

Constitution

Early Childhood Australia Ltd (**ECA**)

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ABN 44 950 767 752

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Moores MDP Pty Ltd

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Preamble

Early Childhood Australia Ltd is a national body whose members at the time of registration of the company limited by guarantee consisted of the individual members of:

Australian Early Childhood Association (NT Branch) Incorporated
Early Childhood Australia (NSW) Inc
Early Childhood Australia (Victorian) Branch Incorporated
Early Childhood Australia Australian Capital Territory Branch (Inc)
Early Childhood Australia Queensland Branch Inc
Early Childhood Australia South Australian Branch (Inc)
Early Childhood Australia -Tasmania Branch Incorporated
Early Childhood Australia Western Australian Branch Incorporated
(the Branches).

Early Childhood Australia Ltd and the Branches desire closer affiliation. Over time, this may involve the transfer of assets and operations from individual Branches to Early Childhood Australia Ltd and the winding up of a Branch. If and when this occurs in respect of a Branch, Early Childhood Australia Ltd will be the successor organisation to that Branch.

1. Name

The name of the Company is Early Childhood Australia Ltd (the Company).

2. Principal Purpose and Powers

- (a) The Company is a not-for-profit public company limited by guarantee
- (b) The Principal Purpose for which the Company is established is to pursue the following charitable purposes:
 - (i) Championing the rights of all young children aged birth to eight years;
 - (ii) Engaging in advocacy for social policy and public investment that supports every child to thrive and learn at home, in the community, in early learning settings and the early years of school;
 - (iii) Reducing the number of young children experiencing social, economic or educational disadvantage by building community capacity and supporting the early childhood and school sectors to build inclusion and social equity.
 - (iv) Facilitating opportunities for transdisciplinary knowledge exchange across policy, practice and research to support continuous improvement in the efficacy and quality of services provided to young children and their families;
 - (v) Maintaining and promoting a body of knowledge on early childhood development and education that supports the ongoing development of children's services; and
 - (vi) Anything ancillary to the objects.
- (c) Solely to carry out the Principal Purpose, the Company may exercise all of the powers of an individual and a company under the Act.

3. Not-For-Profit

- (a) The income and property of the Company must be applied solely towards the Principal Purpose.
- (b) No part of the income or property of the Company may be paid or transferred directly or indirectly to Members or Directors by way of dividend, bonus or other profit distribution in their capacity as Members or Directors.
- (c) Clause 3(b) does not stop the Company from making a payment:
 - (i) to a Member for goods or services provided or expenses properly incurred at fair and

- reasonable rates or rates more favourable to the Company;
- (ii) to a Member in carrying out the Company's Principal Purpose;
- (iii) of premiums for insurance indemnifying Directors to the extent allowed for by law and this Constitution;
- (iv) with the prior approval of the Board, to a Director:
 - (A) for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (B) as reimbursement for out-of-pocket expenses properly incurred in performing a duty as Director; or
- (v) with the prior approval of the Board, of a fair and reasonable stipend to the Chair.

4. Membership

4.1 General

The minimum number of Members is one.

4.2 Eligibility

To be eligible for Membership, a person must:

- (a) be committed to the Principal Purpose of the Company;
- (b) meet the description of the relevant Membership Class set out in clause 4.3(a)(i);
- (c) subscribe to the ECA Code of Ethics; and
- (d) meet any other eligibility requirements prescribed by the Board in respect of the relevant Membership Class.

4.3 Membership Classes

- (a) The Company will have seven Membership Classes, as follows:
 - (i) **Services and schools** –early childhood services, schools and other organisations working directly with young children and families;
 - (ii) **Professionals** –early childhood education and care professionals who work with or for young children, their families and carers;
 - (iii) **Students and concession holders** –individuals studying early childhood education or equivalent, or unemployed, retired or on extended leave;
 - (iv) **Institutions** –universities, research institutions, registered training organisations, local, state and federal government agencies and other institutions;
 - (v) **Life members** – honorary form of membership bestowed upon individuals who have made a significant contribution to ECA and the early childhood sector over the course of their lifetimes;
 - (vi) **International** – individuals living outside of Australia who wish to support the work of ECA; and
 - (vii) **Supporters** – individuals who support the work of ECA and do not meet the eligibility requirements for any other Membership Class.
- (b) The Board may establish a new Membership Class or vary the eligibility criteria for a Membership Class by agreement with the State/Territory Committees and any Branch Committees.

4.4 Admission

- (a) Eligible applicants will be admitted to Membership on lodging an application form in the form and manner (if any) approved by the Board.
- (b) On admission, the Company Secretary must, as soon as possible:
 - (i) enter the applicant's details into the Register; and
 - (ii) notify the Member in writing of the date their membership commenced.
- (c) A person becomes a Member when their name is entered into the Register.

4.5 Annual Membership Fee

- (a) The Board, by agreement with the State/Territory Committees and any Branch Committees, may:
 - (i) determine the amount of the Annual Membership Fee from time to time; and
 - (ii) impose different Annual Membership Fees for different Membership Classes.
- (b) The Annual Membership Fee is due and payable by each member within 30 days of a fee notice being issued to that member.
- (c) The Company may issue a late payment notice to a Member that does not pay their Annual Membership Fee within 60 days of the fee notice date. A Member that does not pay their Annual Membership fee within 30 days of the late payment notice is deemed to have resigned their Membership.

4.6 Register

- (a) The Company Secretary must maintain the Register.
- (b) The Register must contain:
 - (i) the name, address, Membership Class, and date of admission to Membership – for each current Member; and
 - (ii) the name, date of admission to Membership and date on which a person stopped being a Member – for each person who ceased to be Member in the past 7 years.
- (c) The Company Secretary may keep former Member entries separately from current Member entries.
- (d) Notices may be served on a Member at their address in the Register.
- (e) The Company must give Members access to the Register in accordance with the Act.
- (f) Information that is accessed from the Register must only be used in a manner relevant to the interests or rights of Members.

4.7 Ceasing to be a Member

- (a) A person ceases to be a Member on:
 - (i) resignation;
 - (ii) expulsion in accordance with clause 4.8;
 - (iii) the Board deeming, in their sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence within 60 days; or
 - (iv) failing to satisfy the relevant eligibility requirements for the Member's Membership Class and the Membership not being transferred to another Membership Class;
 - (v) in the case of a natural person:
 - (A) death;
 - (B) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (C) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health; or
 - (vi) in the case of a body corporate:
 - (A) being dissolved or otherwise ceasing to exist;
 - (B) having a liquidator or provisional liquidator appointed to it; or
 - (C) being insolvent.
- (b) A Member whose Membership is terminated will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding the Guaranteed Amount for which the Member is liable under this Constitution.
- (c) There will be no liability for any loss or injury suffered by a Member as a result of any decision made in good faith under this clause.
- (d) Any person who for any reason ceases to be a Member must not represent themselves in any

manner as being a Member.

4.8 Expulsion and suspension of Members

- (a) The Board may suspend or expel a Member from the Company if it decides it is not in the interests of the Company for the person to continue or remain as a Member.
- (b) The Board may not resolve to suspend or expel a Member outside of a Board meeting.
- (c) If the Board intends to consider a resolution to suspend or expel a Member, it must notify the Member in writing at least one week prior to the relevant Board meeting:
 - (i) of the date, place and time of the meeting where the resolution will be considered;
 - (ii) of the intended resolution and the grounds on which it is based; and
 - (iii) that they may attend the meeting and give an oral or written explanation or submission before the resolution is voted on.
- (d) After considering any oral or written explanation or submission, the Board may resolve to:
 - (i) take no further action;
 - (ii) warn the Member;
 - (iii) suspend the Member's rights for up to 12 months;
 - (iv) expel the Member;
 - (v) refer the decision to an unbiased, independent person on conditions that the Board consider appropriate (however, the person can only make a decision that the Board could have made under this clause); or
 - (vi) require the matter to be determined at a general meeting.
- (e) Any Member expelled from the Company may at any time apply to the Board to be readmitted as a Member.
- (f) No person may become a Director following expulsion or while suspended unless they are subsequently readmitted as a Member.

4.9 Organisational Representative

- (a) An Organisational Member must appoint an individual as its Representative. The appointment may be a standing one.
- (b) A Representative may exercise any and all powers of the Member unless the appointment specifies otherwise.
- (c) The appointment may be made by reference to a position held.
- (d) An Organisational Member may appoint more than one Representative but only one Representative:
 - (i) may exercise the body's powers as Member at any one time; and
 - (ii) may be counted for the purposes of determining a quorum at a general meeting.

4.10 Liability of Members

The liability of a Member is limited to the Guaranteed Amount, being \$10.

5. Convening General Meetings

5.1 Convening general meetings

The Board may call a general meeting at any time.

5.2 Changes to general meeting arrangements

- (a) The Board may change the venue for, postpone or cancel a general meeting.
- (b) If a change is made under clause 5.2(a):
 - (i) notice of the change must be given to all persons entitled to receive notices of a general meeting under this Constitution;
 - (ii) a notice of postponement must specify the date, time and place to which the general meeting has been postponed; and

- (iii) clause 5.5 does not apply to the notice.
- (c) The only business that may be transacted at a general meeting which is postponed is the business specified in the original notice convening the meeting.

5.3 Entitlement to receive notice

Notice of a general meeting:

- (a) must be given to every Member and every Director; and
- (b) may be given to any auditor appointed for the Company and in office at the time.

5.4 Notice of general meetings

A notice of general meeting must:

- (a) be in writing;
- (b) state the place, day and time of the meeting;
- (c) provide details of any technology that will be used to facilitate the meeting;
- (d) state the general nature of the business to be transacted at the meeting;
- (e) state the wording of any Special Resolution to be considered (and state that it is proposed as a Special Resolution); and
- (f) state that proxy voting is not permitted.

5.5 Timing of notice

At least 21 days' notice must be given of a general meeting (other than a meeting to consider a resolution to remove a Director or auditor) unless:

- (a) in the case of an Annual General Meeting, all the Members entitled to attend and vote agree beforehand; and
- (b) in the case of any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

5.6 Annual General Meeting

- (a) The Board must hold an Annual General Meeting at least once in every calendar year.
- (b) The business of an Annual General Meeting may include any of the following (even if not stated in the notice of meeting):
 - (i) the annual financial statements and any auditor's report;
 - (ii) the appointment of Directors; and
 - (iii) the appointment and remuneration of any auditor.

5.7 Chairperson of general meetings

- (a) The Chair will preside as chairperson at every general meeting.
- (b) If there is no Chair, the Chair is not present within 15 minutes of the commencement time or the Chair is unwilling to act as chairperson for all or part of the meeting, the following may preside as chairperson (in order of precedence):
 - (i) a Deputy Chair;
 - (ii) a Director chosen by a majority of the Directors present;
 - (iii) the only Director present; or
 - (iv) a Member chosen by a majority of the Members present.

5.8 Quorum for general meetings

- (a) No business may be transacted at a general meeting (other than electing a chairperson or adjourning the meeting), unless a quorum is present at the time the business is dealt with.
- (b) A quorum for a general meeting is a majority of the members of the National Council.
- (c) If a quorum is not present within 15 minutes of the commencement time, then:
 - (i) if the meeting was called by, or at the request of Members, the meeting will dissolve;

- (ii) otherwise:
 - (A) the meeting stands adjourned to the day, time and place, determined by the Board or (if no determination is made by the Board), to the same day, time and place in the following week; and
 - (B) if at the resumption of the meeting a quorum is not present within 15 minutes of the commencement time, the meeting will dissolve.
- (d) A suspended Member is not counted for the purpose of determining a quorum.

5.9 Adjournment of general meetings

- (a) The chairperson may (and must if directed by a majority of the Members present and entitled to vote) adjourn the meeting or any business, motion, or discussion being considered or remaining to be considered.
- (b) Only unfinished business may be transacted at a general meeting resumed after an adjournment.
- (c) It is not necessary to give any notice of an adjournment, or of the business to be transacted at any adjourned meeting, unless a meeting is adjourned for one month or more.
- (d) A meeting adjourned under this clause is adjourned to the day, time and place determined by the Board or (if no determination is made by the Board), to the same day, time and place in the following week.

6. Voting at General Meetings

6.1 Voting rights

- (a) Members have weighted votes according to their Membership Class (provided they are not suspended), as follows:
 - (i) Individual members (one vote)
 - (A) Professionals
 - (B) Students and concession holders
 - (C) Supporters
 - (D) Life members
 - (ii) Organisational members (three votes)
 - (A) Services and schools
 - (B) Institutions
 - (iii) International – non-voting
- (b) On a vote conducted at a general meeting each person present carries the weighted votes of each Member they represent.

6.2 Method of Voting

- (a) Voting must occur by poll (including in-person ballot, mail-in ballot and/or electronic ballot as determined by the Board).
- (b) A poll must be taken in the manner directed by the chairperson.
- (c) A poll demanded on the election of the chairperson or on a question of adjournment must be taken immediately.
- (d) A Member may vote in person or by Representative.

6.3 Decisions of the Members

- (a) Questions arising for determination will be decided by a majority of votes cast (unless otherwise provided in this Constitution).
- (b) If equal votes are cast, the chairperson will have a casting vote.
- (c) An objection to the right of a person to vote may only be raised at the meeting at which the vote objected to is given or tendered. Any objection must be referred to the chairperson, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

6.4 Seconding

It is not necessary for a motion to be seconded in order to be put to a vote.

6.5 Use of technology

- (a) The Company may hold a general meeting at any two or more locations using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) A person participating through the use of technology will be deemed to be present at the meeting in person.

7. Dispute Resolution

- (a) The parties to a dispute under this Constitution, being a Member or Director and:
 - (i) one or more Members;
 - (ii) one or more Directors; or
 - (iii) the Company;
 must attempt to resolve the matter between themselves within 14 days of being made aware of the dispute.
- (b) The Company, a Member or a Director must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 4.8 until the disciplinary procedure is completed.
- (c) If the parties cannot resolve the dispute within 14 days, they must:
 - (i) notify the Company;
 - (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (d) The mediator must:
 - (i) be a person chosen by agreement between the parties or:
 - (ii) in the absence of agreement:
 - (A) for disputes between Members, a person chosen by the Board; and
 - (B) for other disputes, a person chosen by the President of the Australian Capital Territory Law Society.
- (e) A mediator chosen by the Board pursuant to clause 7(d)(ii)(A):
 - (i) must be a professionally accredited mediator;
 - (ii) must not be a current or former Member ;
 - (iii) must not have a personal interest in the dispute; and
 - (iv) must not be biased towards or against anyone involved in the dispute.
- (f) When conducting the mediation, the mediator must allow those involved a reasonable chance to be heard and to review any written statements.
- (g) The mediator must not determine the dispute.
- (h) A Member or a Director must not commence a formal legal proceeding (except for interlocutory relief) in relation to a dispute under this Constitution unless and until they have complied with this dispute resolution procedure.

8. Appointment And Removal Of Directors

8.1 Number and composition of Directors

- (a) The Company must have at least five and no more than nine Directors.
- (b) The Board must comprise:
 - (i) five **Ordinary Directors** elected by those Members who reside in the same State or Territory as each Director;
 - (ii) four **Independent Directors** elected by the Members with skills and expertise to be

determined by the Nominations Committee.

- (c) The Chief Executive Officer and Company Secretary may attend and speak at Board meetings but are not Directors and may not vote.

8.2 Rotation of Ordinary Director State/Territory

- (a) Only one Ordinary Director may serve on the Board from each State/Territory at a time.
- (b) Vacancies on the Board must be filled according to the rotation system set out in Schedule 2,

8.3 Eligibility

- (a) Any natural person committed to the Principal Purpose is eligible to be a Director provided the Nominations Committee has confirmed that they meet the following criteria:
 - (i) the person meets the eligibility and rotation requirements set out in Schedule 2 (as amended by the Board from time to time);
 - (ii) the person supports the Principal Purpose of the Company;
 - (iii) the person has consented in writing to be a Director;
 - (iv) the person has suitable qualifications, skills and experience to discharge the functions of a Director, as determined by the Board from time to time; and
 - (v) the person is not ineligible to be a Director under:
 - (A) the Act; or
 - (B) the ACNC legislation.
- (b) An Independent Director is not eligible to seek re-election for a second term unless the Nominations Committee first confirms, in its sole discretion, that:
 - (i) the individual continues to meet the eligibility criteria; and
 - (ii) the individual's skills and experience are still required by the Company.

8.4 Election of Directors

- (a) ECA elections must be held each year by the end of August.
- (b) Elections will be held by postal or electronic ballot of the Members entitled to vote.
- (c) There must be a separate ballot for:
 - (i) Ordinary Directors;
 - (ii) Independent Directors; and
 - (iii) Each State/Territory Committee.
- (d) Ballots must be received by the returning officer by 31 August in order to be counted.
- (e) The returning officer must provide the result to the Nominations Committee by three days prior to the commencement of the AGM.
- (f) The results of the ECA elections will be announced at the Annual General Meeting.

8.5 Chair and Deputy Chair

- (a) The Board must appoint a Chair and a Deputy Chair from among the Directors.
- (b) The Chair holds office as Chair in accordance with clause 8.6(a) until the end of the third Annual General Meeting following their appointment. A Director may be reappointed as Chair, but only once following the completion of their first term.
- (c) The Deputy Chair holds office as Deputy Chair until the end of the first Annual General Meeting following their appointment. The Deputy Chair's term of office is independent of their term of office as a Director. A Director may be reappointed as Deputy Chair for unlimited terms.
- (d) The Board may remove or suspend a Director from holding the position of Chair or Deputy Chair by resolution passed at a Board meeting provided:
 - (i) the resolution is passed by not less than two-thirds of the Directors present; and
 - (ii) at least 21 days' notice in writing of the resolution has been given to the Company Secretary and to the person who is the subject of the resolution.

8.6 Term of office

- (a) The term of office of a Director appointed to the role of Chair by the Board:
 - (i) is three years;
 - (ii) commences immediately following their appointment to the role of Chair; and
 - (iii) expires:
 - (A) if they are not reappointed by the Board - at the end of the third Annual General Meeting following their appointment to the role of Chair; or
 - (B) if they are reappointed by the Board – at the end of the third Annual General Meeting following their reappointment to the role of Chair.
- (b) The term of office of Ordinary Directors:
 - (i) is three years;
 - (ii) commences at the end of the Annual General Meeting immediately following their election; and
 - (iii) expires at the end of the third Annual General Meeting following the election.
- (c) The term of office of Independent Directors:
 - (i) is three years;
 - (ii) commences at the end of the Annual General Meeting immediately following their election; and
 - (iii) expires at the end of the third Annual General Meeting following the election.
- (d) Except as provided for in clause 8.6(e):
 - (i) an Ordinary Director is only eligible to serve a maximum of three years (one term); and
 - (ii) an Independent Director is only eligible to serve a maximum of six years (two consecutive terms).
- (e) A Director who is Chair is eligible to serve a maximum of:
 - (i) in the case of an Ordinary Director - nine years (comprising up to three years as a Director followed by up to two consecutive terms as Chair);
 - (ii) in the case of an Independent Director – twelve years (comprising up to two consecutive terms as an Independent Director followed by up to two consecutive terms as Chair).

8.7 Ceasing to be a Director

A person stops being a Director, and a casual vacancy is created, if they:

- (a) resign by written notice to the Company;
- (b) cease to meet the eligibility requirements set out in clause 8.3(a);
- (c) are removed by the Members under the Act;
- (d) are absent without leave of the Board, from:
 - (i) three consecutive Board meetings; or
 - (ii) four Board meetings over 12 months; or
- (e) die, or become subject to a Court order to receive treatment or have their finances managed by another person due to being of unsound mind or having a mental illness;
- (f) are directly or indirectly interested in any contract or proposed contract with the Company and fail to declare the nature of the interest as required by the Act;
- (g) become ineligible to be a Director under the Act or the ACNC Legislation.

8.8 Casual vacancy

- (a) The Board may appoint a Director to fill a casual vacancy.
- (b) The term of office of a Director appointed by the Board to fill a casual vacancy:
 - (i) commences on the date of appointment; and

- (ii) expires at the end of the first Annual General Meeting following the appointment.
- (c) In the event that a casual vacancy arises in the office of an Ordinary Director, then:
 - (i) if there is more than six months remaining in the Ordinary Director's term - the Board must appoint an Ordinary Director to fill the casual vacancy; and
 - (ii) if there is more than twelve months remaining in the Ordinary Director's term – at the first Annual General Meeting following the casual vacancy arising, the Members who reside in the same State or Territory as the vacating Ordinary Director may elect a new Ordinary Director from that State or Territory for the balance of the vacating Ordinary Director's term.
 - (iii) If a vacating Ordinary Director holds the office of Chair at the time of vacating, this must be disregarded when determining the balance of their term of office for the purpose of clause 8.8(c)(ii).
- (d) If the number of Directors is less than five, the remaining Directors may, except in an emergency, act only to:
 - (i) increase the number of Directors to a number sufficient to constitute a quorum or meet that minimum number; or
 - (ii) convene a general meeting of the Company.

8.9 Defects in appointment of Directors

An act done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting or taking the relevant step.

9. Board Decision Making

9.1 Convening Board meetings

A Director may convene or ask the Company Secretary to convene a Board meeting by giving reasonable notice to all of the other Directors.

9.2 Notice of Board meetings

- (a) Notice of Board meetings must be given to every Director.
- (b) A notice of a Board meeting:
 - (i) must specify the place, day and time of the meeting;
 - (ii) must provide details of any technology that will be used to facilitate the meeting; and
 - (iii) does not need to specify the nature of the business to be transacted at the meeting.
- (c) Subject to clause 9.2(c), at least 48 hours' written notice must be given of Board meetings to all Directors (unless the Board unanimously waives this requirement).

9.3 Quorum for Board meetings

- (a) No business may be transacted at any Board meeting unless a quorum is present.
- (b) A quorum of Directors for Board meetings is a majority of the total number of Directors.
- (c) A Director on a leave of absence approved by the Board should not be included when calculating the total number of Directors for the purposes of this clause.

9.4 Use of technology in Board meetings

- (a) The Board may hold its meetings using any technology that is agreed to by the Board.
- (b) The Board's agreement may be a standing one.
- (c) A Director who attends by technology is deemed to be present in person at the meeting.

9.5 Chairperson of Board meetings

- (a) The Chair will preside as chairperson at Board meetings.
- (b) If the Chair is not present within 15 minutes after the commencement time or is unwilling to act as chairperson for all or part of the meeting then:

- (i) the Deputy Chair will be the chairperson; and
- (ii) if the Deputy Chair is not present or is not willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of the meeting or part of it.

9.6 Voting at Board meetings

- (a) A question arising at a Board meeting is to be decided by a majority of votes of Directors present and entitled to vote.
- (b) If the votes cast on a motion are equal, the chairperson will have a casting vote.

9.7 Resolutions without meetings

- (a) A Board resolution may be passed without a meeting if a majority of the Directors entitled to vote on the resolution sign a notice stating that they are in favour of the resolution.
- (b) The resolution is passed at the time when the last Director necessary to constitute a majority in favour signs.
- (c) For the purpose of this clause:
 - (i) the notice must include the wording of the resolution;
 - (ii) the notice may be distributed by any means;
 - (iii) separate copies of the notice may be signed; and
 - (iv) the resolution fails if it has not achieved majority consent within 48 hours after the notice was given.

10. State/Territory and National Committees

10.1 State/Territory Committees

- (a) The Board may determine that the Members who are resident in a particular State or Territory will be represented by a State/Territory Committee.
- (b) Each State/Territory Committee will be elected by those Members resident in the relevant State/Territory or Territory.
- (c) The State/Territory Committee must operate according to the Terms of Reference set out in Schedule 1.
- (d) The meetings and proceedings of State/Territory Committees are subject to:
 - (i) the Terms of Reference set out in Schedule 1; and
 - (ii) the provisions of this Constitution which regulate the proceedings of the Board, to the greatest extent practical.

10.2 National Committees

- (a) The Board may establish a National Committee at any time.
- (b) A National Committee may only be dissolved by unanimous resolution of the Board or ordinary resolution of the members.
- (c) The National Committee members will be appointed by the Board.
- (d) The National Committee must operate according to Terms of Reference prescribed by the Board.
- (e) The meetings and proceedings of National Committees are subject to:
 - (i) the Terms of Reference; and
 - (ii) the provisions of this Constitution which regulate the proceedings of the Board, to the greatest extent practical.

11. National Council

11.1 Role

- (a) The role of the National Council is to set advocacy priorities and to serve as the main forum for Board consultation on matters of public policy.
- (b) The National Council is an advisory body only – it may not give directions to the ECA Board.

11.2 Composition

The National Council will comprise:

- (a) The Board;
- (b) Four representatives from each State/Territory, appointed as follows:
 - (i) If the State/Territory has a State/Territory Committee, by the State/Territory Committee; and
 - (ii) If the State/Territory does not have a State/Territory Committee, by the Members who reside in the relevant State/Territory.
- (c) Four representatives from each National Committee.

11.3 Term of office

- (a) State/Territory representatives will serve on the National Council from the date of their appointment.
- (b) All State/Territory representative positions on National Council will be vacated on 30 September in each year.

11.4 National Council meetings

- (a) The National Council will meet at least twice in each calendar year, including at least one face to face meeting.
- (b) Meetings will be convened by the Board.

11.5 Notice of National Council meetings

- (a) At least thirty days' notice of National Council meetings must be given to every National Council member.
- (b) A notice of a National Council meeting:
 - (i) must specify the place, day and time of the meeting;
 - (ii) must provide details of any technology that will be used to facilitate the meeting; and
 - (iii) does not need to specify the nature of the business to be transacted at the meeting.

11.6 Chairperson of National Council meetings

- (a) The Chair will preside as chairperson at National Council meetings.
- (b) If the Chair is not present within 15 minutes after the commencement time or is unwilling to act as chairperson for all or part of the meeting then:
 - (i) the Deputy Chair will be the chairperson; and
 - (ii) if the Deputy Chair is not present or is not willing and able to be the chairperson during all or part of the meeting, the Directors present may elect a Director to be chairperson of the meeting or part of it.

11.7 Voting at National Council meetings

- (a) A question arising at a National Council meeting is to be decided by a majority of votes of National Council members present and entitled to vote.
- (b) If the votes cast on a motion are equal, the chairperson will have a casting vote.

12. Nominations Committee

12.1 Role

The role of the Nominations Committee is to manage the recruitment, rotation and election of Directors, including by:

- (a) establishing and monitoring a director skills and expertise matrix;
- (b) identifying needed skills with reference to the skills and expertise matrix and the strategic plan of the Company and submitting them to the Board for approval;
- (c) as far as reasonably possible, promoting diversity of identity, opinion, experience and geographic location on the Board;

- (d) actively recruiting candidates to fill the identified gaps in skills, expertise and representation;
- (e) vetting nominees to ensure that all candidates satisfy the criteria for election;
- (f) acting as or appointing a returning officer for the conduct of elections; and
- (g) announcing the results of the elections at the annual general meeting.

12.2 Composition

The Nominations Committee must comprise five members as follows:

- (a) the Chair;
- (b) the Deputy Chair;
- (c) members of the National Council drawn from the States/Territories of those ordinary Directors that will finish their terms at the next Annual General Meeting; and
- (d) a former Director.

12.3 Term of office

The National Council members and former Director members of the Nominations Committee must be appointed at each Annual General Meeting and will serve for a twelve-month term of office.

12.4 Ballots

The Nominations Committee must, in advance of each annual election, develop the following separate ballots for circulation to the Members:

- (a) Ordinary Directors - ideally, a list of candidates that exceeds the number of vacancies.
- (b) Independent Directors – ideally, a list of candidates that matches the number of vacancies.
- (c) State/Territory Committee members – a separate ballot for each State/Territory Committee.

13. Directors' Powers and Duties

13.1 Powers of the Board

- (a) The Directors are responsible for managing the business of the Company and furthering the Principal Purpose.
- (b) The Directors may exercise all the powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Members.
- (c) The Board cannot remove a Director or auditor.
- (d) The Board may delegate any of its powers to one or more Directors, the Chief Executive Officer, a committee, an employee or any other person.
- (e) The Board may specify terms of the delegation (including the power to further delegate) and revoke a delegation.

13.2 Duties of Directors

Directors must comply with any duties imposed on them by the Act and with the duties described in governance standard 5 of the ACNC Legislation.

13.3 Establishment of committees

- (a) The Board may establish committees.
- (b) A committee may include, or be comprised of, non-Directors.
- (c) The meetings and proceedings of committees are:
 - (i) subject to any terms of reference and/or delegation; and
 - (ii) otherwise governed as far as possible by the provisions of this Constitution which regulate the proceedings of the Board.

13.4 By-laws

- (a) The Board may make regulations or by-laws for the general conduct and management of the Company and the business of the Board.
- (b) The Board may revoke and alter by-laws or regulations as it sees fit.

14. Directors' Interests

14.1 Conflicts of interest

- (a) A Director must disclose the nature and extent of any perceived or actual material conflict of interest to the other Directors (or the Members if the other Directors share that conflict).
- (b) A Director who has a material personal interest in a matter that is being considered by the Board:
 - (i) must not be present while the matter is being considered at a Board meeting; or
 - (ii) vote on the matter;
 unless permitted by clause 14.1(c).
- (c) Provided the Board approves and it is permitted by law, a Director may be present or vote if:
 - (i) the interest arises because the Director is a Member and the other Members have the same interest;
 - (ii) the interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as an officer of the Company;
 - (iii) the interest relates to any payment by the Company under clause 15.2 in respect of an indemnity permitted under the Act or any contract relating to such an indemnity; or
 - (iv) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
 - (v) the interest relates to a contract the Company is proposing to enter into that:
 - (A) is subject to approval by the Members; and
 - (B) will not impose any obligation on the Company if it is not approved by the Members;
 - (vi) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
 - (B) states that those Directors are satisfied that the interest should not stop the Director from voting or being present; or
 - (vii) the interest arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 14.1(c)(vi).

14.2 Permissible conduct

Provided a Director complies with clause 14.1 they may:

- (a) hold any other position in the Company, except that of auditor;
- (b) hold any office or place of profit in any other entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a Member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) sign or participate in the execution of a document by or on behalf of the Company; and
- (g) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

15. Company Secretary and Chief Executive Officer

15.1 Company Secretary

- (a) The Directors must appoint at least one Company Secretary, who may be the Chief Executive Officer.
- (b) A person may not be appointed as Company Secretary unless the person:
 - (i) consents in writing to being appointed as Company Secretary;
 - (ii) is at least 18 years of age; and
 - (iii) is resident in Australia.
- (c) The Board may suspend or remove a Company Secretary.

15.2 Chief Executive Officer

- (a) The Board may appoint a Chief Executive Officer for a term, at the remuneration and on the conditions that the Board thinks fit.
- (b) The Chief Executive Officer may not be a Director.
- (c) The Chief Executive Officer may attend and speak at all Board meetings, National Council, advisory committee meetings, ad hoc committee meetings and general meetings, but may not vote.
- (d) The Directors may:
 - (i) confer powers, discretions and duties on the Chief Executive Officer as they see fit;
 - (ii) withdraw, suspend or vary any powers, discretions and duties conferred; and
 - (iii) authorise the Chief Executive Officer to delegate all or any of the powers, discretions and duties conferred.
- (e) An act done by a person acting as Chief Executive Officer is not invalidated merely because of:
 - (i) a defect in their appointment as Chief Executive Officer; or
 - (ii) the person being disqualified from being Chief Executive Officer;
 if that circumstance was not known by the person when the act was done.

16. Indemnities and Insurance

- (a) The Company indemnifies every present and past Director and executive officer of the Company to the full extent permitted by law against all losses and liabilities incurred as a result of their position as an officer of the Company.
- (b) This indemnity:
 - (i) is a continuing obligation and is enforceable even if the person has ceased to be an officer of the company;
 - (ii) is not subject to any requirement to first incur an expense or make a payment; and
 - (iii) operates only to the extent that the relevant loss or liability is not covered by insurance.
- (c) The Company may, to the extent permitted by law, pay or agree to pay, a premium in respect of a contract insuring its officers.
- (d) Nothing in this clause 16 limits the Company's ability to indemnify or pay for insurance for any person not expressly covered by this clause.

17. Administration

17.1 Minutes and records

- (a) The Board must ensure that:
 - (i) minutes of all general meetings, Board meetings and committee meetings; and
 - (ii) records of resolutions passed by Members, Directors and Committees without a meeting;
 are recorded and kept with the Company's records as soon as practicable (being no later than

one month after the meeting or passing of the resolution).

- (b) The Company must ensure that minutes of a Board or general meeting are signed within a reasonable time by the chairperson of the meeting or of the next meeting.

17.2 Members' access to Company records

The Company must give Members access to Company records as required by the Act.

17.3 Common seal

The Company does not have a common seal.

17.4 Execution of documents

The Company may execute documents by the signature of:

- (a) two Directors; or
- (b) one Director and the Company Secretary; or
- (c) such other persons appointed by the Board for that purpose.

18. Records, Accounting and Audit

18.1 Accounts and other records of the Company

- (a) The Board must:
 - (i) ensure that proper financial records are kept in accordance with all legal and regulatory requirements; and
 - (ii) ensure that records of its operations are kept; and
 - (iii) take reasonable steps to ensure that the Company's records are kept safe.
- (b) The Company must retain its records for at least seven years.

18.2 Audit

- (a) If required by law, the Company must appoint and remunerate an auditor.
- (b) Any auditor is entitled to attend any general meeting and to be heard by the Members on any business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The Company may give any auditor all communications relating to the general meeting that the Members of the Company are entitled to receive.

18.3 Financial year

The financial year will begin on 1 July and end on 30 June, unless the Board passes a resolution to change the financial year.

19. Amending This Constitution

- (a) The Company may only alter this Constitution by Special Resolution in accordance with the Act.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a Charity.

20. Notices

- (a) Notices can be served on Members or Directors personally, by post, email or other electronic means.
- (b) Notices are taken to be served:
 - (i) in the case of a properly addressed and posted notice, five Business Days after the date of posting; and
 - (ii) in the case of a notice sent by email or other electronic means, at the time of sending.
- (c) The non-receipt of notice or a failure to give notice, does not invalidate any thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) the individual waives notice before or after the meeting (including by attending the

- meeting); or
- (iii) the individual notifies the Company of their agreement to that thing or resolution before or after the meeting.
- (d) In calculating a period of notice, both the days on which the notice is given or taken to be given and the day of the meeting must be disregarded.

21. Winding Up

21.1 Contribution of a Member on winding up

If required, each Member must contribute an amount (not more than the Guaranteed Amount) to the assets of the Company if it is wound up while they are a Member, or within one year of the Member ceasing to be a Member, for the:

- (a) payment of the debts and liabilities of the Company incurred before they ceased to be a Member; and/or
- (b) costs, charges and expenses of winding up.

21.2 Distribution of assets on winding up

- (a) If on the winding up of the Company or dissolution of the Company, there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus:
 - (i) must not be paid or distributed to a Member in their capacity as a Member; and
 - (ii) must be given or transferred to a Charity or Charities (the **recipient**) which:
 - (A) have similar objects to those of the Company as described in this Constitution; and
 - (B) prohibit the distribution of profit or gain to its Members in their capacity as Members.
- (b) The Members must decide before any winding up or dissolution which Charity or Charities will receive a distribution. If the Members fail to decide, the matter must be determined by application to the Supreme Court in the Australian Capital Territory.

22. Interpretation

22.1 Definitions

In this Constitution:

"ACNC" means the Australian Charities and Not-for-profits Commission.

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

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

"auditor" may mean a reviewer, if permitted by the Act or ACNC Legislation.

"Branch" means the following organisations that were members of the Company prior to its registration.

Australian Early Childhood Association (NT Branch) Incorporated

Early Childhood Australia (NSW) Inc

Early Childhood Australia (Victorian) Branch Incorporated

Early Childhood Australia Australian Capital Territory Branch (Inc)

Early Childhood Australia Queensland Branch Inc

Early Childhood Australia South Australian Branch (Inc)

Early Childhood Australia -Tasmania Branch Incorporated

Early Childhood Australia Western Australian Branch Incorporated

"Branch Committee" means, where no State/Territory Committee has been established for a particular State or Territory, the Committee of the relevant Branch incorporated in that State or Territory.

“chairperson” means the person chairing a meeting.

“Chair” means the person elected to the position of Chair under clause 15.

“Charity” means a charity registered under the ACNC Legislation.

“Deputy Chair” means the person appointed to the position of Deputy Chair under clause 8.5.

“General Meeting” means a meeting of Members (including an Annual General Meeting).

“Guaranteed Amount” means the amount set out in clause 4.10.

“Member” means a person whose name is entered in the Register as a Member of the Company in accordance with clause 4.5.

“Membership Class” means a Membership Class listed in clause 4.2(d).

“National Committee” means a committee established by the Board pursuant to clause 10.2.

“person” includes a natural person and a corporation within the meaning of s 57A of the Act.

“Principal Purpose” means the purpose set out in clause 2.

“Projects/Programs” refers to activities undertaken as a part of a contracted agreement with ECA to deliver services, research or consultation

“Register” means the register of Members under the Act.

“Representative” means a person appointed to represent a corporate Member in accordance with clause 4.9.

“State/Territory Committee” means a committee established pursuant to Clause 11.1 to represent Members from a particular State or Territory.

22.2 Interpretation

In this Constitution:

- (a) If an expression in the Constitution has a meaning in the Act, the meaning from the Act will apply to the expression - except where a contrary intention appears in this Constitution.
- (b) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

22.3 Exclusion of replaceable rules

- (a) The replaceable rules contained in the Act do not apply to the Company.
- (b) If at any time, the company is not a Charity, the Act (unless it is a replaceable rule) overrides any part of this Constitution or policy of the Company to the extent of any inconsistency.

23. Transitional Provisions

The following clauses apply notwithstanding anything to the contrary in this Constitution.

23.1 Members

The first Members are those named as Members in the application for the Company's registration under the Act.

23.2 Directors

The inaugural Directors are those named as Directors in the application for the Company's registration under the Act.

Initial members

The following individuals consent to be the initial members of the Company and adopt, on registration of the Company, this Constitution in accordance with section 136(1) of the *Corporations Act*.

Full Name

Signature

Full Name

Signature

Full Name

Signature

Full Name

Signature

Full Name

Signature

Full Name

Signature

Full Name

Signature

Full Name

Signature

SCHEDULE 1

Terms of Reference for State/Territory Committees

1. Purpose of State/Territory Committee

The purpose of the State/Territory Committee is to promote ECA's Principal Purpose in the State/Territory.

2. Role of State/Territory Committee

- (a) The role of the State/Territory Committee includes:
 - (i) carrying out State/Territory projects/programs and assisting with Federal projects/programs (by agreement with ECA) within the State/Territory;
 - (ii) participating in the annual leadership forum and sending delegates to the National Council meeting;
 - (iii) encouraging State/Territory members to vote in ECA elections and attend the ECA annual general meeting;
 - (iv) promoting membership recruitment and renewal within the State/Territory;
 - (v) assisting with member events and communications within the State/Territory; and
 - (vi) advocacy and representation in relation to matters connected with the ECA Purpose in the State/Territory.
- (b) The role and obligations of the State/Territory Committee may be set out more fully in an Affiliation Agreement between ECA and the State/Territory Committee, in which case the terms of that affiliation agreement will take precedence over anything in these terms of reference.

3. Composition of the State/Territory Committee

- (a) The State/Territory Committee will have at least three and no more than twelve members.
- (b) State/Territory Committee members must be ECA Members or Representatives of ECA Members who reside in the relevant State or Territory.

4. Appointment and Term of State/Territory Committee members

- (a) State/Territory Committee members will be elected by the ECA Members who reside in the relevant State or Territory.
- (b) State/Territory Committee elections will be conducted by ECA and will take place by postal or electronic ballot at the same time as ECA Board elections.
- (c) The State/Territory Committee may appoint a State/Territory Committee member to fill a casual vacancy;
- (d) The term of office of a State/Territory Committee member:
 - (i) is two years;
 - (ii) commences at the end of the Annual General Meeting of ECA immediately following their election; and
 - (iii) expires at the end of the second Annual General Meeting of ECA following the election.
- (e) The term of office of a State/Territory Committee member appointed by the State/Territory Committee to fill a casual vacancy:
 - (i) commences on the date of appointment; and
 - (ii) expires at the end of the first Annual General Meeting of ECA following the appointment.
- (f) If the Early Childhood Australia Board considers that the State/Territory Committee has become unable to function or is no longer effectively promoting ECA's Purpose, the Early Childhood Australia Board may:

- (i) conduct a poll of the ECA Members who reside in the relevant State or Territory to determine if 75% of them support replacing all or some of the State/Territory Committee members; and
 - (ii) if the poll has 75% support, conduct a State/Territory Committee election.
- (g) State/Territory Committee members may be appointed for more than one term.

5. State/Territory Committee Office bearers

- (a) The State/Territory Committee must appoint a Chair from amongst the State/Territory Committee Members.
- (b) The President will act as chair of State/Territory Committee meetings, unless they are unwilling or unable to do so, in which case the State/Territory Committee Members will appoint another State/Territory Committee Member to act as Chair.

6. Meetings of the State/Territory Committee

- (a) A minimum of 7 days' notice must be provided to each State/Territory Committee Member notifying them of the time and place of the State/Territory Committee meeting.
- (b) The State/Territory Committee will meet as often as it deems appropriate but not less than once per year.
- (c) A quorum of a State/Territory Committee is a majority of the State/Territory Committee Members.
- (d) The Chair must keep minutes of all meetings and make those minutes available to the Company Secretary of ECA on request.

7. Finances

- (a) Annual Membership Fees collected from ECA Members in the State/Territory will be apportioned between ECA and the State/Territory Committee and made available to the State/Territory Committee in accordance with proportions agreed from time to time between the Board, the State/Territory Committees and any Branch Committees.
- (b) The State/Territory Committee may submit an annual budget or project based budgets to the ECA Board requesting additional funds.
- (c) All funds received by the State/Territory Committee must be used to promote ECA's Principal Purpose in the State/Territory and:
 - (i) in accordance with the relevant annual budget; or
 - (ii) for the project for which the funds were requested.
- (d) If for any reason a significant proportion of State/Territory Committee funds cannot be used in accordance with the relevant annual budget or for the project for which the funds were requested, the State/Territory Committee must consult with the Early Childhood Australia Board regarding expenditure of the funds.

8. Regional Networks

The State/Territory Committee may establish, determine terms of reference for and dissolve regional networks within their jurisdiction.

9. Amendments to the Terms of Reference

These Terms of Reference may only be amended by special resolution of the Board of Early Childhood Australia Ltd.

10. Definitions

"Principal Purpose" means the purpose set out in clause 2(b) of the ECA Constitution.

"Terms of Reference" means these Terms of Reference as amended by the ECA Board from time to time.

"ECA" means the company limited by guarantee called Early Childhood Australia Limited (ABN 44 950 767 752).

"ECA Board" means the Board of Directors of ECA.

SCHEDULE 2

Additional eligibility requirements for Directors:

A candidate for the role of Chair or Deputy Chair must:

- Have extensive experience or standing in the early childhood sector gained through employment, appointment to government boards/commissions or other relevant experience.
- Have prior board experience and/or governance qualifications (AICD Company Directors Course or equivalent).
- Have 'Working with Children' authorisation and no criminal record.
- Must not be bankrupt or have served on a board which was found to operate while insolvent.
- Has not posted material online or made public statements contrary to the aims and objectives of ECA.

A candidate for the role of Ordinary Director must:

- Be a Member or a Representative of a Member.
- Have 'Working with Children' authorisation and no criminal record.
- Must not be bankrupt or have served on a board which was found to operate while insolvent.
- Has not posted material online or made public statements contrary to the aims and objectives of EGA.

Rotation of Ordinary Directors:

A random allocation process must be used to determine:

- a fixed rotation schedule for the State/Territory of residence of Ordinary Directors.

As Ordinary Director vacancies (other than casual vacancies) arise on the Board, they must be filled with ECA Members or Representatives from States/Territories according to the fixed rotation schedule. However, if there is already a continuing Ordinary Director on the Board who resides in the next State or Territory to fall due on the rotation system, that State or Territory must be passed over and an Ordinary Director selected from the following State or Territory in the rotation schedule.

A candidate for the role of Independent Director must:

- Satisfy one or more of the current skills-based criteria set by the Nominations Committee.
- Have 'Working with Children' authorisation and no criminal record.
- Must not be bankrupt or have served on a board which was found to operate while insolvent.
- Has not posted material online or made public statements contrary to the aims and objectives of ECA.