken to be held at the place where the chair of the meeting is or at such other place the chair of the meeting decides on, as long as at least one of the Board members involved was at the place for the duration of the meeting.
- 30.12 A Board member taking part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 30.13 If, before or during the meeting, any technical difficulty occurs whereby one or more Board members has ceased to participate, the Chair may adjourn the meeting until the difficulty is remedied or may, provided a quorum of Board members remains present, continue with the meeting.

31 CIRCULAR RESOLUTIONS

- 31.1 Board members may pass a circular resolution without a meeting being held.
- 31.2 A circular resolution is passed if all the Board members entitled to vote on the resolution sign the resolution in the manner set out in Clause 31.3 or 31.4.

- 31.3 Each Board member may sign:
- 31.3.1 A single document setting out the resolution and containing a statement that they agree to the resolution; or
 - 31.3.2 Separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 31.4 VAC may send a circular resolution by email to the Board members and the Board members may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 31.5 A circular resolution is passed when the last Board member signs or otherwise agrees to the resolution in the manner set out in Clause 31.3 or Clause 31.4.

32 MINUTES

- 32.1 The Secretary shall keep or cause to be kept minutes of the resolutions and proceedings of each general meeting and each Board meeting, together with a record of the names of persons present at each Board meeting.
- 32.2 If the Secretary is an employee of VAC, then the Board shall decide whether to exclude the Secretary from any "in-camera" sessions of the Board, in which case those Board members present will appoint a Board member to fill the role of Secretary for that "in-camera" session. Minutes of "in-camera" sessions will be kept by the Vice-President, together with a record of the names of persons present for the "in-camera" part of the Board meeting. Inclusions in the minutes shall be agreed by the Board members in attendance at the "in-camera" session.

33 FINANCIAL ACCOUNTING

- 33.1 The Treasurer shall ensure that:
- 33.1.1 all money due to VAC is collected and received and that all payments authorised by VAC are made;
 - 33.1.2 correct books and accounts are kept, which comply with the Act and ACNC Act, showing the financial affairs of VAC including full details of all receipts and expenditure connected with the activities of VAC;
 - 33.1.3 periodic reports are submitted to the Board as it may direct showing the financial position of VAC.
- 33.2 The accounts and books referred to in Clause 33.1 shall be available for inspection by Members at the VAC office during normal business hours.
- 33.3 VAC financial accounts shall be published from time to time as the Board shall direct in a publication or publications circulating within the gay community in Victoria.

34 REMOVAL OF BOARD MEMBERS

- 34.1 A Special General Meeting convened for the purpose may by Special Resolution remove any Board member from his or her position.

- 34.2 At any meeting convened under Clause 34.1;
- 34.2.1 no proxy shall be bound by any direction to vote for or against the resolution;
 - 34.2.2 the Board member whom it is proposed to remove shall be given an opportunity to be heard or to have written representations of reasonable length read to the meeting; and
 - 34.2.3 the Members entitled to do so shall vote by secret ballot on the question of whether to remove the Board member concerned from his or her position.
- 34.3 Where a Special General Meeting removes a Board member from his or her position, the meeting may proceed, and notwithstanding anything in Clause 28, to receive nominations of candidates for that position and to fill the position by election of one of those candidates.
- 34.4 If the Board member removed at a Special General Meeting is an Office Bearer then his or her position as an Office Bearer will also become vacant and the Board must fill this vacancy in accordance with Clause 24.2.

35 POWER TO MAKE BY-LAWS

- 35.1 Subject to the provisions of this Constitution, the Board has the power from time to time to make, amend and repeal all such By-Laws as it deems necessary or desirable for the proper conduct and management of VAC, the regulation of its affairs, and the furtherance of its Objects.
- 35.2 Without in any way limiting the power of the Board under this Clause, the Board may make, amend and repeal By-Laws which:
- 35.2.1 define the rights and benefits, duties, obligations and status of Members and classes of Members;
 - 35.2.2 regulate all matters relating to applications for, and admission to, membership of VAC not otherwise provided for in this Constitution; and
 - 35.2.3 define and regulate the procedure and order of business of General Meetings and meetings of the Board, to the extent to which this is not provided for in this Constitution.
- 35.3 No By-Law will be inconsistent with, nor may it effect a repeal or modification of anything contained in this Constitution.
- 35.4 Any By-Law made by the Board may be set aside by a Special Resolution.
- 35.5 Save as provided in this Constitution, all By-Laws so long as they remain in force will be binding upon all Members.

- 35.6 A book containing the By-Laws will be kept in such place as the Board appoints for that purpose.

36 COMMON SEAL

- 36.1 The VAC common seal shall be kept in the custody of the Secretary.
- 36.2 The common seal shall not be affixed to any document except by authority of the Board and accompanied by the signatures of two Board members.

37 RECORDS

- 37.1 The safekeeping of all VAC books, registers and other records is the responsibility of the Secretary, except for "in-camera" sessions, which is the responsibility of the Vice-President or as delegated.
- 37.2 Members may inspect the records of VAC on such terms and in such manner as the Board determines, subject to Clause 37.3.
- 37.3 Members may not inspect the records of VAC that relate to personal, employment, contractual and legal matters that are confidential in nature, or that are not required to be disclosed by VAC under the Act, or by operation of law.
- 37.4 A Member may copy the records of VAC available for inspection pursuant to this Clause 37 and VAC may charge a reasonable fee for provision of any copies.

38 SERVICE OF NOTICES

- 38.1 Where any Clause requires a notice or other document to be given or delivered to a Member or a Board member, this shall be understood to mean delivery either:
- 38.1.1 personally; or
 - 38.1.2 in the case of a Member who is not a Board member, by prepaid post to the last known postal address of that Member; and
 - 38.1.3 in the case of a Board member, either by prepaid post to the last known postal address of that Member or by delivery addressed to that Member at his or her VAC office.
- 38.2 Where a document is sent by post it shall be deemed, unless the contrary is proved, to have been received on the second business day following despatch.
- 38.3 Notwithstanding anything else in this Clause 38, notices other than for a General Meeting may be sent by electronic means to the electronic mail address, if directed by the Member.

39 ALTERATIONS TO CONSTITUTION AND OBJECTS

The name, Objects and this Constitution may only be altered by Special Resolution.

40 WINDING UP

- 40.1 VAC may be wound up voluntarily by Members passing a Special Resolution.

- 40.2 VAC may be wound up by the Supreme Court of Victoria upon petition by a Special Resolution, or by a Member or creditor of VAC, in accordance with the Act.
- 40.3 In the event of the winding up or dissolution of VAC, the assets of VAC remaining after outstanding debts and liabilities (including the cost of winding up) have been settled, shall not be paid or distributed among the Members but must be given or transferred to one or more funds or institutions:
- 40.3.1 having charitable purposes similar to, or inclusive of, the Objects;
 - 40.3.2 whose governing documents prohibit the distribution of its income and property among its members to an extent at least as great as imposed on VAC under this Constitution.
- 40.4 The funds or institutions will be determined by the Members at or before the time of dissolution.

41 TAX DEDUCTIBILITY

Where VAC has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act as an entity, then where:

- 41.1 VAC is wound up; or
- 41.2 The endorsement under Subdivision 30-BA of the Income Tax Assessment 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 40.3 and are deductible gift recipients.

42 FUNDS AND GIFT FUND

- 42.1 The funds of VAC shall be derived from entrance fees, annual subscriptions, private donations, government or corporate grants, income derived from businesses conducted under business names, and such other sources as the Board approves.
- 42.2 Without limiting clause 33, where VAC is endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act as an entity, VAC shall maintain a management account (**Gift Fund**):
- 42.2.1 to identify and record Gifts and Deductible Contributions;
 - 42.2.2 to identify and record any money received by VAC because of those Gifts and Deductible Contributions; and
 - 42.2.3 that does not identify and record any other money or property.
- 42.3 The Board must use the Gift Fund only for the purposes of receiving Gifts and Deductible Contributions for the Objects.
- 42.4 The Gift Fund forms part of the accounts of the VAC.

43 OFFICERS INDEMNITY AND INSURANCE**43.1 Indemnity**

43.1.1 To the Relevant Extent and subject to the Act, VAC must indemnify every person who is or has been an Officer against any Liability incurred in the discharge of the duties of the Officer.

43.1.2 Without limiting the effect of Clause 43.1.1, VAC may execute and deliver any deed, agreement or other document in favour of any Officer or former Officer to whom this Clause applies, confirming the indemnities contained in this Clause, in relation to that person. Clause 43.1.1 applies whether or not any such deed, agreement or other document is given.

43.2 Insurance

To the extent permitted by law, VAC may (but is not obliged to):

43.2.1 pay or make payments of amounts by way of premium in respect of any contract effecting insurance on behalf, or in respect of, an Officer against any Liability incurred by the Officer in, or arising out of, the conduct of the business of VAC, or in or arising out of, the discharge of the duties of the Officer; and

43.2.2 bind itself in any deed (in such terms as the Board considers appropriate) with any Officer to make the payments.

44 DISPUTES AND MEDIATION

44.1 The grievance procedure set out in this Clause 44 applies to disputes under this Constitution between:

44.1.1 a Member and another Member; or

44.1.2 a Member and VAC.

44.2 The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen days after the dispute comes to the attention of all of the parties.

44.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten days, hold a meeting in the presence of a person who satisfies the requirements of this Clause 44 ('**Mediator**').

44.4 The Mediator must be:

44.4.1 a person chosen by agreement between the parties; or

- 44.4.2 in the absence of agreement:
 - (a) in the case of a dispute between a Member and another Member of VAC, an unbiased person appointed by the Board; or
 - (b) in the case of a dispute between a Member and VAC, an Unbiased Decision Maker.
- 44.5 A Member can be the Mediator, so long as they are unbiased and satisfy the requirements of the Act.
- 44.6 The Mediator cannot be a Member who is a party to the dispute.
- 44.7 The parties to the dispute must, in good faith, attempt to settle the dispute.
- 44.8 The Mediator must:
 - 44.8.1 give the parties to the grievance process every opportunity to be heard;
 - 44.8.2 allow due consideration by all parties of any written statement submitted by any party;
 - 44.8.3 ensure that natural justice is accorded to the parties to the dispute throughout the grievance process; and
 - 44.8.4 subject to the Act, act in accordance with any By-Laws which apply to a grievance process.
- 44.9 This Clause does not in any way limit or abrogate the authority and power of the Board under Clause 10.

APPENDIX 1

FORM OF APPOINTMENT OF PROXY

I/We [ENTER PREFERRED NAME] of [ENTER YOUR POSTAL ADDRESS]

being a member of the Victorian AIDS Council Inc. hereby appoint

[ENTER NAME], being also a member of the Victorian AIDS Council Inc. as my proxy on my behalf at the general meeting to be held on [ENTER DATE] and at any adjournment of that meeting.

My proxy is authorised to vote in favour of / against (delete as applicable) the following:

Signed _____

Date _____

APPENDIX 2 – OBJECTS OF THE VICTORIAN AIDS COUNCIL INCORPORATED

The Victorian AIDS Council was established as a community controlled health organisation, initiated by, based in, governed by and serving the gay community. It was established by mandate and resolution at a meeting on 12 July 1983 and was constituted as the gay community's sole representative in response to the epidemics of HIV infection and AIDS. The Gay Men's Health Centre was established at a meeting on 29 May 1986, following an initiative of the Victorian AIDS Council as part of its fulfilment of its objectives.

Objects

The objects for which the Victorian AIDS Council Incorporated is established are:

- 1 To promote the prevention or control of HIV as its main activity, including by:
 - (a) Designing and delivering programs and health services for all persons living with, affected by, or at risk of HIV, including affected communities such as lesbian, gay, bisexual, transgender, intersex and other sexuality, sex and gender diverse people (collectively, **LGBTI**), people who inject drugs, sex workers and Aboriginal and Torres Strait Islanders;
 - (b) Providing information, education and training to health professionals, service providers, businesses, the LGBTI community, the general public and persons living with, affected by, or at risk of HIV;
 - (c) Undertaking, participating in, or commissioning research; and
 - (d) Undertaking advocacy work on behalf of key affected populations in all matters relating to the prevention and transmission of HIV and related health matters.
- 2 To collaborate with other organisations and the public to support, develop and deliver innovative programs and initiatives to promote community awareness of HIV/AIDS and to support the health and wellbeing of persons living with, affected by, or at risk of HIV in a manner consistent with the principles and practices of self-empowerment and community development;
- 3 To promote the health and wellbeing of people living with HIV and to design and deliver programs in a manner that encourages and welcomes active participation of such persons in the work of the organisation;
- 4 To promote the health and wellbeing of LGBTI persons and to design and deliver programs in a manner that encourages and welcomes active participation of such persons in the work of the organisation;
- 5 To promote, defend, preserve and extend the rights and liberties of the LGBTI community and persons living with, or affected by HIV in the context of social and political issues impacting on the health and well-being of community members; and
- 6 To do such other things as are incidental or conducive to the attainment of these objects.