

A decorative Indigenous pattern in the top right corner, featuring stylized wavy lines in blue, red, and brown, resembling a traditional Aboriginal design.

**FIRST PEOPLES' ASSEMBLY OF VICTORIA**

# **Constitution**



**FIRST PEOPLES'  
ASSEMBLY OF  
VICTORIA**



## CONTENTS

PART A: STRUCTURE AND OBJECTIVES OF THE ASSEMBLY .....	1
1. WHAT ARE THE OBJECT AND GUIDING VALUES? .....	1
PART B: MEMBERSHIP.....	2
2. WHO ARE THE RESERVED MEMBERS? .....	2
3. WHO ARE THE GENERAL MEMBERS? .....	4
4. WHAT IS THE MEMBERS' CHARTER?.....	4
5. WHAT ARE THE RIGHTS AND DUTIES OF MEMBERS? .....	5
PART C: HOW DO YOU BECOME A MEMBER AND STOP BEING A MEMBER? .....	5
6. WHEN ARE ELECTIONS HELD AND WHAT ARE THE COUNCIL'S DUTIES? .....	5
7. NEW MEMBERS AND BY-ELECTIONS.....	7
8. WHAT HAPPENS IF THERE IS A CASUAL VACANCY?.....	7
9. HOW DOES MEMBERSHIP STOP? .....	8
PART D: THE ASSEMBLY CHAMBER.....	12
10. CALLING AN ASSEMBLY CHAMBER .....	12
11. HOW MANY MEMBERS MUST BE PRESENT? .....	13
12. WHAT IS THE CHAIRPERSON'S ROLE? .....	14
13. HOW IS THE ASSEMBLY CHAMBER ADJOURNED? .....	16
14. HOLDING THE ASSEMBLY CHAMBER USING TECHNOLOGY .....	16
PART E: VOTING AT THE ASSEMBLY CHAMBER .....	17
15. DECISION-MAKING BY CONSENSUS WHERE PRACTICABLE.....	17
16. VOTING AT THE ASSEMBLY CHAMBER .....	17
17. MEMBERS CAN PASS RESOLUTIONS BY A RESOLUTION IN WRITING .....	20
18. VALIDITY OF ACTS OF MEMBERS.....	20
19. MEMBERS CAN VOTE BY BALLOTS .....	20
20. WHO CAN APPOINT A PROXY? .....	22
PART F: APPOINTMENT AND REMOVAL OF DIRECTORS .....	23
21. WHO ARE THE CHAIRS AND THE DIRECTORS? .....	24
22. HOW DO DIRECTORS RETIRE? .....	27
23. THE COUNCIL HAS A LIMITED POWER TO FILL VACANCIES AND CASUAL VACANCIES.....	28
24. HOW DOES A DIRECTOR'S OFFICE END? .....	28
25. DIRECTORS CANNOT APPOINT ALTERNATES .....	29
26. OTHER DUTIES OF DIRECTORS.....	29
PART G: POWERS OF THE COUNCIL.....	30

---

27.	WHAT ARE THE POWERS OF THE COUNCIL? .....	30
	PART H: CO-CHAIRS OR CHAIR AND DEPUTY CHAIR .....	31
28.	WHAT IS THE PROCESS TO ELECT THE CO-CHAIRS OR CHAIR AND DEPUTY CHAIR ? .....	32
29.	HOW CAN A CO-CHAIR, CHAIR OR DEPUTY CHAIR BE REMOVED AND REPLACED? .....	33
30.	WHAT IS THE ROLE OF THE CO-CHAIRS OR CHAIR AND DEPUTY CHAIR OF THE COUNCIL? .....	34
31.	TERM OF OFFICE FOR CO-CHAIR OR CHAIR AND DEPUTY CHAIR .....	35
32.	REMUNERATION OF CO-CHAIRS OR CHAIR AND DEPUTY CHAIR .....	35
	PART I: PROCEEDINGS OF DIRECTORS .....	36
33.	COUNCIL MEETINGS .....	36
34.	HOW MANY DIRECTORS NEED TO BE PRESENT? .....	37
35.	HOW ARE DECISIONS MADE AT COUNCIL MEETINGS? .....	37
36.	CALLING AND HOLDING COUNCIL MEETINGS USING TECHNOLOGY .....	38
37.	DIRECTORS CAN PASS RESOLUTIONS BY A RESOLUTION IN WRITING .....	38
38.	DIRECTORS' INTERESTS .....	38
39.	EXERCISE OF RIGHTS .....	39
40.	DELEGATION OF THE COUNCIL'S POWERS .....	39
41.	COUNCIL COMMITTEES .....	39
42.	VALIDITY OF ACTS OF DIRECTORS .....	40
	PART J: DISPUTE RESOLUTION .....	40
43.	DISPUTE RESOLUTION .....	40
	PART K: ELDERS' VOICE .....	41
44.	ELDERS' VOICE IS NOT A CLASS OF MEMBERSHIP .....	41
45.	COUNCIL MUST PREPARE DESIGN OF ELDERS' VOICE .....	41
	PART L: OTHER OFFICERS OF THE ASSEMBLY .....	42
46.	CHIEF EXECUTIVE OFFICER .....	42
47.	SECRETARY .....	42
	PART M: REMUNERATION, FINANCIAL MATTERS AND ACCOUNTS .....	43
48.	THE ASSEMBLY IS A NOT-FOR-PROFIT BODY .....	43
49.	DIRECTORS' REMUNERATION .....	45
50.	INDEMNITY AND INSURANCE .....	45
51.	SUBSCRIPTIONS AND OTHER FEES PROHIBITED .....	46
52.	ACCOUNTS, AUDIT AND RECORDS .....	46
53.	SELF-DETERMINATION FUND REPORTS .....	47

---

54.	WHAT HAPPENS IF THERE IS A GIFT FUND? .....	47
55.	WHAT HAPPENS ON A WINDING UP OR DISSOLUTION? .....	48
	PART N: THE ASSEMBLY'S CONSTITUTION .....	49
56.	REGULAR REVIEW AND AMENDMENT OF THIS CONSTITUTION .....	49
	PART O: ADMINISTRATIVE MATTERS.....	50
57.	WHAT IS THE NATURE OF THE ASSEMBLY? .....	50
58.	KEEPING A REGISTER OF MEMBERS .....	50
59.	KEEPING MINUTES OF MEETINGS .....	51
60.	HOW CAN DOCUMENTS BE EXECUTED?.....	51
61.	WHAT RULES APPLY TO NOTICES? .....	52
	PART P: DEFINITIONS AND INTERPRETATION.....	54
62.	DEFINITIONS.....	54
63.	INTERPRETATION.....	60
	SCHEDULE 1: ELECTION RULES .....	62
	SCHEDULE 2: APPOINTMENT RULES .....	1
	SCHEDULE 3: REGION RULES .....	1
	SCHEDULE 4: MEMBERS' CHARTER.....	1
	SCHEDULE 5: COUNTBACK RULES.....	1

*Corporations Act 2001 (Cth)*

**Public company limited by guarantee**

**First Peoples' Assembly of Victoria Limited**

**ACN 636 189 412**

**PREAMBLE**

This is the constitution for the First Peoples' Assembly of Victoria.

The First Peoples' Assembly of Victoria represents Aboriginal and Torres Strait Islander peoples in advancing treaty in Victoria and is recognised as the Aboriginal Representative Body under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

Part P contains the capitalised defined terms that are used in this constitution. Many of those capitalised terms are also used in the schedules to this constitution, where they have the same meaning.

**PART A: STRUCTURE AND OBJECTIVES OF THE ASSEMBLY**

Part A sets out the object of the Assembly and the Assembly's guiding values and powers.

**1. WHAT ARE THE OBJECT AND GUIDING VALUES?**

**What is the Object?**

- 1.1 The object of the Assembly is to promote the empowerment of Traditional Owners and Aboriginal Victorians, their advancement and addressing Indigenous disadvantage and providing relief, by:
  - 1.1.1 advancing the treaty process with Aboriginal Victorians, including treaty making between Traditional Owners and the State of Victoria;
  - 1.1.2 acting as the Aboriginal Representative Body to support treaty negotiations;
  - 1.1.3 acting as the First Peoples' Representative Body to negotiate, agree and enforce Statewide Treaty and Interim Agreements, and to carry out related responsibilities, activities and functions;
  - 1.1.4 enabling Traditional Owners and Aboriginal Victorians to exercise sovereignty;
  - 1.1.5 enabling Traditional Owners and Aboriginal Victorians to exercise their right to self-determination;
  - 1.1.6 enabling the exercising of rights, including those contained in the *United Nations Declaration on the Rights of Indigenous Peoples*; and
  - 1.1.7 working with governments to establish or be a First Nations' Voice to government or Parliament.
- 1.2 In pursuing its object, the Assembly may:

- 1.2.1 administer the self-determination fund established under the Act and must do so in accordance with the Act;
- 1.2.2 raise money to further the object of the Assembly, including:
  - (a) securing sufficient funds for the pursuit of the object of the Assembly; and
  - (b) receiving any funds and distributing these funds in a way that best suits the object of the Assembly; and
  - (c) do all such things as are incidental, convenient or conducive to the attainment of the object of the Assembly.

#### **What are the Assembly's guiding values?**

- 1.3 In pursuing its object the Assembly will be guided by the following:
  - 1.3.1 Aboriginal lore, law, and legal tradition, cultural values and practices;
  - 1.3.2 respect and equality;
  - 1.3.3 respect for Elders past, present and emerging; and
  - 1.3.4 participation of young people.

#### **What are the Assembly's powers?**

- 1.4 The Assembly may do anything that a company registered under the Corporations Act may lawfully do. In exercising its powers, the Assembly may develop and follow practices, customs and ways of doing business drawn from Aboriginal lore and law. However, the Assembly may not purport to pass a resolution which would be considered inconsistent with the Act.

### **PART B: MEMBERSHIP**

Part B sets out the rules about:

- How Reserved Members and General Members become Members.
- The key rules about the two classes of membership, Reserved Members and General Members.
- The Members' Charter.
- The key rights and duties of Members.

## **2. WHO ARE THE RESERVED MEMBERS?**

- 2.1 A person is a **Reserved Member** if they are selected and admitted as a Reserved Member under the Appointment Rules and in accordance with this constitution.
- 2.2 The process for selecting a Reserved Member is that the members of the Traditional Owner Group:

- 2.2.1 must self-determine how it selects a Reserved Member, and can change how it does this;
  - 2.2.2 must formally approve the method of selecting the Reserved Member; and
  - 2.2.3 must select a person to be a Reserved Member,
- in accordance with this constitution and the Appointment Rules.
- 2.3 This process is called the Selection Process. This Selection Process also applies under other parts of this constitution where a Reserved Member needs to be selected.
  - 2.4 However, if any part of the Selection Process does not happen in sufficient time so that no later than nine business days after the date of publication of the Election results a Reserved Member has been selected, then a Reserved Member may be selected in accordance with clause 2.4.1 or 2.4.2.

#### **Interim appointment process**

- 2.4.1 The board or other governing body of the Traditional Owner Group may within a further 20 business days select an interim Reserved Member for a period no longer than six months. The members of the Traditional Owner Group must complete the Selection Process within those six months. If they do not do so:
  - (a) the Traditional Owner Group will be deemed to have decided not to select a Reserved Member at that time; and
  - (b) the person who is the interim Reserved Member will stop holding office at the end of that six-month period.

#### **Contingency process**

- 2.4.2 The Traditional Owner Group may, at any time, complete the Selection Process so that a Reserved Member is selected to fill a vacant reserved seat held by that Traditional Owner Group.
- 2.5 If a person is selected under the Selection Process or in accordance with clause 2.4.1:
  - 2.5.1 the board or other governing body of the Traditional Owner Group must:
    - (a) advise the Assembly of the details of the person selected in writing; and
    - (b) give the Assembly a consent to be a member of the Assembly signed by the person, in a form required by the Council; and
  - 2.5.2 in the case of a person selected under clause 2.4, the Council must promptly admit the individual who is selected as a Reserved Member.
- 2.6 Where the Traditional Owner Group is in external control by a third party (such as an administrator) and a Reserved Member is to be selected:
  - 2.6.1 the members of the Traditional Owner Group must select the person to be the Reserved Member under the Appointment Rules; and



- 2.6.2 a person authorised by the members of the Traditional Owner Group must advise the Assembly of the details of the person selected and give the Assembly a consent to be a member signed by the person selected, in a form required by the Council.
- 2.7 A Reserved Member may be re-admitted as a Member if this constitution does not expressly stop them from being re-admitted.
- 2.8 An existing Reserved Member will stop being a Member on the admission of Reserved Members which occurs following an Election:
- 2.8.1 however, this will not happen if they are selected again as a Reserved Member by a Traditional Owner Group; and
- 2.8.2 in this case, they will remain a Member until their membership ends under this constitution.
- 2.9 A Reserved Member must consult with the Traditional Owner Group that selected them at least once before each Assembly Chamber. However, a Reserved Member may exercise their powers in a way they consider to be in the interests of the Assembly so as to preserve and advance the interests of all Traditional Owners and Aboriginal Victorians.
- 3. WHO ARE THE GENERAL MEMBERS?**
- 3.1 A person is a **General Member** if they are elected, or appointed, as a General Member under this constitution.
- 3.2 An existing General Member will stop being a Member on the admission of General Members which occurs following an Election:
- 3.2.1 however, this will not happen if they are re-elected as a General Member at that Election; and
- 3.2.2 in this case, they will remain until their membership ends under this constitution.
- 3.3 A General Member may be re-elected as a Member if this constitution does not expressly stop them from being re-elected.

**4. WHAT IS THE MEMBERS' CHARTER?**

- 4.1 The Members' Charter sets out the roles and required standard of behaviour of all Members.
- 4.2 Each Member agrees to comply with the Members' Charter as a condition of becoming a Member. The Members' Charter is set out in schedule 4.
- 4.3 If a Member does not comply with the Member's Charter, the Assembly may vote to remove them as a Member (under clause 9.4 of the Assembly's constitution).
- 4.4 The Members' Charter is not part of this constitution.
- 4.5 The Assembly Chamber may by Ordinary Majority Resolution change the Members' Charter. Any change to Members' Charter must not be inconsistent with the terms of this constitution, the Election Rules, the Appointment Rules or the requirements of the law.



## **5. WHAT ARE THE RIGHTS AND DUTIES OF MEMBERS?**

### **Rights of Members**

- 5.1 A Member has the right to receive notices of any Assembly Chamber, attend and be heard at any Assembly Chamber and vote at any Assembly Chamber.
- 5.2 All Members have the same rights (other than concerning the election or appointment of General Members and Reserved Members).

### **What are the key duties of Members?**

- 5.3 A Member must comply with this constitution and the Member's other obligations at law, including for clarity any obligations under the Act or the Corporations Act.
- 5.4 A Member must comply with the Members' Charter.

## **PART C: HOW DO YOU BECOME A MEMBER AND STOP BEING A MEMBER?**

Part C sets out the rules about:

- Elections, including Election timing and the Council's duties in relation to Elections.
- The re-election and re-appointment of Members, including maximum term of office for Members.
- When new Members can be admitted, including By-elections.
- How a Member can be censured, suspended or removed by the Assembly Chamber.
- The other ways in which a Member's membership can end.

## **6. WHEN ARE ELECTIONS HELD AND WHAT ARE THE COUNCIL'S DUTIES?**

### **When do future Elections need to be held?**

- 6.1 The Council must ensure that an Election occurs at least once every three years.
- 6.2 The Council must ensure that, at a minimum, enrolment to vote at an Election opens at least four months before the Election is held.
- 6.3 The Assembly Chamber may amend or replace the above requirement for working out the Election timing. However, it cannot do so if it will mean any person is:
  - 6.3.1 a General Member for a continuous period exceeding three years and six months without an Election occurring; or
  - 6.3.2 a Reserved Member for a continuous period exceeding three years and six months without the Traditional Owner Group that selected that Member considering whether the person should remain a Reserved Member under the Appointment Rules.

### **What must the Council do about Elections?**

- 6.4 In a calendar year in which an Election is due to occur the Council must ensure that:

- 6.4.1 an Election is held under the Election Rules;
  - 6.4.2 the persons conducting the Election are not Members; and
  - 6.4.3 it uses its best efforts to have Traditional Owner Groups select Reserved Members under the Selection Process, in order to identify the next cohort of Reserved Members by no later than nine business days after the date of publication of the Election results.
- 6.5 The Council must publish the Election results by no later than 10 business days after the Election results are decided. The Council must do so by:
- 6.5.1 posting the Election results on the Assembly's website; and
  - 6.5.2 making good faith efforts to notify each Voter by email or letter.
- 6.6 The General Members elected in the relevant Election are automatically admitted as General Members of the Assembly and the Reserved Members selected under clause 6.4.3 are automatically admitted as Reserved Members, at 9.00 am, 10 business days after the date of publication of the Election results. Where there is a challenge to the election of any person under the Election Rules:
- 6.6.1 that person is not admitted as a Member, and is only admitted as a Member at 9.00 a.m. on the day after the challenge has been resolved in that person's favour; and
  - 6.6.2 if the challenge is not resolved in that person's favour, the person is not a Member and a "casual vacancy" is deemed to arise, and the Countback Rules apply, adapted as necessary.

#### **How long do Members hold office?**

- 6.7 Each Member will hold office until the next admission of Members after an Election, which usually will be approximately three years.

#### **Re-election, re-appointment and maximum term as Member**

- 6.8 A Member is eligible for re-election or re-appointment as a General Member or Reserved Member. However:
- 6.8.1 the Election Rules and Appointment Rules (as applicable) must be complied with; and
  - 6.8.2 where a Member has held office for two consecutive terms (and, to avoid doubt, a Member's term when filling a casual vacancy is one term for these purposes), a Member can only be re-elected or re-appointed if at least three years have passed since they were last a Member.
- 6.9 Provided that clause 6.8.2 is complied with, a former Reserved Member may be appointed as a Reserved Member or elected as a General Member, and former General Member may be appointed as a Reserved Member or elected as a General Member.

## **By-elections and Supplementary Elections**

- 6.10 If the constitution or the Election Rules require a By-election or a Supplementary Election to be held in a Region, the Council must ensure that the By-election or Supplementary Election is held under the Elections Rules, and clauses 6.4, 6.5 and 6.6 apply as if the By-election or Supplementary Election was an Election.

## **7. NEW MEMBERS AND BY-ELECTIONS**

### **The total number of Members may change**

- 7.1 The total number of Members may change due to:
- 7.1.1 changes to electoral boundaries and/or Regions occurring under the Region Rules, resulting in one or more additional General Members needing to be admitted to membership;
  - 7.1.2 any additional group coming within the definition of Traditional Owner Group, resulting in a one or more additional Reserved Members needing to be admitted to membership; or
  - 7.1.3 a Traditional Owner Group stops being a Traditional Owner Group, resulting in a Reserved Member stopping being a Member.

### **How to admit additional Reserved Members to membership**

- 7.2 If one or more additional Reserved Members needs to be admitted to membership, the Council must:
- 7.2.1 request the additional Traditional Owner Group to promptly select a person under a Selection Process; and
  - 7.2.2 promptly admit each of the individuals who are selected as Reserved Members.

### **How to admit additional General Members to membership**

- 7.3 If an additional General Member needs to be admitted to membership the Council must promptly:
- 7.3.1 commence a By-election under the Election Rules, with the aim of publishing the By-election results within six months of the date of the change to the electoral boundaries and/or Regions occurring; and
  - 7.3.2 admit as General Members each of the individuals who are so elected.
- 7.4 However, the Council does not have to conduct a By-election if an Election is due to occur within 12 months commencing on the change to the electoral boundaries and/or Regions.

## **8. WHAT HAPPENS IF THERE IS A CASUAL VACANCY?**

### **Casual vacancies: Reserved Members**

- 8.1 If a Reserved Member stops being a Member, a "casual vacancy" is deemed to arise.

- 8.1.1 The casual vacancy is to be filled by the Traditional Owner Group that selected that Reserved Member, by notice in writing.
- 8.1.2 The Traditional Owner Group must do so under the Selection Process.
- 8.1.3 On receipt of such notice from the Traditional Owner Group, the Council must promptly admit the person set out in the notice as a Reserved Member.

#### **Casual vacancies: General Members**

- 8.2 If a General Member stops being a Member, a "casual vacancy" is deemed to arise. The casual vacancy is to be filled as follows:
  - 8.2.1 if the casual vacancy is within 18 months of the most recent Election:
    - (a) the Council must ensure that an independent person undertakes a countback of the votes from the most recent Election under the Countback Rules; and
    - (b) the Council must promptly admit as a General Member the person elected under the Countback Rules if they consent to become a Member.
  - 8.2.2 if the casual vacancy is unable to be filled under clause 8.2.1 or it is not less than 18 months after the most recent Election, the Assembly Chamber will decide whether, and if applicable how, the casual vacancy is to be filled. The Assembly Chamber can resolve to:
    - (a) hold a By-election in the Region. The Council must promptly admit the successful candidate as a General Member following receipt of the By-election results; or
    - (b) not fill the vacancy, but only if there is six months or less until the next Election.

### **9. HOW DOES MEMBERSHIP STOP?**

#### **Overview**

- 9.1 A Member stops being a Member if they resign (as set out below), they are removed (as set out below) or immediately on any Termination Event occurring.

#### **How does a Member resign?**

- 9.2 A Member may resign from the Assembly by giving written notice to the Assembly.
  - 9.2.1 The Assembly must promptly advise all Members in writing of the resignation.
  - 9.2.2 The resignation takes effect:
    - (a) on receipt of the notice by the Assembly; or
    - (b) on a later date in the notice (but not later than the next Election).

### **How can a Member be censured, suspended or removed?**

- 9.3 If the Council decides that a Member has done or failed to do anything, or otherwise been involved in anything, which is inconsistent with any part of the Members' Charter, the Council may call the Assembly Chamber to consider:

- 9.3.1 censuring the Member;
- 9.3.2 suspending the Member for a period of no more than two months, during which time the Member's rights as a Member will be suspended and they will not be permitted to attend Assembly Chambers or Council meetings (if they are a Director); or
- 9.3.3 imposing any other sanction on the Member that is consistent with this constitution and the law.

This is called **imposing a sanction** on a Member.

- 9.4 If the Council thinks fit, it may call the Assembly Chamber to consider removing a Member from membership. The Council must first decide that the Member is no longer considered suitable for membership of the Assembly. This may include where (in the Council's opinion):

- 9.4.1 the Member no longer satisfies the eligibility criteria set out in the Election Rules or the Appointment Rules (as applicable);
- 9.4.2 the Member has been absent from two consecutive Assembly Chambers, or three Assembly Chambers in a consecutive period of 12 months (whether or not including any AGMs) without the Council's consent or without reasonable excuse; or
- 9.4.3 the Member has otherwise done or failed to do anything, or otherwise been involved in anything:
  - (a) which is inconsistent with any part of the Members' Charter; or
  - (b) which has adversely affected the Assembly's interests or has the potential to do so.

- 9.5 Before the Council recommends imposing a sanction on a Member or the removal of a Member from membership, the Council must notify the Member in writing that:

- 9.5.1 the Council is considering making such a recommendation to the Assembly Chamber because of acts or omissions of the Member, which the Council must specify in the notice; and
- 9.5.2 the Member can provide the Council with a written explanation for the Member's acts or omissions that are of concern to the Council within 10 business days of the date of the Council's notice to the Member,

and if the Member gives a written explanation within that time, the Council must consider the Member's explanation and then decide whether or not to call an Assembly Chamber to decide the matter. If the Council decides to call an Assembly Chamber, the notice of Assembly Chamber must include details of the Member's acts or omissions and the fact that the Council has given the Member an opportunity to respond and has considered any timely response received from the Member.

- 9.6 Subject to clause 9.5, the Council does not have to give reasons to any person for recommending imposing a sanction on a Member or the removal of a Member from membership. However, the Council:
- 9.6.1 must provide details of any proposed sanction when calling the Assembly Chamber; and
  - 9.6.2 may ask the Assembly Chamber to decide whether to impose a sanction on the Member or instead remove the Member from membership.
- 9.7 The Council must call the Assembly Chamber to consider removal of a Reserved Member from membership, if the following occurs.
- 9.7.1 The Council receives a written notice from the board of a Traditional Owner Group. The notice must reflect a formal decision of the members of the Traditional Owner Group requesting that:
    - (a) the Assembly Chamber pass a resolution to remove the Reserved Member it selected from membership; and
    - (b) the Council then appoint an individual, selected by that Traditional Owner Group under the Selection Process, as a Reserved Member.
  - 9.7.2 The Council must advise Members when convening the Assembly Chamber of the notice from the Traditional Owner Group. The Council does not need to circulate a copy of that notice or summarise its contents.
- 9.8 The Council must give at least 40 business days' written notice to the Member of any Assembly Chamber to consider imposing a sanction on the Member or removing the Member from membership. However, the Council may, as it thinks fit but acting reasonably, resolve that:
- 9.8.1 the Member's acts or omissions are extremely serious or otherwise bring the Assembly into disrepute;
  - 9.8.2 a shorter period of notice of such Assembly Chamber is appropriate; and
  - 9.8.3 in such a case:
    - (a) the Council, acting reasonably, may give a shorter period of notice it thinks fit to all Members (and, to avoid doubt, if the Member is also a Director, the Council must comply with section 203D of the Corporations Act); and
    - (b) the Member may require the Council to give to Members and read out at the Assembly Chamber a written statement. This statement must be sent to the Council before the Assembly Chamber. If the Council decides on reasonable grounds that this right is being abused in a way that adversely affects a Member or the Assembly, including to defame a person, the Council may, as it thinks fit:
      - (A) redact the statement and send out the redacted copy, and then read out the redacted statement at the Assembly Chamber; or
      - (B) not send out the statement and not read out the statement at the Assembly Chamber.

### **How can the Member put their case to the Assembly Chamber?**

- 9.9 The Member may give a written statement to the Council not less than 20 business days before the date of the proposed Assembly Chamber, unless clause 9.8.3 applies.
- 9.10 Where a Member requests that the statement be given to the Members, the Council must include in the notice of resolution given to the Members:
- 9.10.1 that the statement has been made, if the written statement is received within time;
  - 9.10.2 whether Dispute resolution processes have been applied and/or completed (but only if the matter relates to a Dispute);
  - 9.10.3 a copy of the statement;
  - 9.10.4 the requirements in this clause do not apply if the Assembly receives the statement after the time set out in clause 9.8.3(b) or clause 9.9, as applicable; and
  - 9.10.5 if a copy of the statement is not sent to Members for whatever reason, the Member may require the statement be read out at the Assembly Chamber. The Member may also be heard orally at the Assembly Chamber.
- 9.11 Despite the previous clauses, if the Council decides on reasonable grounds that the rights in clause 9.10 are being abused in a way that adversely affects a Member or the Assembly, including to defame a person, the Council may, as it thinks fit:
- 9.11.1 redact the statement and send out the redacted copy, and then read out the redacted statement at the Assembly Chamber; or
  - 9.11.2 not send out the statement and not read out the statement at the Assembly Chamber.

### **How is a censure, suspension or removal imposed by the Assembly Chamber?**

- 9.12 A Member is censured or suspended or has a sanction imposed on them if a Special Majority Resolution to that effect is passed at an Assembly Chamber called under clause 9.
- 9.13 A Member stops being a Member if a Special Majority Resolution is passed to remove them, at an Assembly Chamber called under clause 9.

### **What special rules apply where a Reserved Member is removed?**

- 9.14 Where a Reserved Member is removed from membership:
- 9.14.1 the Council must promptly appoint the person named in the written notice from the Traditional Owner Group as the proposed replacement as a Reserved Member, if the person:
    - (a) consents to become a Member; and
    - (b) satisfies the membership requirements under the Appointment Rules and this constitution; and
  - 9.14.2 if no proposed replacement is named in the written notice, or clause 9.14.1 is not satisfied or is not applicable, the Council must:



- (a) promptly invite the Traditional Owner Group to hold a Selection Process; and
- (b) appoint the replacement selected as a Reserved Member promptly after the Council receives written notice from the Traditional Owner Group, but only if the person:
  - (A) consents to become a Member; and
  - (B) satisfies the membership requirements under the Appointment Rules and this constitution.

**What are the other consequences of censure, suspension or removal from membership?**

- 9.15 If a Member is censured or suspended under this constitution, the Council must, when so directed by the Assembly Chamber:
- 9.15.1 suspend any payment of sitting fees or stipend to the Member for a period of not more than two months;
  - 9.15.2 suspend any payment of Director fees to the Member (if they are a Director) for a period of not more than two months;
  - 9.15.3 decide not to reimburse the Member for relevant expenses under this constitution, or pay such expenses on the Member's behalf;
  - 9.15.4 make a public announcement about the censure or suspension of the Member, and any consequences under clause 9.3.
- 9.16 If a Member is removed from membership, the Council:
- 9.16.1 must cease paying any sitting fees or stipend to the former Member for the period after the date they stopped being a Member;
  - 9.16.2 must cease paying any Director fees to the former Member (if they were a Director immediately prior to their removal) for the period after they stopped being a Member;
  - 9.16.3 may make a public announcement about the removal of the Member, and any consequences under clause 9.3.

**PART D: THE ASSEMBLY CHAMBER**

Part D sets out the rules about:

- How meetings of Members, referred to as the "Assembly Chamber", can be called, held and cancelled.
- The role and powers of the Chairperson at the Assembly Chamber.

**10. CALLING AN ASSEMBLY CHAMBER**

**The Directors can call an Assembly Chamber**

- 10.1 A meeting of the Assembly is called the **Assembly Chamber**. The Assembly Chamber can be called by the number of Directors equal to one half of the number of Directors holding office

at the time (rounded up to the next highest whole number). This clause does not limit clause 34.2.2.

- 10.2 The Members must be given at least 10 days' notice of any Assembly Chamber called by the Directors.

#### **The Members may call an Assembly Chamber**

- 10.3 The Council must call the Assembly Chamber if requested by Members under the Corporations Act. The Council must do so by following the Corporations Act, except that the Members must be given at least 10 days' notice of any Assembly Chamber.

#### **Giving notice of an Assembly Chamber**

- 10.4 The Council may give notice convening the Assembly Chamber by any form of communication permitted by the Corporations Act.

10.4.1 The notice must set out:

- (a) the place, places or technology for the Assembly Chamber, the day and the hour of the Assembly Chamber;
- (b) the general nature of the business to be transacted; and
- (c) any other matters as are required by the Corporations Act.

- 10.5 If the Assembly Chamber is to be held in two or more places, or wholly by technology, the notice must state the technology that will be used to facilitate the Assembly Chamber.

- 10.6 The accidental omission to give notice to, or the non-receipt of a notice by, a person does not invalidate a resolution passed by the Assembly Chamber.

#### **Who can cancel an Assembly Chamber?**

- 10.7 The Council may cancel the Assembly Chamber by giving notice to all persons entitled to receive notice of the Assembly Chamber. It must do so at least five business days before that Assembly Chamber.

- 10.8 However, the Council may not cancel an Assembly Chamber if:

10.8.1 it is a general meeting which the Council is required to call and hold under the Corporations Act; or

10.8.2 the Council cancelled the previous Assembly Chamber.

### **11. HOW MANY MEMBERS MUST BE PRESENT?**

- 11.1 The Assembly Chamber may not do anything unless enough Members are present (a **quorum**).

11.1.1 The quorum is one half of the total number of Members entitled to vote at the Assembly Chamber (whether present in person or by proxy), rounded up to the next highest whole number.

11.1.2 If a quorum is not present within half an hour from the time for the Assembly Chamber or a longer period allowed by the chairperson:

- (a) if the Assembly Chamber was called by or on the requisition of Members, it must be dissolved;
- (b) otherwise, it must stand adjourned to the same day in the next week at the same time and place, or to another day and at another time and place decided by the Council; and
- (c) not less than five business days' notice of the adjourned Assembly Chamber must be given in the same way notice was given of the original Assembly Chamber.

11.2 At the adjourned Assembly Chamber, the same quorum in clause 11.1.1 applies. However, if a quorum is not present within half an hour after the time for the Assembly Chamber, or a longer period allowed by the chairperson, the Assembly Chamber must be dissolved.

## **12. WHAT IS THE CHAIRPERSON'S ROLE?**

### **Does the Assembly Chamber need a chairperson?**

12.1 Every Assembly Chamber must be chaired by a chairperson.

### **Who is the chairperson at an Assembly Chamber?**

12.2 The chairperson will be decided as follows:

12.2.1 if the Assembly Chamber has elected a Chair and a Deputy Chair, the Chair is to chair the Assembly Chamber. If the Chair is not present within 15 minutes after the time appointed for holding the Assembly Chamber, or is unwilling to act:

- (a) first, the Deputy Chair (if present and willing to act) must chair that Assembly Chamber; and
- (b) secondly, the Directors present must choose one of their number to chair that Assembly Chamber;

12.2.2 if the Assembly Chamber has elected Co-Chairs, the relevant Co-Chair is to chair the Assembly Chamber. If the Co-Chair whose turn it is to chair the Assembly Chamber is not present within 15 minutes after the time appointed for holding the Assembly Chamber, or is unwilling to act:

- (a) first, the other Co-Chair (if present and willing to act) must chair that Assembly Chamber; and
- (b) secondly, the Directors present must choose one of their number to chair that Assembly Chamber; and

- 12.2.3 if there is no Chair or Deputy Chair present or neither Co-Chair is present (as applicable), and there are no Directors present or if all Directors present decline to chair the Assembly Chamber, the Members present in person or by proxy must elect one of those Members to chair that Assembly Chamber.

**What is the chairperson's role at the Assembly Chamber?**

- 12.3 The chairperson's role is to conduct the Assembly Chamber in an orderly and proper manner and ensure that there is an adequate opportunity for reasonable discussion by the Assembly Chamber about any question before the Assembly Chamber. The chairperson's ruling on all matters relating to the order of business, procedure and conduct of the Assembly Chamber is final. However, this provision is subject to the other clauses of this constitution.
- 12.4 The chairperson may admit any person to the Assembly Chamber as an observer.
- 12.4.1 However, the chairperson must first get an Ordinary Majority Resolution of the Assembly Chamber permitting this.
- 12.4.2 An observer is not permitted to vote at the Assembly Chamber, but may speak at the Assembly Chamber if so permitted by an Ordinary Majority Resolution of the Assembly Chamber.
- 12.4.3 The chairperson may rule that an observer must leave the Assembly Chamber, and the person must do so. The chairperson is not required to give reasons for making that ruling.
- 12.5 The chairperson may temporarily vacate the chair in favour of another person present at any time and for any reason they see fit.
- 12.5.1 The chairperson must do so if the Members are voting on:
- (a) the chairperson's election or re-election as a Chair, Deputy Chair, Co-Chair or Director;
  - (b) imposing any sanction on the chairperson; or
  - (c) any fee or payment to the chairperson (other than any payment as a Member).
- 12.6 In order to conduct an Assembly Chamber in an orderly manner, the chairperson may, acting reasonably:
- 12.6.1 first, give a person a warning that their behaviour is inappropriate, intimidating or disruptive and must cease;
- 12.6.2 secondly, if a person's behaviour remains inappropriate, intimidating or disruptive after giving them a warning, ask the person to show cause why they should not be expelled from the Assembly Chamber for an appropriate period; and
- 12.6.3 thirdly, if a person's behaviour remains inappropriate, intimidating or disruptive after considering any reasons given by the person (or if the person did not give reasons), expel the person from the Assembly Chamber and not permit them to return for an appropriate period,

if the chairperson reasonably considers that the person's conduct is inappropriate, intimidating or disruptive. Such conduct in an Assembly Chamber includes:

- 12.6.4 the use of offensive or abusive language or disruptive behaviour;
  - 12.6.5 being under the adverse influence of any kind of drug, or using or consuming any non-prescribed drug, at the Assembly Chamber; and
  - 12.6.6 possession of any article, including a recording device or other electronic device or a sign or banner, which the chairperson considers is dangerous, offensive or disruptive or likely to become so.
- 12.7 The chairperson does not need to provide a warning or ask a person to show cause, if in the circumstances the chairperson reasonably considers that it is necessary to act immediately and to expel a person from the Assembly Chamber so as to preserve physical safety at the Assembly Chamber.
- 12.8 However, if the chairperson rules that a Member or an observer is to leave, and at least five Members of the Assembly Chamber promptly request a vote of the Assembly Chamber to consider this ruling, then the Assembly Chamber must promptly consider and vote on whether this ruling should be overturned. If the Assembly Chamber by Ordinary Majority Resolution votes that the ruling is overturned the person may re-enter the Assembly Chamber.

### **13. HOW IS THE ASSEMBLY CHAMBER ADJOURNED?**

- 13.1 The chairperson must adjourn the Assembly Chamber to another time and to another place if the Assembly Chamber votes in favour of adjourning.
- 13.1.1 The only business of any adjourned Assembly Chamber is the business left unfinished at the Assembly Chamber that was adjourned.
- 13.1.2 When the Assembly Chamber is adjourned for:
- (a) 20 business days or more, notice of the adjourned Assembly Chamber must be given as the same way as a usual Assembly Chamber; and
  - (b) less than 20 business days, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned Assembly Chamber, however notice of time and location must be given.

### **14. HOLDING THE ASSEMBLY CHAMBER USING TECHNOLOGY**

- 14.1 The Assembly Chamber may be held at two or more places at the same time, or wholly virtually, using any technology that gives the Members a reasonable opportunity to participate in the Assembly Chamber to the extent permitted by the Corporations Act.
- 14.1.1 To avoid doubt, the Council may allow the Members to participate in the Assembly Chamber using technology and without travelling to the place of the Assembly Chamber.

## **PART E: VOTING AT THE ASSEMBLY CHAMBER**

Part E sets out:

- The preference for Members to make decisions by Consensus, where this is practicable.
- How voting occurs at the Assembly Chamber, which ordinarily involves a show of hands unless a poll is demanded. A poll involves voting at the Assembly Chamber, where polling slips are completed and counted and the Member voting is not identified.
- How Members can pass resolutions in writing, without calling and holding the Assembly Chamber.
- How Ballots may be conducted outside of an Assembly Chamber.
- The required number of votes to pass resolutions. Unless the constitution or Corporations Act say otherwise, the Assembly Chamber may pass a resolution by Ordinary Majority Resolution, which means that it must be passed by not less than 60% of the votes cast by Members who are present and entitled to vote. Certain resolutions can only be passed as Special Majority Resolutions, and require (among other things) 75% of the votes cast by Members to be in favour. Where a Super Majority Resolution is required to pass a particular resolution, this means that at least 75% of the total number of Members who are entitled to vote on that resolution must vote in favour of it.

### **15. DECISION-MAKING BY CONSENSUS WHERE PRACTICABLE**

- 15.1 Where practicable, the Members must try to reach agreement by Consensus about any proposed resolution of the Assembly Chamber.
- 15.1.1 If agreement on the form of the resolution is reached by Consensus, a resolution in that form must be put to the Assembly Chamber.
- 15.1.2 If agreement is not reached within a time reasonably determined by the chairperson, then a resolution permitted by clause 16.1 in a form decided by the chairperson will be put to the Assembly Chamber.

### **16. VOTING AT THE ASSEMBLY CHAMBER**

- 16.1 The Assembly Chamber may pass a resolution by Ordinary Majority Resolution, unless this constitution or the Corporations Act provides otherwise.
- 16.2 Generally, this means that the following approval thresholds apply for decisions of the Assembly Chamber:

<b>Required level of approval</b>	<b>Which decisions?</b>
Super Majority Resolution	Amending this constitution (clause 56.6). Adopting criteria for the definition of "Traditional Owner Group" (clause 62.1).

Special Majority Resolution	<p>Censuring, suspending or imposing a sanction on a Member, or removing a Member from membership (clause 9).</p> <p>Adopting revised Region boundaries proposed by a panel (under the Region Rules).</p> <p>Deciding a group meets the Additional Traditional Owner Group Criteria for the purposes of subclause (d) of the definition of Traditional Owner Group (clause 62.1).</p> <p>Decisions about matters coming within Category 1 of the definition of Self-Determination Fund-Related Matters (clause 62.1).</p> <p>Formalising agreement to Statewide Treaty or an Interim Agreement (clause 27.4.1)</p>
Special Corporations Act approval process in clauses 56.7 and 56.8.	Changing Reserved Members' or General Members' rights as a class.
Ordinary resolution under the Corporations Act	Removing a Director or the Chair or Deputy Chair or a Co-Chair from office by following the process set out in section 203D Corporations Act (clause 24.1).
Ordinary Majority Resolution	All other decisions of the Assembly Chamber.

### **How do Members vote at the Assembly Chamber?**

- 16.3 At the Assembly Chamber, a resolution put to the vote must be decided on a show of hands, unless there is a poll or a Ballot.
- 16.4 However, if a poll:
- 16.4.1 is demanded before that vote is taken or before the result is declared or immediately after the result is declared, then a poll is to be taken.
- 16.4.2 is not demanded, then:
- (a) a statement by the chairperson that a resolution on a show of hands has been carried, carried unanimously, by a particular majority, or is lost; and
  - (b) an entry to that effect in the Assembly Chamber's records of proceedings,
- is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **Who can ask for a poll at the Assembly Chamber?**

- 16.5 A poll may be demanded by either:
- 16.5.1 the chairperson; or
- 16.5.2 any Member entitled to vote on the resolution.



- 16.6 A poll demanded for electing a chairperson or adjourning an Assembly Chamber must be taken immediately after it is demanded.
- 16.7 A poll must be taken by a vote in writing, which to avoid doubt includes voting by electronic means at the Assembly Chamber.
- 16.7.1 The chairperson must ensure that each Member's vote on a poll is kept confidential.
- 16.7.2 The result of the poll is deemed to be a resolution of the Assembly Chamber.
- 16.8 The demand for a poll may be withdrawn.
- 16.9 The demand for a poll does not prevent the meeting continuing to do other business apart from the question which the poll is about.

**Every Member has one vote**

- 16.10 Every Member has one vote. To avoid doubt:
- 16.10.1 on a show of hands, every Member present in person or by proxy has one vote;
- 16.10.2 on a poll, every Member present in person or by proxy has one vote; and
- 16.10.3 on a Ballot, every Member has one vote.

**The chairperson does not have a casting vote**

- 16.11 In a case of any tied vote or poll, the chairperson of the Assembly Chamber does not have a second or casting vote (in addition to any votes they have as a Member or as a proxy of a Member), and the motion fails.

**What if a Member wants to object to someone's right to vote?**

- 16.12 A Member may object to another Member's right to vote only at the Assembly Chamber, or adjourned Assembly Chamber, at which the other Member's vote is being included in the vote taken.
- 16.13 An objection may only be made on the grounds that the other Member is not eligible to vote under this constitution or at law. The Member making the objection must provide reasons or evidence in support of their objection that the other Member is not entitled to vote under this constitution or at law.
- 16.13.1 The Member (or if the Member has appointed a proxy, that proxy) whose right to vote is being objected to must:
- (a) be informed of the objection (if present at the Assembly Chamber or adjourned Assembly Chamber) at that Assembly Chamber; and
  - (b) be given the opportunity to respond to the objection at that Assembly Chamber.
- 16.13.2 However, the chairperson does not have to adjourn that Assembly Chamber to provide the Member or their proxy with additional time to respond.

16.13.3 The objection and reasons or evidence, and any response to the objection, must be given to the chairperson. The chairperson must consider the objection and reasons or evidence when making their decision, and the chairperson's decision is final. However, the chairperson must provide the Assembly Chamber and the Member whose right to vote is being challenged with reasons for the chairperson's decision, having regard to this constitution and applicable law.

16.13.4 A vote which is not disallowed is valid.

16.13.5 To avoid doubt, this does not override any processes set out in the Election Rules about Voter qualification in Elections.

16.14 However, if the chairperson allows an objection to a Member's right to vote, and at least five Members of the Assembly Chamber promptly request a vote of the Assembly Chamber to consider this ruling, then the Assembly Chamber must promptly consider and vote on whether this ruling should be overturned in light of the chairperson's reasons for their decision. If the Assembly Chamber by Ordinary Majority Resolution votes that the ruling is overturned, then the person may vote.

## **17. MEMBERS CAN PASS RESOLUTIONS BY A RESOLUTION IN WRITING**

17.1 A resolution in writing signed by all Members entitled to vote on the resolution is valid as a decision of the Members passed at the Assembly Chamber.

17.2 A resolution in writing may consist of substantially similar documents:

17.2.1 Each document must be signed by at least one Member.

17.2.2 If signed by more than one Member, it takes effect on the latest date on which a Member signs the document.

17.2.3 Alternatively such a resolution may consist of each Member affirming by electronic means that they support the proposed resolution, and, for the avoidance of doubt, clause 60 applies.

17.2.4 If a resolution in writing is signed or authorised by a proxy of a Member, it must not also be signed or authorised by the appointing Member and vice versa.

## **18. VALIDITY OF ACTS OF MEMBERS**

18.1 All acts done by the Assembly Chamber or by a person acting as a Member, including where the person is counted in a quorum, and all Ballots, are valid even if it is later discovered that the person had ceased to be a Member.

## **19. MEMBERS CAN VOTE BY BALLOTS**

### **What are the general rules about Ballots?**

19.1 These provisions concerning Ballots are subject to the requirements of the Corporations Act and the law.

19.2 The Council may put any question or proposed resolution, excluding the proposed election of any of the Chairs or any Director, to a Ballot of the Members.

- 19.3 A resolution of Members decided by Ballot is deemed to be a resolution of the Assembly Chamber.
- 19.4 A Ballot may be held in any way that the Council thinks fit, including an online vote, subject to the following:
- 19.4.1 the Polling Date must be a date that is not more than 40 business days, and not less than 10 business days, before the relevant Assembly Chamber;
  - 19.4.2 the Ballot must be a secret ballot, and the Council must take all reasonable steps to make sure the way it is taken will keep its secrecy;
  - 19.4.3 a Ballot may be held by post, by facsimile or other electronic means, as the Council thinks fit;
  - 19.4.4 a Ballot must not be combined with any other method of voting (for example, voting at the Assembly Chamber);
  - 19.4.5 every Ballot must be held by a returning officer appointed by the Council:
    - (a) the returning officer may be any type of person or entity, but must not be a Member, Director, Chair, Deputy Chair or Co-Chair; and
    - (b) if the Council does not appoint a returning officer, or if the person appointed by the Council cannot or will not act, a Secretary must act as returning officer; and
  - 19.4.6 the returning officer must only count votes received before 5.00 pm on the Polling Date. All votes received after that time are invalid and must be disregarded.
- 19.5 The Ballot paper or online vote (and any relevant background material that accompanies it) must set out:
- 19.5.1 which type of resolution it is (namely, an Ordinary Majority Resolution, Special Majority Resolution or a Super Majority Resolution); and
  - 19.5.2 the wording of the resolution, and
- the resolution must achieve the votes for an Ordinary Majority Resolution, a Special Majority Resolution or a Super Majority Resolution (as applicable) in order to be validly passed.
- 19.6 To avoid doubt, if there is a tied vote, the proposed resolution is lost. The Chair or a Co-Chair (as applicable) does not have a second or casting vote in addition to any votes they may have as a Member or as a proxy of a Member.
- 19.7 The Council must make reasonable and genuine efforts to ensure that Members receive Ballot papers. If this requirement is met, no resolution or other question decided by Ballot is invalid merely because there has been an accidental omission to give the Ballot paper or other relevant material to a Member, or a Member has not received those documents.
- 19.8 An objection to a Member's right to vote in a Ballot must be referred to the Chair or the Co-Chairs (as applicable) at least ten business days before the Polling Date, along with reasons or evidence in support of their objection that the other Member is not entitled to vote under this constitution or at law.

19.8.1 The Chair or the Co-Chairs (as applicable) must:

- (a) promptly give the Member whose right to vote is being objected to notice of the objection; and
- (b) advise that Member they must respond to the objection no later than five business days before the Polling Date.

19.8.2 To avoid doubt, the chairperson does not have to adjourn the Polling Date to provide the Member with additional time to respond.

19.8.3 When making their decision, the Chair or Co-Chairs (as applicable) must consider the objection and any response to the objection that is received no later than five business days before the Polling Date. The decision of the Chair or both Co-Chairs (as applicable) is final and must be immediately published to all Members, along with reasons for the decision.

19.8.4 A vote not disallowed is valid for all purposes.

19.8.5 However, if the Chair or both Co-Chairs (as applicable) allow an objection to a Member's right to vote, and at least five Members of the Assembly Chamber promptly request a vote of the Assembly Chamber to consider this ruling, then the Assembly Chamber must be called in sufficient time for the Ballot to proceed and must promptly consider and vote on whether this ruling should be overturned in light of that evidence. If the Assembly Chamber by Ordinary Majority Resolution votes that the ruling is overturned, then the person may vote in the Ballot.

19.9 The Council may decide, as it thinks fit:

19.9.1 the form of the Ballot and the form and content of any material to go with the Ballot paper;

19.9.2 the Polling Date;

19.9.3 how objections about a Ballot must be raised, and the way in which any such disputes will be resolved; and

19.9.4 all other matters about the Ballot.

## **20. WHO CAN APPOINT A PROXY?**

### **Members can appoint proxies**

20.1 Each Member entitled to vote may appoint another Member as their proxy to attend and vote at an Assembly Chamber instead of the Member. However, where a vote is held by Ballot, only Members may vote (and a proxy cannot vote).

20.2 If a Member appoints a proxy, this does not remove or reduce the Member's duties under this constitution or the Members' Charter.

20.3 A proxy has all the powers of a Member at the Assembly Chamber, unless:

- 20.3.1 the Member puts restrictions in the document appointing the proxy, in which case such restrictions apply; or

20.3.2 the constitution expressly states otherwise.

#### **How does a Member appoint a proxy?**

20.4 A document appointing a proxy:

20.4.1 must be in writing and signed by the Member;

20.4.2 may say how the proxy is to vote and, if so, the proxy is not entitled to vote any other way; and

20.4.3 may have other restrictions which the proxy must follow.

20.5 For a proxy to be appointed, a Member must give the Assembly:

20.5.1 the document appointing the proxy; and

20.5.2 if the appointment is signed by a Member's attorney, the document (or a certified copy) authorising the attorney to sign the proxy document (even if previously provided to the Assembly).

20.6 Those documents must be received at the Office (or at another place or electronic address specified for that purpose in the notice of the Assembly Chamber) not less than 48 hours before the Assembly Chamber.

20.7 If an Assembly Chamber has been adjourned, an appointment and any authority received by the Assembly at least 48 hours before the resumption of the Assembly Chamber are effective for the resumed part of the Assembly Chamber.

20.8 A proxy document is invalid if it is not given to the Assembly before an Assembly Chamber as required by this constitution.

#### **What happens if a Member wants to cancel a proxy?**

20.9 To cancel a proxy a Member must give notice in writing and it must be received at the Office before the Assembly Chamber or adjourned Assembly Chamber that the proxy is to attend.

20.10 A vote given under the terms of a proxy document is valid despite:

20.10.1 the previous death or unsoundness of mind of the Member; or

20.10.2 the revocation of the proxy or of the authority under which the proxy document was executed,

unless the notice in writing has been received at the Office before the Assembly Chamber or adjourned Assembly Chamber.

### **PART F: APPOINTMENT AND REMOVAL OF DIRECTORS**

The Assembly will be led by a Council of up to nine Directors. These Directors are ordinarily elected by the Members or can be appointed in limited circumstances. Part F sets out the rules for:

- The process for Members voting to elect the Chairs and the Directors, including when this occurs and

the nomination process.

- The rules relating to stopping being a Director, including retiring and replacing Directors.
- The Council's limited power to appoint a person as a Director to fill a casual vacancy.
- The duties of Directors over and above their legal duties.

## **21. WHO ARE THE CHAIRS AND THE DIRECTORS?**

### **Council must call an Assembly Chamber**

#### **21.1 The Council must call an Assembly Chamber:**

21.1.1 as soon as practicable after the admission of Members following an Election; and

21.1.2 18 months after an Election (**Mid-Term Elections**).

#### **21.2 At the first Assembly Chamber held after an Election and the Assembly Chamber for the Mid-Term Elections (each an **Election Assembly Chamber**), the Assembly will elect the Chairs and other Directors as follows:**

21.2.1 any Member may be elected as a Chair or as a Director;

21.2.2 the Council must call for nominations before issuing the notice of Assembly Chamber;

21.2.3 the Council must have nomination forms available for Members; and

21.2.4 nominations may be submitted from the floor of the Assembly Chamber.

### **How many Directors are there?**

#### **21.3 The number of Directors (including, for the avoidance of doubt, the Chairs) must not be less than the statutory minimum of three nor more than nine.**

### **What is a Director's term of office?**

#### **21.4 A Director (including, for the avoidance of doubt, a Chair) elected at the first Assembly Chamber held after an Election will hold office for a maximum term ending on the Council Declaration for the Mid-Term Elections. A Director (including, for the avoidance of doubt, a Chair) elected at the Mid-Term Elections will hold office for a maximum term ending on the Council Declaration after the next Election.**

#### **21.5 A retiring Director is eligible for re-election or re-appointment if they remain a Member.**

### **How are Directors nominated and elected?**

#### **21.6 Nominations may be submitted by Members, and:**

21.6.1 must be in writing and signed by the proposer and (if not the same as the proposer) the candidate;

- 21.6.2 must have a consent to act as a Director signed by the candidate, as required under the Corporations Act and the person must have or have applied for a Director ID and have a statement that this has been done;
  - 21.6.3 may set out whether the candidate wishes to stand for election as Co-Chair or Chair or Deputy Chair; and
  - 21.6.4 may have such documents or evidence as to the candidate's skills, competencies and experience as the nominee wishes to give (subject to any word limit imposed by the Council).
- 21.7 Nominations must be received by the Secretary by no later than three business days before the Election Assembly Chamber or be submitted at the Election Assembly Chamber to the Secretary.
- 21.8 A nomination may be withdrawn by the candidate or the relevant proposer at any time before or at the Election Assembly Chamber by giving written notice to the Secretary.

#### **Notice requirements**

- 21.9 The Council must give all Members notice of:
- 21.9.1 all nominations that satisfy the requirements of clauses 21.6 and 21.7 and have not been properly withdrawn under clause 21.8 to Members by no later than two business days before the Election Assembly Chamber; and
  - 21.9.2 all nominations properly withdrawn after that time, as promptly as possible.

#### **Additional nominations**

- 21.10 At an Election Assembly Chamber, and prior to voting on electing the Chairs and other Directors, the chairperson must call for any additional nominations for the position of Co-Chair or Chair or Deputy Chair, and for the position of Director.
- 21.11 Any additional nominations must comply with clauses 21.6 and 21.7 and be submitted to the Secretary.
- 21.12 Those nominations not withdrawn by the time for voting at the Election Assembly Chamber are called **Final Nominations**.

#### **Electing Chairs**

- 21.13 At the Election Assembly Chamber, the Assembly must decide by Ordinary Majority Resolution whether there will be two Co-Chairs or, alternatively, a Chair and Deputy Chair.
- 21.14 Once any additional nominations have been received under clause 21.10 and the decision has been made under clause 21.13, the Chairs will be elected before the other Directors are elected.
- 21.15 If there are two Co-Chairs, clauses 28.1 to 28.3 apply. If there is a Chair and a Deputy Chair, clauses 28.4 to 28.6 apply.
- 21.16 Upon election, the two Co-Chairs, or the Chair and Deputy Chair, are Directors.



### **When does a vote on Chairs not need to be held?**

#### **21.17 Where two Co-Chairs are to be elected:**

21.17.1 where there is one Final Nomination for the position of Co-Chair that candidate is deemed to be elected on the Council Declaration and a vote will not be held. The Assembly may seek to elect the other Co-Chair at that Election Assembly Chamber or a later Assembly Chamber but must ensure a gender balance; or

21.17.2 where there are two Final Nominations for the position of Co-Chair, if one is non-male identifying and the other is male identifying, each of those candidates are deemed to be elected on the Council Declaration and a vote will not be held.

#### **21.18 Where a Chair and Deputy Chair are to be elected:**

21.18.1 where there is one Final Nomination for the position of Chair that candidate is deemed to be elected on the Council Declaration and a vote will not be held. The Assembly may seek to elect the Deputy Chair at that Election Assembly Chamber or a later Assembly Chamber but must ensure a gender balance;

21.18.2 where there is one Final Nomination for the position of Deputy Chair that candidate is deemed to be elected on the Council Declaration and a vote will not be held. The Assembly may seek to elect the Chair at that Election Assembly Chamber or a later Assembly Chamber but must ensure a gender balance; or

21.18.3 where there is one Final Nomination for the position of Chair and one Final Nomination for the position of Deputy Chair, if one is non-male identifying and the other is male identifying, each of those candidates are deemed to be elected on the Council Declaration and a vote will not be held.

### **Electing Directors**

#### **21.19 Once the elections for the Chairs have been held the other seven Directors are to be elected.**

### **When does a vote on the other Directors not need to be held?**

#### **21.20 Where there are more than seven Final Nominations for the position of Director a vote will be held. However, where only three or fewer of those Final Nominations are non-male identifying candidates these non-male identifying candidates are deemed to be elected on the Council Declaration and a vote will be held to fill the other four Director positions.**

#### **21.21 Where there are seven or fewer Final Nominations for the position of Director:**

21.21.1 if the Gender Quota is reached, all of those candidates are deemed to be elected on the Council Declaration and a vote will not be held;

21.21.2 if the Gender Quota is not reached:

- (a) each of those non-male identifying candidates are deemed to be elected on the Council Declaration;
- (b) if there are four or fewer male identifying candidates, each of those male identifying candidates are deemed to be elected on the Council Declaration;

- (c) if there are more than four male identifying candidates, a vote will be held to fill the four Director positions from those candidates; and

21.21.3 the Assembly may seek to elect further candidates at that Election Assembly Chamber or a later Assembly Chamber, as long as the Gender Quota, adapted as necessary, is satisfied.

#### **How is a vote for the other Directors held?**

21.22 The Directors are to be elected as follows:

21.22.1 the election will be conducted by the Secretary or their nominee;

21.22.2 the election will be by a poll at the Election Assembly Chamber;

21.22.3 a list will be prepared with only the names of each of the Final Nominations, in alphabetical order (by last name), along with the number of vacancies to be filled;

21.22.4 each Member present and voting at the Election Assembly Chamber must vote for at least the number of Director positions that are vacant;

21.22.5 elected Director positions will be decided by an Optional Preferential Vote subject to the Gender Quota being satisfied; and

21.22.6 if, after the counting of votes, the Gender Quota is not met the Gender Quota Rules apply, adapted as necessary.

21.23 Where there are not enough Final Nominations or the Members do not otherwise elect enough Directors at that Election Assembly Chamber, the Council may only appoint Directors to fill vacancies under clause 23.1. Any remaining vacancies may be filled by Members at a later Assembly Chamber, as long as the Gender Quota, adapted as necessary, is satisfied.

#### **Council Declaration**

21.24 Before the Election Assembly Chamber closes, the Directors (including, for avoidance of doubt, the Chairs) elected must be declared by the Secretary or their nominee (the **Council Declaration**) and will assume office immediately on the close of that Assembly Chamber. To avoid doubt, when the Secretary or their nominee makes the Council Declaration:

21.24.1 the office of each Director (including, for avoidance of doubt, the Chairs) who holds office before the Council Declaration becomes vacant; and

21.24.2 when the Council Declaration occurs, the Council is the Directors (including, for avoidance of doubt, the Chairs) newly elected in accordance with this constitution.

## **22. HOW DO DIRECTORS RETIRE?**

22.1 A Director may retire from office by giving notice in writing to the Assembly.

22.1.1 That notice takes effect the later of the time of giving the notice to the Assembly and any date set out in the notice.

22.2 A Director whose term ends also retires.

22.3 A Director retiring at an Assembly Chamber:

22.3.1 may act as a director until the end of that Assembly Chamber; and

22.3.2 is eligible for re-election or re-appointment to the extent permitted by law and this constitution.

**23. THE COUNCIL HAS A LIMITED POWER TO FILL VACANCIES AND CASUAL VACANCIES**

23.1 The Council has a limited power to appoint a Member to be a Director to fill a vacant Council position, including as a consequence of a casual vacancy arising.

23.1.1 This power of appointment may only be used:

- (a) to ensure that the Council consists of a minimum of three Directors; or
- (b) if the Members have directed the Council to exercise this power of appointment by an Ordinary Majority Resolution.

23.1.2 A Member's appointment to the Council commences on the date that the Council passes a resolution to that effect, or any later date in the Council resolution.

23.1.3 A Member's appointment ends at the close of the next Assembly Chamber.

23.1.4 The Council must use its best endeavours to achieve gender representation on the Council equivalent to the Gender Quota.

23.2 If there is only one Director, that Director may use this power of appointment as if that person were the Council.

**24. HOW DOES A DIRECTOR'S OFFICE END?**

**The Assembly Chamber may remove and replace Directors**

24.1 The Assembly Chamber may by ordinary resolution remove a Director from office by following the process set out in section 203D Corporations Act, including its notice requirements. The Assembly must elect their replacement by using the procedures in this constitution for the election of Directors, adapted as necessary as one person is being elected.

24.1.1 To the extent necessary to comply with the Gender Quota, such a replacement must be non-male identifying if the removed Director is non-male identifying.

**How else does a Director's office end?**

24.2 In addition to other provisions of this constitution, the office of Director immediately becomes vacant if:

24.2.1 the Director stops being a Member for any reason;

24.2.2 the Director dies or becomes an insolvent under administration;

24.2.3 the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

- 24.2.4 the Director is absent from three Council meetings in any six-month period without the prior written consent of the Council (not including absences required for ceremonial leave, culturally required leave or to attend to "Sorry Business", including attending the funeral of family or community members);
  - 24.2.5 the Director resigns as a Convener and the Council does not resolve to allow the Director to remain as Director within 30 days of that resignation; or
  - 24.2.6 the Director becomes prohibited from being a director by reason of an order made under any statute, including the ACNC Act or the Corporations Act.
- 24.3 For the avoidance of doubt, a person does not cease to be Director merely because they are a Convener and the group of which they are a Convener ceases or disbands.

## **25. DIRECTORS CANNOT APPOINT ALTERNATES**

- 25.1 No Director can appoint a person to be an alternate Director in their place, and a Director must not try to do so.

## **26. OTHER DUTIES OF DIRECTORS**

### **Conveners**

- 26.1 At the first Council meeting after a Council Declaration, and each time a new Director is elected, the Council must consider which Director (excluding the Chairs) should be appointed to which role as a Convener and whether to fill any vacant Convener roles.
- 26.2 For avoidance of doubt, a Director (excluding the Chairs):
  - 26.2.1 must act as a Convener, unless the Council decides otherwise;
  - 26.2.2 can hold more than one role as a Convener;
  - 26.2.3 who resigns as a Convener must promptly notify the Council; and
  - 26.2.4 who resigns as a Director, or whose term of office as a Director ends, ceases to be a Convener.

### **Other duties**

- 26.3 In addition to complying with their legal duties as a director each Director must:
  - 26.3.1 attend Council meetings and Council training sessions;
  - 26.3.2 comply with the Members' Charter;
  - 26.3.3 make themselves reasonably available to be contactable by Members;
  - 26.3.4 meet with Members;
  - 26.3.5 promptly respond to communications from Members; and
  - 26.3.6 strive to meet any key performance indicators or other performance metrics that the Assembly Chamber may by Ordinary Majority Resolution specify for Directors.

## **PART G: POWERS OF THE COUNCIL**

The Council is made up of the Directors of the Company and is led by the Chair or the Co-Chairs (as decided by the Assembly Chamber after an Election). The Council runs the day-to-day operations of the corporation and implements the decisions of the Assembly Chamber. Part G sets out the rules about:

- The powers given to the Council and to the Assembly Chamber respectively.
- The special framework for making decisions on Core Matters.
- The Council's power to adopt By-Laws that are binding on the Directors and the Members.

### **27. WHAT ARE THE POWERS OF THE COUNCIL?**

#### **General reservation of power to the Council**

- 27.1 The Council may exercise all those powers of the Assembly as are not, by the Corporations Act or by this constitution or the Region Rules, required to be exercised by the Assembly Chamber or otherwise.

#### **Decision-making process for Core Matters**

- 27.2 The Assembly may create and pass a resolution about Core Matters. The Council may not exercise any powers of the Assembly directly relating to any Core Matters other than in compliance with clauses 27.3 and 27.4.

- 27.3 If the Council creates a proposal that would directly relate to any Core Matters:

27.3.1 the Council must promptly submit the proposal (accompanied by an accurate and reasonably detailed briefing document) to the Assembly Chamber; and

27.3.2 the Assembly Chamber must consider it and, if thought fit, approve it under clause 27.4; and

(a) if the Assembly Chamber approves the proposal, promptly implement the proposal on terms that are identical or substantially similar to the terms approved by the Assembly Chamber; or

(b) if the Assembly Chamber does not approve the proposal:

(A) the Council must not pursue that proposal if so directed by the Assembly Chamber;

(B) if the Assembly Chamber so requests, redesign the proposal and resubmit it for consideration at the same Assembly Chamber; or

(C) if the Assembly Chamber so requests, consult further with Members with the aim of preparing a new proposal about that matter which takes into account any feedback received from Members; and

(D) recommence the process set out in clause 27.3 until the Assembly Chamber approves a revised proposal about that matter.

- 27.4 The Assembly Chamber must consider any proposal that is submitted by the Council under clause 27.3 and decide:
- 27.4.1 in the case of a resolution about a Treaty-Related Matter to formalise agreement to Statewide Treaty or an Interim Agreement, by Special Majority Resolution;
  - 27.4.2 in the case of a resolution about a Treaty-Related Matter that does not come within clause 27.4.1, by Ordinary Majority Resolution;
  - 27.4.3 in the case of a resolution about a matter coming within Category 1 of the definition of Self-Determination Fund-Related Matter, by Special Majority Resolution; or
  - 27.4.4 in the case of a resolution about a matter coming within Category 2 of the definition of Self-Determination Fund-Related Matter, by Ordinary Majority Resolution;
- whether the proposal is approved or whether the proposal is rejected, in which case clause 27.3.2(b) applies.
- 27.5 To avoid doubt, nothing in this clause 27 limits the Council's powers in relation to matters relating to the Self-Determination Fund that do not come within the definition of Self-Determination Fund-Related Matters.

#### **Council's power to adopt By-Laws**

- 27.6 The Council may adopt By-Laws that are binding on the Members and the Directors. However:
- 27.6.1 the By-Laws must not be inconsistent with, or place greater limitations on Members than this constitution or the law (including, to avoid doubt, the Members' Charter); and
  - 27.6.2 the By-Laws must be about how the Assembly is to conduct its activities and fulfil its object.
- 27.7 The Council may change any By-Laws.
- 27.8 The Council must tell the Members in writing of any changed By-Laws within 20 business days of the change.
- 27.9 The Council must ensure that free copies of all By-Laws are made available to Members promptly on request.

### **PART H: CO-CHAIRS OR CHAIR AND DEPUTY CHAIR**

The Assembly will decide whether it will be led by Co-Chairs elected by the Assembly, or alternatively by a Chair and a Deputy Chair elected by the Assembly. Part H sets out the rules about:

- How the Assembly Chamber elects either two Co-Chairs or a Chair and Deputy Chair.
- How any Co-Chair, Chair or Deputy Chair may be removed.
- The role of the Co-Chairs or Chair and Deputy Chair.
- The remuneration of the Co-Chairs, Chair and Deputy Chair.

## **28. WHAT IS THE PROCESS TO ELECT THE CO-CHAIRS OR CHAIR AND DEPUTY CHAIR ?**

### **How to elect Co-Chairs**

- 28.1 The Assembly Chamber will elect two Members to act as Co-Chairs.
- 28.2 The two Co-Chairs will be elected as follows:
  - 28.2.1 the election will be conducted by the Secretary or their nominee;
  - 28.2.2 the election will be by a poll at the Election Assembly Chamber;
  - 28.2.3 the Assembly Chamber must ensure that one of the Co-Chairs is non-male identifying and the other is male identifying;
  - 28.2.4 a list will be prepared with only the names of each of the Final Nominations who consent to stand for election as Co-Chair, in alphabetical order (by last name);
  - 28.2.5 each Member present and voting at the Assembly Chamber must vote for at least the number of Co-Chair positions that are vacant;
  - 28.2.6 the election of Co-Chairs will be decided by an Optional Preferential Vote, subject to one non-male identifying candidate and one male identifying candidate being elected;
  - 28.2.7 if, after the counting of votes, only non-male identifying candidates or only male identifying candidates are elected, the Gender Quota Rules apply, adapted as necessary; and
  - 28.2.8 before the Assembly Chamber closes, as part of the Council Declaration, the Co-Chairs must be declared elected by the Secretary or their nominee and they will assume office immediately on the close of that Assembly Chamber.
- 28.3 A Co-Chair will hold such office until:
  - 28.3.1 that Member stops being a Director;
  - 28.3.2 that Member resigns as Co-Chair by written notice to the Assembly (and, to avoid doubt, if a Member resigns as Co-Chair the person must resign as a Director); or
  - 28.3.3 that Member is removed as Co-Chair by the Assembly Chamber.

### **How to elect a Chair and Deputy Chair**

- 28.4 The Assembly Chamber will elect a Member to act as Chair and a Member to act as Deputy Chair.
- 28.5 The Chair and the Deputy Chair are to be elected as follows:
  - 28.5.1 the election will be conducted by the Secretary or their nominee;
  - 28.5.2 the election will be by a poll at the Election Assembly Chamber;



- 28.5.3 the Assembly Chamber must ensure that one of them is non-male identifying and the other is male identifying;
- 28.5.4 lists will be prepared with only the names of each of the Final Nominations who consent to stand for election as Chair or Deputy Chair (as applicable), in alphabetical order (by last name);
- 28.5.5 each Member present and voting at the Assembly Chamber must vote for at least one Final Nomination for the position of Chair and at least one Final Nomination for the position of Deputy Chair (for the avoidance of doubt, there will be two separate votes, one for Chair and one for Deputy Chair);
- 28.5.6 the elected Chair or Deputy Chair positions (as applicable) will be decided by an Optional Preferential Vote subject to the following:
  - (a) if the Chair elected is non-male identifying, the Deputy Chair elected must be male identifying;
  - (b) if the Chair elected is male identifying; the Deputy Chair elected must be non-male identifying;
  - (c) if, after the counting of votes, only non-male identifying candidates or only male identifying candidates are elected, the Gender Quota Rules apply, adapted as necessary and so that either (a) or (b) above is satisfied; and
- 28.5.7 before the Assembly Chamber closes, as part of the Council Declaration, the elected Chair and Deputy Chair must be so declared as elected by the Secretary or their nominee and they will assume office immediately on the close of that Assembly Chamber.
- 28.6 A Chair or Deputy Chair will hold such office until:
  - 28.6.1 that Member stops being a Director;
  - 28.6.2 that Member resigns as Chair or Deputy Chair (as the case may be) by written notice to the Assembly (and, to avoid doubt, if a Member resigns as a Chair or Deputy Chair the person must also resign as a Director); or
  - 28.6.3 that Member is removed as Chair or Deputy Chair (as the case may be) by the Assembly.
- 29. HOW CAN A CO-CHAIR, CHAIR OR DEPUTY CHAIR BE REMOVED AND REPLACED?**
  - 29.1 The Assembly Chamber may by ordinary resolution remove any or all Chairs from such office. The Assembly Chamber can only do so by also following the process for removing a director under section 203D(2) to section 203D(6) Corporations Act as if references to "director" were references to "Chair", "Deputy Chair" or "Co-Chair" (as applicable) and elect their replacement or replacements by using the procedures in this constitution for election of such Chairs, adapted as necessary where one person is being elected.
    - 29.1.1 If there are Co-Chairs, the Assembly Chamber must ensure that one of the Co-Chairs is non-male identifying and the other is male identifying.

29.1.2 If there is a Chair and a Deputy Chair, the Assembly Chamber must ensure that one of them is non-male identifying and the other is male identifying.

29.1.3 A replacement Co-Chair, Chair or Deputy Chair (as applicable) elected under clause 29.1 will hold office for a period worked out under clause 28.3 or 28.6.

29.1.4 To avoid doubt, a Member removed as a Co-Chair, Chair or Deputy Chair is also removed as a Director.

### **30. WHAT IS THE ROLE OF THE CO-CHAIRS OR CHAIR AND DEPUTY CHAIR OF THE COUNCIL?**

#### **Introduction**

30.1 If there are two Co-Chairs, clauses 30.2 to 30.5 apply. If there is a Chair and a Deputy Chair, clauses 30.6 to 30.11 apply.

#### **Role of Co-Chairs**

30.2 The Chair or each Co-Chair (as applicable):

30.2.1 if present and willing to act, will chair all Assembly Chambers (with Co-Chairs rotating as chair from Assembly Chamber to Assembly Chamber, so that no Co-Chair will chair two consecutive Assembly Chambers if the other Co-Chair is available and willing to chair the second meeting);

30.2.2 if present and willing to act, will chair all Council meetings (with Co-Chairs rotating as chair from meeting to meeting);

30.2.3 may be set key performance indicators or other performance metrics by the Assembly Chamber by Ordinary Majority Resolution; and

30.2.4 is otherwise expected to devote a significant amount of time to perform the functions of that office.

#### **Determining who chairs Council meetings**

30.3 If no Co-Chairs are elected, at a Council meeting the Directors present must choose one of their number to chair that meeting.

30.4 If there is a single Co-Chair holding office and at any Council meeting Co-Chair is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present must choose one of their number to chair that meeting.

30.5 If there are Co-Chairs and at any Council meeting the Co-Chair whose turn it is to chair the meeting is not present within 15 minutes after the time appointed for holding the meeting, or if present is unwilling to act:

30.5.1 the other Co-Chair (if present and willing to act) must chair that meeting; or

30.5.2 otherwise, the Directors present must choose one of their number to chair that meeting.

### **Role of Chair**

#### **30.6 The Chair:**

30.6.1 if present and willing to act, will chair all Assembly Chambers;

30.6.2 if present and willing to act, will chair all Council meetings;

30.6.3 may be set key performance indicators or other performance metrics by the Assembly Chamber by Ordinary Majority Resolution; and

30.6.4 is otherwise expected to devote a significant amount of time to perform the functions of that office.

### **Role of Deputy Chair**

#### **30.7 The Deputy Chair:**

30.7.1 if present and willing to act, will chair all Assembly Chambers and Council meetings in accordance with this constitution where the Chair is not present and willing to act;

30.7.2 may be set key performance indicators or other performance metrics by the Assembly Chamber by Ordinary Majority Resolution; and

30.7.3 is otherwise expected to devote a significant amount of time to perform the functions of that office.

30.8 If the Chair stops being Chair, the Deputy Chair is not automatically the next Chair but may be elected as the next Chair in accordance with this constitution.

### **Determining who chairs Council meetings**

30.9 If no Chair and no Deputy Chair are elected, at a Council meeting the Directors present must choose one of their number to chair that meeting.

30.10 If no Chair is elected, or if at any Council meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chair may act as chair of that meeting.

30.11 If no Chair or Deputy Chair is elected, or if at any meeting the Chair and the Deputy Chair are not present within 15 minutes after the time appointed for holding the meeting or are unwilling to act, the Directors present must choose one of their number to chair that meeting.

## **31. TERM OF OFFICE FOR CO-CHAIR OR CHAIR AND DEPUTY CHAIR**

31.1 If they remain a Member, a retiring Co-Chair, Chair or Deputy Chair is eligible for re-election to that office under clause 28.2 or clause 28.5 (as applicable).

## **32. REMUNERATION OF CO-CHAIRS OR CHAIR AND DEPUTY CHAIR**

32.1 A Co-Chair or Chair and Deputy Chair (as applicable) may be remunerated under clause 49 and may receive a greater level of remuneration than other Directors.

- 32.1.1 To avoid doubt, if there are Co-Chairs then each is entitled to be paid an equal amount for their services (assuming that both hold that office on a full-time basis or on an equivalent part-time basis, and otherwise pro-rated as necessary).

## **PART I: PROCEEDINGS OF DIRECTORS**

Directors will primarily make decisions at Council meetings. These are expected to be held at least six times a year. If a meeting cannot be held, Directors may also make decisions out of session in writing. Part I sets out the rules about:

- How Council meetings may be called, including the notice that must be given to Directors.
- The number of Directors that must be present for a Council meeting to proceed to business (the quorum).
- How technology may be used to hold a Council meeting.
- How Directors can pass resolutions in writing without calling and holding a Council meeting.
- What happens if a Director has a material person interest or other conflict in a matter before the Council.
- The Council's right to exercise voting rights in another body that the Assembly owns or has some other interest in.
- The Council's delegation of its powers to individual Directors, Council committees, employees of the Assembly and other persons.
- The Council's power to establish and dissolve Council committees.

### **33. COUNCIL MEETINGS**

#### **How often will there be Council meetings?**

- 33.1 It is intended that the Council will meet no less than six times per calendar year.
- 33.2 This intention is subject to the needs of the Assembly and the Directors, including:
- 33.2.1 supporting the implementation of Assembly Chamber resolutions as appropriate; and
  - 33.2.2 recognising that one or more Directors may require ceremonial leave or may need to attend to "Sorry Business" including attending the funeral of family or community members, or may require leave in light of that Director's other cultural duties.

#### **How are Council meetings called?**

- 33.3 A Director may at any time, and a Secretary must on the requisition of a Director, call a Council meeting.

- 33.4 The person calling a Council meeting must ensure that notice of the Council meeting is given to each Director. The notice must be given at least 48 hours before the meeting or such longer time given by Council resolution. However:
- 33.4.1 notice is not required if all Directors waive in writing the required period of notice for a particular meeting (excluding a Director who has been given leave of absence by the Council); and
  - 33.4.2 it is not necessary to give a notice of a meeting of Directors to a Director who has been given leave of absence by the Council.
- 33.5 Notice of a Council meeting may be sent to a Director by:
- 33.5.1 delivering it to Director personally;
  - 33.5.2 delivering it to the street or postal address of the Director, as shown in the Register (or as may be subsequently advised to the Assembly); or
  - 33.5.3 sending it by email to the electronic address nominated by the Director at the time they consented to become a Member (or as may be subsequently advised to the Assembly).

#### **34. HOW MANY DIRECTORS NEED TO BE PRESENT?**

- 34.1 A Council meeting cannot do anything unless enough Directors are present (a **quorum**). To have a quorum, there must be at least one half of the number of Directors holding office (rounded up to the next highest whole number).
- 34.2 If the number of Directors is below the statutory minimum, the continuing Director or Directors may act only to:
- 34.2.1 appoint additional Directors under clause 23.1; or
  - 34.2.2 call an Assembly Chamber.

#### **35. HOW ARE DECISIONS MADE AT COUNCIL MEETINGS?**

##### **Voting at Council meetings**

- 35.1 The Council must decide any questions arising at a Council meeting by a majority of votes of Directors present and voting. To avoid doubt:
- 35.1.1 Directors must not appoint a proxy;
  - 35.1.2 Directors may only vote in person; and
  - 35.1.3 an Ordinary Majority Resolution is not required.

##### **Chairperson's vote at Council meetings**

- 35.2 In the case of a tied vote at a Council meeting, the Chair, Deputy Chair, Co-Chair or other Director chairing the meeting does not have a second or casting vote in addition to his or her deliberative vote as a Director and the motion or resolution fails.

### **36. CALLING AND HOLDING COUNCIL MEETINGS USING TECHNOLOGY**

36.1 A Council meeting may be called or held using any technology consented to by all the Directors.

36.1.1 The consent may be a standing one, if all Directors give or renew that consent promptly after a new Director joins the Council.

36.1.2 A Director may only withdraw their consent within a reasonable period before the meeting.

36.1.3 The Council may otherwise regulate its meetings as it considers fit.

### **37. DIRECTORS CAN PASS RESOLUTIONS BY A RESOLUTION IN WRITING**

37.1 The Council can make decisions by a written resolution. A resolution in writing:

37.1.1 sent to all Directors (excluding Directors who have requested and been given leave of absence by the Council), and

37.1.2 approved by all Directors entitled to vote on the resolution (excluding Directors who have requested and been given leave of absence by the Council),

is to be treated as a decision of the Council passed at a Council meeting duly called and held.

37.2 A resolution in writing may consist of substantially similar documents.

37.2.1 Each document must be signed at least one Director.

37.2.2 If signed by more than one Director, it takes effect on the latest date on which a Director signs one of the documents.

37.2.3 Alternatively such a resolution may consist of each Director affirming by electronic means that they support the proposed resolution, and, for the avoidance of doubt, clause 60 applies.

### **38. DIRECTORS' INTERESTS**

#### **What happens when a Director may have an interest in a matter being considered?**

38.1 The Corporations Act deals with conflict of interests, conflicts of duty and benefits to entities related to directors. The Directors must comply with the Corporations Act, for example, a Director may be present and may vote on a matter before the Council if and to the extent that they are permitted to do so under the Corporations Act.

38.2 If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting, then one or more of the Directors (including those who have the disqualifying interest in the matter) may call an Assembly Chamber and the Assembly Chamber may pass a resolution to deal with the matter.

38.3 Subject to compliance with the Corporations Act, a Director may execute or participate in the execution of a document by or on behalf of the Assembly.

### **No disqualification**

- 38.4 Subject to compliance with the law, a Director or any entity in which the Director has a direct or indirect interest (as applicable) may:
- 38.4.1 enter into a contract or arrangement with an Associated Party;
  - 38.4.2 hold any office or place of profit (other than auditor) in an Associated Party; and
  - 38.4.3 act in a professional capacity (or be a member of a firm that so acts) other than as auditor of an Associated Party.
- 38.5 Despite the fiduciary nature of a Director's office and the Director's fiduciary duties:
- 38.5.1 any contract or arrangement entered into under clause 38.4.1 by the Director or any entity in which the Director has a direct or indirect interest is not invalid or voidable; and
  - 38.5.2 a Director may do any of the things specified in clause 38.4 without any liability to account to the Assembly or any other person for any direct or indirect benefit accruing to the Director or any entity in which the Director has a direct or indirect interest.

## **39. EXERCISE OF RIGHTS**

- 39.1 If the Assembly holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Council may exercise any and all voting rights conferred by the membership, shares or interests in any way that the Council thinks fit.

## **40. DELEGATION OF THE COUNCIL'S POWERS**

- 40.1 The Council may delegate any of its powers to any person, as the Council thinks fit.
- 40.1.1 This includes delegating any of the Council's powers to committees consisting of Directors or other persons.
  - 40.1.2 The Council may at any time revoke any delegation of power.
  - 40.1.3 A delegate must conform to the directions of the Council in the exercise of any powers delegated to the delegate.
  - 40.1.4 The delegate's exercise of a power under this constitution is to be treated as the exercise of that power by the Council.

## **41. COUNCIL COMMITTEES**

### **Establishment and dissolution of Council committees**

- 41.1 The Council may, as it thinks fit, establish one or more committees to give advice and recommendations to the Council on specified matters (among any other functions given by the Council).
- 41.2 The Council may:

- 41.2.1 specify in writing the terms of reference and functions of the committee, including (if the Council considers fit);
  - (a) any delegation of power to the committee; and
  - (b) any associated directions from the Council about the committee's exercise of that delegated power;
- 41.2.2 appoint such persons as the Council wants to the committee (including one or more Directors), and remove any such person from the committee at any time by written notice or otherwise under the terms of reference of that committee;
- 41.2.3 specify the period and conditions (including as to remuneration, if any) of any such appointment to the committee; and
- 41.2.4 dissolve the committee at any time.

#### **Proceedings of Council committees**

- 41.3 The meetings and proceedings of a committee must be governed by the provisions of this constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Council. This provision applies to a committee unless the Council otherwise directs.

### **42. VALIDITY OF ACTS OF DIRECTORS**

- 42.1 All acts done by a Council meeting or of a committee of (or including) Directors or by a person acting as a Director are valid, even if it is later discovered that:
  - 42.1.1 there is a defect in the appointment of a person to be a Director or a member of the committee; or
  - 42.1.2 any person was disqualified or was not entitled to vote.

## **PART J: DISPUTE RESOLUTION**

Part J sets out the rules for resolution of Disputes.

### **43. DISPUTE RESOLUTION**

- 43.1 A Dispute will be dealt with in accordance with any dispute resolution process adopted by the Assembly Chamber by Ordinary Majority Resolution.
- 43.2 Nothing in clause 43 prevents the Council creating and implementing such policies as it thinks fit, including policies about occupational health and safety, sexual harassment, and other matters.



## **PART K: ELDERS' VOICE**

The advice and guidance of Elders is vital to the work of the Assembly. Part K sets out the rules about:

- The rules about the later establishment of Elders' Voice, including the role of the Assembly Chamber in approving or rejecting any such proposal by the Council.
- The status of the Elders' Voice and its members. In particular, Elders' Voice will be a committee of the Assembly and not a third class of membership of the Assembly, and being appointed to Elders' Voice will not result in a person becoming a Member.

### **44. ELDERS' VOICE IS NOT A CLASS OF MEMBERSHIP**

- 44.1 The role of the Elders' Voice is to provide advice and guidance to the Members.
- 44.2 The Elders' Voice is not a class of membership of the Assembly. If a person is appointed to the Elders' Voice this does not make them a Member.

### **45. COUNCIL MUST PREPARE DESIGN OF ELDERS' VOICE**

- 45.1 The Council must design a proposed structure for a committee of the Assembly (rather than a committee of the Council) to be called the "Elders' Voice". The proposal must set out:
- 45.1.1 the powers, duties and functions of the Elders' Voice, noting:
- (a) that the Elders' Voice is not a class of membership of the Assembly; and
  - (b) being appointed to the Elders' Voice does not, in and of itself, result in that individual being admitted as a Member;
- 45.1.2 the way in which the Elders' Voice will be composed, including the initial membership of the Elders' Voice;
- 45.1.3 the terms of reference of the Elders' Voice;
- 45.1.4 the rules that apply to proceedings of the Elders' Voice;
- 45.1.5 any remuneration of persons who serve on the Elders' Voice; and
- 45.1.6 all other matters relevant to the Elders' Voice not inconsistent with the law or this constitution.
- 45.2 The Council must promptly submit the proposal to the Assembly Chamber for consideration, and the Assembly Chamber must consider any proposal about the Elders' Voice that is submitted by the Council and decide by Ordinary Majority Resolution whether the proposal is approved. If it is not approved, it is rejected.
- 45.2.1 If the Assembly Chamber approves the proposal, the Council must promptly establish the Elders' Voice on terms that are identical or substantially similar to the terms approved by the Assembly Chamber; or
- 45.2.2 If the Assembly Chamber does not approve the proposal, the Council must:

- (a) consult further with Members with the aim of preparing a new proposal about the Elders' Voice which takes into account any feedback received from Members; and
- (b) recommence the process set out in clause 45 until the Assembly Chamber approves a proposal about the Elders' Voice.

## **PART L: OTHER OFFICERS OF THE ASSEMBLY**

To allow the Assembly to function it may engage a Chief Executive Officer and a Secretary. The Chief Executive Officer implements the decisions of the Assembly and will be responsible to the Council. Part L sets out the rules about:

- The appointment and termination of any Chief Executive Officer of the Assembly.
- The appointment and removal of Secretaries of the Assembly.

### **46. CHIEF EXECUTIVE OFFICER**

#### **Who can appoint the CEO?**

- 46.1 The Council may appoint a person who is not a Member or Director to the position of Chief Executive Officer for the period and on the terms (including as to remuneration and whether the position will be full-time or part-time) as the Council sees fit.
- 46.2 The Council may appoint another person to act temporarily as Chief Executive Officer if:
  - 46.2.1 the Chief Executive Officer is absent from duty or from Australia or the Council considers the person is incapable of acting as the Chief Executive Officer; or
  - 46.2.2 the position of Chief Executive Officer is vacant.

#### **Who can remove the CEO?**

- 46.3 Subject to the law, the Council may remove the Chief Executive Officer. To avoid doubt, the Assembly Chamber has no power:
  - 46.3.1 to remove the Chief Executive Officer; or
  - 46.3.2 appoint a person to the position of Chief Executive Officer.
- 46.4 A person's appointment as Chief Executive Officer automatically ends if they become a Director or Member.

### **47. SECRETARY**

- 47.1 The Council may appoint one or more Secretaries and may remove them.
- 47.2 The Council may decide the terms and conditions of appointment of a Secretary, including remuneration.
- 47.3 Any one of the Secretaries may carry out any act or deed required by this constitution, the Corporations Act or by any other statute to be carried out by the Secretary of the Assembly.

## **PART M: REMUNERATION, FINANCIAL MATTERS AND ACCOUNTS**

The Assembly needs to deal with money or finances in a way that ensures its integrity, preserves its not-for-profit status and maintains public trust that it is managing funds responsibly. The Assembly also needs to ensure that Members are appropriately remunerated and supported in their work representing Aboriginal communities.

Part M sets out the rules about:

- Ensuring the "not-for-profit" status of the Assembly, including the circumstances in which the Assembly can pay or transfer any of its money or other property to a Member while the Assembly is a going concern or, alternatively, is being wound up.
- The exception for paying a stipend to Members, in recognition of the significant responsibilities that each Reserved Member and each General Member has to their local communities.
- Remuneration of Directors, and the Assembly Chamber's role in approving any such remuneration.
- The circumstances in which the Assembly can reimburse a Director for out-of-pocket expenses, or pay those expenses on the Directors' behalf.
- The scope of the indemnity that the Assembly grants to each officer and past officer of the Assembly.
- The Assembly's power to purchase insurance to protect each officer and past officer of the Assembly.
- The prohibition against charging Members a fee or annual subscription amount for being Members.
- The Assembly's accounts, financial reports and other reports, and the circumstances in which Members may inspect them.
- The circumstances in which the Assembly must appoint a registered company auditor.
- The rules about any Gift Fund that the Assembly may maintain to ensure its status as a "deductible gift recipient" under tax law (if applicable).
- The rules about the distribution of the Assembly's surplus property if it is ever wound up.

### **48. THE ASSEMBLY IS A NOT-FOR-PROFIT BODY**

#### **No transfer of income or property to Members**

- 48.1 The Assembly may not pay or transfer any income or property, directly or indirectly, to any Member. This provision is subject to clauses 48.2 and 55.

#### **What payments are allowed to Members?**

- 48.2 Nothing in clause 48 prevents the Assembly from:

48.2.1 making a payment in good faith to a Member in carrying out the Assembly's purposes;

48.2.2 making a payment in good faith of any of the following:

- (a) directors' fees under clause 49.1;

- (b) Members' sitting fees or stipend as worked out under this constitution;
- (c) reimbursing a director for out-of-pocket expenses, or paying such expenses, under clause 49.2; or
- (d) reimbursing a Member for out-of-pocket expenses, or paying such expenses, under clause 48.6; or

48.2.3 for any officer of the Assembly who is or was a Member:

- (a) indemnifying them, or
  - (b) paying premiums on insurance for them,
- to the extent permitted by law and this constitution; or

48.2.4 providing services to the Members on terms which are different from the terms on which services are provided to persons who are not Members, or from providing services to Members on different terms.

#### **Members may be entitled to a stipend**

48.3 Each Member may be entitled to a stipend for their service, taking into account each Member's responsibilities under the Members' Charter. Such stipend will accrue from day to day.

#### **No payment for any additional services rendered**

48.4 To avoid doubt, any Member may not be paid:

48.4.1 a fee, salary or hourly rate for any services rendered to the Assembly in a professional or technical capacity, over and above their ordinary duties as a Member; or

48.4.2 for any goods or property provided to the Assembly, including renting real or personal property to the Assembly. This includes where such goods or services are provided:

- (a) by a for-profit entity that is owned or controlled by the Member or that employs the Member; or
- (b) by a spouse, sibling, cousin, parent or child of the Member,

if the Member will or may materially benefit from the payment made by the Assembly to that entity or individual.

48.5 To avoid doubt, this does not prevent the Assembly paying a not-for-profit entity for any goods or property provided to the Assembly, including renting real or personal property from such an entity.

#### **Are members paid for expenses?**

48.6 Each Member may be reimbursed for out-of-pocket expenses reasonably and properly incurred by the Member for Assembly business (including travel and accommodation expenses).

48.6.1 Alternatively, the Assembly may pay such amounts on the Member's behalf.

- 48.6.2 The Council must create a policy about what are reasonable and proper out-of-pocket expenses and make this policy available to all Members. The policy may also set out circumstances where the Council will not reimburse or pay such amounts, including where a Member is censured or removed from membership under this constitution.

## **49. DIRECTORS' REMUNERATION**

### **Who sets Directors fees?**

- 49.1 The Directors' fees for their services will be set by the Assembly Chamber by Ordinary Majority Resolution.
- 49.1.1 Any such approved fees must take the form of sitting fees or a stipend, rather than an hourly rate. Directors' fees accrue from day to day.
- 49.1.2 To avoid doubt, the ways in which the Assembly Chamber may decide such fees include by approving a proposed remuneration policy that sets out:
- (a) the relevant stipend, stipends, or sitting fees payable;
  - (b) the frequency of payment; and
  - (c) whether any automatic indexation of fees may occur without requiring further approval of the Assembly Chamber.

### **Are Directors paid for expenses?**

- 49.2 Each Director may be reimbursed for out-of-pocket expenses reasonably and properly incurred by the Director for Assembly business (including travel and accommodation expenses).
- 49.2.1 Alternatively, the Assembly may pay such amounts on the Director's behalf.
- 49.2.2 Before authorising a payment or reimbursement, the Council must:
- (a) adopt a policy about what constitutes reasonable and proper out-of-pocket expenses; and
  - (b) make this policy available to all Members, including by notifying Members that such a policy has been adopted and can be viewed on request by any Member. The policy may also set out circumstances where the Council will not reimburse or pay such amounts, including where a Member is censured or removed from membership under this constitution.

## **50. INDEMNITY AND INSURANCE**

### **The Assembly may indemnify officers**

- 50.1 Every officer and past officer of the Assembly may be indemnified by the Assembly, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Assembly or a subsidiary of the Assembly, in carrying out the activities of the Assembly.
- 50.1.1 This includes legal costs and expenses incurred in defending an action.

- 50.1.2 To avoid doubt, the ways in which the Assembly may do so include by entering into an 'Indemnity, Insurance and Access Deed' (or similar contract) with one or more officers or past officers of the Assembly.

**The Assembly may pay insurance premiums**

- 50.2 The Assembly may pay the premium on a contract insuring a person who is or has been an officer of the Assembly to the fullest extent permitted by law.

- 50.2.1 To avoid doubt, the ways in which the Assembly may do so include by entering into an 'Indemnity, Insurance and Access Deed' (or similar contract) with one or more officers or past officers of the Assembly.

**51. SUBSCRIPTIONS AND OTHER FEES PROHIBITED**

- 51.1 No Member has to pay a subscription or fee for membership of the Assembly, including (to avoid doubt,) any fee payable on admission to membership of the Assembly.
- 51.2 The Council and/or the Assembly Chamber must not impose any such subscription or fee.

**52. ACCOUNTS, AUDIT AND RECORDS**

**Accounts**

- 52.1 The Council must cause proper accounting and other records to be kept under the ACNC Act (if and for so long as the Assembly is a Registered Entity), or as otherwise required by law.

**Reports**

- 52.2 To the extent required by the ACNC Act (if and for so long as the Assembly is a Registered Entity), or otherwise required by law, the Council must cause the company to:

52.2.1 prepare financial reports;

52.2.2 prepare directors' reports;

52.2.3 notify each Member of the Member's right to receive reports from the Assembly; and

52.2.4 give members with reports, in a form and within such timeframe,

as required by the ACNC Act (if and for so long as the Assembly is a Registered Entity) or otherwise required by law.

**Audit**

- 52.3 If required by law, a registered company auditor must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated under the ACNC Act or as otherwise required by law.

### **What are a Member's rights of inspection?**

52.4 Subject to the law:

52.4.1 the Council may decide whether, how, when, where and under what conditions, the records and other documents of the Assembly or any of them are open to the inspection of Members or others;

52.4.2 a Member does not have the right to inspect any document of the Assembly except as provided by law, as authorised by the Council or by the Assembly Chamber; and

52.4.3 despite anything else, the Council may refuse access to a document where the Council (acting reasonably) considers that such access would or would be likely to cause the Assembly to lose the benefit of any form of evidentiary privilege, including legal professional privilege.

## **53. SELF-DETERMINATION FUND REPORTS**

### **Members to receive reports and other information**

53.1 The Council must give reports and other information to Members about the operation of the Self-Determination Fund, including reports received under the Self-Determination Fund Trust Deed. The reports and other information must be given at the next Assembly Chamber or otherwise within a reasonable time.

53.2 Information referred to in clause 53.1 includes audits and other information accessed by the Assembly under the Self-Determination Fund Trust Deed or Self-Determination Fund Trustee Company Constitution.

## **54. WHAT HAPPENS IF THERE IS A GIFT FUND?**

### **Assembly to maintain a Gift Fund**

54.1 Where the Assembly seeks deductible gift recipient status, and to the extent required by law for such status, the Assembly must maintain at least one Gift Fund.

### **What rules apply to the Gift Fund?**

54.2 The following rules apply to any Gift Fund established and maintained by the Assembly.

54.2.1 The Gift Fund must have a name.

54.2.2 The Assembly must maintain sufficient documents to give evidence of the Gift Fund's purpose and operations.

54.2.3 The Assembly must maintain a separate bank account for the Gift Fund.

54.2.4 The following must be credited to the Gift Fund:

- (a) all gifts of money or property to the Assembly for the Principal Purpose; and
- (b) all money or property received by the Assembly because of those gifts.

54.2.5 No other money or property may be credited to the Gift Fund.

54.2.6 The Assembly must use any gifts, money or property of the kind referred to in clause 54.2.4 only for the Principal Purpose.

#### **How is a Gift Fund wound up?**

54.3 Despite clause 55, if:

54.3.1 the Assembly wishes to wind up a Gift Fund; or

54.3.2 the Assembly's deductible gift recipient endorsement is revoked (whether or not the Assembly is to be wound up),

any surplus Gift Fund must be transferred to the entity that is the successor to the Assembly as the Aboriginal Representative Body if it is a charity and, if not, then to one or more charities as decided by the Council:

54.3.3 with charitable purpose(s) similar to, or inclusive of, the Assembly's object;

54.3.4 which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Assembly; and

54.3.5 that is or are deductible gift recipients within the meaning of the ITAA 97.

54.4 To avoid doubt, if a Gift Fund operated by the Assembly is wound up but the Assembly remains endorsed as a deductible gift recipient and operates any other gift fund, any surplus Gift Fund that is being wound up may be transferred to any other charitable gift fund operated by the Assembly.

#### **55. WHAT HAPPENS ON A WINDING UP OR DISSOLUTION?**

55.1 If the Assembly is wound up, any surplus property must not be distributed to a Member or a former Member.

55.2 Subject always to clause 54.3, any court order, the Corporations Act and any other applicable law, on the winding up or dissolution of the Assembly any surplus property that remains after satisfaction of all debts and liabilities must be distributed to:

55.2.1 the entity that is the successor to the Assembly as the Aboriginal Representative Body;  
or

55.2.2 if there is no such entity, then to one or more charities:

- (a) with charitable purposes similar to, or inclusive of, the Assembly's object;
- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Assembly;
- (c) that is or are "deductible gift recipients" within the meaning of ITAA 97 (but only if this is required by law); and
- (d) as decided by the Assembly Chamber by Ordinary Majority Resolution at or before the time of winding up or dissolution of the Assembly and, in default of any such decision, by the Supreme Court of Victoria.



## **PART N: THE ASSEMBLY'S CONSTITUTION**

Part N sets out the rules about how this constitution may be changed including that a Super Majority Resolution is required to amend the constitution and there are special rules for changes that impact General and Reserved seats. The requirement for a Super Majority Resolution do not apply to the schedules to the constitution. This part includes:

- The Council's obligation to ensure that the Assembly's constitution is regularly reviewed, and to report to Members following each such review.
- How the constitution can be amended.
- How the rights of a class of Members can be varied, and the process that must be followed.

### **56. REGULAR REVIEW AND AMENDMENT OF THIS CONSTITUTION**

#### **What must the Council do?**

- 56.1 The Council must ensure that regular reviews of this constitution are completed by the Council or a person nominated by the Council.
- 56.2 The Council must give the members a written report of a review of the constitution no later than:
- 56.2.1 four years after the Assembly was set up; and
  - 56.2.2 every fifth year after that time.
- 56.3 The report may include recommendations to change the constitution. Any such recommendations are not binding on the Assembly Chamber.
- 56.4 Nothing above limits the Assembly Chamber's powers to change this constitution under the provisions of this constitution or the Act.

#### **Amending this constitution**

- 56.5 Where practicable, the Assembly Chamber must reach agreement or consensus about any changes to this constitution by Consensus.
- 56.6 The Assembly Chamber may only modify or repeal this constitution or a provision of this constitution by Super Majority Resolution. The notice of the Super Majority Resolution must state that it is a special resolution for the purposes of the Corporations Act, and must set out the resolution.

#### **How are Members' rights varied?**

- 56.7 The rights of the General Members as a class and Reserved Members as a class may only be varied or cancelled if:
- 56.7.1 the Assembly Chamber passes a special resolution approving the proposed variation or cancellation of those rights, and
  - 56.7.2 the Members of that class pass a special resolution approving the proposed variation or cancellation of those rights; or

- 56.7.3 at least 75% of the Members of that class give their written consent to the proposed variation or cancellation of those rights.
- 56.8 Clause 56.7 can only be modified or repealed if the resolutions or consent in that clause are passed or given.

## **PART O: ADMINISTRATIVE MATTERS**

Part O sets out the rules about various administrative matters, including:

- The obligation to keep and update a register of the Members.
- The Council's minute-keeping duties in relation to the Assembly Chamber, Council meetings and Council committee meetings.
- The ways in which the Assembly can execute documents.
- Giving notices to the Assembly, and the Assembly giving notices to Members (including notices of the Assembly Chamber).

### **57. WHAT IS THE NATURE OF THE ASSEMBLY?**

#### **Nature of the Assembly**

- 57.1 The Assembly is a public company limited by guarantee.

#### **What is the liability of Members?**

- 57.2 The members do not have to pay the corporation's debts if the corporation is wound up.
- 57.3 However, every Member undertakes to contribute \$1.00 if the corporation is wound up while they are a Member, or within one year after the person stopped being a Member.
- 57.4 A Member's liability under this constitution continues even if the person resigns or stops being a Member.

57.4.1 A former Member continues to be liable for any money the Member owes to the Assembly and for any amount payable on its winding up.

57.4.2 This clause is not limited by any other clause in this constitution.

#### **A membership is not transferable**

- 57.5 A Member's rights, privileges and benefits of membership are personal to the Member and membership of the Assembly is not transferable.

57.5.1 No Member is to be recognised by the Assembly as holding its membership on trust for another person or in a representative capacity representative of another person.

### **58. KEEPING A REGISTER OF MEMBERS**

- 58.1 A register of the Members of the Assembly must be kept under the Corporations Act.

- 58.2 A person becomes a Member when the person's details are entered in the Register. The details to be entered are:
- 58.2.1 the full name of the Member;
  - 58.2.2 the address of the Member; and
  - 58.2.3 the date on which the entry of the Member's name in the Register is made.
- 58.3 The Register must also have:
- 58.3.1 the name and details of each person who stopped being a Member within the last seven years; and
  - 58.3.2 the date on which each such person stopped being a Member.
- This information can be kept in a separate part of the Register.
- 58.4 The Assembly may also keep further registers recording other information about Members that is not required to be kept under the Corporations Act, for example:
- 58.4.1 the telephone number and email address (as applicable) of the Member; and
  - 58.4.2 such other information as the Council may require.
- 58.5 Each Member must notify the Secretary in writing of any change in that Member's name, address, telephone number or email address within one month after the change.

## **59. KEEPING MINUTES OF MEETINGS**

- 59.1 The Council must cause minutes of all proceedings of Assembly Chambers, of Council meetings and of committee meetings to be prepared under the law.
- 59.1.1 Such minutes must be entered in books kept for the purpose within one month after the relevant meeting is held.
  - 59.1.2 The Council must cause all minutes to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

## **60. HOW CAN DOCUMENTS BE EXECUTED?**

- 60.1 The Assembly, the Council or any Director, any Committee or any Committee member or any Member may sign or execute a document (including, for avoidance of doubt, any resolution in writing or any notice) in any way permitted by the Corporations Act or at general law.
- 60.1.1 Subject to any law to the contrary, any such document produced and signed, or executed, by mechanical or electronic means by, or by the authority of, the Assembly, the Council, any Director, any Committee, any Committee member or any Member is considered a document in writing signed or executed by that person or those persons when received in legible form by the recipient.

## **61. WHAT RULES APPLY TO NOTICES?**

### **Who can give notices?**

- 61.1 A notice under this constitution may be given on behalf of the Assembly or a Member by any person authorised by the Assembly or the Member (as the case may be).

### **How to give notices**

- 61.2 A notice by the Assembly to a Member under this constitution may be given:

61.2.1 by delivering it to a street address of the Member;

61.2.2 by sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the Member; or

61.2.3 by sending it by email to the email address of the Member.

- 61.3 A Member may nominate an electronic means by which the Member may be notified that notices of meeting are available and access notices of meeting. Where practicable, the Assembly will give notice to a Member in the way that the Member has advised the Assembly in writing as their preferred method of notice.

- 61.4 A notice by a Member to the Assembly under this constitution may be given:

61.4.1 by delivering it to the street address of the Assembly.

61.4.2 by sending it by prepaid ordinary post (airmail if outside Australia) to the street or postal address of the Assembly.

61.4.3 by sending it by email to the email address of the Assembly.

### **What addresses should be used - Members?**

- 61.5 The street address or postal address of a Member is the street or postal address of the Member shown in the Register.

- 61.6 The email address of a Member is the address which the Member may specify by written notice to the Assembly as the email address to which notices may be sent to the Member.

### **What addresses should be used - the Assembly?**

- 61.7 The street and postal address of the Assembly is the Office.

- 61.8 The email address of the Assembly is the email address which the Assembly may specify by written notice to the Members as the email address to which notices may be sent to the Assembly.

### **Time notice of Assembly Chamber is given**

- 61.9 A notice of Assembly Chamber given under this constitution is to be taken as given, served and received at the following times:

61.9.1 If delivered in writing to the street address of the addressee, at the time of delivery.

61.9.2 If it is sent by post to the street or postal address of the addressee, on the second business day after posting.

61.9.3 If sent by email to the email address of the addressee, on the earlier of:

- (a) the sender receiving an automated message confirming delivery; or
- (b) if no automated message is received stating that the email has not been delivered, three hours after the time the email was sent (calculating the three hours by reference to the device from which the email was sent).

#### **Time other notices are given**

61.10 A notice given under this constitution is to be taken as given, served and received at the following times:

61.10.1 If delivered in writing to the street address of the addressee, at the time of delivery.

61.10.2 If it is sent by post to the street or postal address of the addressee, on the third (ninth if outside Australia) business day after posting.

61.10.3 If sent by email to the email address of the addressee, on the earlier of:

- (a) the sender receiving an automated message confirming delivery; or
- (b) provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be worked out by reference to the device from which the email was sent.

#### **Who should get a notice of an Assembly Chamber?**

61.11 Notice of every Assembly Chamber must be given to all of the following persons:

61.11.1 Every Member.

61.11.2 The auditor for the time being of the Assembly, if any.

61.12 No other person is entitled to receive notices of Assembly Chambers.

#### **What about notices to and from Traditional Owner Groups?**

61.13 The Assembly (including, to avoid doubt, the Council and the Assembly Chamber):

61.13.1 may rely without further inquiry on any notice signed on behalf of a Traditional Owner Group by the then-current chief executive officer, chairperson or any external controller of that Traditional Owner Group (such as an administrator); and

61.13.2 gives proper notice to a Traditional Owner Group if the notice is addressed to the then-current chairperson of that Traditional Owner Group.

## PART P: DEFINITIONS AND INTERPRETATION

Part P contains the capitalised defined terms that are used in this constitution. Many of those capitalised terms are also used in the schedules to this constitution, where they have the same meaning as below.

Part P also contains the rules of interpreting this constitution. This includes the important rules that a preamble, schedule or attachment does not form part of this constitution unless it expressly states that it is part of this constitution. This matters because of clause 56.6.

### 62. DEFINITIONS

#### Definitions

62.1 In this constitution the following definitions apply:

**Aboriginal Representative Body** means the entity declared to be the Aboriginal Representative Body by the Minister under the Act.

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

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and to avoid doubt, includes any "governance standards" prescribed under any related regulations.

**Act** means the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

**Additional Traditional Owner Group Criteria** means the following criteria:

- (a) a group whose geographic area is not represented in whole or in part by an existing Reserved Member of the Assembly;
- (b) a group that is an established group or nation, being:
  - (i) a group with a membership of a minimum of 80 members who are 16 years of age and over;
  - (ii) all current-day members are descendants of identified apical ancestors;
  - (iii) established group governance and decision-making processes;
- (c) a group that has a connection to country;
- (d) a group whose application to become a Traditional Owner Group under this subclause has significant support amongst Traditional Owners for the area; and
- (e) a group that meets all the requirements in the guidelines adopted by the Assembly Chamber by a Super Majority Resolution with the first guidelines being the "Mandatory Guidelines on Additional Traditional Owner Group Criteria under subclause (d) of the definition of Traditional Owner Group".

**AGM** means an annual general meeting of the Assembly.

**Appointment Rules** means the "Appointment Rules" in schedule 2 or such other rules as the Assembly Chamber may by Ordinary Majority Resolution adopt to deal with how Traditional Owner Groups are to select people to be Reserved Members.

**Assembly** means the company, being the First Peoples' Assembly of Victoria Limited ACN 636 189 412.

**Assembly Chamber** means a general meeting of the Members and, to avoid doubt, includes an AGM.

**Associated Party** means each of the following:

- (a) the Assembly;
- (b) any Related Body Corporate of the Assembly; and
- (c) any other body corporate, trust or entity promoted by the Assembly or in which the Assembly has an interest of any kind.

**Ballot** means Members voting on a proposed resolution or other question by means of a ballot held under clause 19.

**By-laws** include rules, regulations and similar sets of requirements.

**Chair** means the person elected as Chair and who will preside as chairperson at Council meetings and Assembly Chambers.

**Chairs** means each Co-Chair or the Chair or Deputy Chair as is applicable at the time.

**Co-Chair** means a person elected as a Co-Chair and who will preside as chairperson in rotation with the other elected Co-Chair at Council meetings and Assembly Chambers.

**Convener** means the convener (or chair, leader or co-convener however described) of any committee or other group created by the Council or by resolution of the Assembly Chamber such as the following: Treaty Committee, Yurpa Committee, Elders' Voice, Youth Voice, Self-Determination Fund Committee and the Audit, Risk and Remuneration Committee.

**Chief Executive Officer** has the meaning given in clause 46.

**Consensus**, with respect to a decision, means:

- (a) a decision made under the Consensus Decision-Making Framework (if any); and
- (b) otherwise means a decision made as the result of a respectful, consultative process which has the aim of identifying a decision that all parties with the legal authority to make the relevant decision are comfortable with and will support.

**Consensus Decision-Making Framework** means any non-binding framework to help the making of decisions by consensus that the Council may give to Members.

**Core Matters** means Self-Determination Fund-Related Matters and Treaty-Related Matters.

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

**Council** means Directors acting as the board of the Assembly.

**Council Declaration** has the meaning given in clause 21.24.

**Countback Rules** means the "Countback Rules" in schedule 5 or such other rules as the Assembly Chamber may by Ordinary Majority Resolution adopt to govern having a countback to fill a casual vacancy for a General Member.

**Deputy Chair** means the person elected as the Deputy Chair and who will preside as chairperson at Council meetings and Assembly Chambers in the Chair's absence, unwillingness or unavailability.

**Director** means a person occupying the position of a director of the Assembly, and for avoidance of doubt includes the Chairs unless the context requires otherwise.

**Dispute** means a complaint about behaviour which has, or is likely to have, an unreasonable negative impact on a person but excludes: electing, appointing or removing Members, Directors or a Chair, Deputy Chair or Co-Chair; sanctioning, censuring or suspending a Member; rulings of a Chair, Deputy Chair or Co-Chair or other chairperson; resolutions of the Council or the Assembly Chamber; or anything about Elder's Voice or its actions (including the establishment of Elders' Voice).

**Election** means the process of voting for and electing General Members, and the parallel process under the Appointment Rules to identify the individuals who will become the Reserved Members. **By-election** has a corresponding meaning for election of casual vacancies or additional Members and **Supplementary Election** has the corresponding meaning for election of General Members in a Region to fill any other form of vacancy.

**Election Assembly Chamber** has the meaning given in clause 21.2.

**Election Rules** means the document titled "First Peoples' Assembly of Victoria Election Rules version 2.0" issued by the Commissioner on 14 November 2019 in the form set out in schedule 1 or such other set of rules as the Assembly Chamber may by Ordinary Majority Resolution adopt to govern the election of General Members and the appointment of Reserved Members.

**Final Nominations** has the meaning given in clause 21.12.

**First Peoples' Representative Body** means the body confirmed to be the First Peoples' Representative Body by the Treaty Authority under the Treaty Negotiation Framework.

**Gender Quota** means, for an election process, that 50% of the relevant vacancies (or the number that is closest to 50%, rounding down to the nearest whole number) must be filled by candidates that are non-male identifying.

**Gender Quota Rules** means the methods for applying any gender quota in the Election Rules to vacancies. However, for references to "Gender Quota Rules" in this constitution, the methods under the Election Rules apply and must be adapted as necessary. This will include Candidates being read as Final Nominations, Ballot Papers being read as voting papers used by the Members and Supplementary Election being read as that Election Assembly Chamber or a later Assembly Chamber.

**General Member** has the meaning given in clause 3.1.

**Gift Fund** means a fund that is maintained for the Principal Purpose.

**Guidelines** means the values set out in clause 1.3.



**Insolvency Event** means, for a Member, anything that reasonably indicates that there is a significant risk that the Member is or will become unable to pay the Member's debts as they fall due. This includes any of the following (as applicable):

- (a) a meeting of the Member's creditors being called or held;
- (b) a step been taken to make the Member bankrupt;
- (c) an application is presented or an order is made for the sequestration of the Member's estate; or
- (d) the Member entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors.

**Interim Agreement** means an agreement made in acceptance of an interim offer under the Treaty Negotiation Framework.

**ITAA 97** means *Income Tax Assessment Act 1997* (Cth).

**Member** means a person whose name is entered in the Register as a member of the Assembly, until such time as that person stops being a member under this constitution.

**Members' Charter** has the meaning given in clause 4.1.

**Mid-Term Elections** has the meaning given in clause 21.1.2.

**Minister** means the Minister responsible for the Act and their successors, or such other Minister as is appointed by the Premier of Victoria for the purposes of this constitution.

**Office** means the registered office of the Assembly.

**Optional Preferential Vote** means the Vote Counting Method in Schedule 4 to the Election Rules, adapted as necessary to apply to elections of Chairs and Directors under this constitution, this will include Candidates being read as Final Nominations and Ballot Papers being read as voting papers used by the Members.

**Ordinary Majority Resolution** means a resolution that is passed by not less than 60% of votes cast by Members entitled to vote on the resolution, whether in person or by proxy.

**Polling Date** means the date by which completed Ballot papers must be received by the applicable returning officer under the terms of the relevant Ballot, as worked out under clause 19.4.1.

**Principal Purpose** means the purposes of the Assembly as reflected in the object of the Assembly specified in clause 1.1, or any of those purposes.

**Proxy** means a person appointed under clause 20.

**Region** means the geographic region within Victoria set out in the Election Rules or Appointment Rules, as applicable, and for which one or more Members is an elected or appointed representative.

**Region Rules** means the "Region Rules" in schedule 3 or such other rules as the Assembly Chamber may by Ordinary Majority Resolution adopt for determining, reviewing and

proposing changes to Regions, and the processes for enrolling Voters in a particular Region and determining how many Members will be associated with a Region.

**Register** means the register of Members kept by the Assembly under the Corporations Act.

**Registered Entity** means an entity that is registered under the ACNC Act.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Reserved Member** has the meaning given in clause 2.1.

**Secretary** means a person appointed to perform the duties of a secretary of the Assembly.

**Selection Process** has the meaning given in clauses 2.2 and 2.3.

**Self-Determination Fund** means the public charitable trust established by the Self-Determination Fund Trust Deed for the purposes of Part 6 of the Act.

**Self-Determination Fund-Related Matters** means:

- (a) Category 1 matters which are matters:
  - (i) relating to the appointment and removal of the Self-Determination Fund Trustee;
  - (ii) relating to winding up the Self-Determination Fund;
  - (iii) relating to varying the Self-Determination Fund Trust Deed or Self-Determination Fund Trustee Company Constitution; and
  - (iv) relating to ceasing to be a member of the Self-Determination Fund Trustee.
- (b) Category 2 matters which are matters:
  - (i) relating to any directions given to the Self-Determination Fund Trustee under the Self-Determination Fund Trust Deed insofar as they relate to the priority areas of the application of assets of the Self-Determination Fund by the Self-Determination Fund Trustee;
  - (ii) relating to the strategic plan for the Self-Determination Fund; and
  - (iii) relating to the selection criteria for directors of the Self-Determination Fund Trustee and members of the advisory and investment committee established by the Self-Determination Fund Trustee.

**Self-Determination Fund Trust Deed** means the trust deed that establishes the Self-Determination Fund executed by the Self-Determination Fund Trustee.

**Self-Determination Fund Trustee** means the Self-Determination Fund Trustee Ltd.

**Self-Determination Fund Trustee Company Constitution** means the company constitution of Self-Determination Fund Trustee Ltd.

**Special Majority Resolution** means a resolution that:

- (a) is passed by not less than 75% of votes cast by Members entitled to vote on the resolution, whether in person or by proxy or attorney; and
- (b) the notice of resolution:
  - (i) states it is a Special Majority Resolution, and
  - (ii) sets out the resolution.

**State** means the State of Victoria.

**Super Majority Resolution** means a resolution that:

- (a) is passed by not less than 75% of all Members entitled to vote on the resolution at the time (and to avoid doubt such Members may vote in person, by Proxy or attorney); and
- (b) the notice of resolution:
  - (i) states it is a Super Majority Resolution, and
  - (ii) sets out the resolution.

**Termination Event** means:

- (a) An Insolvency Event occurs in respect of the Member.
- (b) The Member dies.
- (c) The Member is not eligible to be a director under the Corporations Act (whether by operation of an order made under the Corporations Act or otherwise).
- (d) The Member did not satisfy the eligibility criteria set out in the Election Rules or the Appointment Rules (as applicable) at the time of admission as a General Member or a Reserved Member (as applicable).
- (e) The Member is not a Traditional Owner.
- (f) The Member is:
  - (i) imprisoned for a period of greater than three months and cannot access technology to enable the Member to participate in the Assembly Chamber;
  - (ii) the subject of an order under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic); or
  - (iii) restricted by bail, parole or other legal mechanisms for a period of greater than three months from travelling within Victoria.
- (g) The member is convicted of an indictable offence.
- (h) If the person is a Reserved Member, the Traditional Owner Group that selected them stops being a Traditional Owner Group.

**Traditional Owner**, for an area in Victoria, has the meaning given in section 3 of the Act.

**Traditional Owner Group** means the members of:

- (a) a Prescribed Body Corporate registered as a native title holder for an area in Victoria where there is a native title agreement under the *Native Title Act 1993* (Cth);
- (b) a Corporation formally recognised under the *Aboriginal Heritage Act 2006* (Vic) as a "Registered Aboriginal Party";
- (c) a Corporation that holds a "Recognition and Settlement Agreement" under the *Traditional Owner Settlement Act 2010* (Vic);
- (d) a group that the Assembly Chamber decides, by a Special Majority Resolution, meets the Additional Traditional Owner Group Criteria (until such time as another group satisfies the requirements of subclause (a), (b) or (c) of this definition for the whole or a part of the same geographic area); or
- (e) another group meeting any new criteria adopted by a Super Majority Resolution of the Assembly Chamber.

**Treaty Authority** means the Treaty Authority established by agreement between the Aboriginal Representative Body and the State for the purposes of Part 4 of the Act.

**Treaty Negotiation Framework** means the Treaty Negotiation Framework established by agreement between the Aboriginal Representative Body and the State for the purposes of Part 5 of the Act.

**Treaty-Related Matters** means each of the following matters:

- (a) matters relating to negotiating, agreeing and enforcing Statewide Treaty or an Interim Agreement; and
- (b) matters otherwise relating to powers, duties and functions conferred on the Assembly as the Aboriginal Representative Body or the First Peoples' Representative Body under legislation or an agreement with the State.

**Voter** means a person who is entitled to vote under the Election Rules.

## **63. INTERPRETATION**

63.1 In this constitution, unless the context otherwise requires:

- 63.1.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this constitution.
- 63.1.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 63.1.3 A reference to a preamble, clause, Part, schedule or attachment is a reference to a preamble, clause, Part, schedule or attachment of or to this constitution.
- 63.1.4 A preamble, schedule or attachment does not form part of this constitution unless the preamble, schedule or attachment expressly states that it is part of this constitution.

- 63.1.5 A reference to "non-male identifying" includes female identifying.
- 63.1.6 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 63.1.7 A word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender indicates the other genders.
- 63.1.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 63.1.9 A reference to 'dollars' or '\$' means Australian dollars.
- 63.1.10 References to the word 'include' or 'including', or to the word 'exclude' or 'excluding', are to be interpreted without limitation.
- 63.1.11 A reference to a time of day means that time of day in the place where the Office is located.
- 63.1.12 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Victoria.
- 63.1.13 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 63.1.14 A term of this constitution which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.
- 63.1.15 A reference to a change to a thing includes a reference to a complete replacement and also to its removal and not having any replacement of it.
- 63.1.16 A reference to a thing being done means the thing may be done any number of times.
- 63.1.17 To avoid doubt, a reference to "when the Assembly was set up" is a reference to when the Assembly was incorporated.
- 63.1.18 A reference to "imposing a sanction" on a Member has the meaning given in clause 9.3 and "sanction" has a corresponding meaning.
- 63.1.19 Headings and boxed text are inserted for convenience only and do not affect the interpretation of this constitution.

#### **References to this constitution**

- 63.2 A reference to this constitution, where amended, means this constitution as so amended.

#### **Replaceable rules**

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

### **Application of Corporations Act**

63.4 Unless the context otherwise requires,

63.4.1 an expression used but not defined in this constitution has the same meaning given in the Corporations Act; and

63.4.2 where an expression referred to in clause 63.4.1 has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as the relevant clause of this constitution, the expression has the same meaning as in that provision.

Subject to clause 63.3, for so long as the Assembly is a Registered Entity:

63.4.3 the provisions in Part 2G.2 and Part 2G.3 of the Corporations Act, for avoidance of doubt, other than section 249H and any section that relates to liabilities, offences or penalties are incorporated into this constitution by reference as if they are repeated in full except to the extent that any section, or any requirement of any section, is modified by this constitution; and

63.4.4 to the extent that the ACNC Act or any law or binding regulation of the ACNC applies to the Assembly and this conflicts with one or more provisions in Part 2G.2 and Part 2G.3 of the Corporations Act, the Assembly must comply with (as applicable) the ACNC Act or that law or binding regulation. However, it is expressly intended by the Members that the Assembly must hold an AGM at least once in each calendar year.

### **SCHEDULE 1: ELECTION RULES**

Refer overleaf.

## **SCHEDULE 1: ELECTION RULES**

### **CONTENTS**

<b>RULES FOR THE ELECTION OF MEMBERS OF THE FIRST PEOPLES' ASSEMBLY OF VICTORIA</b>	<b>3</b>
<b>PART A: PRELIMINARY</b>	<b>3</b>
1 PURPOSE	3
2 COMMENCEMENT	3
3 AMENDMENT	3
4 INTERPRETATION	3
<b>PART B: MEMBERS OF ASSEMBLY</b>	<b>4</b>
5 MEMBERS OF ASSEMBLY	4
6 NUMBER OF GENERAL MEMBERS TO BE ELECTED	4
7 APPOINTMENT OF RESERVED MEMBERS	4
<b>PART C: ENROLMENT</b>	<b>4</b>
8 ELECTORAL ROLL	5
9 ENROLMENT REGISTRAR	5
10 ACCESS TO THE ELECTORAL ROLL	5
11 USE OF ELECTORAL ROLL	6
12 ELIGIBILITY TO BE REGISTERED	6
13 PROCESS FOR REGISTRATION ON ELECTORAL ROLL	7
14 EVIDENCE TO BE PROVIDED FOR REGISTRATION ON ELECTORAL ROLL	8
15 REGISTRATION AS SILENT ELECTOR	8
16 REGISTRATION ADDRESS	9
17 SPECIAL REGISTRATION PROCESSES	10
18 NOTIFICATIONS ABOUT APPLICATION FOR REGISTRATION	10
19 PROVISIONAL ELECTORS AND ELIGIBLE ELECTORS	10
20 CHANGES TO ELECTORAL ROLL	11
21 ENROLMENT COMPLAINTS	11
<b>PART D: ELECTION</b>	<b>14</b>
22 APPOINTMENT OF RETURNING OFFICER	14
23 ELECTION OFFICIALS	14
24 ELECTION DATES	14
25 NOTICE OF ELECTION	15
26 ELECTORAL LIST	15
27 PROVISIONAL ELECTORS	16
<b>PART E: NOMINATION OF CANDIDATES FOR ELECTION</b>	<b>16</b>
28 WHO IS ELIGIBLE TO STAND AS CANDIDATE?	17
29 REGIONS	18
30 HOW TO NOMINATE AS A CANDIDATE	19
31 NOMINATION FORM	19
32 ASSESSING NOMINATIONS	19
33 NOTIFICATIONS ABOUT NOMINATIONS	20

34	EXTENSION OF NOMINATION CLOSING	20
35	ANNOUNCEMENT OF CANDIDATES	21
36	NUMBER OF CANDIDATES	21
37	GENDER QUOTA	22
38	WITHDRAWAL OF CANDIDATE	22
	PART F: RIGHTS AND REQUIREMENTS OF CANDIDATES	23
39	CODE OF CONDUCT	23
40	CAMPAIGNING	23
	PART G: CONDUCT OF ELECTIONS	23
41	CONDUCT OF ELECTIONS	24
42	ORDER OF CANDIDATES	24
43	METHODS OF VOTING	24
44	ABSENT VOTES	25
45	ACCESSIBILITY	25
46	CONDUCT AT ELECTIONS	26
47	PROVISIONAL VOTING	26
	PART H: ELECTION OUTCOMES	27
48	DETERMINING ELECTION OUTCOMES	27
49	APPLYING THE GENDER QUOTA	27
50	TIED VOTES	27
51	SCRUTINEERS	27
52	ANNOUNCEMENT OF ELECTION RESULTS	28
	PART I: ELECTION COMPLAINTS	28
53	ELECTION COMPLAINTS	28
54	PEACEMAKERS	31
	PART J: DEFINITIONS AND INTERPRETATION	32
55	DEFINITIONS	32
56	INTERPRETATION	34
	SCHEDULE 1: REGIONS	35
	SCHEDULE 2: PERMITTED FORMS OF EVIDENCE	36
	PART 1: ACCEPTABLE EVIDENCE	36
	PART 2: ALTERNATIVES IF EVIDENCE SPECIFIED IN PART 1 CANNOT BE PROVIDED	37
	PART 3 BORDER AREA MAP	38
	SCHEDULE 3: CODE OF CONDUCT	39
	SCHEDULE 4: VOTE COUNTING METHOD	41
	SCHEDULE 5: GENDER QUOTA COUNTBACK PROCEDURE	45
	SCHEDULE 6: RULES RELATING TO SCRUTINEERS	48



# RULES FOR THE ELECTION OF MEMBERS OF THE FIRST PEOPLES' ASSEMBLY OF VICTORIA

## PART A: PRELIMINARY

Part A sets out rules about:

- Purpose.
- Commencement.
- Amendment.
- Interpretation.

### 1 PURPOSE

- 1.1 The purpose of these Rules is to govern the electoral processes for the First Peoples' Assembly of Victoria, that is the Aboriginal Representative Body under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).
- 1.2 These Rules do not form part of the Constitution of the Assembly.

### 2 COMMENCEMENT

- 2.1 These Rules come into force on the day that they are adopted by the Assembly Chamber by Ordinary Majority Resolution.
- 2.2 These Rules replace the Election Rules (Version 3.0) adopted by the Assembly Chamber by Ordinary Majority Resolution on 2 December 2020.
- 2.3 Anything of a continuing nature commenced under the previous Election Rules and continuing immediately before the commencement of these Rules has effect and may be continued and completed under these Rules.

### 3 AMENDMENT

- 3.1 These Rules may be amended or replaced by the Assembly Chamber by Ordinary Majority Resolution.
- 3.2 These Rules may only be amended in an Election Period if:
  - (a) there are unanticipated circumstances that require these Rules to be amended to maintain the integrity of the Election; and
  - (b) the Assembly Chamber adopts the amendment by Ordinary Majority Resolution.

### 4 INTERPRETATION

- 4.1 Part J sets out definitions and interpretation rules for these Rules.
- 4.2 If there is any inconsistency between a provision of these Rules and the Constitution, the Constitution prevails.

## **PART B: MEMBERS OF ASSEMBLY**

Part B sets out rules about the Members of the Assembly.

### **5 MEMBERS OF ASSEMBLY**

5.1 The Assembly consists of General Members and Reserved Members.

### **6 NUMBER OF GENERAL MEMBERS TO BE ELECTED**

6.1 In each Election, the number of General Members to be elected across the Regions is determined in accordance with the Region Rules.

6.2 22 General Members are to be elected from across the Regions as set out in the following table:

<b>Region*</b>	<b>Number of General Members to be elected from that Region</b>
Metropolitan	10
South West	3
North West	3
North East	3
South East	3
<b>TOTAL</b>	<b>22</b>

**\*See Map in Schedule 1.**

6.3 An Election of General Members must be held in accordance with the procedure set out in Parts D to H.

### **7 APPOINTMENT OF RESERVED MEMBERS**

7.1 The Reserved Members of the Assembly will be appointed in accordance with the procedure set out in the Constitution and the Appointment Rules.

## **PART C: ENROLMENT**

Part C sets out rules about:

- The establishment of and access to the Electoral Roll.
- The appointment and role of the Enrolment Registrar.
- Access to the Electoral Roll.
- Use of the Electoral Roll.
- Eligibility and the process for registration on the Electoral Roll.

- |   |
|---|
| <ul style="list-style-type: none"><li>- Changes to the Electoral Roll.</li><li>- Enrolment Complaints relating to registration.</li></ul> |
|---|

## **8 ELECTORAL ROLL**

- 8.1 The Electoral Roll is established to register people to enable them to vote in an Election.
- 8.2 The Electoral Roll is independent of any other existing electoral rolls, including those held by Australian Electoral Commission and the Victorian Electoral Commission.

## **9 ENROLMENT REGISTRAR**

- 9.1 The Council must appoint a person to be the Enrolment Registrar.
- 9.2 The Council may remove the person appointed as Enrolment Registrar from office.
- 9.3 The Enrolment Registrar is responsible for the maintenance and security of the Electoral Roll in accordance with these Rules.
- 9.4 The Enrolment Registrar has the powers and duties that are conferred on the Enrolment Registrar by these Rules.
- 9.5 The Council may appoint a person to be the Acting Enrolment Registrar in the event that the Enrolment Registrar is absent or unable to carry out the duties of Enrolment Registrar.
- 9.6 The Council may remove the person appointed as Acting Enrolment Registrar from office.
- 9.7 The Acting Enrolment Registrar has the powers and duties of the Enrolment Registrar while acting in that role.
- 9.8 The Enrolment Registrar may appoint or authorise persons to be Enrolment Officials to assist with the ongoing maintenance and security of the Electoral Roll.
- 9.9 The Enrolment Registrar may delegate any of the Enrolment Registrar's powers and functions (other than this power of delegation) to an Enrolment Official.

## **10 ACCESS TO THE ELECTORAL ROLL**

### **Format**

- 10.1 The Electoral Roll may be kept in both electronic and hard copy formats.

### **Who has access to the Electoral Roll?**

- 10.2 The Electoral Roll is not to be publicly available.
- 10.3 The Electoral Roll is to be available for the Assembly only for a purpose permitted by Rule 11.
- 10.4 A Member of the Assembly does not have access to the Electoral Roll.
- 10.5 A Candidate does not have access to the Electoral Roll.
- 10.6 The Electoral Roll must not be shared with, or accessed by, anyone unless these Rules expressly permit it, or if required by law.

## **11 USE OF ELECTORAL ROLL**

### **What can the Electoral Roll be used for?**

11.1 The Electoral Roll may only be used for the following purposes:

- (a) any purpose related to the administration of enrolment and the conduct of Elections;
- (b) contacting voters with information about the Assembly;
- (c) compiling statistics and data about voters in a de-identified manner; and
- (d) any purpose reasonably related to a purpose set out in this Rule.

## **12 ELIGIBILITY TO BE REGISTERED**

### **Who is eligible to be registered to vote?**

12.1 A person may be registered on the Electoral Roll as an Eligible Elector if the person is an Eligible Person.

### **Who is an Eligible Person?**

12.2 A person is an Eligible Person if they satisfy each of the following requirements:

- (a) First requirement: The person must be an individual who is aged 16 years or above.
- (b) Second requirement: The person must be either:
  - (i) a Victorian Traditional Owner; or
  - (ii) an Aboriginal or Torres Strait Islander person who lives in Victoria.

### **About the first requirement**

12.3 A person's age must be calculated as at the day that the person provides their enrolment form to the Enrolment Registrar.

12.4 Despite Rule 12.2(a), a person may be registered on the Electoral Roll if the person is an individual aged 15 years or above and meets the second requirement.

12.5 A person who is registered in accordance with Rule 12.4 is not eligible to vote in an Election unless the person is aged 16 years or above at Voting Closing.

### **About the second requirement**

12.6 A person is an Aboriginal or Torres Strait Islander person for the purposes of these Rules, if the person:

- (a) identifies as an Aboriginal or Torres Strait Islander person;
- (b) is of Aboriginal or Torres Strait Islander descent; and
- (c) is accepted as an Aboriginal or Torres Strait Islander person in the Aboriginal or Torres Strait Islander community.

12.7 A person lives in Victoria for the purposes of these Rules if:

- (a) the person's current residential address is in Victoria; and
- (b) the person has been living in Victoria for three years out of the five-year period ending on the date the person provides their enrolment form to the Enrolment Registrar.

## **13 PROCESS FOR REGISTRATION ON ELECTORAL ROLL**

### **How does an Eligible Person apply to be registered?**

- 13.1 An Eligible Person may apply to be registered on the Electoral Roll by:
- (a) completing the enrolment form; and
  - (b) providing the completed enrolment form to the Enrolment Registrar.
- 13.2 The Enrolment Registrar must publish, in a publicly accessible location, details of the process for applying to be registered on the Electoral Roll.

### **When can a person apply to be registered?**

- 13.3 An Eligible Person may apply to be registered on the Electoral Roll at any time.
- 13.4 Rule 27 applies if a person applies to be registered on the Electoral Roll after the Preliminary Close of the Roll.

### **What information must be provided?**

- 13.5 The enrolment form must include the following information about the Eligible Person:
- (a) their full name;
  - (b) their date of birth;
  - (c) their current residential address;
  - (d) their postal address (if different from the current residential address); and
  - (e) any other information required by the Enrolment Registrar.
- 13.6 The enrolment form may include the following optional information about the Eligible Person if they choose to provide it:
- (a) the name of their clan, nation or mob;
  - (b) their gender;
  - (c) their email address; or
  - (d) their phone number.

### **What declarations must be made?**

- 13.7 An Eligible Person must make one of the following declarations on the enrolment form:
- (a) I am a Victorian Traditional Owner and I live in Victoria;
  - (b) I am a Victorian Traditional Owner and I live outside Victoria; or
  - (c) I am an Aboriginal or Torres Strait Islander person (but not a Victorian Traditional Owner) and I live in Victoria and I have lived in Victoria for three years out of the last five years.
- 13.8 The enrolment form must include a declaration that the information provided is correct.

### **Enrolment form may include request for consent**

- 13.9 The enrolment form may include a consent to the collection, use, storage and disclosure of the Eligible Person's personal and sensitive information as required under these Rules.

## **14 EVIDENCE TO BE PROVIDED FOR REGISTRATION ON ELECTORAL ROLL**

### **What evidence will need to be provided?**

- 14.1 Subject to Rule 14.3, a person who applies for registration on the Electoral Roll must provide evidence of the following:
- (a) their name; and
  - (b) their current residential address if the person lives in Victoria.
- 14.2 Part 1 of Schedule 2 sets out the documents that will be accepted as evidence for Rule 14.1.
- 14.3 Part 2 of Schedule 2 sets out rules that will apply if the person cannot provide the evidence set out in Part 1 of Schedule 2.

### **Victorian Traditional Owners who live outside of Victoria**

- 14.4 A Victorian Traditional Owner who lives outside Victoria who applies for registration on the Electoral Roll must provide evidence or authorise the provision of evidence that they are a Victorian Traditional Owner.
- 14.5 The evidence may be a verification in a form approved by the Enrolment Registrar from:
- (a) a Traditional Owner Group;
  - (b) an Aboriginal Community Controlled Organisation nominated by the Enrolment Registrar; or
  - (c) another organisation nominated by the Enrolment Registrar.
- 14.6 If a person is unable to provide the evidence referred to in Rule 14.5, the person may provide a statutory declaration declaring that they are a Victorian Traditional Owner.
- 14.7 Rule 14.4 does not apply to a person who lives in a Border Area.

## **15 REGISTRATION AS SILENT ELECTOR**

- 15.1 An Eligible Person may ask the Enrolment Registrar to be registered as a Silent Elector.
- 15.2 The request must include a declaration made by the Eligible Person that showing their residential address or postal address (or both) on the Electoral Roll would place the person's personal safety or the safety of their family at risk.
- 15.3 An Eligible Person does not need to provide details about why they consider their safety or the safety of their family is at risk.
- 15.4 If an Eligible Person is registered as a Silent Voter:
- (a) the Enrolment Registrar must ensure that the Eligible Person's residential address or postal address (or both) do not appear on the Electoral Roll or the Electoral List used for an Election; and
  - (b) access to the Eligible Person's residential address or postal address (or both) will otherwise be restricted as determined by the Enrolment Registrar.

## **16 REGISTRATION ADDRESS**

### **General**

- 16.1 An Eligible Person must be registered on the Electoral Roll in the Region in which their current residential address notified to the Enrolment Registrar is located.
- 16.2 If an Eligible Person's current residential address is not wholly within one Region, the Eligible Person must be registered on the Electoral Roll in the Region that covers the largest geographical area of the property at that address.

### **Victorian Traditional Owners who live in a Border Area**

- 16.3 If an Eligible Person is a Victorian Traditional Owner who lives in a Border Area, the person must be registered on the Electoral Roll in the Region closest to their current residential address.

### **Victorian Traditional Owners who live outside Victoria but not in a Border Area**

- 16.4 If an Eligible Person is a Victorian Traditional Owner who lives outside Victoria but not in a Border Area, the person must be registered on the Electoral Roll at the first of the following addresses that is known and applies in descending order of priority:
- (a) the residential address of the person when they last lived in Victoria;
  - (b) the current or most recent residential address in Victoria of either of the person's parents;
  - (c) the current or most recent residential address in Victoria of any of the person's grandparents; or
  - (d) the Victorian address of the most recently known apical ancestor of the person to live in Victoria.

### **Special circumstances**

- 16.5 Rule 16.6 applies to an Eligible Person who at the time of registration on the Electoral Roll is:
- (a) experiencing homelessness;
  - (b) living in out of home care;
  - (c) serving in the armed forces; or
  - (d) in custody in a Prison or a Youth Justice Centre.
- 16.6 The Eligible Person must be registered on the Electoral Roll at the first of the following addresses that is known and applies in descending order of priority:
- (a) the residential address of the person when they last lived in Victoria;
  - (b) the current or most recent residential address in Victoria of either of the person's parents;
  - (c) the current or most recent residential address in Victoria of any of the person's grandparents;
  - (d) if the person is experiencing homelessness, the address of the service provider who most recently provided them with overnight accommodation;
  - (e) if the person is living in out of home care, the address of the service provider where the person is currently living in out of home care;

- (f) if the person is serving in the armed forces, the Victorian address of the most recently known apical ancestor of the person to live in Victoria; or
- (g) if the person is in custody in a Prison or Youth Justice Centre, the address of the Prison or Youth Justice Centre.

16.7 For Rule 16.6, a person's residential address does not include:

- (a) in the case of a person experiencing homelessness, the address of the service provider who provides them with overnight accommodation;
- (b) in the case of a person living in out of home care, the address of the service provider where the person is living in out of home care; and
- (c) a Prison or Youth Justice Centre.

## **17 SPECIAL REGISTRATION PROCESSES**

17.1 The Enrolment Registrar may approve special registration processes for Eligible Persons who may have difficulty with the registration processes set out in Rules 13 to 15, including Eligible Persons:

- (a) with accessibility needs;
- (b) who are under 18 years of age;
- (c) who are experiencing homelessness;
- (d) who are living in out of home care;
- (e) who are serving in the armed forces; or
- (f) who are in custody in a Prison or Youth Justice Centre.

17.2 The Enrolment Registrar must document the approved special registration processes.

## **18 NOTIFICATIONS ABOUT APPLICATION FOR REGISTRATION**

18.1 The Enrolment Registrar must notify a person who applies for registration on the Electoral Roll in writing of:

- (a) the receipt of the application; and
- (b) the decision on the application.

## **19 PROVISIONAL ELECTORS AND ELIGIBLE ELECTORS**

19.1 A person who applies under Rule 13 to be registered on the Electoral Roll must be registered as a Provisional Elector until the person is confirmed as an Eligible Elector.

19.2 The Enrolment Registrar must confirm a person as an Eligible Elector if the Enrolment Registrar is satisfied that:

- (a) the person is an Eligible Person; and
- (b) the registration of the person complies with these Rules.

19.3 If the Enrolment Registrar is not satisfied that a person who applies for registration on the Electoral Roll is an Eligible Person or that the registration of the person complies with these Rules, the Enrolment Registrar must:

- (a) reject the application; and



- (b) remove the person from the Electoral Roll.

19.4 The Enrolment Registrar must take reasonable steps to confirm a person as an Eligible Elector before rejecting the person's application for registration.

19.5 Rule 47 sets out special processes for voting by Provisional Electors.

## **20 CHANGES TO ELECTORAL ROLL**

### **Changes to Electors' details on Electoral Roll**

20.1 An Elector may apply to the Enrolment Registrar to change their enrolment details on the Electoral Roll.

20.2 An application must be made in a way approved by the Enrolment Registrar.

20.3 An application must include written confirmation by the Elector that the changed enrolment details are correct.

20.4 If an Elector applies to change their name on the Electoral Roll, the Elector must provide evidence of the new or changed name.

20.5 If an Elector applies to change their address on the Electoral Roll, the Enrolment Registrar must be reasonably satisfied that the new or changed address complies with these Rules before recording the change on the Electoral Roll.

20.6 The Enrolment Registrar may ask the Elector for more information about the proposed change before recording the change on the Electoral Roll.

### **Removal of Elector from Electoral Roll**

20.7 An Elector may apply in writing to the Enrolment Registrar to be removed from the Electoral Roll.

20.8 The Enrolment Registrar may ask the Elector for more information about the identity of the Elector before removing the Elector from the Electoral Roll.

20.9 The Enrolment Registrar must remove the Elector from the Electoral Roll if the Enrolment Registrar is satisfied that:

- (a) sufficient information has been provided to identify the Elector; and
- (b) the Elector has made the application for removal voluntarily.

20.10 The Enrolment Registrar must remove an Elector from the Electoral Roll if:

- (a) there is a determination under Rule 21.6, 21.8(b) or 21.22 that the Elector is not eligible to be registered; or
- (b) the Enrolment Registrar, after taking reasonable steps, is reasonably satisfied that the Elector is deceased.

20.11 Removal of an Elector from the Electoral Roll does not impact the validity of a vote already cast by the Elector in an Election.

## **21 ENROLMENT COMPLAINTS**

### **Who may make an Enrolment Complaint and what may an Enrolment Complaint be about?**

21.1 The following persons may make a complaint about a decision of the Enrolment Registrar:

- (a) an applicant for registration on the Electoral Roll, in relation to a decision to reject the application; or
- (b) an Elector, in relation to a decision to accept or reject an application for registration on the Electoral Roll that the Elector reasonably believes was invalidly accepted or rejected, including a decision about the Region for which a person is, or is to be, registered.

#### **How may an Enrolment Complaint be made?**

- 21.2 An Enrolment Complaint must be lodged in writing with the Enrolment Registrar.
- 21.3 An Enrolment Complaint must include the reasons for the complaint and the persons involved.

#### **Enrolment Registrar to publish information about Enrolment Complaint procedures**

- 21.4 The Enrolment Registrar must publish, in a publicly accessible location, information about how to make an Enrolment Complaint.

#### **Resolution of Enrolment Complaints**

- 21.5 The Enrolment Registrar must refer an Enrolment Complaint to the Enrolment Dispute Resolution Panel for determination if the complaint relates to whether a person is a Victorian Traditional Owner or an Aboriginal or Torres Strait Islander person.
- 21.6 The Enrolment Registrar must determine any other Enrolment Complaint lodged under this Rule.

#### **Enrolment Registrar may conduct own inquiries**

- 21.7 The Enrolment Registrar may also, without an application, inquire into whether a registration on the Electoral Roll is invalid.
- 21.8 If, on an inquiry under Rule 21.7, the Enrolment Registrar reasonably considers that a registration of a person on the Electoral Roll may be invalid, the Enrolment Registrar must:
  - (a) refer the matter to the Enrolment Dispute Resolution Panel for determination, if it relates to whether a person is a Victorian Traditional Owner or an Aboriginal or Torres Strait Islander person; or
  - (b) determine the matter, in any other case.

#### **Determination by the Enrolment Registrar**

- 21.9 Before making a determination under Rule 21.6 or 21.8(b), the Enrolment Registrar must:
  - (a) give the persons involved reasonable notice of the matter and the opportunity to be heard;
  - (b) comply with the rules of natural justice; and
  - (c) consider all information provided to, or obtained by, the Enrolment Registrar in relation to the matter.
- 21.10 The Enrolment Registrar must notify all persons involved following a determination under Rule 21.6 or 21.8(b).

21.11 Any person involved may apply to the Enrolment Registrar for a review by the Enrolment Dispute Resolution Panel of a determination under Rule 21.6 or 21.8(b).

21.12 An application for review by a person must be made within 30 days after the person is notified of the determination of the complaint.

### **Convening of Enrolment Dispute Resolution Panel**

21.13 The Council must convene an Enrolment Dispute Resolution Panel to deal with:

- (a) an Enrolment Complaint referred under Rule 21.5 or 21.8(b); or
- (b) an application for review under Rule 21.11.

21.14 The Enrolment Dispute Resolution Panel must be constituted as follows:

- (a) the Panel must have at least 3 members;
- (b) each member of the Panel must be an Aboriginal or Torres Strait Islander person;
- (c) at least one member of the Panel must be a Victorian Traditional Owner;
- (d) at least one member of the Panel must be a male identifying person; and
- (e) at least one member of the Panel must be a non-male identifying person.

21.15 The members of the Enrolment Dispute Resolution Panel must be impartial and not have interests in or be related to any person who is a party to:

- (a) an Enrolment Complaint to be determined by the Panel; or
- (b) an application for review to be determined by the Panel.

21.16 The Council must appoint a new member of the Panel in accordance with the requirements of Rule 21.14, if a member is not able to sit on the Panel because of a conflict of interest and there are fewer than 3 members as a result.

21.17 The Enrolment Registrar may publish guidelines about conflicts of interest.

### **Determination by Enrolment Dispute Resolution Panel**

21.18 The person who made the Enrolment Complaint or the application for review must provide the Enrolment Dispute Resolution Panel with any evidence and assistance that it reasonably requests.

21.19 The Enrolment Dispute Resolution Panel may dismiss the Enrolment Complaint or the application for review if the evidence and assistance requested under Rule 21.18 is not provided.

21.20 In determining an Enrolment Complaint or an application for review, the Enrolment Dispute Resolution Panel:

- (a) may seek advice from persons with suitable expertise;
- (b) may conduct its own inquiries;
- (c) must give persons involved reasonable notice of the matter and the opportunity to be heard;
- (d) must comply with the rules of natural justice;
- (e) must consider all information provided to, or obtained by, the Panel in relation to the matter; and

- (f) must act efficiently and finalise the Enrolment Complaint or application for review in a timely manner using culturally strong processes.
- 21.21 Subject to Rule 21.20, the Enrolment Dispute Resolution Panel may determine its own procedure.
- 21.22 A determination of the Enrolment Dispute Resolution Panel made under this Rule is final.
- 21.23 The Enrolment Dispute Resolution Panel must give its determination in writing to the Enrolment Registrar.
- 21.24 The Enrolment Registrar must give notice of the determination to:
- (a) the person whose registration is affected; and
  - (b) any other party to the Enrolment Complaint or application for review (as applicable).

## **PART D: ELECTION**

Part D sets out rules about:

- The appointment of a Returning Officer and Election Officials for an Election.
- Election dates.
- The Electoral List.
- Provisional Electors.

### **22 APPOINTMENT OF RETURNING OFFICER**

- 22.1 The Council must appoint a person as the Returning Officer for an Election.
- 22.2 The Council may only remove a person appointed as the Returning Officer from office:
- (a) as a result of the incapacity of the person; or
  - (b) if the removal is necessary to ensure the integrity of the Election process.
- 22.3 The role of the Returning Officer is to oversee the Election.
- 22.4 The Returning Officer has all the powers and duties in relation to an Election that are conferred on the Returning Officer by these Rules.

### **23 ELECTION OFFICIALS**

- 23.1 The Returning Officer for an Election may appoint or authorise persons as Election Officials to support the conduct of the Election.
- 23.2 The Returning Officer may delegate any of the Returning Officer's powers and functions (other than this power of delegation) to an Election Official.

### **24 ELECTION DATES**

- 24.1 The Council must set the Election dates and times for an Election in accordance with the following requirements:
- (a) a date and time must be set for the Nomination Opening;

- (b) a date and time must be set for the Nomination Closing that must be at least 10 days after the Nomination Opening;
  - (c) a date and time must be set for the Announcement of Candidates that must be after the Nomination Closing but before the Voting Opening;
  - (d) a date and time must be set for the Preliminary Close of the Roll that must be before the Voting Opening;
  - (e) a date and time must be set for the Voting Opening that must be at least 10 days after the Nomination Closing;
  - (f) a date and time must be set for the Voting Closing that must be at least 10 days after the Voting Opening;
  - (g) a date and time must be set for the Vote Counting and, if there are postal votes, the date for Vote Counting must be at least 10 days after the Voting Closing.
- 24.2 The Council may amend an Election date to a later date if the Council considers it is appropriate in the circumstances to do so.
- 24.3 If an Election date is amended the Council may:
- (a) amend any subsequent Election date to the amended Election date; and
  - (b) amend the Notice of Election and make any other consequential amendments required as a result of the amended Election date.

## **25 NOTICE OF ELECTION**

- 25.1 The Returning Officer must publish, in a publicly accessible location, a Notice of Election before the beginning of the Election Period for the Election.
- 25.2 If a Returning Officer is not yet appointed for the Election, the Notice of Election must be published by the Council.
- 25.3 The Notice of Election must set out the process for nominating as a Candidate.
- 25.4 Subject to Rule 25.5, the Notice of Election must set out the Election dates and times set by the Council under Rule 24.
- 25.5 The Returning Officer is not required to publish the date and time of the Preliminary Close of the Roll in the Notice of Election.

## **26 ELECTORAL LIST**

- 26.1 The Enrolment Registrar must prepare an Electoral List for an Election, as soon as practicable after the Preliminary Close of the Roll for that Election.
- 26.2 Subject to Rules 26.3 to 26.5, the Electoral List is to be the Electoral Roll as it exists at the date the Electoral List is prepared.
- 26.3 The name of a person who applied for registration on the Electoral Roll before the Preliminary Close of the Roll in an Election and whose application is accepted after the Preliminary Close of the Roll may be added to the Electoral List for the Election.
- 26.4 A person who applied to have their enrolment details changed on the Electoral Roll before the Preliminary Close of the Roll in an Election and whose application is accepted after the

Preliminary Close of the Roll may have their enrolment details changed on the Electoral List for the Election.

26.5 The following must not be included on the Electoral List for an Election:

- (a) the name of any Elector who will not be 16 years of age by Voting Closing;
- (b) the name of any Elector who is not an Eligible Elector;
- (c) subject to Rule 26.3, the name of any Elector added to the Electoral Roll after the Preliminary Close of the Roll;
- (d) subject to Rule 26.4, any changes to an Elector's details on the Electoral Roll that are made after the Preliminary Close of the Roll;
- (e) the name of any Elector whose enrolment application is received after the Preliminary Close of the Roll; and
- (f) any changes to an Elector's details that are received by the Enrolment Registrar after the Preliminary Close of the Roll.

26.6 Rules 10 and 11 apply to the Electoral List in the same way as they apply to the Electoral Roll.

## **27 PROVISIONAL ELECTORS**

27.1 A person may make an enrolment application under Rule 13 to the Enrolment Registrar after the Preliminary Close of the Roll.

27.2 A person may apply under Rule 20 for a change to the person's enrolment details on the Electoral Roll after the Preliminary Close of the Roll.

27.3 A person referred to in Rule 27.1 or 27.2 must be recorded on the Electoral Roll as a Provisional Elector until, as applicable:

- (a) the person is confirmed as an Eligible Elector; or
- (b) the changes to the person's enrolment details are recorded in the Electoral Roll.

27.4 The Enrolment Registrar must notify the following of the date of the Vote Counting:

- (a) a person who makes an enrolment application after the Preliminary Close of the Roll and before the Vote Counting; and
- (b) a person who applies to the Enrolment Registrar to change the Elector's enrolment details after the Preliminary Close of the Roll and before the Vote Counting.

27.5 Rule 47 sets out special processes for voting by Provisional Electors.

## **PART E: NOMINATION OF CANDIDATES FOR ELECTION**

Part E sets out rules about:

- Eligibility to stand as a Candidate.
- The processes for nomination as a Candidate.
- The number of Candidates elected.
- The Gender Quota.
- Withdrawal of Candidates.

## 28 WHO IS ELIGIBLE TO STAND AS CANDIDATE?

28.1 A person is eligible to stand as a Candidate for election if the person meets all of the requirements set out in the column 1 of the table in Rule 28.2.

28.2 The following table sets out the eligibility requirements for a person to stand as a Candidate for election, and how the Returning Officer will verify that the requirements are met:

Requirement	Verification
1. The person must be an Eligible Elector.	The Returning Officer must confirm this with the Enrolment Registrar.
2. The person must be an individual who is aged 18 years or above, calculated at the date the person submits the nomination form.	The Returning Officer must: <ul style="list-style-type: none"><li>confirm this with the Enrolment Registrar; or</li><li>request the person to provide evidence of the person's date of birth.</li></ul>
3. The person must be a Victorian Traditional Owner.	<p>The person must:</p> <ul style="list-style-type: none"><li>declare on the nomination form that they are a Victorian Traditional Owner; and</li><li>provide the Returning Officer with one of the following forms of evidence or authorise the evidence to be provided to the Returning Officer:</li></ul> <p>The evidence may be:</p> <ul style="list-style-type: none"><li>a verification in a form approved by the Returning Officer from:<ul style="list-style-type: none"><li>a Traditional Owner Group;</li><li>an Aboriginal Community Controlled Organisation nominated by the Returning Officer; or</li><li>another organisation nominated by the Returning Officer; or</li></ul></li><li>if they are unable to provide a verification set out above:<ul style="list-style-type: none"><li>a statutory declaration provided at the time of nomination that the person is a Victorian Traditional Owner; and</li><li>a confirmation that the person is a Victorian Traditional Owner signed by 10 Eligible Electors.</li></ul></li></ul>

4. The person must not be disqualified from acting as a director of a company under the <i>Corporations Act 2001</i> (Cth).	<p>The person must declare on the nomination form that they meet this requirement.</p> <p>The Returning Officer must search the registers maintained by the Australian Securities and Investments Commission and the Australian Financial Security Authority.</p> <p>The person must provide the Returning Officer with any information required to conduct this search.</p>
5. The person must not: <ul style="list-style-type: none"> <li>• be in prison;</li> <li>• be the subject of an order under the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> (Vic); or</li> <li>• be restricted by bail, parole or other legal mechanisms from travelling within Victoria.</li> </ul>	<p>The person must declare on the nomination form that they meet this requirement and consent to the Returning Officer conducting a National Police Records Check.</p> <p>The Returning Officer must conduct a National Police Records Check.</p> <p>The person must provide the Returning Officer with all information required to undertake a National Police Records Check.</p>
6. The person must be able to comply with the rights and responsibilities of a Member of the Assembly, as set out in the Constitution and the Members' Charter.	<p>The person must declare on the nomination form that they meet this requirement.</p>

28.3 A person must provide the declarations and other information required by column 2 of the table in Rule 28.2 to the Returning Officer before the Nomination Closing.

28.4 The Returning Officer must verify the eligibility requirements in rows 1-4 and 6 of the table in Rule 28.2 are met before the Announcement of Candidates.

28.5 The Returning Officer may verify the eligibility requirement in row 5 of the table in Rule 28.2 is met after the Announcement of Candidates.

28.6 A person cannot be declared to be elected if the Returning Officer has not verified that all of the eligibility requirements in the table in Rule 28.2 are met.

## 29 REGIONS

### In which Region can a person nominate as a Candidate for election?

29.1 A person may nominate as a Candidate for election (at their choice) either for:

- (a) the Region containing the person's current residential address in Victoria; or
- (b) the Region the person identifies as including their traditional country as a Victorian Traditional Owner.



## **30 HOW TO NOMINATE AS A CANDIDATE**

- 30.1 A person may nominate as a Candidate for election by:
- (a) completing the nomination form approved by the Returning Officer; and
  - (b) giving the completed nomination form to the Returning Officer after the Nomination Opening and before the Nomination Closing.
- 30.2 The Returning Officer must not accept a nomination form after the Nomination Closing.
- 30.3 The Returning Officer may ask for more information from a Nominee before or after the Nomination Closing.
- 30.4 The Returning Officer must bear the costs associated with a nomination of a person as a Candidate for election up to a maximum amount determined by the Council.

## **31 NOMINATION FORM**

- 31.1 The nomination form must include the following:
- (a) the information and declarations required by column 2 of the table in Rule 28.2 to show whether the person meets the eligibility requirements in column 1 of that table to stand as a Candidate at the Election;
  - (b) the information required to meet the Region requirements under Rule 29;
  - (c) the name of the Nominee as they would like it to appear on the Ballot Paper, in the form of Preferred given name, FAMILY NAME; and
  - (d) the gender of the Nominee, in particular, whether the Nominee identifies as male, female or another gender. A statement of a person's gender on a nomination form is not to be challenged or disputed under these Rules.
- 31.2 The nomination form may include:
- (a) information in the form of a Candidate Statement that must not exceed 200 words; and
  - (b) a Passport-style photograph of the Nominee.
- 31.3 The nomination form must ask for the Nominee to give the following consents:
- (a) a consent to the collection, use, storage and disclosure of the Nominee's personal and sensitive information as required under these Rules;
  - (b) a consent to the publication of the Nominee's name and Region and, if provided, the Candidate Statement and the Nominee's photograph;
  - (c) a consent required by the table in Rule 28.2; and
  - (d) a consent to be elected as a General Member of the Assembly.
- 31.4 The nomination form may ask for any other information, evidence, declaration or consent that the Returning Officer considers necessary.

## **32 ASSESSING NOMINATIONS**

- 32.1 The Returning Officer must accept the nomination of a person as a Candidate before the Announcement of Candidates if the Returning Officer considers that:

- (a) the Nominee meets the eligibility requirements in column 1 of the table in Rule 28.2; and
  - (b) the nomination meets the other requirements of these Rules.
- 32.2 If the Returning Officer accepts the nomination of a person as a Candidate, the Returning Officer must publish, in a publicly accessible location, the Candidate's name and Region and if provided, the Candidate's photograph and Candidate Statement.
- 32.3 If the Returning Officer is not satisfied of the matters in Rule 32.1, the Returning Officer must reject the nomination.
- 32.4 Before rejecting the nomination, the Returning Officer must give the person the opportunity, within the reasonable period determined by the Returning Officer, to provide any information required to meet the eligibility requirements or other requirements of these Rules.
- 32.5 The period determined by the Returning Officer under Rule 32.4 may be after the Nomination Closing but must be before the Announcement of Candidates.
- 32.6 Only a person who is accepted as a Candidate may stand for election as a General Member of the Assembly.
- 32.7 An acceptance of a Candidate under this Rule is a provisional acceptance until the Returning Officer has verified the eligibility requirements in the table in Rule 28.2 are met.

### **33 NOTIFICATIONS ABOUT NOMINATIONS**

- 33.1 The Returning Officer must notify a Nominee of:
- (a) the receipt of the nomination; and
  - (b) the decision on the nomination.
- 33.2 A notice of a decision must be given to a person before the Announcement of Candidates.
- 33.3 A person who disagrees with a decision to reject the nomination of the person as a Candidate may make a complaint under Rule 53.

### **34 EXTENSION OF NOMINATION CLOSING**

- 34.1 The Returning Officer may extend the Nomination Closing by up to 5 days if:
- (a) the number of accepted Candidates in a Region is less than the number of vacancies in that Region; or
  - (b) the Gender Quota for that Region cannot be met.
- 34.2 The Returning Officer must publish, in a publicly accessible location, a notice of the extension of the Nomination Closing.
- 34.3 If the Nomination Closing is extended under this Rule, the Council may:
- (a) amend any subsequent Election date to the extended Nomination Closing date; and
  - (b) amend the Notice of Election and make any other consequential amendments required as a result of the extension of the Nomination Closing date or the amendment of any other Election date under this Rule.

## **35 ANNOUNCEMENT OF CANDIDATES**

35.1 On the Announcement of Candidates, the Returning Officer:

- (a) must publish, in a publicly accessible location, the accepted Candidates, including the Candidate's name and Region and, if provided, the Candidate's photograph and Candidate Statement; and
- (b) may otherwise publicise the Candidates as the Returning Officer thinks fit.

35.2 The Returning Officer may edit a Candidate Statement referred to in Rule 32.2 or 35.1 before it is published or refuse to publish a Candidate Statement if the Returning Officer considers it necessary, for example, if the Returning Officer believes the Statement may be misleading, deceptive or defamatory.

## **36 NUMBER OF CANDIDATES**

36.1 If, after the Announcement of Candidates, the number of Candidates in a Region exceeds the number of vacancies and the Gender Quota can be met, the Returning Officer must conduct an Election in accordance with these Rules.

36.2 If, after the Announcement of Candidates, the number of Candidates in a Region exceeds the number of vacancies and the Gender Quota cannot be met, the Returning Officer must:

- (a) conduct an Election to determine which male identifying Candidates are to be elected; and
- (b) conduct a Supplementary Election to fill any vacancy to be occupied by a non-male identifying Candidate.

36.3 If, after the Announcement of Candidates, the number of Candidates in a Region is equal to the number of vacancies and the Gender Quota can be met, the Returning Officer must declare each Candidate to be elected and no Election is required in that Region.

36.4 If, after the Announcement of Candidates, the number of Candidates in a Region is equal to the number of vacancies and the Gender Quota cannot be met, the Returning Officer must:

- (a) conduct an Election to determine which male identifying Candidates are to be elected; and
- (b) conduct a Supplementary Election to fill any vacancy to be occupied by a non-male identifying Candidate.

36.5 If, after the Announcement of Candidates, the number of Candidates in a Region is less than the number of vacancies and the Gender Quota can be met, the Returning Officer must:

- (a) declare each Candidate to be elected; and
- (b) conduct a Supplementary Election to fill the remaining vacancies.

36.6 If, after the Announcement of Candidates, the number of Candidates in a Region is less than the number of vacancies and the Gender Quota cannot be met, the Returning Officer must:

- (a) if the number of male identifying Candidates is equal to or less than the maximum number of male identifying Candidates permitted under the Gender Quota:
  - (i) declare all Candidates to be elected; and
  - (ii) conduct a Supplementary Election to fill the remaining vacancies; and

- (b) if the number of male identifying Candidates exceeds the maximum number of male identifying Candidates permitted under the Gender Quota:
    - (i) conduct an Election to determine which male identifying Candidates are elected; and
    - (ii) conduct a Supplementary Election to fill the remaining vacancies to be occupied by non-male identifying Candidates.
- 36.7 A Supplementary Election under this Rule must be held as soon as possible, and within 6 months, after the Announcement of Candidates.
- 36.8 To avoid doubt, where Rule 36.2, 36.4 or 36.6(b) applies, a Candidate who is non-male identifying must stand for election in the Region.
- 37 GENDER QUOTA**
- 37.1 40% of the vacancies for General Members in a Region (or the number that is closest to 40%, rounding down to the nearest whole number) must be filled by non-male identifying Candidates in that Region. This is called the Gender Quota.
- 37.2 The Gender Quota operates so that:
  - (a) in a Region where there are 3 General Members to be elected, at least one seat must be filled by a non-male identifying Candidate; and
  - (b) in a Region where there are 9 General Members to be elected, at least 3 seats must be filled by non-male identifying Candidates.
- 38 WITHDRAWAL OF CANDIDATE**
- 38.1 A Candidate may withdraw at any time before the Announcement of Candidates.
- 38.2 A Candidate may withdraw after the Announcement of Candidates if:
  - (a) the withdrawal results in an uncontested election; or
  - (b) the Returning Officer is satisfied that the Candidate has a good reason to no longer stand for election.
- 38.3 A withdrawal under Rule 38.1 or 38.2 must be made in writing by the Candidate and takes effect when it is accepted by the Returning Officer.
- 38.4 The Returning Officer must withdraw a Candidate if the Candidate:
  - (a) is disqualified from being elected;
  - (b) is determined to be ineligible;
  - (c) is unable to assume the role of a General Member; or
  - (d) has died.
- 38.5 If a Candidate withdraws or is withdrawn after the Announcement of Candidates:
  - (a) Rule 36 applies; and
  - (b) the Nomination Closing cannot be extended under Rule 34 because of that withdrawal.
- 38.6 If a Candidate withdraws or is withdrawn:

- (a) the Returning Officer must proceed as if the Candidate had never nominated;
- (b) any Ballot Paper showing a preference for a withdrawn Candidate must be allocated as if the Candidate had been eliminated; and
- (c) the Returning Officer may modify Ballot Papers as necessary or appropriate.

## **PART F: RIGHTS AND REQUIREMENTS OF CANDIDATES**

Part F sets out rules about:

- A Code of Conduct for Candidates and campaigners.
- Campaigning.

### **39 CODE OF CONDUCT**

39.1 A Candidate, or a campaigner for a Candidate, must comply with the Code of Conduct set out in Schedule 3 or any replacement code of conduct issued from time to time.

### **40 CAMPAIGNING**

#### **Funding and support to Candidates**

- 40.1 The Council may decide to offer funding and in-kind support to Candidates to support their campaigning during an Election Period.
- 40.2 If the Council decides to offer funding and in-kind support to Candidates:
- (a) the Council must publish, before the Nomination Opening, a policy setting out how the support will be calculated, allocated and used; and
  - (b) the support provided must not unfairly favour any particular Candidate or Candidates.

#### **Campaigning to comply with Code of Conduct**

40.3 All campaigning, including campaign materials, must comply with the Code of Conduct.

## **PART G: CONDUCT OF ELECTIONS**

Part G sets out rules about:

- Conduct of Elections.
- Order of Candidates.
- Methods of voting.
- Absent Votes.
- Accessibility.
- Conduct at Elections.
- Provisional voting.

## **41 CONDUCT OF ELECTIONS**

### **Voting Period**

- 41.1 Voting will take place during the Voting Period, during the times set out in the Notice of Election.

### **Voting**

- 41.2 An Elector:
- (a) is not required to vote in an Election;
  - (b) may only vote once in an Election;
  - (c) may only vote for Candidates standing for election in the Region for which they are registered on the Electoral Roll; and
  - (d) cannot appoint a proxy to vote for them in an Election.
- 41.3 All Elections must be conducted by secret ballot.

## **42 ORDER OF CANDIDATES**

- 42.1 The Returning Officer must determine the order of Candidates on the Ballot Paper by random draw.
- 42.2 The time of the draw must be after the Announcement of Candidates and before the Voting Opening.
- 42.3 The Returning Officer must nominate the place and time of the draw.
- 42.4 The Returning Officer must notify each Candidate for election in a Region of the place and time of the draw.

## **43 METHODS OF VOTING**

### **Determining voting methods**

- 43.1 The Council must determine the alternative methods of voting in an Election, for example in-person voting, online voting or postal voting.
- 43.2 The Council must consider the accessibility of voting when deciding the methods of voting for an Election.
- 43.3 All methods of voting must:
- (a) enable an Elector to be authenticated;
  - (b) be secure; and
  - (c) enable and support the secrecy of the ballot.

### **Alternative methods of voting**

- 43.4 The Returning Officer must assume that all Electors wish to vote in person if in-person voting is a method of voting for an Election.
- 43.5 An Elector may request, in a manner approved by the Returning Officer, an alternative method of voting.

- 43.6 The Returning Officer may set reasonable periods for requests for alternative voting methods to be received.
- 43.7 The Returning Officer may issue alternative methods of voting to an Elector without the request of the Elector.
- 43.8 An Elector may vote in person, if this is a method of voting at the Election, even if the Elector has requested or received an alternative method of voting.
- 43.9 The Returning Officer must determine the order of precedence to be given to alternative methods of voting if an Elector votes more than once.

### **How to vote**

- 43.10 The Returning Officer must publish information, in a publicly accessible location, about how Electors can vote in an Election, which may include:
- (a) the methods of voting at the Election;
  - (b) how to access or request an alternative method of voting;
  - (c) how to cast a valid vote; and
  - (d) the dates, times and locations of in-person voting, if this is a method of voting at the Election.

## **44 ABSENT VOTES**

- 44.1 If in-person voting is a method of voting for an Election, an Elector may vote at any in-person polling place, even if it is outside their Region.
- 44.2 A vote cast in person by an Elector outside their Region is an Absent Vote.
- 44.3 If an Elector casts an Absent Vote, the Returning Officer must:
- (a) arrange for the Elector's details to be recorded to confirm their eligibility to vote; and
  - (b) ensure the secrecy of the Absent Vote.

## **45 ACCESSIBILITY**

- 45.1 The Returning Officer must ensure that voting in an Election is accessible to all Electors.
- 45.2 The Returning Officer must assist an Elector who has special needs, including persons who:
- (a) have accessibility needs;
  - (b) have low or no literacy; or
  - (c) wish to nominate a person to assist them to cast their vote, if they are unable to cast their vote without any assistance.
- 45.3 A person nominated under Rule 45.2.3 cannot act as proxy for the Elector.
- 45.4 If an Elector needs help from an Election Official to fill out a Ballot Paper, one of the following people may be present to observe:
- (a) a scrutineer;
  - (b) another Election Official; or
  - (c) another person nominated by the Elector.

- 45.5 An Elector may bring a written statement that sets out their voting intention and have another person complete the vote for them.
- 45.6 The Returning Officer must take steps to make voting accessible to all Electors, which may include:
- (a) providing large print files on request;
  - (b) providing a magnifier and maxi pencils at every voting place; or
  - (c) any other measures the Returning Officer determines, having regard to the alternative methods of voting used at the Election.

## **46 CONDUCT AT ELECTIONS**

### **Interference with rights and duties**

- 46.1 A person must not hinder or interfere with the free exercise or performance by any other person of any right or duty that is relevant to an Election.

### **Interference with Ballot Papers**

- 46.2 A person must not:
- (a) forge or fraudulently mark, deface or destroy a Ballot Paper;
  - (b) without authority supply a Ballot Paper to any person;
  - (c) fraudulently put any unauthorised Ballot Paper into a ballot box;
  - (d) be in possession of an unauthorised Ballot Paper;
  - (e) without authority destroy, take, open or otherwise interfere with any ballot box or parcel of Ballot Papers;
  - (f) vote or attempt to vote more than once in an Election, or impersonate any voter; or
  - (g) leave a voting place with a Ballot Paper.

## **47 PROVISIONAL VOTING**

### **What special Rules apply to Provisional Electors?**

- 47.1 A vote cast by a Provisional Elector is a provisional vote.
- 47.2 The Returning Officer may treat a vote by any other Elector as a provisional vote if special circumstances apply (for example if an Election Official has incorrectly and inadvertently marked that the Elector has already voted in the Election).
- 47.3 If an Elector casts a provisional vote, the Returning Officer must, in any way the Returning Officer considers appropriate:
- (a) arrange for the Elector's enrolment details to be recorded to confirm their eligibility to vote; and
  - (b) ensure the secrecy of the vote.
- 47.4 A provisional vote must be set aside until it ceases to be a provisional vote.
- 47.5 If a vote ceases to be a provisional vote, the provisional vote must be counted with the other votes in the Region.
- 47.6 A Provisional Elector's enrolment or eligibility to vote may be confirmed up to Vote Counting.



- 47.7 If a Provisional Elector's enrolment or eligibility to vote is not confirmed by Vote Counting, the provisional vote must not be counted.

## **PART H: ELECTION OUTCOMES**

Part H sets out rules about:

- Determining Election outcomes.
- Applying the Gender Quota.
- Tied votes.
- Scrutineers.
- Announcing Election results.

### **48 DETERMINING ELECTION OUTCOMES**

#### **How will votes be counted?**

- 48.1 The Returning Officer must count votes using the system set out in Schedule 4.
- 48.2 For a Ballot Paper to be counted the Elector's intention must be clearly discernible.
- 48.3 The Elector's intention may be discernible even if the Ballot Paper is completed in a way that varies from the instructions, for example by:
- (a) recording preferences alphabetically (a, b, c, d...) rather than numerically (1, 2, 3, 4);
  - (b) ticking a box (where only voting for one Candidate); or
  - (c) writing on or otherwise marking their Ballot Paper in addition to recording their preferences.
- 48.4 An Elector is not required to number every box on a Ballot Paper and may number just one box.
- 48.5 A Ballot Paper that is not counted in accordance with this Rule must be set aside as an informal vote.

### **49 APPLYING THE GENDER QUOTA**

- 49.1 If, after the counting of votes in a Region, the Gender Quota is not met, the process set out in Schedule 5 will apply.
- 49.2 If, after the counting of votes in a Region, the Gender Quota is met or exceeded in a Region, there will be no change to the outcome following the counting of votes in that Region.

### **50 TIED VOTES**

- 50.1 If, at the end of counting of votes in a Region, two or more Candidates have an equal number of votes, the process set out in Schedule 4 will apply.

### **51 SCRUTINEERS**

- 51.1 If in-person voting is used for an Election, a Candidate may only appoint one scrutineer at each in-person voting place within the Region for which they are a Candidate.

- 51.2 A Candidate may also appoint one scrutineer to be present for the return processing, validation and counting of votes cast in any method of voting used at the Election.
- 51.3 A Candidate cannot appoint themselves as a scrutineer.
- 51.4 The Returning Officer may set further requirements for the appointment of scrutineers, for example by providing a form to be used to make the appointment.
- 51.5 A Candidate must ensure that their scrutineers comply with Rule 46 and with Schedule 6.

## **52 ANNOUNCEMENT OF ELECTION RESULTS**

- 52.1 The Council must publish the results of an Election in accordance with the Constitution.

### **PART I: ELECTION COMPLAINTS**

Part I sets out rules about:

- Election Complaints.
- Peacemakers.

## **53 ELECTION COMPLAINTS**

### **Who may make a complaint?**

- 53.1 Any of the following persons may make a complaint to the Returning Officer about a matter set out in Rule 53.2:
  - (a) a Nominee;
  - (b) a Candidate;
  - (c) a campaigner;
  - (d) a scrutineer;
  - (e) an Elector; and
  - (f) any other person reasonably connected with or impacted by an Election.

### **What may a complaint be about?**

- 53.2 A complaint may be about any of the following:
  - (a) the way the Returning Officer or the Assembly has applied these Rules;
  - (b) the conduct of any person connected to an Election;
  - (c) a challenge to the validity of an Election;
  - (d) a Candidate's status as a Victorian Traditional Owner; and
 any other matter reasonably connected to an Election.

### **How may an Election Complaint be made?**

- 53.3 An Election Complaint must be made in writing to the Returning Officer before the end of 7 days after the announcement of the results of Election.
- 53.4 An Election Complaint must include the reasons for the complaint and the persons involved.

### **Returning Officer to publish information about Election Complaint procedures**

- 53.5 The Returning Officer must, before the Election Period, publish information, in a publicly accessible location, about how to make an Election Complaint and any relevant timelines for an Election Complaint.

### **Resolution of Election Complaints**

- 53.6 The Returning Officer must notify the Council of any Election Complaint, and also refer an Election Complaint to the Election Dispute Resolution Panel for determination if the Election Complaint relates to whether a Candidate is validly elected or whether they are a Victorian Traditional Owner or a Victorian Traditional Owner of Country in a Region.
- 53.7 The Returning Officer must determine any other complaint lodged under this Rule.

### **Determination by the Returning Officer**

- 53.8 Before making a determination under Rule 53.7, the Returning Officer must:
- (a) give the persons involved reasonable notice of the matter and the opportunity to be heard;
  - (b) comply with the rules of natural justice; and
  - (c) consider all information provided to, or obtained by, the Returning Officer in relation to the matter.
- 53.9 The Returning Officer may engage Peacemakers to help resolve the Election Complaint if the Returning Officer considers it appropriate.
- 53.10 The Returning Officer must not make a determination to disqualify a Candidate unless the Returning Officer finds the Candidate is ineligible.
- 53.11 The Returning Officer must notify the following of a determination under Rule 53.7:
- (a) all people involved; and
  - (b) the Assembly.
- 53.12 Any person involved in an Election Complaint may apply to the Returning Officer for a review by the Election Dispute Resolution Panel of a determination of the Returning Officer under this Rule.
- 53.13 An application for review by a person must be made within 5 days after the person is notified of the determination of the Election Complaint.

### **Convening of Election Dispute Resolution Panel**

- 53.14 The Council must convene an Election Dispute Resolution Panel for an Election to deal with:
- (a) an Election Complaint referred to it under Rule 53.6; or
  - (b) an application for review under Rule 53.12.
- 53.15 An Election Dispute Resolution Panel must be constituted as follows:
- (a) the Panel must have at least 3 members;
  - (b) each member of the Panel must be an Aboriginal or Torres Strait Islander person;
  - (c) at least one member of the Panel must be a Victorian Traditional Owner;

- (d) at least one member of the Panel must be a male identifying person;
  - (e) at least one member of the Panel must be a non-male identifying person; and
  - (f) a member cannot be a Candidate at the Election.
- 53.16 The members of the Election Dispute Resolution Panel must be impartial and not have interests in or be related to any person who is a party to:
- (a) an Election Complaint to be determined by the Panel; or
  - (b) an application for review to be determined by the Panel.
- 53.17 The Council must appoint a new member of the Panel in accordance with the requirements of Rule 53.15, if a member is not able to sit on the Panel because of a conflict of interest or other reason and there are fewer than 3 members as a result.
- 53.18 The Returning Officer may publish guidelines about conflicts of interest.

#### **Determination by Election Dispute Resolution Panel**

- 53.19 If a referral of an Election Complaint is made under Rule 53.6 or an application for review is made under Rule 53.12, the Returning Officer must provide all relevant information (including the Election Complaint or application for review), to the Election Dispute Resolution Panel within one business day of the Election Complaint being made or the application for review being lodged.
- 53.20 Any person involved in an Election Complaint or application for review must promptly provide the Election Dispute Resolution Panel with any evidence and assistance that it reasonably requests.
- 53.21 The Election Dispute Resolution Panel may dismiss the Election Complaint or application for review if the evidence and assistance requested under Rule 53.20 is not provided promptly.
- 53.22 In determining an Election Complaint or an application for review, the Election Dispute Resolution Panel:
- (a) may seek advice from persons with suitable expertise, including Peacemakers;
  - (b) may conduct its own inquiries;
  - (c) must give the persons involved reasonable notice of the matter and the opportunity to be heard;
  - (d) must comply with the rules of natural justice;
  - (e) must consider all information provided to, or obtained by, the Panel in relation to the matter; and
  - (f) must act efficiently and finalise the dispute or application for review in a timely manner using culturally strong processes.
- 53.23 Subject to Rule 53.22, the Election Dispute Resolution Panel may determine its own procedure.
- 53.24 The Election Dispute Resolution Panel must make a determination within 14 days of receiving the Election Complaint or application for review. A determination of the Election Dispute Resolution Panel made under this Rule is final.

- 53.25 The Election Dispute Resolution Panel must give its determination in writing to the Returning Officer.

The Returning Officer must give notice of the determination to:

- (a) all persons involved; and
- (b) the Assembly.

## **54 PEACEMAKERS**

- 54.1 The Council may appoint suitably qualified respected Aboriginal or Torres Strait Islander community members as Peacemakers in the Election process.
- 54.2 The role of Peacemakers is to seek to resolve Election Complaints in a culturally-based way, including by seeking informal resolutions or de-escalating Election complaints wherever possible.
- 54.3 Peacemakers may:
- (a) provide the Returning Officer with advice to support the resolution and de-escalation of Election Complaints; and
  - (b) provide the Election Dispute Resolution Panel with advice to support their resolution of Election Complaints; and
  - (c) offer formal peacemaking to parties to an Election Complaint, with the consent of all parties.
- 54.4 Any decision maker under Rule 53 may refer parties, with their consent, to Peacemakers to seek to resolve their dispute through a formal peacemaking process.
- 54.5 Any agreement or outcome reached through a formal peacemaking process must be approved by a member of the Election Dispute Resolution Panel.
- 54.6 Peacemakers may:
- (a) sit on the Election Dispute Resolution Panel to hear Election Complaints and applications for review; and
  - (b) hear Election Complaints under Rule 53.
- 54.7 A Peacemaker must not sit on the Election Dispute Resolution Panel to resolve a matter that they have considered as a Peacemaker.

## PART J: DEFINITIONS AND INTERPRETATION

Part J contains the capitalised defined terms that are used in these Rules. These Rules also use capitalised terms that are defined in the Constitution.

Part J also contains the rules of interpreting these Rules.

### 55 DEFINITIONS

55.1 In these Rules, the following definitions apply:

**Aboriginal or Torres Strait Islander person** has the meaning set out in Rule 12.6.

**Absent Vote** means a vote cast in person outside an Elector's Region, in accordance with Rule 44.

**Announcement of Candidates** means the date and time that Candidates are publicly announced.

**Assembly** means the First Peoples' Assembly of Victoria.

**Ballot Paper** means the paper or equivalent electronic platform used to register a vote.

**Council** means Directors acting as the board of the Assembly and includes a delegate of the Council.

**Border Area** means any area outside Victoria that is within 60 kilometres of the Victorian border (see Border Area Map in Part 3 of Schedule 2).

**Candidate** means a person whose nomination has been accepted and is standing for election.

**Candidate Statement** means the statement included on a nomination form, which could include information about the Nominee, including their nation/clan/mob connection, why they wish to be a member of the Assembly and their views and aspirations for Treaty.

**Code of Conduct** means Schedule 3 to these Rules or any replacement code of conduct issued from time to time.

**Constitution** means the Constitution of the Assembly.

**Election Complaint** means a complaint made under Rule 53.1.

**Election Dispute Resolution Panel** means a panel convened under Rule 53.14.

**Election Official** means a person appointed or authorised by the Returning Officer under Rule 23 to support the conduct of an Election.

**Election Period** means the period of time from Nomination Opening to Voting Closing.

**Elector** means Eligible Elector or Provisional Elector.

**Electoral List** means the Electoral List prepared for an Election under Rule 26.

**Electoral Roll** means the Electoral Roll established under Rule 8.

**Eligible Elector** means a person whose enrolment on the Electoral Roll has been confirmed in accordance with Rule 19 and so, under the Constitution, is a Voter who is entitled to vote in an Election under these Rules.

**Eligible Person** means a person who is an Eligible Person under Rule 12.

**Enrolment Complaint** means a complaint made under Rule 21.

**Enrolment Dispute Resolution Panel** means an Enrolment Dispute Resolution Panel convened under Rule 21.13.

**Enrolment Registrar** means the person responsible for the ongoing maintenance and security of the Electoral Roll in accordance with Rule 9.

**Enrolment Official** means a person appointed or authorised by the Enrolment Registrar to assist with the ongoing maintenance and security of the Electoral Roll in accordance with Rule 9.8.

**Gender Quota** has the meaning set out in Rule 37.

**Nominee** means a person who nominates to stand as a Candidate for election.

**Nomination Closing** means the date and time nominations close for an Election.

**Nomination Opening** means the date and time nominations open for an Election.

**Peacemaker** means a person appointed as a Peacemaker under Rule 54.

**Preliminary Close of the Roll** means date and time specified under Rule 24 as the Preliminary Close of the Roll.

**Prison** has the same meaning as in the *Corrections Act 1986* (Vic).

**Provisional Elector** means a person whose enrolment on the Electoral Roll has not yet been confirmed in accordance with Rule 19.

**Regions** means the Assembly voting regions set out in Schedule 1.

**Returning Officer** means the person appointed under Rule 22 to conduct an Election.

**Rules** means these Election Rules as amended by the Assembly from time to time.

**Silent Elector** means a person registered as a Silent Elector under Rule 15.

**Vote Counting** means the date and time votes are counted for an Election.

**Voting Closing** means the date and time voting closes for an Election.

**Voting Opening** means the date and time voting opens for an Election.

**Voting Period** means the period commencing on the Voting Opening and ending on the Voting Closing.

**Youth Justice Centre** has the same meaning as it has in the *Children, Youth and Families Act 2005* (Vic).

## **56 INTERPRETATION**

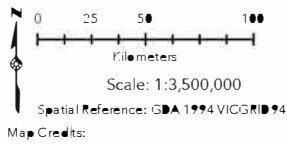
- 56.1 This Rule sets out interpretative rules that apply to these Rules, unless the context otherwise requires.
- 56.2 A capitalised term that is used but not defined in these Rules has the meaning given in the Constitution.
- 56.3 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of these Rules.
- 56.4 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced.
- 56.5 A reference to a rule, Part or Schedule is a reference to a rule, Part or Schedule of or to these Rules.
- 56.6 A reference to "non-male identifying" includes female identifying.
- 56.7 A reference to "in writing" includes by electronic communication.
- 56.8 If a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 56.9 A word that indicates the singular indicates the plural, a word that indicates the plural indicates the singular, and a reference to any gender indicates any other gender.
- 56.10 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 56.11 References to the word 'include' or 'including', or to the word 'exclude' or 'excluding', are to be interpreted without limitation.
- 56.12 A reference to a time of day means that time of day in the place where the Office is located.
- 56.13 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Victoria.
- 56.14 If a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 56.15 A term of these Rules that has the effect of requiring anything to be done on or by a date that is not a business day must be interpreted as if it required it to be done on or by the next business day.
- 56.16 A reference to a change to a thing includes a reference to a complete replacement and also to its removal and not having any replacement of it.
- 56.17 A reference to a thing being done means the thing may be done any number of times.
- 56.18 Headings and boxed text are inserted for convenience only and do not affect the interpretation of these Rules.
- 56.19 A reference to these Rules, where amended, means these Rules as so amended.



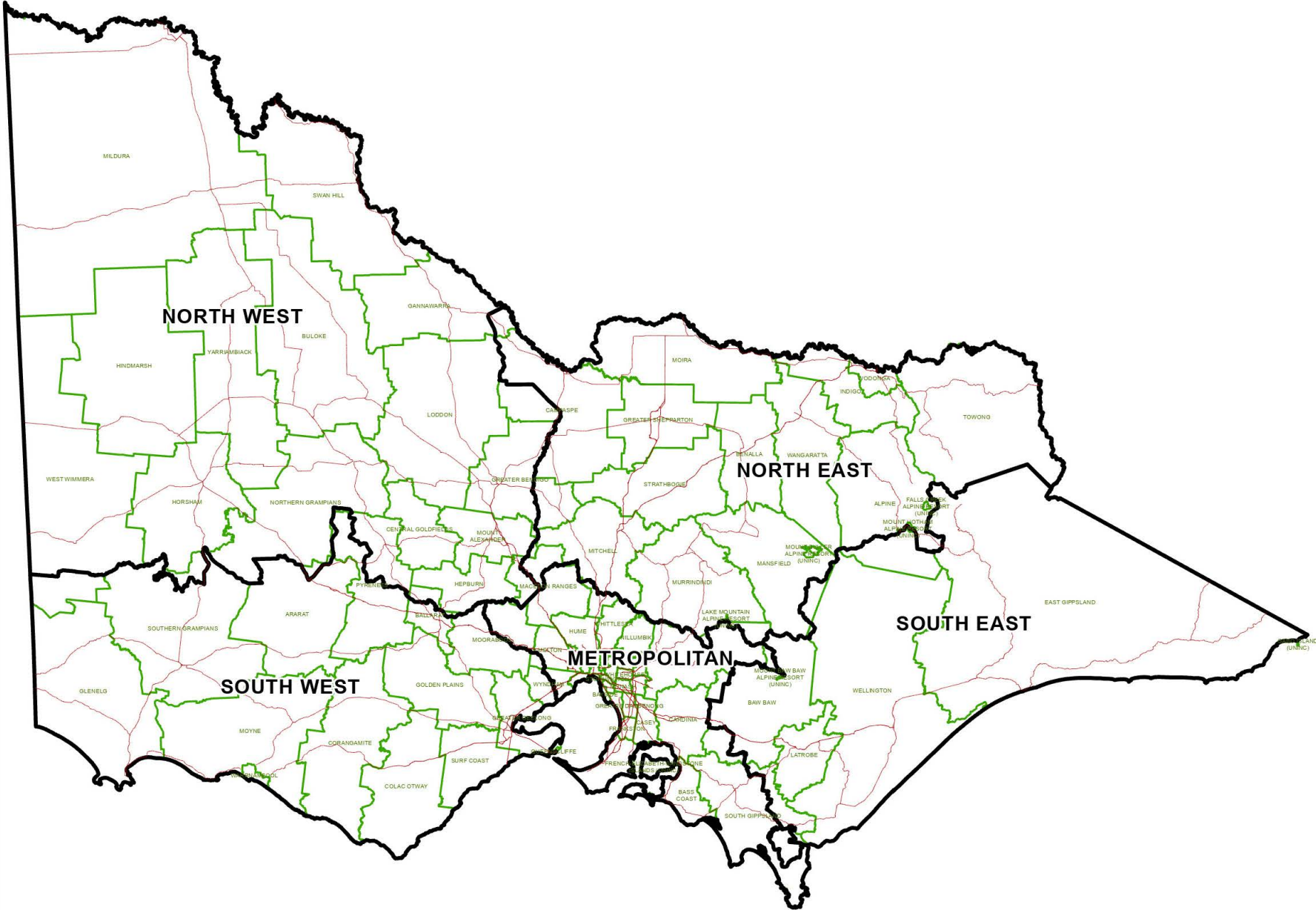
## **SCHEDULE 1: REGIONS**

Refer overleaf.

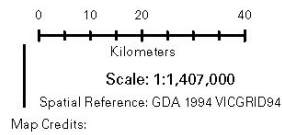
# Statewide Overview



- Legend
- First Peoples Assembly regions
  - Local Government Area boundaries
  - Roads



# Metropolitan Voting Region



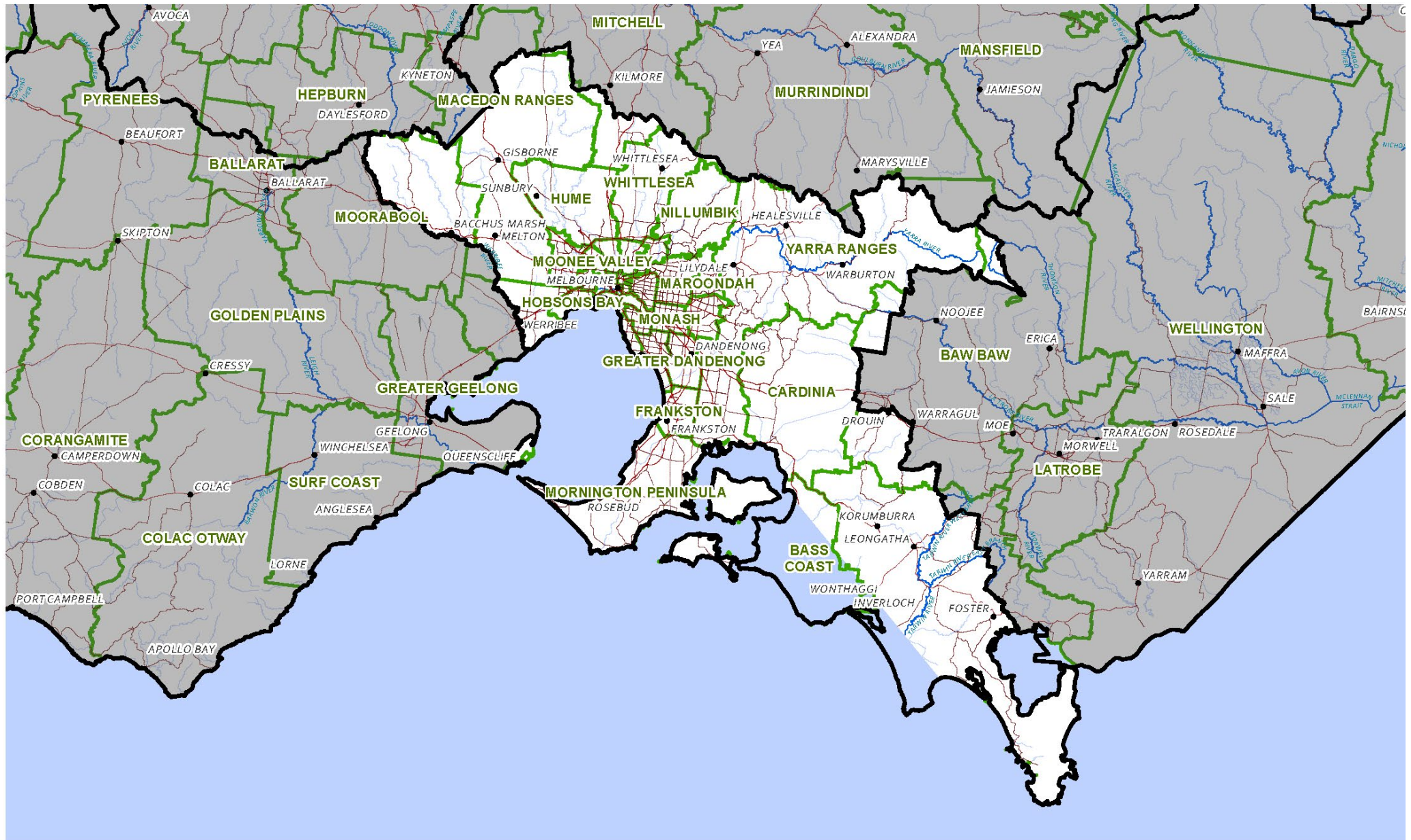
## Legend

- First Peoples Assembly regions
- Local Government Area boundaries
- Highways/Freeways
- Roads
- Towns
- Waterways
- Major waterway
- Minor waterway

## First Peoples Assembly regions

Project: 304912  
Version: 1

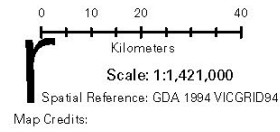
Date Exported: 23/03/2023 11:07 AM  
User: D.Kang







Disclaimer: Maps are for graphical purposes only. They do not represent a legal survey. While every effort has been made to ensure that these data are accurate and reliable within the limits of the current state of the art, Veris cannot assume liability for any damages caused by any errors or omissions in the data, nor as a result of the failure of the data to function on a particular system. Veris makes no warranty, expressed or implied, nor does the fact of distribution constitute such a warranty.



## South West Voting Region



Legend

-  First Peoples Assembly regions      • Towns  
 Local Government Area boundaries      Waterways  
 Highways/Freeways       Major waterway  
 Roads       Minor waterway

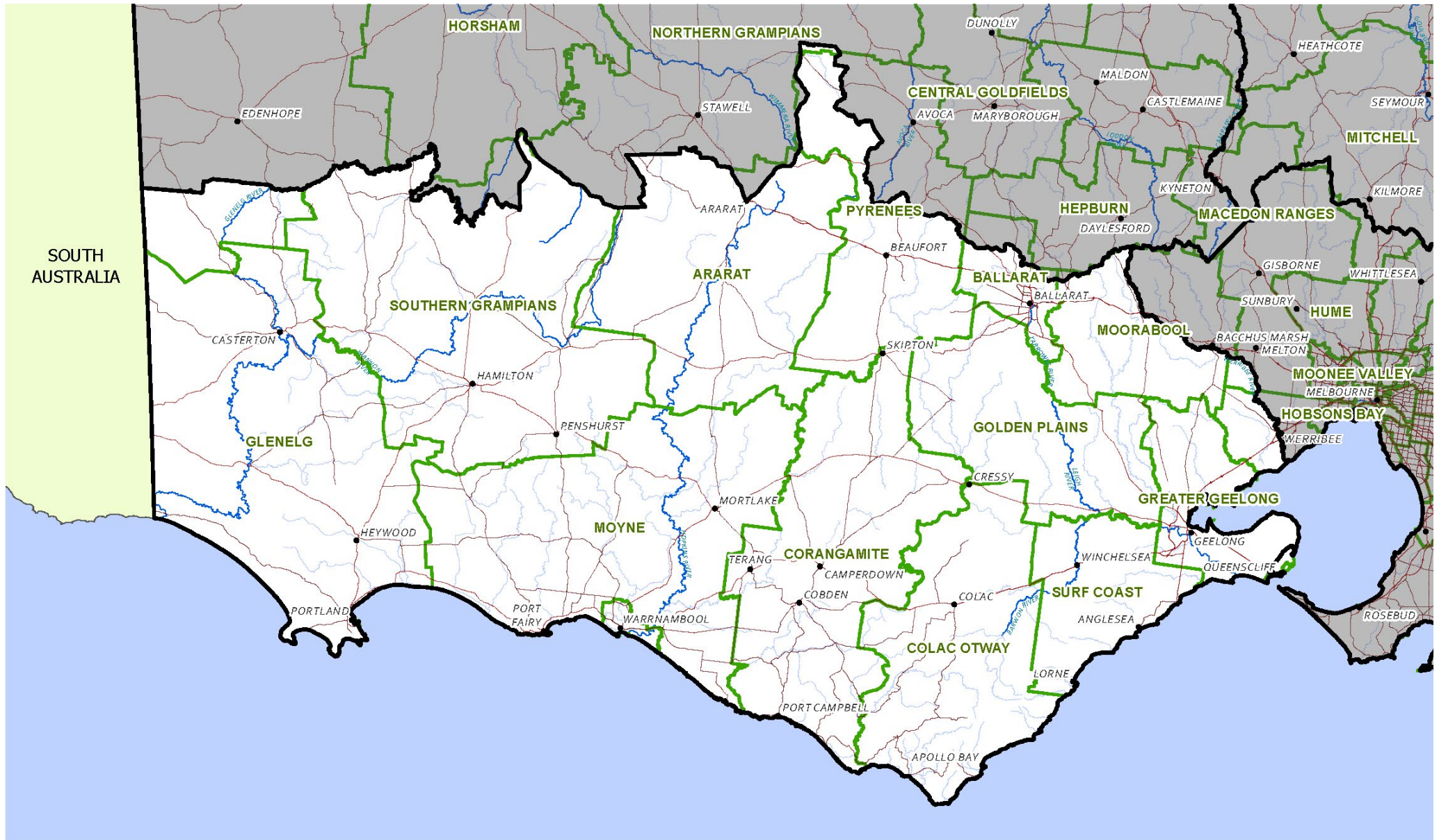
## First Peoples Assembly regions

Project: 304912

Date Exported: 23/03/2023 11:07 AM

Version: 1

User: D.Kang



Disclaimer: Maps are for graphical purposes only. They do not represent a legal survey. While every effort has been made to ensure that these data are accurate and reliable within the limits of the current state of the art, Veris cannot assume liability for any damages caused by any errors or omissions in the data, nor as a result of the failure of the data to function on a particular system. Veris makes no warranty, expressed or implied, nor does the fact of distribution constitute such a warranty.

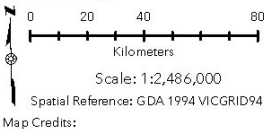


# North West Voting Region

## First Peoples Assembly regions

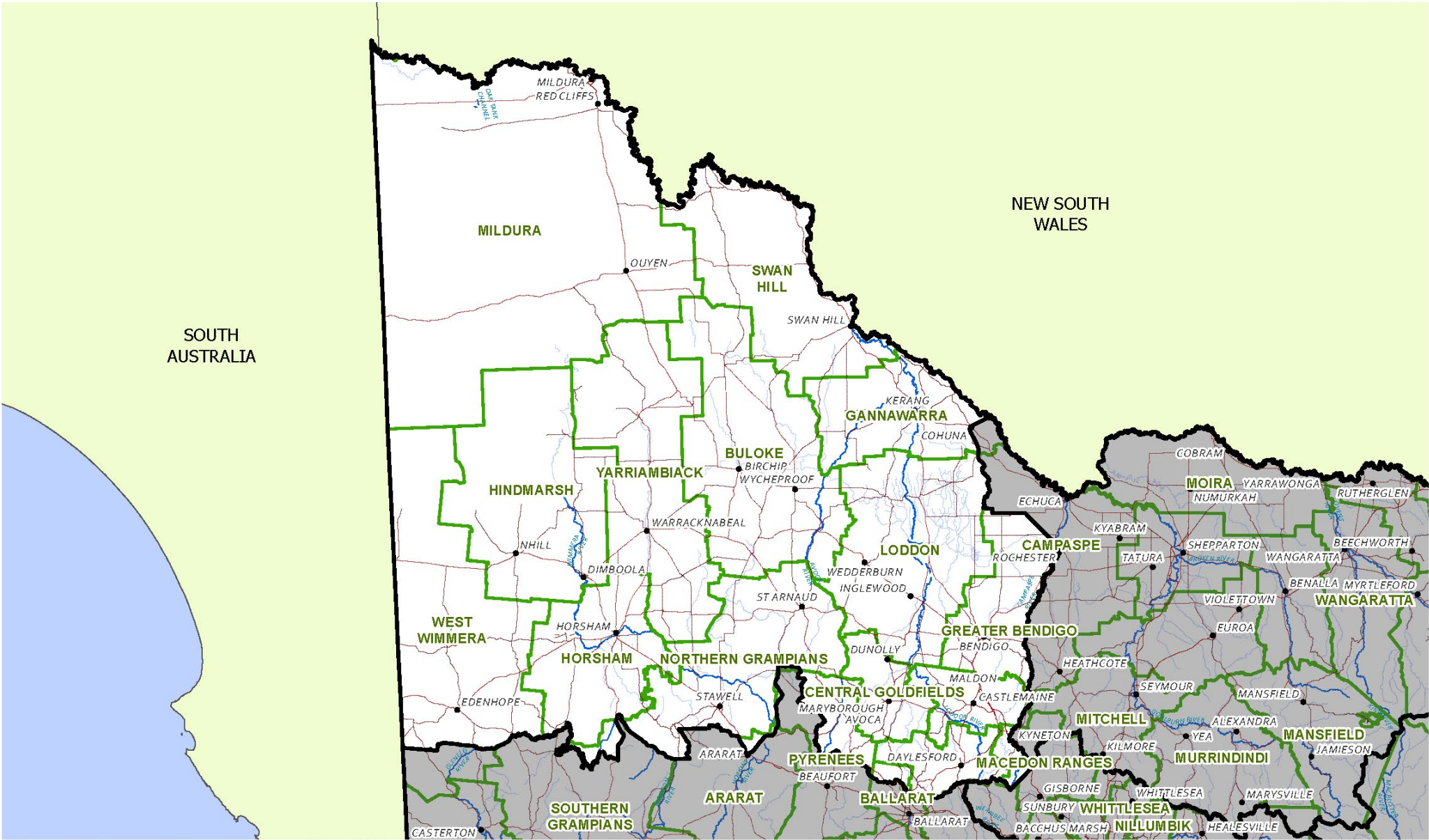
Project: 304912  
Version: 1

Date Exported: 23/03/2023 11:07 AM  
User: D.Kang



### Legend

- First Peoples Assembly regions
- Local Government Area boundaries
- Highways/Freeways
- Roads
- Towns
- Waterways
  - Major waterway
  - Minor waterway



Disclaimer: Maps are for graphical purposes only. They do not represent a legal survey. While every effort has been made to ensure that these data are accurate and reliable within the limits of the current state of the art, Veris cannot assume liability for any damages caused by any errors or omissions in the data, nor as a result of the failure of the data to function on a particular system. Veris makes no warranty, expressed or implied, nor does the fact of distribution constitute such a warranty.

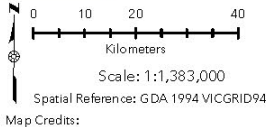


# North East Voting Region

## First Peoples Assembly regions

Project: 304912  
Version: 1

Date Exported: 23/03/2023 11:07 AM  
User: D.Kang



- Legend
- First Peoples Assembly regions
  - Local Government Area boundaries
  - Highways/Freeways
  - Roads
  - Towns
  - Waterways
  - Major waterway
  - Minor waterway



Disclaimer: Maps are for graphical purposes only. They do not represent a legal survey. While every effort has been made to ensure that these data are accurate and reliable within the limits of the current state of the art, Veris cannot assume liability for any damages caused by any errors or omissions in the data, nor as a result of the failure of the data to function on a particular system. Veris makes no warranty, expressed or implied, nor does the fact of distribution constitute such a warranty.



# South East Voting Region

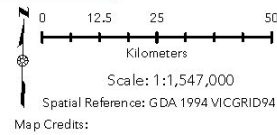
## First Peoples Assembly regions

Project: 304912

Date Exported: 23/03/2023 11:07 AM

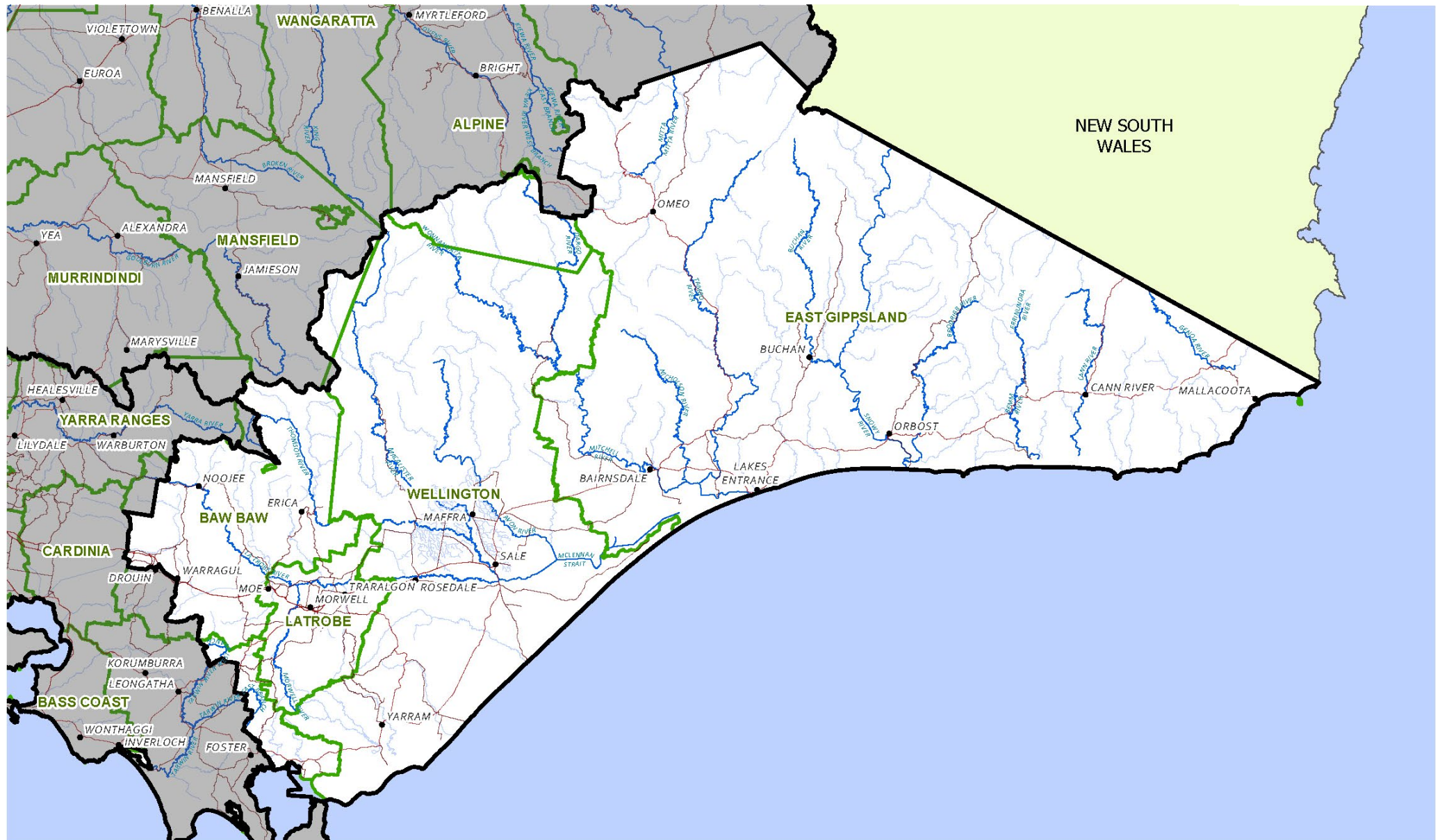
Version: 1

User: D.Kang



### Legend

- First Peoples Assembly regions
- Local Government Area boundaries
- Highways/Freeways
- Roads
- Towns
- Waterways
  - Major waterway
  - Minor waterway



Disclaimer: Maps are for graphical purposes only. They do not represent a legal survey. While every effort has been made to ensure that these data are accurate and reliable within the limits of the current state of the art, Veris cannot assume liability for any damages caused by any errors or omissions in the data, nor as a result of the failure of the data to function on a particular system. Veris makes no warranty, expressed or implied, nor does the fact of distribution constitute such a warranty.

## SCHEDULE 2: PERMITTED FORMS OF EVIDENCE

### PART 1: ACCEPTABLE EVIDENCE

#### 1 DOCUMENTS THAT MAY BE ACCEPTED AS EVIDENCE

- 1.1 The following table provides the documents that the Enrolment Registrar will accept as evidence of an Elector's name or current residential address. This is not an exhaustive list.

Form of Identification	Name	Residential address
Driver's licence, learner's permit, firearm, or marine licence	✓	✓
Valid Passport	✓	x
Proof of Age Card	✓	✓
Keypass	✓	✓
Birth certificate	✓	x
Commonwealth Government Concession Card (including Health Care Card)	✓	If residential address is listed on the card
Department of Veterans Affairs Health Card	✓	x
Marriage Certificate	✓	x
Australian Taxation Office Assessment	✓	✓
Student or Tertiary Institution Identification card	✓	x
Lease Agreement	✓	✓
Utility statement* (Gas, water, electricity, mobile or home phone)	✓	If residential address is listed on the statement
Bank statement*	✓	If residential address is listed on the statement
Superannuation statement*	✓	If residential address is listed on the statement



<b>COVID-19 vaccination certificate</b>	✓	✗
<b>Other Government issued identification</b>	If person's name is listed on the identification	If person's residential address is listed on the identification
<b>Statutory Declaration declaring the person's name or residential address or both</b>	If person's name is declared	If person's residential address is declared

\*A bank, utility or superannuation statement must contain an official company letterhead or stamp.

## **PART 2: ALTERNATIVES IF EVIDENCE SPECIFIED IN PART 1 CANNOT BE PROVIDED**

### **2 ADDITIONAL MEANS TO VERIFY IDENTITY**

2.1 If an Elector cannot provide the evidence specified in Part 1, their name and current residential address may be verified by one of the following organisations:

- (a) a secondary school;
- (b) a university;
- (c) a TAFE institute;
- (d) a medical clinic;
- (e) a Prison or Youth Justice Centre;
- (f) an aged care facility;
- (g) a homelessness support venue; or
- (h) another organisation approved by the Enrolment Registrar.

### **3 ACCEPTANCE OF OTHER FORMS OF EVIDENCE**

3.1 If an Elector cannot provide the evidence specified in Part 1, the Enrolment Registrar may accept other forms or combinations of evidence to verify a person's name and current residential address.

### **4 EXEMPTION FROM REQUIREMENTS**

4.1 If an Elector cannot provide the evidence required in Rule 14.1, the Enrolment Registrar may exempt the Elector from the requirement.

4.2 An exemption must be:

- (a) decided on a case by case basis; and
- (b) granted in writing by the Enrolment Registrar.

4.3 In granting an exemption, the Enrolment Registrar must:

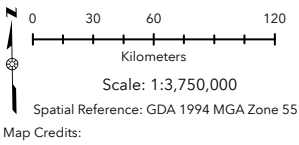
- (a) take into account the circumstances of the Elector; and
- (b) be reasonably satisfied of the Elector's identity and Region.

4.4 The Enrolment Registrar may establish a policy to govern exemptions.

### **PART 3 BORDER AREA MAP**

# Border Area Map

Regions and areas within 60km of the Victorian border.



**Legend**

Assembly Region	North West
Metropolitan	South East
North East	South West



## **SCHEDULE 3: CODE OF CONDUCT**

### **1 RESPECT**

- 1.1 Candidates and campaigners for Candidates must show respect for each other, respect for Country, and respect for past, present and future generations.
- 1.2 The Election must be conducted in a spirit of cooperation, solidarity and mutual assistance.
- 1.3 The conduct of Candidates and campaigners will respect the meaningful and voluntary participation in the Election by any person or group of persons eligible to vote. This includes not preventing a person from participating in the Election based on any of the following:
  - (a) gender identity;
  - (b) age;
  - (c) language group, nation or clan identity, including persons who are disconnected from or reconnecting with their identity;
  - (d) sexual orientation;
  - (e) disability;
  - (f) religion;
  - (g) language; or
  - (h) marital status.
- 1.4 The wisdom and strength of Elders must be respected by all Candidates and campaigners, including Elders who choose to stand as Candidates.

### **2 DUTIES OF CANDIDATES AND CAMPAIGNERS**

- 2.1 Candidates and campaigners must participate in the Election in accordance with the Election Rules and this Code of Conduct.
- 2.2 Candidates and campaigners must respect those working in the Election and not interfere with the performance of their duties.
- 2.3 Candidates and campaigners must comply with and respect any dispute resolution process.
- 2.4 Candidates and campaigners must confine criticism of other Candidates and campaigners to their policies.

### **3 CONDUCT OF CANDIDATES AND CAMPAIGNERS IN ELECTORAL PROCESS**

- 3.1 Candidates and campaigners must not engage in any violent, abusive or threatening conduct.
- 3.2 Candidates and campaigners must not interfere with the Ballot Papers, ballot boxes, voters' rolls or other Election material.
- 3.3 Candidates and campaigners must not interfere with the secrecy of the ballot and must not attempt to find out or share how a person voted.
- 3.4 Campaigners must not campaign for a Candidate without the approval of that Candidate.

- 3.5 Candidates and campaigners must not use branding, including the letterhead or logo of the Assembly or the Treaty for Victoria brand, or other associated branding to promote a Candidate without authorisation from the Returning Officer.
- 3.6 A Candidate or campaigner must not by intimidation or duress compel a person to vote or refrain from voting or voting for a Candidate.
- 3.7 A Candidate or campaigner must not through dishonesty or misinformation induce a person to vote or refrain from voting or voting for a Candidate.

#### **4 CONTENT OF COMMUNICATIONS**

- 4.1 Candidates and campaigners must ensure that the content of any communications, including via social media and promotional material is:
- (a) fair and honest;
  - (b) respectful of other Candidates and campaigners and Electors; and
  - (c) free of unverified allegations, distortion or smear.

#### **5 SUPPORT BY COUNCIL**

- 5.1 If the Council decides to fund the production of campaign material (for example by sponsoring a social media advertisement or printing a brochure):
- (a) the Council must not unfairly favour any particular Candidate;
  - (b) the Returning Officer must vet all campaign material (including for defamation or any misleading or deceptive statements);
  - (c) the campaign material must include an authorisation tag, with the Candidate's name, stating they are a Candidate for the First Peoples' Assembly of Victoria and the Region they are running in, in a form approved by the Returning Officer; and
  - (d) the Council may withdraw support for campaign materials at any time, if the Council considers it necessary or appropriate.

## SCHEDULE 4: VOTE COUNTING METHOD

### 1 INTERPRETATION

#### Definitions for this Schedule

- 1.1 In this Schedule, the following definitions apply:

**Quota** means the number of votes sufficient to elect a Candidate. The Quota is determined by dividing the number of first preference votes by 1 more than the number of Candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1, expressed in the following formula:

$$\text{Quota} = (\text{Total Votes} / \text{Total Vacancies} + 1) + 1$$

**Surplus** means the number of votes that a Candidate has obtained, at any stage of the counting of votes, in excess of the Quota.

**Transfer value** means that portion of a vote that is transferred to the Candidate next in the order of the voter's preference because it is unused by:

- (a) an elected Candidate who has obtained a Surplus; or
- (b) a Candidate excluded on account of having the least number of votes.

#### Calculation of Transfer value

- 1.2 In this Schedule, despite calculations, a vote cannot be transferred at a value greater than 1. A calculation that returns a value greater than 1 must be transferred at a value of 1.

### 2 FIRST PREFERENCE VOTES TO BE COUNTED

- 2.1 The number of first preferences recorded for each Candidate, on all the Ballot Papers that are not informal votes, is to be counted.

### 3 CANDIDATE WITH QUOTA TO BE ELECTED

- 3.1 A Candidate who has, after the first preferences have been counted, a number of votes equal to or greater than the Quota is to be declared elected.

### 4 CANDIDATE WITH EXACT QUOTA

- 4.1 If the number of first preferences obtained by a Candidate is equal to the Quota, all the Ballot Papers on which a first preference is recorded for that Candidate are to be set aside as finally dealt with, unless required for a process under Schedule 5.

### 5 SURPLUS FIRST PREFERENCE VOTES TO BE DISTRIBUTED

- 5.1 If the number of first preferences obtained by a Candidate exceeds the Quota, the Surplus is to be transferred to the other Candidates not yet declared elected, next in the order of the voters' respective preferences, in the following manner:
- (a) all Ballot Papers on which a first preference is recorded for the elected Candidate are to be re-examined, and the number of second preferences, or, if required below, third or next consecutive preferences, recorded for each unelected Candidate are to be counted;

- (b) the Surplus of the elected Candidate is to be divided by the total number of votes obtained by the elected Candidate on the counting of the first preferences, and the resulting fraction is to be the Transfer value;
- (c) the number of second or other preferences, ascertained in clause 5.1.1 to be recorded for each unelected Candidate, is to be multiplied by the Transfer value; and
- (d) the resulting number, disregarding any fractional remainder, is to be transferred to each unelected Candidate, and added to the number of votes obtained by unelected Candidate on the counting of the first preferences.

## **6 ORDER OF DISTRIBUTING SURPLUSES**

- 6.1 If after any count or transfer, a Candidate obtains a Surplus, the Surplus votes are not to be transferred before the transfer of any Surplus votes obtained by any other Candidate on an earlier count or transfer.
- 6.2 If, on the counting of the first preferences or on a transfer, more than one Candidate has a Surplus, the largest Surplus must be dealt with first then other Surpluses transferred in order of largest Surplus to smallest.
- 6.3 If two or more Surpluses are equal, the Surplus of the Candidate who was recorded as having the highest number of votes at the last count or transfer at which the Candidates had an unequal number of votes is to be dealt with first.
- 6.4 If the Candidates referred to in clause 6.3 have had an equal number of votes at all preceding counts or transfers, the Candidate whose Surplus is to be dealt with first must be determined by a fair method determined by the Returning Officer.

## **7 METHOD OF DEALING WITH SURPLUS VOTES OBTAINED AT TRANSFER OF SURPLUS**

- 7.1 If the number of votes obtained by a Candidate is increased to a number that is equal to, or exceeds, the Quota by a transfer under clause 5 or any subsequent transfer, the Candidate must be declared elected.
- 7.2 Despite the fact that the Candidate has reached the Quota, the transfer must be completed, and all the votes to which the Candidate is entitled from the transfer must be transferred to the Candidate, but no votes of any other Candidate are to be transferred to the Candidate at subsequent transfers.
- 7.3 If the number of votes obtained by a Candidate is increased by a transfer under clause 5 or any subsequent transfer to a number that is equal to the Quota, all the Ballot Papers on which the votes are recorded are to be set aside as finally dealt with, unless required for a process under Schedule 5.
- 7.4 If the number of votes obtained by a Candidate is increased by a transfer under clause 5 or any subsequent transfer to a number that exceeds the Quota, the Surplus is to be transferred to the Candidates next in the order of the voters' respective preferences, in the following manner:
  - (a) the Ballot Papers on which are recorded the votes obtained by the elected Candidate in the last transfer are to be re-examined, and the number of third, or, in the case provided for in clause 12, next consecutive preferences recorded for each unelected Candidate are to be counted;

- (b) the Surplus of the elected Candidate is to be divided by the total number of votes mentioned in clause 7.4(a), and the resulting fraction is to be the Transfer value;
- (c) the number of third or other preferences, ascertained in accordance with clause 7.4(a) as having been recorded for each unelected Candidate, must be multiplied by the Transfer value referred to in clause 7.4(b); and
- (d) the resulting number, disregarding any fractional remainder, must be credited to each unelected Candidate and added to the number of votes previously obtained by the unelected Candidate.

## **8 METHOD OF TRANSFERRING VOTES OF EXCLUDED CANDIDATES**

- 8.1 If, after the first preferences have been counted and all Surpluses, if any, have been transferred as provided by this Schedule, no Candidate, or less than the number of Candidates required to be elected, has or have obtained the Quota:
- (a) the Candidate who, at that count or transfer, has the least number of votes must be excluded; and
  - (b) all the votes obtained by the excluded Candidate must be transferred to the continuing Candidates in order of the voters' preferences on each Ballot Paper following the process described in clauses 8.2 and 8.3.
- 8.2 The votes received by the excluded Candidate must be sorted into groups according to their transfer values when received by that Candidate.
- 8.3 The groups must be transferred, at the transfer value at which they were received, in the following order:
- (a) first, the group with the highest transfer value;
  - (b) secondly, the remaining groups in descending order of transfer value.
- 8.4 Each of the transfers that takes place under clause 8.3 is to be taken for all purposes to be a separate transfer.

## **9 METHOD OF DEALING WITH SURPLUS VOTES OBTAINED AT TRANSFER FROM EXCLUDED CANDIDATE**

- 9.1 If the number of votes obtained by a Candidate is increased by a transfer from an excluded Candidate to a number that is equal to, or exceeds, the Quota, the Candidate must be declared elected.
- 9.2 Despite the fact that the Candidate has reached the Quota, the transfer from the excluded Candidate must be completed, and all the votes to which the Candidate is entitled to receive from the transfer are to be transferred to the Candidate. No other votes are to be transferred to the Candidate at subsequent transfers.
- 9.3 If the number of votes obtained by a Candidate is increased by a transfer from an excluded Candidate to a number that is equal to the Quota, all the Ballot Papers on which those votes are recorded must be set aside as finally dealt with, unless required for a process under Schedule 5.
- 9.4 If the number of votes obtained by a Candidate is increased by a transfer from an excluded Candidate to a number that exceeds the Quota, the Surplus must be transferred to continuing



Candidates next in the order of the voters' respective preferences in the same manner as provided by clause 7.4.

- 9.5 However, in the case of a transfer of votes of an excluded Candidate under clause 8.1 or clause 11, the Surplus must not be dealt with until all the votes of that excluded Candidate have been transferred.

- 9.6 If a Surplus exists, it must be dealt with before any other Candidate is excluded.

## **10 PROCESS TO CONTINUE**

- 10.1 The process of electing and excluding Candidates as set out in this Schedule is to be repeated until the number of persons required to be elected are declared elected.

## **11 CANDIDATES WITH EQUAL NUMBER OF VOTES**

- 11.1 If on any count 2 or more Candidates have an equal number of votes and one of them is to be excluded, then whichever of those Candidates was recorded as having the least number of votes at the last count or transfer at which they had an unequal number of votes must be excluded.

- 11.2 If the Candidates referred to in clause 11.1 have had an equal number of votes at all preceding counts or transfers, the Candidate to be excluded must be determined by a fair method determined by the Returning Officer.

## **12 NEXT AVAILABLE PREFERENCES**

- 12.1 In determining which Candidate is next in the order of a voter's preference, any Candidates who have been declared elected or who have been excluded are not to be considered, and the order of the voter's preference must be determined as if the names of those Candidates had not been on the Ballot Paper.

## **13 SETTING ASIDE CERTAIN BALLOT PAPERS**

- 13.1 On a transfer if on a Ballot Paper there is no Candidate opposite whose name a number is placed, other than a Candidate who has been declared elected or excluded, the Ballot Paper must be set aside and not further counted, unless required for a process under Schedule 5.

## SCHEDULE 5: GENDER QUOTA COUNTBACK PROCEDURE

### 1 OVERVIEW

- 1.1 This Schedule applies when not enough non-male identifying Candidates are elected to meet the Gender Quota in a Region.
- 1.2 The last elected male Candidate in the Region is excluded, and the Ballot Papers they held at the point they were elected are distributed to the unelected non-male identifying Candidates according to the next available preference.
- 1.3 This process determines which of the unelected non-male identifying Candidates the voters who elected the last male identifying Candidate would prefer.
- 1.4 If more than one non-male vacancy needs to be filled to achieve the Gender Quota, the process set out in this Schedule is repeated with a single vacancy being filled each time.

### 2 PARTICIPATING CANDIDATES

- 2.1 Only unelected non-male identifying Candidates from an Election participate in the countback process (**participating Candidates**).
- 2.2 If there is no unelected non-male identifying Candidate, the last elected male Candidate is excluded and the remaining non-male vacancy must be filled by a Supplementary Election.
- 2.3 If there is only one unelected non-male identifying Candidate, the last elected male identifying Candidate is excluded and the Returning Officer must declare the non-male identifying Candidate elected.

### 3 CONDUCT OF COUNTBACK

- 3.1 The Returning Officer may conduct the countback manually or by electronic means.
- 3.2 To conduct the countback electronically, the Returning officer must be satisfied that:
  - (a) the electronic Ballot Paper data is an accurate copy of all the completed Ballot Papers from the Election; and
  - (b) the countback can be conducted using electronic means.
- 3.3 If the countback is conducted using electronic means, the Returning Officer may modify the process applying under clauses 4 to 9 as necessary to allow for the electronic nature of the countback.

### 4 DETERMINE COUNTBACK BALLOT PAPERS

- 4.1 In this clause, **Ballot Papers** means Ballot Papers from the Election that were completed.
- 4.2 The Ballot Papers belonging to the last elected male identifying Candidate (**retired Candidate**) at the point they were elected, are the only Ballot Papers that are examined and distributed to the unelected non-male identifying Candidates during the countback process
- 4.3 The following Ballot Papers must be brought together for the countback:
  - (a) if the retired Candidate was elected on first preferences, all the formal Ballot Papers marked with a first preference for that Candidate; or
  - (b) if the retired Candidate was elected on a subsequent transfer:

- (i) all the formal Ballot Papers counted to the retired Candidate at the time they were elected; and
- (ii) if the retired Candidate was elected when the number of remaining Candidates was equal to the number of remaining vacancies, any Ballot Papers that showed a next available preference for the retired Candidate but were not distributed because it was not necessary.

## **5 TRANSFER VALUE OF COUNTBACK BALLOT PAPERS**

5.1 The transfer value of each Ballot Paper included in the countback is to be determined as follows:

- (a) A Ballot Paper received by the retired Candidate at the Election as a first preference has a transfer value of 1.
- (b) A Ballot Paper received by the retired Candidate at the Election after first preferences were counted but before the transfer at which they were elected has the same transfer value as when it was received at the Election.
- (c) The transfer value of a Ballot Paper received by the retired Candidate at the transfer they were elected must be adjusted if they exceeded the Quota when they were elected. The countback transfer value is determined by dividing the number of votes by which the retired Candidate, immediately before that transfer was short of the Quota, by the number of Ballot Papers transferred to them at that transfer.
- (d) If the retired Candidate was elected because the remaining vacancies were equal to the remaining Candidates, the countback transfer value is that which would have applied if a further transfer was necessary.

## **6 TRANSFER OF COUNTBACK VOTES TO PARTICIPATING CANDIDATES**

- 6.1 Each participating non-male identifying Candidate begins the countback with zero votes. Any votes received by the participating Candidate in the Election are not counted for the purposes of the countback.
- 6.2 Starting with the countback Ballot Papers of highest transfer value, each Ballot Paper is transferred to the participating non-male identifying Candidates according to the next available preference shown on the Ballot Paper
- 6.3 If there is no preference recorded on a Ballot Paper next to any of the participating Candidate names, the Ballot Paper is to be set aside and not further counted
- 6.4 The total Ballot Papers transferred to each participating Candidate is multiplied by the transfer value as determined under clause 5 and credited to each participating Candidate, disregarding any remainder.
- 6.5 This process is repeated for each batch of countback Ballot Papers of the same transfer value, in order of highest transfer value to lowest.

## **7 DECLARATION OF SUCCESSFUL CANDIDATE AND END OF COUNTBACK**

- 7.1 After the transfers have been completed, if a participating Candidate has an absolute majority, the Returning Officer must declare that Candidate to be elected.

- 7.2 For the purposes of this clause, a participating Candidate has an absolute majority if the number of votes credited to that Candidate is more than 50% of the total number of votes credited to all the participating Candidates after the transfers described in clause 6.

## **8 NEXT STAGE (IF NECESSARY)**

- 8.1 If no participating Candidate has an absolute majority of votes, the participating Candidate with the fewest votes must be excluded.
- 8.2 The excluded Candidate's completed Ballot Papers must be transferred to the continuing unelected non-male identifying Candidates according to the next available preference shown on each Ballot Paper, at its respective transfer value. Ballot-papers of highest transfer value are transferred first, followed by Ballot Papers of the same transfer value, in order of highest to lowest.
- 8.3 The total number of Ballot Papers transferred to each continuing Candidate is multiplied by the transfer value and credited to each Candidate, disregarding any remainder.
- 8.4 The transfer value for the purposes of this clause is the same as the transfer value set out in clause 5.
- 8.5 If a continuing Candidate has an absolute majority the Returning Officer must declare that Candidate to be elected. If not, the process of excluding the Candidate with the lowest total votes continues until an absolute majority is achieved.
- 8.6 For the purposes of this clause, a Candidate has an absolute majority if the number of votes credited to that Candidate is more than 50 per cent of the total number of votes credited to all participating Candidates after the transfers and additions required by clauses 8.2 and 8.3.

## **9 PROCESS IF VOTE EQUAL**

- 9.1 This clause applies if:
- (a) a participating Candidate must be excluded; and
  - (b) 2 or more continuing Candidates with the fewest votes have an equal number of votes.
- 9.2 The Candidate who had the fewest votes at the last count or transfer at which they had an unequal number of votes must be excluded.
- 9.3 If there is no stage at which the 2 or more continuing Candidates had an unequal number of votes, the Candidate to be excluded must be determined by a fair method determined by the Returning Officer.

## **SCHEDULE 6: RULES RELATING TO SCRUTINEERS**

### **1 ROLE OF SCRUTINEERS**

- 1.1 A scrutineer is appointed by a Candidate to represent the Candidate's interests by ensuring the integrity of the Election process.
- 1.2 A scrutineer may only observe activities for the specific Election for which the scrutineer is appointed.

### **2 INFRINGEMENT OF SECRECY**

- 2.1 Except as authorised by the Returning Officer, a scrutineer must not communicate to any person any information likely to defeat the secrecy of voting.

### **3 RIGHTS OF SCRUTINEERS**

- 3.1 A scrutineer has the right to observe certain Election activities before the Voting Closing and to observe all Ballot Papers during the counting of votes.
- 3.2 The Election activities a scrutineer may observe include the following:
  - (a) the opening and emptying of a postal ballot box;
  - (b) the receipt and processing of Ballot Paper envelopes;
  - (c) the extraction, counting and recounting of Ballot Papers;
  - (d) in-person voting places throughout the Voting Period and during the counting of votes (when polling officials are present);
  - (e) any area designated for the counting of votes during the scrutiny of postal votes, provisional votes, absentee votes, and the counting of votes; and
  - (f) the final tabulation and production of online votes.
- 3.3 A scrutineer may challenge the admission or rejection of Ballot Paper envelopes and the formality of Ballot Papers by advising the Returning Officer of their challenges at the time that counting of votes takes place.
- 3.4 The Returning Officer must determine the outcome of a challenge by a scrutineer.
- 3.5 The Returning Officer's decision is final.

### **4 BRIEFING OF SCRUTINEERS**

- 4.1 The Returning Officer must ensure that scrutineers are briefed on their rights and responsibilities and provided with a detailed explanation of processes before each activity commences.
- 4.2 The Returning Officer must ensure that scrutineers are advised of the following:
  - (a) they can only be present when Ballot Papers for their Candidate's election are being processed;
  - (b) the total envelopes or Ballot Papers involved in each activity prior to its commencement;

- (c) their right to observe all aspects of the processing of Ballot Papers, but that they must not unnecessarily communicate with anyone at the Election activity and must allow space for staff to carry out their duties;
- (d) they must not under any circumstances handle election materials including Ballot Papers, and computer systems used to manage online voting;
- (e) they must not travel with the Returning Officer or an Election Official or their agents; and
- (f) any challenge or query should be drawn to the attention of the person authorised by the Returning Officer who is in charge of the Election activity.

## **5 REMOVAL OF SCRUTINEERS**

5.1 The Returning Officer or an Election Official may have a scrutineer removed from a voting place in the following circumstances:

- (a) if more than one scrutineer for a Candidate is present;
- (b) if the scrutineer handles any election materials;
- (c) if the scrutineer obstructs or hinders the Returning Officer's activities;
- (d) if the scrutineer fails to obey a lawful direction from the Returning Officer; or
- (e) if the scrutineer interferes with or attempts to influence any voter within a voting place.

## SCHEDULE 2: APPOINTMENT RULES

The Appointment Rules deal with how Traditional Owner Groups select Reserved Members.
---

### 1 ELIGIBILITY TO SELECT A RESERVED MEMBER

- 1.1 Each Traditional Owner Group is reserved one seat on the First Peoples' Assembly of Victoria (Assembly) and may select a Reserved Member.
- 1.2 A Traditional Owner Group has the meaning given in the Constitution of Assembly (Constitution), which means the members of:
- (a) a Prescribed Body Corporate registered as a native title holder for an area in Victoria where there is a native title agreement under the *Native Title Act 1993* (Cth);
  - (b) a Corporation formally recognised under the *Aboriginal Heritage Act 2006* (Vic) as a "Registered Aboriginal Party";
  - (c) a Corporation that holds a "Recognition and Settlement Agreement" under the *Traditional Owner Settlement Act 2010* (Vic);
  - (d) a group that the Assembly Chamber decides, by a Special Majority Resolution, meets the Additional Traditional Owner Group Criteria (until such time as another group satisfies the requirements of 1.2(a), 1.2(b) or 1.2(c) for the whole or a part of the same geographic area); or
  - (e) another group meeting any new criteria adopted by a Super Majority Resolution of the Assembly Chamber.

### 2 SELECTION OF RESERVED MEMBER

- 2.1 The process for selecting a Reserved Member is called the Selection Process.
- 2.2 The Selection Process adopted by a Traditional Owner Group at a previous Election may be used for the selection of a Reserved Member, unless changed.
- 2.3 The Selection Process requires that the members of the Traditional Owner Group, in accordance with the Constitution and these Rules:
- (a) must self-determine how it selects a Reserved Member and can change how it does this;
  - (b) must formally approve the method of selecting the Reserved Member; and
  - (c) must select a person to be a Reserved Member, in accordance with the approved method.
- 2.4 Examples of selection methods include:
- (a) a vote at a general meeting (for example an annual general meeting);
  - (b) a postal vote by members of the Traditional Owner Group; or

- (c) another method approved by the members of the Traditional Owner Group.

2.5 The following timeframes apply for selecting a Reserved Member:

- (a) at an Election time, no later than 9 business days after the date of publication of the Election results (Time Period);
- (b) at a time other than an Election time:
  - (i) to fill a vacant reserved seat held by a Traditional Owner Group, at the earliest convenience of that Traditional Owner Group;
  - (ii) to fill a reserved seat of a group referred to in Rule 1.2(d) or 1.2(e), at the earliest convenience of that Traditional Owner Group; and
  - (iii) to fill a casual vacancy, at the earliest convenience of the relevant Traditional Owner Group.

2.6 The following timeframes apply for admitting a Reserved Member:

- (a) at an Election time, the Reserved Member is automatically admitted as a Reserved Member at 9.00 am, 10 business days after the date of publication of the Election results;
- (b) at a time other than an Election time, the Reserved Member is admitted when the Council admits the person named in a notice of selection as a Reserved Member following receipt of the notice of selection from the Traditional Owner Group.

### **3 SELECTION AFTER TIME PERIOD**

3.1 This Rule applies if, at an Election time, the members of a Traditional Owner Group do not select a Reserved Member using the Selection Process within the Time Period.

#### **Interim appointment process**

3.2 The board or other governing body of the Traditional Owner Group may select an interim Reserved Member within 20 business days after the Time Period (Interim Process).

3.3 The interim Reserved Member may be selected for a period no longer than 6 months from the date of selection by the board or other governing body.

3.4 On receipt of a notice from the Traditional Owner Group of the selection of a person as an interim Reserved Member under this Rule, the Council must promptly admit the person named in the notice as an interim Reserved Member.

3.5 An interim Reserved Member has all the rights, responsibilities and entitlements of a Reserved Member until the first of the following to occur:

- (a) a new person is admitted to the seat as a Reserved Member; or
- (b) the six month period from the selection of the interim Reserved Member ends.

3.6 If an interim Reserved Member is selected, the members of the Traditional Owner Group may, within 6 months of the date of the selection, select a Reserved Member in accordance with Rule 2.



- 3.7 The interim Reserved Member will stop being a Member on the admission of the Reserved Member in accordance with Rule 2.6(b).
- 3.8 If the members of the Traditional Owner Group do not select a Reserved Member within the 6 month period:
- (a) the Traditional Owner Group is deemed to have decided not to select a Reserved Member at that time; and
  - (b) the person who is the interim Reserved Member will stop being a Member at the end of that 6 month period.

#### **Contingency process**

- 3.9 The members of the Traditional Owner Group may, at any time, select a Reserved Member in accordance with Rule 2 to fill a vacant reserved seat held by that Traditional Owner Group.
- 3.10 The Council must use its best efforts to have Traditional Owner Groups select Reserved Members under the Selection Process at an Election or as soon as possible after an Election.

### **4 NOTICE OF SELECTION**

- 4.1 If a person is selected under the Selection Process or Interim Process, the Traditional Owner Group must give the Assembly:
- (a) a notice of selection in accordance with Rule 4.2 advising the Assembly of the details of the person selected; and
  - (b) a consent to be a Member of the Assembly signed by the person selected, in a form required by the Council.
- 4.2 A notice of selection of a person as a Reserved Member given to the Assembly by the Traditional Owner Group must be in a form (if any) approved by the Assembly and must:
- (a) include:
    - (i) the full name of the Traditional Owner Group;
    - (ii) the full name of the selected person; and
    - (iii) a description of the method used to select the person and whether this method was approved by the members of the Traditional Owner Group; and
  - (b) be provided by a person authorised to make a declaration on behalf of the Traditional Owner Group and set out:
    - (i) the full name of the person;
    - (ii) the signature of the person;
    - (iii) the office held by the person; and
    - (iv) the date of the declaration of selection; and
  - (c) be accompanied by a copy of evidence supporting:

- (i) the method chosen; and
- (ii) the selection of the person; and

**Example:** an extract of minutes of a general meeting of the Traditional Owner Group

- (d) be accompanied by any information, evidence, declaration or consent required under Rule 4.1(b), 5.2(b)(ii) or 8.2.

## **5 EXTERNAL CONTROL**

5.1 A Traditional Owner Group may select a Reserved Member while it is in external control by a third party (such as an administrator) in accordance with Rule 5.2.

5.2 When selecting the Reserved Member, the following process must be followed:

- (a) the members of the Traditional Owner group must select the person to be the Reserved Member in accordance with these Rules;
- (b) a person authorised by the members of the Traditional Owner Group must give the Assembly:
  - (i) a notice of selection in accordance with Rule 4.2 advising the Assembly of the details of the person selected; and
  - (ii) a consent to be a Member signed by the person selected, in a form required by the Council; and
- (c) the person selected must be admitted in accordance with these Rules.

## **6 COSTS OF SELECTION PROCESS**

6.1 The costs for organising and administering the Selection Process or any other equivalent process to select a Reserved Member under these Rules will be the responsibility of the Traditional Owner Group.

## **7 GENDER QUOTA**

7.1 There is currently no requirement to meet a gender quota for Reserved Members.

7.2 The Assembly may adopt a quota or other system in the future if one gender is overrepresented among the Reserved Members.

## **8 ELIGIBILITY REQUIREMENTS FOR RESERVED MEMBERS**

8.1 A person is eligible to be selected as a Reserved Member if the person meets all of the requirements set out in the table in Rule 8.2.

8.2 The following table sets out the eligibility requirements for a person to be selected as a Reserved Member, and how the Assembly will verify that the requirements are met:

Requirement	Verification
1. The person must be an individual who is aged 18 years or above, calculated at the date the notice of selection is given to the Council.	The Assembly may request evidence of the person's date of birth or that they are at least 18 years of age.
2. The person must be a Victorian Traditional Owner.	Verification from the Traditional Owner Group.
3. The person must not be disqualified from acting as a director of a company under the <i>Corporations Act 2001</i> (Cth).	<p>The person must declare in writing that they meet this requirement</p> <p>The Assembly will search the registers maintained by the Australian Securities and Investments Commission and the Australian Financial Security Authority.</p> <p>The person must provide the Assembly at the time the notice of selection is given with any information required to conduct this search.</p>
<p>4. The person must not:</p> <ul style="list-style-type: none"> <li>• be in prison;</li> <li>• be the subject of an order under the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> (Vic); or</li> <li>• be restricted by bail, parole or other legal mechanisms from travelling within Victoria.</li> </ul>	<p>The person must declare in writing that they meet this requirement and consent to the Assembly conducting a National Police Records Check.</p> <p>The Assembly will conduct a National Police Records Check.</p> <p>The person must provide the Assembly at the time the notice of selection is given with any information required to undertake a National Police Records Check.</p>
5. The person must be able to comply with the rights and responsibilities of a Member of the Assembly, as set out in the Constitution and the Members' Charter.	The person must declare in writing that they meet this requirement.

## **9 ABOUT THESE APPOINTMENT RULES**

- 9.1 These Appointment Rules do not form part of the Constitution.
- 9.2 These Appointment Rules may be amended or replaced by the Assembly Chamber from time to time by Ordinary Majority Resolution.
- 9.3 Capitalised terms used but not defined in these Appointment Rules that are defined in the Constitution have the meaning given in the Constitution.
- 9.4 If there is any inconsistency between a provision of these Appointment Rules and the Constitution, the Constitution prevails.

## SCHEDULE 3: REGION RULES

The Region Rules set out the rules for:

- creating and changing Regions;
- for enrolling Voters in a Region, and
- how many Members represent a Region.

### **What are the Regions?**

The current Regions are contained in the Election Rules. The Elections Rules must be amended to include any update to the Regions.

### **Which Region will a person be enrolled to vote?**

A person will be enrolled in the Region in which the current residential address that they nominated in their enrolment form is located, subject to the following special rules.

If the address in which they are enrolled to vote is not wholly within one Region, they will be enrolled to vote in the Region that covers the largest geographic area of their property.

### **How are Regions to be drawn?**

Regions are intended to ensure that Members are drawn from different parts of the State in way that is broadly in line with the population. Regions are not treaty regions, traditional owner boundaries or determinations of country.

Regions must be drawn in a way that:

- Does not cross formally recognised traditional owner boundaries (**traditional owner boundaries**).
- Incorporates multiple traditional owner groups (whether or not they are formally recognised).
- Follows local government boundaries except where they intersect with a traditional owner boundary.
- When a local government boundary intersects with a traditional owner boundary, the Region boundary will follow the traditional owner boundary until it reaches the nearest local government boundary, which it will then continue to follow.

### **What is a formally recognised traditional owner boundary?**

- A boundary of a Registered Aboriginal Party.
- A boundary recognised through the process of agreement making under the Traditional Owner Settlement Act.
- A boundary recognised through another process as resolved by a super majority vote of the Assembly.

### **When are Regions to be reviewed?**

Regions are to be reviewed before an Election if, since the last review, there is:

- The publication of a new series of data that is used to calculate the voting age population.

- Any change to the boundaries of associated with a Traditional Owner Group, or the recognition or loss of recognition of a Traditional Owner Group, where these boundaries are also a Region boundary or now intersect with a Region boundary.
- Any change to the boundary of a local government area where this boundary is also a Region boundary.
- Any change to the State boundary of Victoria where this boundary is also a Region boundary.
- An ordinary motion of the Assembly Chamber to do so.

The exception to the above is when any of these events happen within three months of an Election. In this case, the Review will take place after the Election.

### **How are Regions to be reviewed?**

- The Council may call a panel to review the Regions (**review panel**).
- The review panel must consist of at least three people, none of which have been a candidate for the Assembly in the most recent Election.
- At least one member of the panel must have suitable expertise in drawing and understanding voting boundaries.
- The panel may consider any or all of the Regions and assess whether the Regions still best meet the criteria in these Region Rules.
- The panel may present revised boundaries to the Council that the panel considers better reflect the criteria in these Region Rules.
- If the panel does so, the Council must present these revised boundaries to the Assembly Chamber for a period of feedback of approximately one month's in duration.
- Following this feedback period, the panel may provide the Council with the final revised boundaries. If the panel does so, the Council must present the final revised boundaries to the Assembly Chamber for consideration and, if thought fit, adoption.
- The Assembly Chamber may adopt the revised boundaries proposed by the panel by Special Majority Resolution. If the panel does not adopt the revised boundaries they are rejected, and the panel must review and amend its proposal and repeat the above process.

### **How many Members are to be elected in each Region?**

- Each Region is to be allocated a Member for every 1,700 head of voting age population in that Region, rounded up or down to the nearest whole number.
- Exception to the above: there is to be a minimum of three Members in each Region.

### **How is the voting age population in a Region calculated?**

Voting age population is to be calculated using the most recent published census undertaken by the Australian Bureau of Statistics.

The voting age population is to be the number of people who have identified as Aboriginal and/or Torres Strait Islander living in that Region who are at the voting age or above.

At the time the Assembly was set up, there was not sufficiently accurate data to allow for calculating the number of eligible Voters in a Region including the number of:

- Traditional owners living interstate who would be enrolled to vote in that Region.
- Number of non-traditional owners who have not lived in that Region for long enough to qualify to vote.
- Number of people who did not respond to, or responded inaccurately to the most recent census.

The review panel may consider and recommend to the Council an alternate method of calculating voting age population to be adopted. If the panel does so, the Council must submit the proposal to the Assembly Chamber and the same review process as for review of Regions will apply (as set out above), including the period for feedback and the mechanism for approval by the Assembly Chamber. To avoid doubt, if the panel proposes changes to both the Regions and the method of calculating voting age population, those proposals can be submitted and considered by the Assembly at the same time.

### **About these Region Rules**

These Region Rules do not form part of the Assembly's constitution, and may be amended or replaced by the Assembly Chamber from time to time by Ordinary Majority Resolution.

Capitalised terms used but not defined in these Region Rules have the meaning given in the Assembly's constitution.

To the extent of any inconsistency between the provisions of these Region Rules and the provisions of the Assembly's constitution, the provisions of the Assembly's constitution will prevail.

## SCHEDULE 4: MEMBERS' CHARTER

### FIRST PEOPLES' ASSEMBLY OF VICTORIA

# Members' Charter

The Members' Charter sets out:

- the purpose of this Members' Charter
- the role and responsibilities of Assembly Members
- the expected standards of behaviour of Assembly Members
- the consequences of non-compliance with this Members' Charter and
- the rules for interpreting and amending this Members' Charter.

## CONTENTS

<b>1</b>	<b><u>Introduction</u></b>	<b>2</b>
<b>2</b>	<b><u>Roles and responsibilities</u></b>	<b>2</b>
2.1	<u>Roles</u>	2
2.2	<u>Time commitment</u>	2
2.3	<u>Engagement</u>	3
2.4	<u>Attendance at Chamber</u>	3
2.5	<u>Attendance at Committee meetings</u>	4
2.6	<u>Attendance at engagements</u>	4
2.7	<u>Reporting</u>	4
2.8	<u>Operations</u>	4
<b>3</b>	<b><u>Standards of behaviour</u></b>	<b>5</b>
3.1	<u>Cultural practices</u>	5
3.2	<u>Working together</u>	5
3.3	<u>Meeting protocols</u>	5
3.4	<u>Misconduct</u>	5
3.5	<u>Communications</u>	6
3.6	<u>Conflicts of interest</u>	6
3.7	<u>Confidentiality</u>	6
<b>4</b>	<b><u>Compliance</u></b>	<b>7</b>



# 1 Introduction

---

The First Peoples' Assembly of Victoria (**Assembly**) is the elected voice for Traditional Owners of Country in Victoria and Aboriginal and Torres Strait Islander peoples living on the lands and waters now known as Victoria (**First Peoples**). Its object is to promote the empowerment and self-determination of First Peoples by advancing the Treaty process. Composed of Traditional Owners of Country in Victoria, the Assembly will apply the collective cultural knowledge of the Members to perform its role. This requires strength, inclusivity, wisdom and courage. The success of the Assembly depends on its Members working together to represent First Peoples on the journey to Treaty. Members may not always agree, but Members will work constructively and with purpose to advance the Treaty process.

This Members' Charter sets out the roles and required standards of behaviour of all Members. It applies to all Members throughout their term – each Member agrees to comply with this Members' Charter as a condition of becoming a Member.

## 2 Roles and responsibilities

---

### 2.1 Roles

Members will represent First Peoples in advancing the Treaty process, including negotiating Statewide Treaty under the Treaty Negotiation Framework (**Framework**). Members have an important role in ensuring the Assembly meets the minimum standards under the Framework and building collective support of First Peoples for Treaty outcomes, including interim agreements. Members may also have a role in performing additional functions and responsibilities the Assembly takes on as Treaty negotiations progress and in supporting Traditional Owners to negotiate Traditional Owner Treaties, as appropriate.

Members also have a role in carrying out the Assembly's ongoing functions as the Aboriginal Representative Body under the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (**Treaty Act**), including in relation to the Self-Determination Fund and Treaty Authority.

### 2.2 Time commitment

It is expected that all Members, at a minimum, dedicate on average 1-2 days per week to Assembly business. Members with additional duties are expected to work increased hours to reflect the nature of their position.

It is up to Members how they allocate their time. However, Members must make themselves reasonably available to attend engagements and Yurpa Committee and Treaty Committee

(**Committee**) and Assembly Chamber (**Chamber**) meetings. Members must also make themselves available to work together with staff on Assembly business and to meet their reporting obligations.

## 2.3 Engagement

Members must bring their communities along the journey to Treaty.

It is expected that:

- **General Members** meaningfully engage with the communities in the Region they represent. This includes undertaking formal community engagement activities that are open to all community members in their Region and making themselves reasonably available to be contacted by and meet with community members in their Region. General Members should actively participate in, at a minimum, one formal engagement activity before each Chamber. General Members must represent their Region at Chamber and Committee meetings by ensuring their Regions' voices, ideas and aspirations are heard by the Assembly.
- **Reserved Members** meaningfully engage with their Traditional Owner Group and its members. This includes undertaking formal engagement activities with their Traditional Owner Group that are open to all members of the Traditional Owner Group and making themselves reasonably available to be contacted by and meet with members of the Traditional Owner Group. Reserved Members should actively participate in, at a minimum, one formal engagement activity before each Chamber. Reserved Members must represent their Traditional Owner Group at Chamber and Committee meetings by ensuring their Traditional Owner Groups' voices, ideas and aspirations are heard by the Assembly.

All Members are expected to actively participate in Assembly processes to:

- engage Aboriginal Community Controlled Organisations, Aboriginal Trusts and First Peoples who are not Traditional Owners of Country in Victoria
- educate and consult First Peoples, including Traditional Owner groups, Aboriginal Community Controlled Organisations, and Aboriginal Trusts regarding Treaty negotiations and
- seek the collective support of First Peoples to the outcomes of Treaty negotiations, including interim agreements.

Members must make all reasonable efforts to actively promote and enrol community members to the Assembly's Electoral Roll and encourage them to vote at Assembly elections. This includes Reserved Members assisting to promote and enrol members of their Traditional Owner Group.

Members must be responsive to staff engagement initiatives, including in relation to Assembly publicity and communications.

## 2.4 Attendance at Chamber

The Chamber is the central decision-making body of the Assembly. At Chamber, Members will be asked to consider and make key decisions of the Assembly. This may include decisions related to:

- Statewide Treaty, including meeting and continuing to meet the minimum standards, demonstrating collective support and negotiating and entering into Statewide Treaty and interim agreements

- how the Assembly exercises additional functions and powers that it takes on under interim agreements (if any), Treaty or other arrangements
- the Assembly's ongoing role in relation to the Self-Determination Fund, the Treaty Authority and functions under the Treaty Act and
- the governance of the Assembly and how it engages with Community.

The Chamber will meet at least 4 times per year, for 1-2 days at a time. The schedule of meetings will be set annually by the Council.

A Member must not be absent from two consecutive Chambers or three Chambers in a period of 12 months without the Council's consent or without reasonable excuse.

A Member may miss a Chamber meeting, or part of a meeting, for a legitimate reason. This could be, for example, due to illness, Sorry Business or other cultural duties. If a Member misses a Chamber meeting, the Member is expected to:

- perform their duties before and after the Chamber meeting, for example, read the papers and hold meetings with their community and
- make an effort to be informed of the business of that Chamber meeting.

If a Member is going to miss a Chamber meeting and chooses to appoint a proxy. Members must appoint the chairperson of that meeting or another Member as their proxy.

## **2.5 Attendance at Committee meetings**

The Assembly has established Committees to progress Treaty related work and strengthen the Assembly's cultural governance. The Committees are where the work of the Assembly is done. It is expected that Members contribute to this work.

Members must be a member of at least one Committee.

Members must actively attend and participate in Committee meetings.

## **2.6 Attendance at engagements**

Members must attend engagement activities arranged by the Assembly, including at least ten engagement events arranged by Assembly staff each year.

## **2.7 Reporting**

General Members are required to provide quarterly reports on their engagement activities to the communities in the Region they represent.

Reserved Members are required to provide quarterly reports on their engagement activities to their Traditional Owner Group and its members.

The quarterly reports may include regional reports at Chamber.

## **2.8 Operations**

Assembly operations provide support to Members as directed by the Council. It is expected that Members will work respectfully and productively with staff in the best interests of the Assembly. If a

Member has concerns with the adequacy of support, they are expected to raise the issue promptly with the Chief Executive Officer.

## 3 Standards of behaviour

---

Members are expected to act with integrity and humility. They are expected to perform their responsibilities in good faith and in the best interests of the Assembly. To achieve this, Members must meet certain standards of behaviour. Adhering to these standards supports building and maintaining positive relationships between Members, staff and Community.

### 3.1 Cultural practices

Members must abide by agreed ways of doing business that are part of cultural practice, lore and law.

### 3.2 Working together

Members must show respect to each other, their communities and the work of the Assembly.

Members must collaborate with other Members in their Region.

Members must make reasonable efforts to respond to questions and requests from Assembly staff. Members must make themselves reasonably available to be contacted by, and to meet with Assembly staff on a monthly basis.

### 3.3 Meeting protocols

Members must comply with the Assembly's Cultural Safety Policy, including its meeting protocols.

Members must participate in Assembly meetings in a respectful manner. This means respecting the Assembly's decision-making processes and structures, including the role of Committees, the Elders' Voice and Youth Voice and the role and responsibilities of Members who take on additional duties and positions.

It is expected that Members attend all Chamber and Committee meetings for the full duration. Members must actively participate in the meeting. This means that Members must have read the papers for the meeting and be prepared to discuss items under consideration.

Where a meeting is held by technology, it is expected that Members:

- have their camera on and
- are in a private place where they can focus on the meeting and not allow non-Members to view the meeting.

### 3.4 Misconduct

Members must not engage in:

- any violent, abusive or threatening conduct, including lateral violence, when engaging in Assembly business
- any behaviour that brings the Assembly into disrepute
- any behaviour that interferes with the work or activities of other Members, Assembly staff or stakeholders, for example, by frequent or vexatious complaints or
- intimidation or duress to attempt to compel another Member to support, or not support, a decision of the Assembly.

### **3.5 Communications**

Members must ensure that any communication (including social media) related to Assembly business that they make, authorise or endorse is:

- fair and honest
- respectful towards other Members and all members of the community
- free of allegations, distortion or smear and
- does not breach confidentiality requirements.

### **3.6 Conflicts of interest**

Members must declare and manage conflicts of interest in accordance with any policies adopted by the Council.

### **3.7 Confidentiality**

Members must keep confidential and not disclose any information of the Assembly that they receive, develop or become aware of while, or through having been, a Member. This is a continuing obligation; Members must continue to keep this information confidential after they stop being a Member.

Members do not need to keep information confidential where:

- the information is already publicly available (except if disclosed by a Member in breach of their confidentiality requirements)
- there is prior written agreement from the Assembly
- the disclosure is required by law or
- the disclosure is to a lawyer acting for the Member in the context of a lawyer-client relationship (and the lawyer agrees to keep the information confidential).

## 4 Compliance

---

It is a key duty of Members to comply with the Members' Charter. Compliance with the Members' Charter is an important way for Members to be accountable to the communities they represent.

Members will comply with this Members' Charter if they fulfil the roles and responsibilities and meet the standards of behaviour set out in this document.

To hold Members accountable, Members' attendance at engagement activities and Committee and Chamber meetings may be made publicly available, for example, on the Assembly's website or in the Assembly's Annual Report.

Consequences for non-compliance with the Members' Charter may include:

- the chair of a Committee or Chamber meeting may draw attention to the non-compliance at the meeting and may exercise powers to require the Member to cease the non-compliance
- the Audit, Risk and Remuneration Committee or the Council may draw attention to the non-compliance by writing to the Member or, in serious cases, notifying all Members in writing of the non-compliance and
- action may be taken under the Assembly's grievance and dispute resolution policies.

The ultimate consequence for non-compliance is the Members' disciplinary procedures and sanctions under clause 9.3-9.16 of the Constitution. This involves suspension or removal of the Member.

## 5 About this Members' Charter

---

This Members' Charter was adopted by the Chamber on 16 March 2023. It will commence operation on the day of the first Chamber following the 2023 election and from that day will replace any existing Members' Charter.

This Members' Charter does not form part of the Constitution.

This Members' Charter may be amended or replaced by the Chamber by Ordinary Majority Resolution. However, the terms of the Members' Charter must be consistent with the Constitution, Election Rules, Appointment Rules and requirements of the law.

Capitalised terms used but not defined in this Members' Charter have the meaning given in the Constitution. If there is an inconsistency between this Members' Charter and the Constitution, the Constitution prevails.

## SCHEDULE 5: COUNTBACK RULES

The Countback Rules set out the rules for having a countback to fill a casual vacancy for a General Member.

### 1 OVERVIEW

- 1.1 A countback is used to fill a casual vacancy arising when a General Member stops being a Member (**Vacating Member**), and the Vacating Member was elected:
- (a) at a general Election (**Relevant Election**); or
  - (b) at a previous countback.
- 1.2 If the Vacating Member was elected at a countback, a reference in this Schedule (except Rule 1.1) to a Vacating Member is a reference to the original Vacating Member from the Relevant Election that triggered that countback.
- 1.3 For a countback to proceed, there must be one or more unsuccessful Candidates from the Relevant Election who are eligible to fill the vacancy.
- 1.4 During a countback, the Ballot Papers that the Vacating Member held at the point they were elected are distributed to the Candidates participating in the countback according to the next available preference. This process determines which of the remaining unsuccessful Candidates, the Electors who elected the Vacating Member, would prefer to take their place.
- 1.5 If more than one vacancy needs to be filled at any time, the vacancy that occurred first is to be filled first.
- 1.6 If the Returning Officer is unable to determine which vacancy occurred first, the Vacating Member who was elected first at the Relevant Election is deemed to have stopped being a Member first.

### 2 RETURNING OFFICER

- 2.1 An independent person must be appointed by the Council to conduct the countback (**Returning Officer**).

### 3 PARTICIPATING CANDIDATES

- 3.1 A person is eligible to participate in a countback (**participating Candidate**) if:
- (a) that person was a Candidate at the Relevant Election;
  - (b) that person did not withdraw or retire from, and was not elected at, that Election;
  - (c) that person is still eligible to be elected to the Assembly; and
  - (d) that person's election will maintain the Gender Quota requirement for that Region.
- 3.2 The Returning Officer must exclude from participation in a countback, any Candidate who has died or has otherwise ceased to be eligible to be elected to the Assembly.
- 3.3 If there are no eligible Candidates, the countback fails and a By-election must be held.
- 3.4 If there is only one eligible Candidate, the Returning Officer must request written confirmation from the Candidate that they are eligible and consent to be elected as a member of the Assembly.

- 3.5 On receipt of the advice under Rule 3.4, the Returning Officer must declare the Candidate elected.

#### **4 CONDUCT OF COUNTBACK**

- 4.1 The Returning Officer must give written notice to each participating Candidate, advising:
- (a) the date, time and place for the conduct of the countback;
  - (b) that a participating Candidate is entitled to appoint scrutineers; and
  - (c) the contact details of the Returning Officer.
- 4.2 The date for the conduct of the countback must be at least 10 business days after the date of the written notice provided to Candidates which, in the opinion of the Returning Officer, is the earliest practicable date to conduct the countback.
- 4.3 If a Candidate wishes to withdraw from a countback, the Candidate must notify the Returning Officer within 10 business days of receipt of the notice that a countback will take place.
- 4.4 The Election Rules applying to scrutineers apply to a countback (with the necessary changes relevant to this context).
- 4.5 The Returning Officer may conduct the countback manually or by electronic means.
- 4.6 To conduct the countback electronically, the Returning Officer must be satisfied that:
- (a) the electronic Ballot Paper data is an accurate copy of all the completed Ballot Papers from the Election; and
  - (b) the countback can be conducted using electronic means.
- 4.7 If the countback is conducted using electronic means, the Returning Officer may modify the process applying under Rules 5 to 10 as necessary to allow for the electronic nature of the countback.

#### **5 COUNTBACK BALLOT PAPERS**

- 5.1 In this Rule, a reference to Ballot Papers means completed Ballot Papers (as defined in the Election Rules) from the relevant Election.
- 5.2 The Ballot Papers belonging to the vacating Candidate at the point they were elected, are the only Ballot Papers that are examined and distributed to participating Candidates during the countback process.
- 5.3 The following Ballot Papers must be brought together for the countback:
- (a) if the vacating Candidate was elected on first preferences, all the formal Ballot Papers marked with a first preference for that Candidate;
  - (b) if the vacating Candidate was elected on a subsequent transfer:
    - (i) all the formal Ballot Papers counted to the vacating Candidate at the time they were elected; and
    - (ii) if the vacating Candidate was elected when the number of remaining Candidates was equal to the number of remaining vacancies, any Ballot Papers that showed a next available preference for the vacating Candidate but were not distributed because it was not necessary.



## **6 TRANSFER VALUE OF COUNTBACK BALLOT PAPERS**

6.1 The transfer value of each Ballot Paper included in the countback is to be determined as follows:

- (a) a Ballot Paper received at the Relevant Election by the vacating Candidate as a first preference has a transfer value of 1;
- (b) a Ballot Paper received at the Relevant Election by the vacating Candidate after first preferences were counted but before the transfer at which they were elected has the same transfer value as when it was received;
- (c) the transfer value of a Ballot Paper received by the vacating Candidate at the transfer at which they were elected must be adjusted if they exceeded quota when they were elected;
- (d) the adjusted transfer value under Rule 6.1(c) is determined by dividing the number of votes by which the vacating Candidate, immediately before the transfer was short of the quota, by the number of Ballot Papers transferred to them at the transfer; and
- (e) if the vacating Candidate was elected because the remaining vacancies were equal to the remaining Candidates, the countback transfer value is that which would have applied if a further transfer was necessary.

## **7 TRANSFER OF COUNTBACK VOTES TO PARTICIPATING CANDIDATES**

7.1 Each participating Candidate begins the countback with zero votes.

7.2 Any votes received by a participating Candidate at the Relevant Election are not counted for the purposes of the countback.

7.3 Starting with the countback Ballot Papers of highest transfer value, each Ballot Paper is transferred to the participating Candidates according to the next available preference shown on the Ballot Paper.

7.4 If there is no preference recorded on a Ballot Paper next to any of the participating Candidate names, the Ballot Paper is to be set aside and not further counted.

7.5 The total Ballot Papers transferred to each participating Candidate is multiplied by the transfer value determined in Rule 6 and credited to each participating Candidate, disregarding any remainder.

7.6 This process is repeated for each batch of countback Ballot Papers of the same transfer value, in order of highest transfer value to lowest.

## **8 DECLARATION OF SUCCESSFUL CANDIDATE AND END OF COUNTBACK**

8.1 After the transfers have been completed, if a participating Candidate has an absolute majority the countback ends and the Returning Officer must seek written confirmation from the successful Candidate that they are eligible and consent to being elected to the Assembly.

8.2 On receipt of the written declaration, the Returning Officer must declare that Candidate elected.

8.3 If written confirmation is not received within 24 hours, a further countback is to be conducted.

- 8.4 For the purposes of this Rule, a participating Candidate has an absolute majority if the number of votes credited to that Candidate is more than 50% of the total number of votes credited to all participating Candidates after the transfers described in Rule 7.

## **9 NEXT STAGE (IF NECESSARY)**

- 9.1 If no participating Candidate has an absolute majority of votes, the participating Candidate with the fewest votes must be excluded.
- 9.2 The excluded Candidate's completed Ballot Papers must be transferred to the continuing Candidates according to the next available preference shown on each Ballot Paper, at its respective transfer value. Ballot Papers of highest transfer value are transferred first, followed by Ballot Papers of the same transfer value, in order of highest to lowest.
- 9.3 The total number of Ballot Papers transferred to each continuing Candidate is multiplied by the transfer value and credited to each Candidate, disregarding any remainder.
- 9.4 The transfer value for the purposes of this Rule is the same as the transfer value set out in Rule 6.
- 9.5 If a continuing Candidate has an absolute majority, the Returning Officer must declare that Candidate to be elected. If not, the process of excluding the Candidate with the lowest total votes continues until an absolute majority is achieved.
- 9.6 For the purposes of this Rule, a Candidate has an absolute majority if the number of votes credited to that Candidate is more than 50 per cent of the total number of votes credited to all participating Candidates after the transfers and additions required by Rules 9.2 and 9.3.

## **10 PROCESS IF VOTE EQUAL**

- 10.1 This Rule applies if:
- (a) a participating Candidate must be excluded; and
  - (b) 2 or more continuing Candidates with the fewest votes have an equal number of votes.
- 10.2 The Candidate who had the fewest votes at the last count or transfer at which they had an unequal number of votes is to be excluded.
- 10.3 If there is no stage at which the 2 or more continuing Candidates had an unequal number of votes, the Candidate to be excluded must be determined by a fair method determined by the Returning Officer.

## **11 ABOUT THESE COUNTBACK RULES**

- 11.1 These Countback Rules do not form part of the Constitution of the Assembly.
- 11.2 These Rules may be amended or replaced by the Assembly Chamber from time to time by Ordinary Majority Resolution.
- 11.3 Capitalised terms used but not defined in these Countback Rules:
- (a) that are defined in the Constitution of the Assembly have the meaning in the Constitution;
  - (b) that are defined in the Election Rules and not in the Constitution, have the meaning in the Election Rules.

- 11.4 If there is any inconsistency between a provision of these Rules and the Constitution, the Constitution prevails.