

THE CONSTITUTION

OF

**FEDERATION OF VICTORIAN
TRADITIONAL OWNER
CORPORATIONS LTD
ABN 40 164 514 121**

**Incorporates changes as at
27 November 2020**

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of
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CORPORATIONS LTD

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THE CONSTITUTION
of
FEDERATION OF VICTORIAN
TRADITIONAL OWNER CORPORATIONS
LTD

COMPANY NAME AND TYPE

1 Company Name

1.1 The name of the Company is FEDERATION OF VICTORIAN TRADITIONAL OWNER CORPORATIONS LTD (the “Company”).

2 Company Type

2.1 The Company is a public company limited by guarantee.

2.2 The liability of the members is limited to the extent of the guarantee required to be given pursuant to clauses 7.6 and 7.7 below.

OBJECTS, FUNCTIONS & POWERS

3 Objects

3.1 The objects of the Company are:-

- (a) to promote economic development and self-determination of Traditional Owner Corporations in Victoria;
- (b) to assist Traditional Owner Corporations to manage their land and promote environmental and cultural protection of their country;
- (c) to promote the interests of the Company, its members and Aboriginal people more generally, to Government and other bodies and to make representations or submissions on relevant matters of law, legislative measures, or policies;
- (d) to support and promote mutually beneficial collaboration and partnership arrangements between Traditional Owner Corporations owned social and commercial business enterprises in Victoria; and
- (e) to relieve poverty, sickness, suffering, distress, misfortune, destitution and helplessness amongst Traditional Owners in Victoria.

4 Functions

4.1 Functions Company shall strive to obtain its objects by doing all things within its powers necessary and desirable for the attainment of the objects.

5 Powers

- 5.1 The Company has, subject to the *Corporations Act* and other applicable laws, power to do all things necessary or convenient to be done for, or in connection with, the attainment of its objects and the performance of its functions.
- 5.2 Subject to clauses 5.3 and 6.1 the Company has the legal capacity and powers of an individual and all the powers of a body corporate.
- 5.3 The Company does not have the power to issue shares.

6 Limitation on Power - Not for Profit

- 6.1 The Company shall apply its assets and income solely to the furtherance of its objects as set out in clause 3.1 above and is not empowered to pay, transfer or distribute, directly or indirectly, by way of dividend, bonus or otherwise any income or property to any member of the Company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

THE MEMBERS

7 Membership and eligibility

- 7.1 Subject to clause 10.1 members of the Company are:-
- (a) those entities listed as members on the application for registration of the Company at the time of registration;
 - (b) those Traditional Owner Corporations who apply for and are accepted for membership in accordance with clauses 7.2 and 7.3 of this Constitution; and
 - (c) the Yorta Yorta Nation Aboriginal Corporation, the Taungurung Clans Aboriginal Corporation and the Wurundjeri Tribal Land Compensation and Cultural Heritage Council Inc. should they wish to apply for membership at any time and are accepted for membership in accordance with clauses 7.2 and 7.3.
- 7.2 An application for membership must be made in writing in such form as may be determined by the Board and must be given to the Company.
- 7.3 Admission to membership of the Company is subject to approval at the sole and absolute discretion of the Board. The Board is not required to give any reason for the rejection of an application for membership.
- 7.4 Where an applicant has been accepted for membership the Secretary will send to the applicant written notice of the acceptance of their application and a request for payment of the initial joining fee and first annual membership fee, if such fees apply. If such fees are not paid within two (2) calendar months after the date of notice, the Board may in its discretion cancel its acceptance of the application for membership.
- 7.5 Upon the Company approving membership of the applicant, the applicant will become a member of the Company and will be entered into the register of members by the Secretary.

- 7.6 In applying for membership, the applicant must guarantee, in writing, that they will contribute to the property of the Company, in the event that the Company is wound up and they are a member of the Company at the commencement of the winding up, for the payment of debts and liabilities of the Company and the payment of the costs, charges and expenses of winding-up such amount as may be required but not exceeding \$1.00.
- 7.7 Those entities listed as members on the application for registration of the Company at the time of registration, guarantee that they will contribute to the property of the Company, in the event that the Company is wound up and they are a member of the Company at the commencement of the winding up, for the payment of debts and liabilities of the Company and the payment of the costs, charges and expenses of winding-up such amount as may be required but not exceeding \$1.00.

8 Entitlement to Vote

- 8.1 Members are entitled to vote at any general and extraordinary general meeting of the Company.
- 8.2 Each member has one vote in relation to each resolution to be exercised by their nominated representative at a meeting of members.

9 Membership fees

- 9.1 There shall be no joining fee payable for membership of the Company unless otherwise determined from time to time by the Board.
- 9.2 If joining fees and annual membership fees of the Company are to be enforced, it is at the Board's discretion to determine those fees, their due date and the appropriate penalty for failing to pay those fees.

10 Ceasing to be a member & expulsion from membership

- 10.1 A member shall cease to be a member of the Company if the member:-
- (a) cancels their membership by giving written notice of cancellation to the Company; or
 - (b) is expelled from membership in accordance with clause 10.2; or
 - (c) is a member at the commencement of winding up.
- 10.2 A member may be expelled from membership of the Company by a special resolution passed by the persons present in a general meeting if the members are satisfied that the member has engaged in conduct, is engaging in conduct, or is proposing to engage in conduct, which is, or is likely to be, detrimental to the interests of the Company or the objects in clause 3.1.
- 10.3 Notice of intention to move a resolution to expel a member must be given to the member not less than 21 days prior to the date of the general meeting at which the special resolution is to be moved.
- 10.4 The notice given to the member must set out the grounds for the proposed motion with sufficient particularity for the member to fully comprehend and answer the allegation against them.

- 10.5 Before a proposed resolution for expulsion of a member is moved, the member shall be given an opportunity to put their case to the members by:-
- (a) giving the Company a written statement for circulation to the members (provided that it shall not be more than 1,000 words long and shall not be defamatory); and/or
 - (b) speaking to the motion at the meeting.
- 10.6 The Board of the Company has the capacity to direct the Company's executive officer in connection with a motion for expulsion by instructing him or her to make enquiries or carry out any investigation considered necessary or appropriate.

11 Register of members

Note: See also provisions relating to company registers in Part 2C.1 of the Corporations Act

- 11.1 The Company shall at all times keep an up to date register of its members in accordance with section 169 of the *Corporations Act* listing in relation to each member at least:-
- (a) the member's name and address;
 - (b) the date on which the member's name is entered in the register; and
 - (c) the contact point for the purpose of giving notice under clauses 10.3, 15.1, and 30.2.
- 11.2 The register of members must also show, pursuant to subsection 169(7) of the *Corporations Act*:-
- (a) the name and details of each person or body that ceased being a member within the last seven (7) years; and
 - (b) the date on which the person or body stopped being a member.
- 11.3 It is the responsibility of the Secretary to keep or cause to be kept the register of members.

PROCEEDINGS & RESOLUTIONS OF THE MEMBERS

Note: See also provisions in relation to meetings of members in part 2G.2 of the Corporations Act

12 General Meetings

- 12.1 A meeting of the members is a general meeting.
- 12.2 Each year the Company shall, unless otherwise exempted, have an annual general meeting in accordance with Division 8 of Part 2G.2 of the *Corporations Act* and clauses 13.1 to 13.3 below.
- 12.3 All other meetings of the Company's members are extraordinary general meetings.

13 Annual General Meetings

Note: See Division 8 of Part 2G.2 of the Corporations Act

- 13.1 The Company shall hold its first annual general meeting by no later than between 1 July 2013 and 30 November 2013.
- 13.2 Thereafter, the Company shall hold an annual general meeting each calendar year on a date falling between 1 July and 30 November.
- 13.3 The business of an annual general meeting shall include each of the following, even if they are not referred to in the notice of the meeting:-
- (a) confirmation of the minutes of the last annual general meeting and any extraordinary general meeting held since the last annual general meeting;
 - (b) receiving and considering the annual financial report, directors' report, auditor's report and CEO's report; and
 - (c) the appointment of the Company auditor in accordance with Division 1 of Part 2M.4 of the *Corporations Act*.

14 Calling Annual General Meetings and Extraordinary General Meetings

Note: See Division 2 of Part 2G.2 of the Corporations Act

- 14.1 The Company's annual general meetings will be called by:-
- (a) the Chairperson in consultation with the CEO fixing the date and other arrangements for the meeting; and
 - (b) the Secretary giving notice of the meeting in accordance with clauses 15.1 to 15.3 below.
- 14.2 In addition to the annual general meetings, the directors may determine to hold an extraordinary general meeting, and if they do, an extraordinary general meeting will be called by:-
- (a) the Chairperson in consultation with the CEO fixing the date and other arrangements for the meeting; and
 - (b) the Secretary giving notice of the meeting in accordance with clauses 15.1 to 15.3 below.
- 14.3 General meetings must be held on a date and at a time and a place that is reasonable having regard to the circumstances of each of the members.
- 14.4 The Company may hold a general meeting at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

(Note: See also sections 249D, 249E and 249F of the Corporations Act)

15 Notice of General Meetings

Note: See also Division 3 of Part 2G.2 of the Corporations Act

- 15.1 Subject to clause 15.2 below, the Company must give at least 21 days written notice of any general meeting to each member, each director and the auditor.
- 15.2 Less than 21 days' notice of a members' meeting may be given where all of the members agree beforehand, except where a resolution is to be moved at the meeting for:-
- (a) removal of a member from membership;
 - (b) removal of a director from office;
 - (c) removal of an auditor under section 329 of the *Corporations Act*, or
 - (d) repeal or amendment of this Constitution.
- 15.3 The written notice of a general meeting shall include details of:-
- (a) the place, date and time for the meeting;
 - (b) if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this;
 - (c) the general nature of any business to be transacted at the meeting; and
 - (d) if a special resolution is to be proposed, the intention to propose such resolution and the terms of the resolution proposed.

16 Quorum at General Meetings

Note: See section 135 of the Corporations Act

- 16.1 No business shall be transacted at a general meeting unless a quorum is present.
- 16.2 The quorum for a general meeting shall be achieved if more than one half of the total number of members (a majority of members), rounded up to the nearest whole number, are represented.
- 16.3 If within 1 hour after the time appointed for holding a meeting of the members a quorum is not present:-
- (a) if the meeting was convened upon the requisition of members, it shall be dissolved;
 - (b) in any other case, the meeting:-
 - (i) will stand adjourned to the following day at the same time and place or to such other day time and place as the Chairperson in consultation with the CEO may, by reasonable notice to the members, appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within 1 hour after the time appointed for the holding of the meeting, the meeting shall be dissolved.

17 Non-Member Attendance at General Meetings

- 17.1 The following persons, shall be entitled to attend and address each general meeting:-
- (a) the CEO;
 - (b) the Chairperson;
 - (c) the Directors;
 - (d) the Secretary; and
 - (e) the Company's auditor.
- 17.2 A request made by two (2) or more members for a non-member to attend and address a general meeting may be permitted, but only with the agreement of the Chairperson.

18 Chairperson of the General Meeting

- 18.1 The Chairperson shall preside at all meetings of the members.
- 18.2 If the Chairperson is absent or unwilling to preside then the members shall elect a meeting Chairperson to preside over the meeting.
- 18.3 A reference to the Chairperson in clauses 17.2, 20.4, 20.6, and 39.2, is also taken to be a reference to a person elected as a meeting chairperson pursuant to clause 18.2.

19 Representatives at General Meetings

Note: See Division 6 of Part 2G.2 of the Corporations Act

- 19.1 Each member that is a body corporate may, in accordance with s250D of the *Corporations Act*, appoint a natural person to be the member's representative for the purpose of exercising the powers of the member at general meetings.
- 19.2 Unless a member determines otherwise and gives written notice of an appointment, the member's chief executive officer, if the member has one, will be taken to have been appointed under clause 19.1 as the member's representative.
- 19.3 To avoid any doubt, a member may appoint a director to be the member's representative under clause 19.1.

20 Voting at General Meetings

Note: See Division 7 of Part 2G.2 of the Corporations Act

- 20.1 Subject to clause 20.2 all members who have paid their memberships fees, if fees apply, may vote at general meetings.
- 20.2 At a general meeting, each member has one (1) vote in relation to each resolution to be exercised by their representative.
- 20.3 A resolution has been passed when 60% or more of members, rounded up to the nearest whole number, vote in favour of the resolution.
- 20.4 A challenge to the right of a person to vote at a general meeting may only be raised at the meeting and must be determined by the Chairperson, whose decision is final.

- 20.5 At any meeting of the Company's members, each resolution shall be decided on a show of hands unless a poll is demanded in accordance with clause 20.8 below.
- 20.6 On a show of hands, a declaration by the Chairperson of the general meeting is conclusive evidence of the result, provided that the declaration reflects the show of hands received. Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded in favour of or against the resolution.
- 20.7 A poll may only be demanded:-
- (a) before a vote is taken; or
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting result on a show of hands is declared.
- 20.8 A poll demanded must be taken immediately.

THE DIRECTORS & OTHER OFFICERS

Note: Many provisions relating to directors which may or may not be reproduced in this constitution are contained in the Corporations Act 2001 (see in particular Chapter 2D).

21 Directors

- 21.1 Subject to clause 28.1 below, the directors are:-
- (a) those persons listed as directors in the application for registration; and
 - (b) such other persons who are appointed as directors from time to time.
- 21.2 In accordance with s.201A(2) of the *Corporations Act*, the Company must have at least three (3) directors.
- 21.3 Each member is entitled to appoint two (2) directors to the Board of the Federation, who are generally:
- (a) the Chief Executive Officer of the member organisation; and
 - (b) the Chairperson of the member organisation
- but can be such other persons as the member may wish.
- 21.4 An appointment for the purpose of clause 21.3 shall be:-
- (a) in writing;
 - (b) signed by the member that appointed the director;
 - (c) addressed to the Secretary (or any other person nominated by the Board from time to time for this purpose); and
 - (d) accompanied by the signed consent of the appointee as referred to in clause 21.6 below.
- 21.5 If, despite clause 21.3 above, there are ever fewer than three (3) appointed directors, the members may by resolution appoint a person or persons as director to ensure that there are at least three (3) directors.

- 21.6 If a director ceases to be a director for any reason (including removal by the members), the member that appointed that director is entitled to appoint a new director to replace that director.
- 21.7 A person may not be appointed as a director unless that person:-
- (a) is more than 18 years of age and is otherwise qualified to hold office in accordance with the *Corporations Act*, and
 - (b) has, in writing signed by the person, consented to being a director.
- 21.8 A person may not be appointed as a director if the person is:
- (a) disqualified from managing corporations under the *Corporations Act* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
 - (b) subject to a pending criminal charge that involves dishonesty or physical harm punishable by imprisonment.
- 21.9 A director may be removed and replaced by the member that appointed that director at any time. A removal and replacement must comply with the requirements of clause 21.

22 Observers

- 22.1 From time to time, the Board of Directors may resolve to invite an Observer to attend meetings of the Company subject to a determination by the directors that observers are to be excluded.
- 22.2 Observers are entitled to participate however not entitled to vote at Board meetings or any other meetings of the Company.

23 The Chairperson

- 23.1 There shall be a Chairperson of the Company who each must be a Victorian Traditional Owner.
- 23.2 The Chairperson is to be a director elected to the office of Chairperson by the other directors in accordance with clauses 23.3 to 23.5:-
- (a) at the first Board meeting; and
 - (b) thereafter at the first Board meeting after each annual general meeting.
- 23.3 Nominations for office as the Chairperson shall be made in the manner determined by directors.
- 23.4 If there is only one nomination for the office of Chairperson, the nominee shall stand elected as the Chairperson.
- 23.5 If there is more than one nomination for the office of the Chairperson, then there shall be an election for that position conducted by secret ballot.
- 23.6 Subject to clauses 28.1 and 28.2, the Chairperson shall hold office as the Chairperson from the date of his or her election until the date of the first Board meeting following the next annual general meeting.
- 23.7 Upon the expiry of each of the Chairperson's term, he or she shall be eligible for re-election as the Chairperson.

23.8 If the Chairperson is absent, unwilling or unavailable to perform his or her role as Chairperson under this constitution, another Director shall be elected as the meeting chairperson or to fulfil that role.

24 The Secretary

24.1 In accordance with section 204A of the *Corporations Act* the Company shall have a Secretary (the "Secretary").

24.2 The first Secretary shall be the person named as the Secretary in the application for registration of the Company.

24.3 The Secretary may be, but need not be a director of the Company and may be the CEO or another person involved in the administration of the financial affairs of the Company.

24.4 If there should ever be any vacancy in the office of Secretary, the directors must meet to appoint an appropriate person, who has in writing and signed by the person, consented to being the secretary of the Company, as the Secretary.

25 The Chief Executive Officer

25.1 The Company may employ a person as the Chief Executive Officer (CEO).

25.2 The CEO shall be chosen by the directors and employed by the Company on such terms as, subject to the following clause, the directors shall deem appropriate having regard to:-

- (a) the person's level of experience, knowledge and expertise; and
- (b) the Company's funding constraints.

25.3 The CEO's contract of employment must include provisions establishing:-

- (a) the CEO's remuneration;
- (b) the term of the employment contract;
- (c) an enforceable probation period; and
- (d) specified grounds for dismissal.

25.4 The CEO may be, but need not be a director or the Secretary.

26 The Powers and Functions of the Directors and the CEO

26.1 The affairs of the Company are to be managed and controlled under the direction of the Board.

26.2 The Board may exercise all of the powers of the Company other than those that the *Corporations Act* or this constitution requires the Company to exercise in general meeting.

26.3 Subject to the following clause 26.4, and to any terms, conditions or restrictions contained in the CEO's employment contract, the day-to-day management of the Company's affairs are, by this Constitution, delegated to the CEO.

- 26.4 For the avoidance of doubt, “day-to-day management” as used in clause 26.3 does not include, and the CEO must obtain the written approval of the Board for:-
- (a) the Company’s policies, strategies and budgets;
 - (b) entering into a contract or funding agreement that is financially significant, being equivalent to over 25% of the Company’s Annual Budget;
 - (c) the Company’s financial statements; and
 - (d) the Company’s annual reports.
- 26.5 The Board may delegate any of its powers, other than the powers delegated to the CEO by the clause 26.3 above, to a sub-committee of directors.
- 26.6 Subject to any terms, conditions or restrictions contained in the CEO’s employment contract, the CEO may, by instrument in writing, delegate any of his or her powers, except this power to delegate, to other employees of the Company on such terms as he or she considers fit, provided that he or she must table any such delegation at the next Board meeting.
- 26.7 No person, other than the Chairperson or the CEO may make any public statement on behalf of the Company unless he or she is authorised to do so by the Board.
- 26.8 A contract or deed may be executed on behalf of the Company by any two (2) of the following:
- (a) a director;
 - (b) the Chairperson;
 - (c) the Secretary; and
 - (d) the CEO.
- 26.9 All acts performed in good faith by any director shall be valid even if it is subsequently revealed that there was some defect in that person’s appointment or that he or she was disqualified from holding office at the time that the act was performed.

Note: See section 201M of the Corporations Act)

27 Duties of Company Officers

Note: See Division 1 & 2 of Part 2D.1 of the Corporations Act

- 27.1 Each director and each other officer of the Company (including the CEO) must, in accordance with law, exercise their powers and discharge their duties:-
- (a) honestly;
 - (b) in good faith and for proper purposes; and
 - (c) with the degree of care and diligence that a reasonable person would exercise if they:-
 - (i) were a director or officer of a corporation in the Company’s circumstances; and

- (ii) occupied the office held by, and had the same responsibilities with the Company as, the director.

(Note: See particularly sections 180, 181 & 14 of the Corporations Act)

27.2 A director and each other officer of the Company (including the CEO) must not:-

- (a) improperly use their position to gain an advantage for themselves or someone else;
- (b) improperly use information gained through their position as director to gain advantage for themselves or someone else; or
- (c) in any way act so as to cause detriment to the Company.

(Note: See sections 182, 183 & 184 of the Corporations Act)

27.3 A director or other officer (including the CEO), who stands to obtain any direct or indirect material benefit from a transaction or arrangement which is being considered by the Company:-

- (a) must, as soon as possible after that fact comes to the director or officer's knowledge or attention, bring that fact to the attention of the Company and give full disclosure of the nature and extent of the material benefit which the director would derive from the transaction or arrangement, to the Company;
- (b) shall not be present for, nor participate in, any deliberations in relation to whether or not the transaction or arrangement should be entered into;
- (c) shall not vote on any resolution pertaining to the transaction or arrangement, or otherwise take part in making a decision in relation to the transaction or arrangement; and
- (d) shall not execute any document or do anything on behalf of the Company to execute or give effect to the proposed transaction or arrangement.

(Note: see Division 2 of Part 2D.1 of the Corporations Act and see also Chapter 2E of the Corporations Act)

27.4 The minutes of any meeting at which a director or other officer gives disclosure of the type referred to in sub-clause 27.3(a) in relation to a matter, or at which any matter in relation to which disclosure of the type referred to in sub-clause 27.3(a) has been given, shall record the disclosure and whether or not the Director was present during, or participated in any deliberations or voting in relation to the matter.

28 Ceasing to Hold Office & Removing Office Holders

Note: See Division 3 of Part 2D.3 of the Corporations Act

28.1 A person shall cease to be a director upon the happening of any of the following events:-

- (a) the person resigns as a director by giving written notice of his or her resignation to the Company;

- (b) the person dies;
- (c) the member who appointed the person as a director ceases to be a member;
- (d) the person becomes disqualified or prohibited by law from managing or holding office in corporations under the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;

(Note: See Part 2D.6 of the *Corporations Act*)

- (e) the person is subject to a pending criminal charge that involves dishonesty or physical harm punishable by imprisonment;
- (f) the person is removed from office as a director and is replaced by the member who appointed the person.

28.2 Pursuant to s.203D of the *Corporations Act*, a person may be removed from office as a director by a resolution passed by the members in a general meeting.

28.3 Without limiting the circumstances in which a person may be removed from office as a director by the members, the members may remove a person from office if they are satisfied that:-

- (a) the person has breached his or her duties to the Company, including the duties set out in clauses 27.1 and 27.2, in a material respect;
- (b) the person has engaged in, is engaging in, or proposes to engage in, conduct which is or may be detrimental to the interests of the Company or the objects in clause 3.1 above;
- (c) the person has been absent from three (3) consecutive meetings of the Board without leave of absence from the Board;
- (d) the person is directly or indirectly interested in any transaction or arrangement (or proposed transaction or arrangement) with the Company and, contrary to clause 27.3, failed to disclose that fact or the nature and extent of the interest, or was present during or participated in deliberations or proceedings in relation to the transaction or arrangement;
- (e) the person has committed an offence under the *Corporations Act* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (f) the person has become a mentally incapacitated person.

28.4 Notice of intention to move a resolution for the removal of a director pursuant to clause 28.2 above must be given to the Company at least two (2) months before the general meeting is to be held. However, if the Company calls a general meeting after the notice of intention is given under this clause, the meeting may pass the resolution even though the meeting is held less than two (2) months after the notice of intention is given to the Company.

28.5 A copy of any notice referred to in the preceding clause must be given to the director concerned as soon as practicable after it has been received.

28.6 In any event, notice of intention to move a resolution to remove a director from office must be given to the director not less than 21 days prior to the

- date of the meeting at which the resolution is to be moved.
- 28.7 The notice given to the director must set out the grounds for the proposed motion with sufficient particularity for the director to fully comprehend and answer the allegation against him or her.
- 28.8 The director may put his or her case to the members before the resolution is moved by:-
- (a) giving the Company a written statement for circulation to the members (provided that it shall not be more than 1,000 words long and shall not be defamatory); and/or
 - (b) speaking to the motion at the meeting.
- 28.9 The members may satisfy themselves of any matter in connection with a proposed resolution for removal of a director in any way they see fit including by instructing the CEO to make any inquiries or carry out any investigation the members consider necessary or appropriate.
- 28.10 A person may not be appointed or re-appointed as a director if they have been removed from office in the Company under clause 28.2.
- 28.11 A person shall cease to be the CEO or the Secretary, as the case may be, upon the happening of any of the following events:-
- (a) he or she resigns by giving written notice of his or her resignation to the Company;
 - (b) the person dies;
 - (c) the person becomes ineligible to hold office in the company; and
 - (d) the person becomes disqualified or prohibited by law from managing or holding office in corporations.
(Note: See Part 2D.6 of the Corporations Act)
 - (e) The person is removed by the Board or their contract expires.

PROCEEDINGS AND RESOLUTIONS OF DIRECTORS

Note: See also the provisions in relation to director meetings in Part 2G.1 of the Corporations Act

29 Calling Board Meetings

- 29.1 The directors shall meet to attend to the Company's business as often as is necessary and in any case at least twice in each calendar year.
- 29.2 Ordinarily, Board meetings will be called by:-
- (a) the CEO, fixing the date, time and location of the Board meeting, and
 - (b) the Secretary giving notice of the meeting in accordance with clauses 30.1 to 30.4.

Where there is no CEO of the Federation, the Chairperson will take this role on behalf of the Board.

- 29.3 In addition, any three (3) directors by notice in writing given to the Chairperson, may require that a Board meeting be called and in that event:-
- (a) the Chairperson in consultation with the CEO must fix the date (within 21 days of the request having been given), time and location for a Board meeting; and
 - (b) the Secretary is to give notice of the meeting in accordance with clauses 30.1 to 30.4.

29.4 Board meetings must be held on a date and at a time and a location that is reasonable having regard to the circumstances of each of the directors.

29.5 A Board meeting may be held using telephone or other technology, provided that:-

- (a) each director taking part must be able to hear each of the other directors taking part at and from the commencement of the meeting;
- (b) each director must acknowledge his or her presence at the commencement of the meeting to all of the directors taking part; and
- (c) no director may leave the meeting unless the director has first obtained the consent of the Chairperson of the Board meeting; and
- (d) each director will, for the purposes of this Constitution, be conclusively presumed to have been present and to have taken part at all times during the meeting unless the director obtained the consent of the meeting to leave the meeting.

30 Notice of Board Meetings

30.1 Reasonable notice of every Board meeting, and of the postponement of a meeting or the change in any of the logistical arrangements for a meeting, is to be given to each director and the CEO by the Secretary.

30.2 Reasonable notice of every Board meeting, and of the postponement of a meeting or the change in any of the logistical arrangements for a meeting, is also to be given to each member via the contact point for members listed on the register of members subject to clause 11.1(c).

30.3 Notice of a Board meeting must include notice of:-

- (a) the date, time and location of the meeting;
- (b) if the meeting is to be held by telephone or teleconference, the arrangements for the facilitation of the meeting; and
- (c) the agenda (to the extent that it is known in advance).

30.4 Notice of Board meetings may be given in writing, by email, by telephone or by any other technology, provided that the method adopted is reasonable in all the circumstances.

31 Quorum at Board Meetings

31.1 No business shall be transacted at a Board meeting unless a quorum is present.

- 31.2 The quorum for a Board meeting shall be achieved if more than one half of the total number of directors (a majority of directors), rounded up to the nearest whole number, are represented.
- 31.3 If within 1 hour of the time appointed for holding a Board meeting a quorum is not present:-
- (a) the meeting shall stand adjourned to the following day at the same time and location (unless circumstances prevent that); and
 - (b) if at the adjourned meeting a quorum is not present within 1 hour of the appointed time, but there are no less than three (3) directors present, the meeting may proceed at the discretion of the directors present;
 - (c) if at the adjourned meeting a quorum is not present within 1 hour of the appointed time, and there are less than 3 directors present, the meeting may proceed at the discretion of the directors present only for the purposes of calling a general meeting of the Company, and otherwise the meeting shall be dissolved.

32 Chairperson to Preside at Board Meetings

- 32.1 Generally, the Chairperson shall preside at all Board meetings, but if the Chairperson is not present at a meeting, the Board may elect another director as the Chairperson for that meeting.
- 32.2 If the Chairperson or other person elected as the Chairperson of the Board meeting is unwilling or not entitled to be the Chairperson for any part of the meeting, the members shall elect another director, as the Chairperson of the Board meeting for the purposes of that part of the meeting.
- 32.3 A reference to the Chairperson in clauses 34.4, 35.3 and 39.2 is also taken to be a reference to a person elected as a meeting Chairperson pursuant to clauses 32.1 and 32.2.

33 CEO's and Secretary's Right of Attendance at Board Meetings

- 33.1 In addition to the directors, the CEO and the Secretary shall be entitled to be present at, and to address, each Board meeting.

34 Voting at Board Meetings

- 34.1 A resolution of the Board will be passed when 60% of the directors, rounded up to the nearest whole number, vote in favour of the resolution.
- 34.2 Each director shall have one (1) vote in relation to each resolution.
- 34.3 Each resolution shall be decided on a show of hands.
- 34.4 On a show of hands, a declaration by the Chairperson of the Board meeting is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes received. Neither the Chairperson of the Board meeting nor the minutes need to state the number or proportion of the votes recorded in favour of or against the resolution.

35 Resolutions without Meetings

See Part 2G.2 of the Corporations Act

- 35.1 The Board may pass an ordinary resolution without a Board meeting being held if 60% or more of the directors (a majority of directors) entitled to vote on the resolution are in agreement of the resolution.
- 35.2 If the method of passing resolutions described in the preceding clause is used, then:-
- (a) separate copies of a document may be circulated for signing by directors if the wording of the resolution and statement is identical in each copy; and
 - (b) the circulating document may take many forms such as a letter, email or facsimile; and
 - (c) the resolution shall be deemed to be passed when 60% or more of the directors (a majority of directors) entitled to vote on the resolution have signed the copy.
- 35.3 A resolution passed without a meeting must be minuted and, at the next meeting of the directors, signed by the Chairperson.

36 Sub-Committees of Directors

- 36.1 If the Board delegates any of its powers to a sub-committee of directors pursuant to clause 26.5, the proceedings and resolutions of the sub-committee will be governed by the provisions for regulating the proceedings and resolutions of the Board contained in this Constitution.
- 36.2 A minute of all the meetings and resolutions of every committee shall be made and signed in the same manner in all respects as minutes of meetings and resolutions of the Board are required by this constitution to be made and signed.

37 Appointments to boards of subsidiary companies

- 37.1 The Board must consider and resolve appointments of directors to subsidiary boards, including any consideration of the terms of appointments, the mix of roles, skills and other such factors as required for the purposes of the subsidiary company.

38 Representation as Members or Shareholders

- 38.1 Where the Federation is a member or shareholder of another corporation, the board will appoint a person to be the representative in performing the functions and duties of the member or shareholder, and determine any authorities on any resolution or voting required, subject to any consideration of conflict of interest.

MISCELLANEOUS

39 Minutes

Note: See Part 2G.3 of the Corporations Act

- 39.1 The directors must cause minutes of the proceedings and resolutions of the members and directors (including any sub-committee of directors) to be kept in accordance with the *Corporations Act*.
- 39.2 Minutes of a meeting shall be confirmed at the next succeeding meeting and signed by the Chairperson.
- 39.3 A minute that is recorded and signed is evidence of the proceeding resolution or declaration to which it relates unless the contrary is proved.
- 39.4 The directors shall ensure that the members have such access to the Company's minutes as is required by the *Corporations Act*.

40 Finance & Accounts

Note: See Chapter 2M of the Corporations Act

- 40.1 The directors shall ensure that the Company complies with its legal obligations to:-
- (a) keep written financial records that:-
 - (i) correctly record and explain its transactions and financial position and performance; and
 - (ii) would enable true and fair financial statements to be prepared and audited
 - (b) prepare annual financial reports and directors' reports;
 - (c) prepare half-yearly financial reports and directors' reports;
 - (d) have its annual financial reports audited and obtain auditor's reports;
 - (e) lodge its financial reports, directors' reports and auditor's reports with ASIC;
 - (f) report annually to members; and
 - (g) all other legal obligations relating to the keeping of accounts and financial reporting.

41 Indemnity

Note: See Part 2D.2 of the Corporations Act in relation to restrictions on indemnities, insurance and termination payments.

- 41.1 To the extent permitted by law, and subject to clauses 39.3 and 39.4, every officer (and former officer) of the Company shall be indemnified out of the funds of the Company against liability in relation to all claims, proceedings and demands incurred in the course of performing his or her duties as an officer of the Company.
- 41.2 The indemnity granted by the Company contained in the preceding clause shall continue in full force and effect notwithstanding the repeal or modification of that clause, in respect of all claims, proceedings and demands made in relation to any acts and omissions occurring prior to the

date of the repeal or modification.

- 41.3 An officer (or former officer) of the Company shall not be indemnified out of the funds of the Company in relation to:-
- (a) a liability owed to the Company (or a related body corporate);
 - (b) a liability for a pecuniary penalty order or compensation order under the *Corporations Act*;
 - (c) a liability that is owed to someone other than the Company (or a related body corporate) and did not arise out of conduct in good faith

This subsection does not apply to a liability for legal costs.

- 41.4 An officer (or former officer) of the Company shall not be indemnified out of the funds of the Company (whether by agreement or by making a payment and whether directly or through an interposed entity) in relation to legal costs incurred in defending an action for a liability incurred as an officer or employee where the costs are incurred:-
- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 39.3 above;
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (d) in connection with proceedings for relief to the person under the *Corporations Act* in which the Court denies relief.

Paragraph (c) above does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

42 Notices

- 42.1 Where under this Constitution, a person is required or entitled to give a notice or other written document to the Company, they may do so by:-
- (a) delivering the notice or other document during business hours to the Company's registered office;
 - (b) posting the notice or other document by ordinary pre-paid post addressed to the Secretary at the Company's registered office; or
 - (c) forwarding the notice or other document by electronic means or facsimile transmission to a facsimile number at the Company's registered office.
- 42.2 A notice or other document given to or by the Company shall be deemed to have been given:-
- (a) if delivered by hand, on the date that it is delivered;
 - (b) if delivered by ordinary pre-paid post, on the third business day after it is posted; and

- (c) if sent by facsimile transmission, or other electronic means, on the next business day after successful transmission.

43 Modification or Repeal of Constitution

Note: See subsection 136(2) of the Corporations Act

- 43.1 The Company may repeal or modify this Constitution by a special resolution of the members in general meeting.

44 Gift Fund

- 44.1 For the purposes of pursuing its objects as set out in clause 3.1 above, the Company will establish and maintain a gift fund (the "gift fund"):-

- (a) to which gifts of money or property for that purpose are to be made;
- (b) to which any money received because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

- 44.2 The Company must use:-

- (a) gifts made to the gift fund; and
- (b) any income received as a result of those gifts

only for the attainment of its objects as set out in clause 3.1 above.

- 44.3 At the first occurrence of:-

- (a) the winding up of the gift fund; or
- (b) the revocation of endorsement (if any) of the fund as a deductible gift receipt under Division 30 of the *Income Tax Assessment Act 1997*,

any surplus assets of the gift fund remaining after the payment of liabilities attributable to it, must be transferred to another fund, institution or corporation in Australia which is a public benevolent institution to which income tax deductible gifts can be made for the purposes of any taxation law of the Commonwealth.

45 Winding up

- 45.1 If any surplus remains following the winding up of the Company, after satisfaction of all its debts and liabilities, any surplus assets shall not be paid to or distributed amongst members, but will be given or transferred to another fund or institution or corporation in Australia which has:-

- (a) objects which are similar to the objects of the company as set out in clause 3.1;
- (b) a constitution which requires its income and property to be applied in promoting its objects; and
- (c) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by clause 6.1.

- 45.2 Where gifts to a public benevolent institution are deductible only if, amongst

other things, the conditions set out in the relevant legislation are satisfied, a transfer under this clause must be made in accordance with those conditions.

- 45.3 The identity of such fund or funds or institutions or corporation or corporations shall be determined by the Board at or before the time of dissolution of the fund and (where applicable) approved by a Commissioner and, in default, shall be determined by a Supreme Court of any Australian State or Territory.

DEFINITIONS AND INTERPRETATION

46 Definitions

- 46.1 In this Constitution, unless a contrary intention is evident, the following words convey the following meanings:-

Board	means the directors of the Company acting together as the Board in accordance with this Constitution and the <i>Corporations Act</i>
Chairperson	means the Chairperson of the company elected by the directors pursuant to clause 23
Company	means Federation of Victorian Traditional Owner Corporations
Constitution	means this constitution, as amended from time to time
<i>Corporations Act:</i>	means the <i>Corporations Act 2001 (Cth)</i>
Directors:	means the directors of the Company
CEO	means the Chief Executive Officer of the Company employed pursuant to clause 25
Members	means the members of the Company from time to time
NTA	means the <i>Native Title Act 1993 (Cth)</i>
Officer	has the same meaning as in section 9(a) and (b) only of the <i>Corporations Act</i>
Register	means the register of members of the Company kept under the <i>Corporations Act</i> pursuant to clause 11
Secretary:	means the Secretary of the company who holds office pursuant to clause 24
Special resolution	means a resolution passed by no less than three quarters (3/4) of the persons present and entitled to vote in relation to the resolution
Traditional Owner Corporation	means one of the following bodies: <ul style="list-style-type: none"> • a registered native title body corporate under the <i>Native Title Act 1993 (Cth)</i> • a traditional owner group entity as defined in section 3 of the <i>Traditional Owner Settlement Act 2010 (Vic)</i> which has entered into a recognition and settlement agreement under the <i>Traditional Owner Settlement Act 2010 (Vic)</i> • any other corporation which the Board deems, in its sole and absolute discretion, a Traditional Owner Corporation for the purposes of clause 7.1(b). The Board is not required to give any reason for its decision not to deem a corporation a Traditional Owner Corporation
Winding up	means the winding up of a company whether in insolvency, by the Court or voluntarily under Part 5.6 <i>Corporations Act</i>

47 Interpretation

47.1 In this Constitution:-

- (a) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (b) a reference to any clause is to a clause of this Constitution; and
- (c) notes and headings are for convenient reference only.

47.2 the provisions of this Constitution are intended to displace the replaceable rules contained in the *Corporations Act*. The replaceable rules do not apply to the Company to any extent.

47.3 If any provision of this constitution is held to be illegal, invalid or otherwise ineffective, that provision is deemed to be severed from the Constitution and the remainder of the Constitution shall remain in force.
