

# **CONSTITUTION**

**of**

**THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF CANBERRA  
INCORPORATED**

**APPROVED AGM 9 NOVEMBER 2016**

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ASSOCIATIONS INCORPORATION ACT 1991 (ACT)  
An association registered in the Australian Capital Territory

CONSTITUTION

of

THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF CANBERRA INCORPORATED

**1. DEFINITIONS AND INTERPRETATION**

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**1.1. Definitions**

In this Constitution, unless the context otherwise requires:

- (a) "Act" means the Associations Incorporation Act 1991 (ACT);
- (b) "Annual General Meeting" has the same meaning given in the Act;
- (c) "Associate Member" means a natural person admitted as an Associate Member under Clause 8.3;
- (d) "Board" means the committee of the YMCA of Canberra under Clause 20;
- (e) "By-Laws" means any by-laws made by the Board under Clause 28;
- (f) "Chair" means the Chair of YMCA of Canberra elected under Clause 24;
- (g) "Challenge 21" means the declaration adopted at the 14<sup>th</sup> World Council of YMCAs as a contemporary interpretation of the Paris Basis, and which refers to the following aspirations:
  - (i) striving for spiritual, intellectual and physical well being of individuals and wholeness of communities;
  - (ii) empowering all, especially young people and women to take increased responsibilities and assume leadership at all levels and working towards an equitable society;
  - (iii) advocating for and promoting the rights of woman and upholding the rights of children;
  - (iv) fostering dialogue and partnership between people of different faiths and ideologies and recognising the culture identities of people and promoting cultural renewal;
  - (v) committing to work in solidarity with the poor, dispossessed, uprooted people and oppressed racial, religious and ethnic minorities;
  - (vi) seeking to be mediators and reconcilers in situations of conflict and working for meaningful participation and advancement of people for their own self-determination; and
  - (vii) preserving and protecting the earth's resources for coming generations;

- (h) **“Chief Executive Officer”** means the Chief Executive Officer of YMCA of Canberra appointed under Clause 26;
- (i) **“Club”** means a new club of the YMCA of Canberra created by the Board, or an existing club affiliated with the YMCA of Canberra by the Board, under Clause 7.1;
- (j) **“Constitution”** means this Constitution of YMCA of Canberra as amended from time to time;
- (k) **“Deputy Chair”** means the Deputy Chair of YMCA of Canberra elected under Clause 24.2;
- (l) **“Director”** means a member of the Board and a committee member of YMCA of Canberra;
- (m) **“General Meeting”** means the Annual General Meeting or any Special General Meeting of YMCA of Canberra;
- (n) **“General Member”** means a natural person admitted as a General Member of YMCA of Canberra under Clause 8.2; **“Life Member”** means a natural person admitted as a Life Member of YMCA of Canberra under Clause 8.5;
- (o) **“Member”** means a member for the time being of YMCA of Canberra under Clause 8 and **“Membership”** has a corresponding meaning;
- (p) **“National Council”** means the National Council of the Young Men’s Christian Associations of Australia;
- (q) **“Objects”** means the objects of YMCA of Canberra set out in Clause 3;
- (r) **“Public Officer”** means the public officer of YMCA of Canberra appointed under Clause 25;
- (s) **“Regulation”** means the Association Incorporation Regulation 1991 (ACT);
- (t) **“Special Resolution”** means a resolution of YMCA of Canberra:
  - (i) passed at a General Meeting of which at least 21 days’ notice, accompanied by notice of an intention to propose the resolution as a special resolution, has been given to the Members; and
  - (ii) passed by at least 75% of the votes of those Members who, being entitled to vote, vote in person or by proxy at the General Meeting;
- (u) **“Values”** means:
  - (i) valuing the whole person, consisting of a body, a mind and a spirit, each of which is of equal importance;
  - (ii) valuing the dignity and intrinsic worth of all people regardless of age, gender, ethnicity, belief or other difference;
  - (iii) valuing the diversity of people, communities and nations;
  - (iv) valuing equality of opportunity and justice for all people;

- (v) valuing healthy communities based on relationships between people which are characterised by love, understanding and mutual respect; and
- (vi) valuing acceptance of personal responsibility; and
- (v) “YMCA of Canberra” means the Young Men’s Christian Association of Canberra Incorporated.

## 1.2. Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to a function includes a reference to a power, authority or duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority or the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other gender;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) expressions referring to “writing” will be construed to include references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail;
- (h) the words “includes” or “including” shall be treated as being “includes without limitation” or “including without limitation” respectively;
- (i) references to a Clause or schedule refers to a Clause or schedule in this Constitution;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (k) an expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has in any Clause of this Constitution that deals with a matter by that Part or Division the same meaning as in that Part or Division; and
- (l) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution.

## **2. THE ASSOCIATION**

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### **2.1. Name of the association**

The name of the association is “The Young Men’s Christian Association of Canberra Incorporated”.

### **2.2. The nature of YMCA of Canberra**

YMCA of Canberra:

- (a) is an association incorporated under the Act;
- (b) is established solely for the Objects;
- (c) will apply its surplus income (if any) to promoting the Objects; and
- (d) is not carried on for the purpose of profit or gain to the Members.

## **3. OBJECTS OF THE ASSOCIATION**

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### **3.1. Objects of YMCA of Canberra**

The Objects of YMCA of Canberra are:

- (a) promote the Values;
- (b) promote the Challenge 21;
- (c) to work for and maintain conditions, within YMCA of Canberra and in society, its organisations and institutions, which allow for tolerance, acceptance and inclusiveness;
- (d) to promote the interests of the YMCA movement;
- (e) to promote the spiritual, mental, moral, social, physical and material well-being of the community;
- (f) to affiliate with any body of persons for the purpose of furthering the objects of YMCA of Canberra provided that such body has objects similar to those of YMCA of Canberra;
- (g) to remain a member of the organisation known as the National Council; and
- (h) to provide and facilitate health, recreation, welfare and well being services to the Community.

## **4. POWERS**

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### **4.1. YMCA of Canberra’s capacity and powers**

YMCA of Canberra has the legal capacity and powers conferred on an incorporated association under the Act, which must be exercised solely for furthering the Objects.

#### **4.2. How YMCA of Canberra may exercise its powers**

In exercising its powers under Clause 4.1, YMCA of Canberra may do all such things incidental or conducive to the attainment of the Objects.

#### **4.3. Doctrine of *ultra vires* will not apply to the power of YMCA of Canberra**

This Clause 4 and any other provisions of this Constitution are to be construed to:

- (a) prevent the application of the doctrine of ultra vires to the powers of YMCA of Canberra to further its Objects; and
- (b) ensure YMCA of Canberra can give effect to the Objects by acting a certain way without the need to specifically include a power to do so.

### **5. INCOME AND PROPERTY**

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#### **5.1. Income and property to only be used in promotion of the Objects**

The income and property of YMCA of Canberra must be applied solely towards the promotion of the Objects.

#### **5.2. Members not to receive income or property of YMCA of Canberra**

No portion of the income or property of YMCA of Canberra will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member.

#### **5.3. Members may receive payments in good faith**

Subject to Clause 5.2, nothing in this Constitution prevents payment in good faith to any Member:

- (a) for any services actually rendered to YMCA of Canberra, whether as an employee or otherwise;
- (b) for goods supplied to YMCA of Canberra in the ordinary and usual course of business;
- (c) of interest on money borrowed by YMCA of Canberra from any Member;
- (d) of rent of premises demised or let by any Member to YMCA of Canberra; or
- (e) for any out-of-pocket expenses incurred by any Member on behalf of YMCA of Canberra and approved by the Board,

provided any such payment does not exceed the amount ordinarily payable between ordinary commercial parties dealing at arms-length in a similar transaction.

### **6. ADDITION, ALTERATION OR AMENDMENT OF CONSTITUTION**

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#### **6.1. Amendment of Constitution to be by Special Resolution**

No addition, alteration or amendment can be made to this Constitution unless approved by the National Council and passed by a Special Resolution of YMCA of Canberra.

## **7. CLUBS**

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### **7.1. Power to create clubs**

- (a) The Board may by resolution create a new Club for the furtherance of the Objects.
- (b) The Board may by resolution affiliate an existing Club with the YMCA of Canberra for the furtherance of the Objects.

### **7.2. Club rules**

The rules of a Club and its members shall be those rules approved or as amended by the Board in its sole discretion.

### **7.3. Club Members to comply with club rules**

A Member who is a member of a Club must comply with that Club's rules.

### **7.4. Power to dissolve or disaffiliate a club**

The Board may dissolve a Club that does not comply with the Rules, or otherwise ensure its members comply with the Rules, this Constitution or any By-Laws.

## **8. MEMBERSHIP**

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### **8.1. Categories of Membership**

YMCA of Canberra shall have the following categories of Members:

- (a) General Members;
- (b) Associate Members;
- (c) Life Members; and
- (d) any other categories of Membership determined by the Board from time to time in accordance with Clause 8.6.

### **8.2. General Members**

General Members are:

- (a) all those natural persons who were voting members of YMCA of Canberra as at the date of the adoption of this Constitution; and
- (b) thereafter, any natural person who subscribes to the Values and whose nomination for General Membership has been accepted by the Board in accordance with Clause 8.4.

### **8.3. Associate Members**

Associate Members are:

- (a) all those natural persons, other than General Members, who were non-voting members of the YMCA of Canberra, or who were members of Clubs of the YMCA of Canberra, as at the date of the adoption of this Constitution; and
- (b) thereafter, any natural person who becomes a member of a Club or whose application for Associate Membership has otherwise been accepted by the Board at its discretion.

### **8.4. Nomination for General Membership**

- (a) A nomination of a person for General Membership must:
  - (i) be made by a Member in writing in the form determined from time to time by the Board; and
  - (ii) be lodged with the Chief Executive Officer.
- (b) As soon as is practicable after receiving a nomination for General Membership, the Chief Executive Officer shall refer the nomination to the Board which shall resolve whether to approve or reject the nomination. The Board may accept or reject any nomination at its absolute discretion and without giving reasons.

### **8.5. Life Members**

- (a) The Board may by ordinary resolution, from among persons who have provided long and meritorious service to YMCA of Canberra, appoint Life Members in recognition of their efforts in furthering the interests of YMCA of Canberra.

Nominations for Life Membership may be submitted to the Chief Executive Officer.

### **8.6. Creation of new categories of Membership**

The Board may from time to time create new categories of Membership with such rights, privileges and obligations as the Board considers appropriate provided that no such categories of Membership shall have voting rights unless and until the creation of that category of Membership is ratified by ordinary resolution of YMCA of Canberra in General Meeting.

### **8.7. Creation of new sub-categories of Membership**

The Board may from time to time create new sub-categories of Membership with such rights, privileges and obligations as exist in respect of the relevant primary category of Membership.

### **8.8. Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being a Member of YMCA of Canberra:

- (a) cannot be transferred or transmitted to another person; and

- (b) terminates upon cessation of the person's Membership.

## **9. EFFECT OF MEMBERSHIP**

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### **9.1. Consequences of Membership**

Members acknowledge and agree:

- (a) that this Constitution constitutes a contract between each of them jointly and severally and YMCA of Canberra and that they are bound by and must comply with:
- (i) this Constitution; and
  - (ii) any By-Laws, determination, resolution or policy which may be made or passed by the Board or any duly authorised persons or committee in accordance with this Constitution;
  - (iii) that by being a Member they are subject to the jurisdiction of YMCA of Canberra;
  - (iv) that subject only to this Constitution, they are entitled to all the rights, advantages, privileges and services of YMCA of Canberra Membership;
  - (v) to operate with mutual trust and confidence in pursuit of the Objects; and
  - (vi) to do all things reasonably necessary to enable the Objects to be achieved.

## **10. LIABILITY OF MEMBERS**

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### **10.1. Liability of Members**

The liability of a Member of YMCA of Canberra to contribute towards the payment of debts and liabilities of YMCA of Canberra or the costs, charges and expenses of the winding up of YMCA of Canberra is limited to the amount, if any, unpaid by the Member in respect of any subscriptions and fees due and payable under Clause 11.

## **11. SUBSCRIPTIONS AND FEES**

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### **11.1. The Board may determine subscriptions and fees for Membership of YMCA of Canberra**

- (a) The Board may determine from time to time subscriptions and fees to be paid by Members to YMCA of Canberra, including but not limited to annual membership fees, capitation fees, Club fees and levies.
- (b) Any subscriptions, fees and levies determined by the Board under this Clause 11 and the basis of, time for and manner of payment for those monies must be prescribed in the By-Laws or, in the case of Club fees, in the relevant Club rules.

### **11.2. Consequences of failure to pay monies due to YMCA of Canberra**

If a Member fails to pay all monies due and payable by that Member to YMCA of Canberra under Clause 11.1 then:

- (a) that Member's rights under this Constitution will be immediately suspended from the expiry of time prescribed for the payment of those monies, unless the Board determines otherwise;
- (b) such rights will be suspended until all monies are fully paid unless the Board determines otherwise; and
- (c) if the monies remain unpaid for more than 28 days, the Board may deal with the Member at its discretion and in line with any applicable By-Laws and may suspend, expel, disqualify, discipline or retain (but not impose a financial penalty on) that Member as a Member, or impose such other conditions as the Board considers appropriate.

## **12. REMOVAL AND CESSATION OF MEMBERSHIP**

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### **12.1. Cessation of Membership**

A person ceases to be a Member if the person:

- (a) dies;
- (b) resigns from Membership of YMCA of Canberra under Clause 12.2;
- (c) is removed from YMCA of Canberra under Clause 12.3;
- (d) is expelled from YMCA of Canberra under Clause 11.2(c);
- (e) fails to renew his or her Membership of YMCA of Canberra within the time set by the Board,

with such cessation of Membership taking effect immediately upon the occurrence of the relevant event giving rise to the cessation of Membership.

### **12.2. Resignation of Members**

- (a) A Member who has paid all amounts due and payable by that Member to YMCA of Canberra may resign from Membership of YMCA of Canberra by giving written notice to YMCA of Canberra. The resignation comes into effect upon receipt of the notice by YMCA of Canberra.
- (b) If a Member resigns from YMCA of Canberra, the Member must fulfil all his or her obligations to YMCA of Canberra up to and including the effective date of resignation.

### **12.3. The Board may suspend or expel a Member**

- (a) If the Board is of the opinion that a Member:
  - (i) has failed to comply with this Constitution; or
  - (ii) has acted in a manner prejudicial to the interests of YMCA of Canberra or the Objects,

then the Board may, by ordinary resolution:

- (iii) expel the Member from YMCA of Canberra; or
- (iv) suspend the Member from the rights and privileges of membership of YMCA of Canberra that the Board may decide for a specified period.

- (b) If the Board passes a resolution under Clause 12.3(a), the Chief Executive Officer must, as soon as practicable, serve a written notice on the Member:
  - (i) setting out the resolution of the Board and the grounds on which it is based;
  - (ii) stating that the Member may address the Board at a meeting held not earlier than 14 days and not later than 28 days after service of the notice; and
  - (iii) stating the date, place and time of that meeting; and
  - (iv) informing the Member that the Member may do either or both of the following:
    - a. attend and speak at that meeting; and
    - b. submit to the Board at or before the date of that meeting written representations relating to the resolution.
- (c) A resolution of the Board under Clause 12.3(a) is of no effect unless the Board, at the meeting held under 12.3(b), confirms the resolution.
- (d) At a meeting of the Board mentioned in Clause 12.3(c) the Board must:
  - (i) give the relevant Member an opportunity, if present, to make oral representations;
  - (ii) give due consideration to any oral or written representations submitted to the Board by that Member at or before the meeting; and
  - (iii) by resolution decide whether to confirm or revoke the resolution of the Board previously made.
- (e) If the Board confirms a resolution under Clause 12.3(d), the Chief Executive Officer must, within 7 days of that confirmation, by written notice inform the Member of that confirmation and of the Member's right of appeal under Clause 12.4.
- (f) A resolution confirmed by the Board under Clause 12.3(d) does not take effect:
  - (i) until the end of the period within which the Member is entitled to appeal against the resolution if the Member does not exercise the right of appeal within that period; or
  - (ii) if within that period the Member exercises any right of appeal, unless and until YMCA of Canberra confirms the resolution in accordance with Clause 12.4.
- (g) The Board may, in the By-Laws, delegate its power under this clause 12.3 to the Chief Executive Officer or a disciplinary committee or panel, in which case all references to the Board in this clause shall be regarded as a reference to the person, committee or panel to whom the relevant power has been delegated.

#### **12.4. Member's right of appeal**

- (a) A Member may appeal to YMCA of Canberra in a Special General Meeting against a resolution under Clause 12.3(a), within 7 days after the notice of the resolution is served on the Member, by lodging with the Chief Executive Officer a notice to that effect.

- (b) On receipt of a notice under Clause 12.4(a), the Chief Executive Officer must notify the Board which must call a Special General Meeting of YMCA of Canberra to be held within 21 days after the date when the Chief Executive Officer received the notice or as soon as possible after that date.
- (c) At a Special General Meeting of YMCA of Canberra called under Clause 12.4(b):
  - (i) no business other than the question of the appeal may be transacted;
  - (ii) the Board and the Member must be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
  - (iii) the Members present must vote by secret ballot on the question of whether the resolution made under Clause 12.3(d) should be confirmed or revoked.
- (d) If the General Meeting passes an ordinary resolution in favour of the confirmation of the resolution made under Clause 12.3(d), that resolution is confirmed.

#### **12.5. Effect of cessation of Membership**

A Member who ceases to be a Member, for whatever reason:

- (a) forfeits all rights in and claim against YMCA of Canberra whatsoever;
- (b) forfeits all representation rights at General Meetings; and
- (c) must return any YMCA of Canberra documents, records or other property in their possession, custody or control, including confidential information, to YMCA of Canberra within 7 days of cessation of Membership.

#### **12.6. Membership may be reinstated**

Membership which has lapsed, been withdrawn or has been terminated under this Constitution may be reinstated at the discretion of the Board.

### **13. MEETINGS**

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#### **13.1. Annual General Meetings**

An Annual General Meeting of YMCA of Canberra must be held in accordance with the Act and this Constitution on a date and at a venue to be determined by the Board.

#### **13.2. All other meetings to be Special General Meetings**

All General Meetings other than the Annual General Meeting must be Special General Meetings and held in line with this Constitution and the Act.

### **14. NOTICE OF GENERAL MEETINGS**

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#### **14.1. Notice of General Meetings to be in writing**

- (a) YMCA of Canberra must give written notice of a General Meeting individually to:

- (i) each and every Member;
- (ii) each and every Director;
- (iii) the Public Officer;
- (iv) the Chief Executive Officer; and
- (v) YMCA of Canberra's auditors (if any),

at least 21 days prior to the date on which that meeting is to be held.

#### **14.2. Service of notice of General Meetings**

YMCA of Canberra may give the notice of a General Meeting to a person entitled to notice under Clause 14.1 either:

- (a) personally;
- (b) by sending it by post to the address nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; and
- (d) by sending it to the person by other electronic means (if any) nominated by that person,

and the date of service shall be determined in accordance with Clause 32.

#### **14.3. Content of notice of General Meetings**

A notice of a General Meeting given under this Clause 14 must state the place, day and time of the General Meeting, together with:

- (a) the agenda for the meeting;
- (b) notice of the business to be transacted at the meeting;
- (c) any notice of motion received from any Member or the Board in accordance with Clause 16;
- (d) any other documents required to be tabled in line with this Constitution and the Act;
- (e) if a Member is entitled to appoint a proxy – a statement setting out:
  - (i) that the Member has a right to appoint a proxy;
  - (ii) that the proxy does or does not need to be a Member; and
- (f) the date on which the notice is sent.

### **15. ENTITLEMENT AT GENERAL MEETINGS**

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#### **15.1. Entitlement to attend, speak and vote at General Meetings**

- (a) Each Member and Director is entitled to attend and speak at General Meetings.

- (b) Each General Member is entitled to vote at General Meetings.
- (c) Any other person authorised by the Board may attend and speak at General Meetings.

**15.2. Member must not have any outstanding debts to YMCA of Canberra**

Despite any other Clause of this Constitution, no Member can be represented at, or take part in, a General Meeting, unless all monies then due and payable by that Member to YMCA of Canberra are fully paid and received by YMCA of Canberra.

**16. NOTICES OF MOTION**

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**16.1. Any Member may give a notice of motion for special business**

Subject to anything else in this Clause 16, any Member may, at least 18 days (excluding the receiving date and the meeting date) before a General Meeting, give the Chief Executive Officer a written notice of motion, requiring an issue or resolution to be included as special business at the General Meeting.

**16.2. MCA of Canberra must include a notice of motion as special business**

If a notice is given under Clause 16.1, YMCA of Canberra must include the issue or resolution referred to in an amended notice of motion, given at least 14 days before the relevant General Meeting, as special business at the General Meeting.

**17. SPECIAL GENERAL MEETINGS**

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**17.1. Board may convene Special General Meetings**

The Board may, by resolution and whenever it thinks fit, convene a Special General Meeting of YMCA of Canberra and, where but for this Clause more than 15 months would elapse between Annual General Meetings, must convene a Special General Meeting before the expiration of that period.

**17.2. Members may demand Special General Meetings**

The Board must convene a Special General Meeting on the requisition in writing of more than 5% of General Members, and such Special General Meeting must be:

- (a) called no later than 21 days after the requisition and in accordance with the Act and the Constitution; and
- (b) held no later than 2 months after the requisition.

**17.3. Format of Member's requisition for Special General Meeting**

A General Members' requisition for a Special General Meeting must:

- (a) state the business to be transacted at that meeting;
- (b) identify any resolutions (including Special Resolutions) that are to be raised at the meeting;

- (c) be signed by the Members making the requisition; and
- (d) be delivered to the Chief Executive Officer.

#### **17.4. Member's requisition for Special General Meeting may be in counterparts**

A General Members' requisition for a Special General Meeting may consist of several documents in a like form, each signed by one or more of the Members making the requisition.

#### **17.5. Members may convene Special General Meetings**

- (a) If the Board fails to convene a Special General Meeting under Clause 17.2, the General Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than 2 months after the date on which the requisition was made.
- (b) The cost and expense of convening a Special General Meeting under this Clause 17.5 must be borne by the Members calling and holding the meeting.
- (c) A Special General Meeting convened by General Members under this Constitution must be convened in the same manner, or as nearly as possible as that, in which General Meetings are convened by the Board.

#### **17.6. Members' rights to requisition and convene a General Meeting not allowed if a meeting already called**

If General Members requisition a Special General Meeting in accordance with this Clause 17 and notice has already been given for a General Meeting that is to be held within the next 60 days, the Board shall not be required to convene a Special General Meeting under this Clause 17 and the business sought by the Members in the requisition notice made under this Clause 17 shall be included in the business of the General Meeting already called.

### **18. PROCEEDINGS AT GENERAL MEETINGS**

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#### **18.1. Quorum present**

No business can be transacted at any General Meeting unless a quorum of at least 20% of the existing General Members is present at the time when the meeting proceeds to business.

#### **18.2. Chair of the General Meeting**

- (a) The Chair must, where possible and subject to this Constitution, preside as chairman at every General Meeting of YMCA of Canberra.
- (b) If the Chair is not present at a General Meeting, or is unable to preside, the Deputy Chair shall, where possible and subject to this Constitution, preside as chairman for that meeting only.
- (c) If neither the Chair nor Deputy Chair are present at a General Meeting, the present Members will elect:
  - (i) one of the remaining Directors present at the meeting; or

- (ii) if there are no remaining Directors willing or able to preside, a Member present at the meeting,

who must, subject to this Constitution, preside as chairman for that meeting only.

### **18.3. Chairman of General Meeting to determine conduct of General Meeting**

The conduct of a General Meeting, and any question arising at a General Meeting and relating to the order of business, procedure or conduct of that meeting, must be referred to the chairman for that meeting, whose decision is final.

### **18.4. Adjournment of Meeting**

If within 30 minutes from the time appointed for the General Meeting a quorum is not present, the meeting must be adjourned to such other day and at such other time and place as the chairman of that meeting may determine. If at the adjourned meeting a quorum of three members is not present within 30 minutes from the time appointed for the rescheduled meeting then the meeting will lapse.

### **18.5. Chairman may adjourn General Meeting**

The chairman of a General Meeting may, and must if so directed by a majority of voting Members present at the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **18.6. Notice of adjourned General Meeting required if adjournment exceeds 30 days**

When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as if the meeting were being called for the first time.

### **18.7. Resolutions to be determined by show of hands unless a poll is demanded**

- (a) At any General Meeting a resolution put to the vote of the meeting will be decided on a show of hands of voting Members, unless a poll is (either before or on the declaration of the result of the show of hands) demanded.
- (b) Unless a poll is demanded then:
  - (i) a declaration by the chairman of the meeting that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority lost; and
  - (ii) an entry to that effect made in the book containing the minutes of the proceedings of YMCA of Canberra,

will be conclusive evidence of that fact without proof of the number of the votes recorded in favour of or against the resolution.

### **18.8. A demand for a resolution to be voted by poll**

- (a) A poll may be demanded for a vote on any resolution being considered at a General Meeting:

- (i) by the chairman of the meeting; or
  - (ii) by a majority of voting Members present at the meeting.
- (b) If a poll is duly demanded it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman of that meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

#### **18.9. Chairman to have casting vote if voting is equal**

Where voting is equal on any resolution put to a vote then the chairman of that meeting shall have a casting vote.

#### **18.10. Resolutions not in Meeting**

- (a) YMCA of Canberra may pass a resolution without a General Meeting being held if all Members who would have been entitled to vote on the resolution if considered at a General Meeting sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Any such resolution may consist of one or several documents in like form each signed by one or more of the Members entitled to vote.
- (c) The resolution is deemed to be passed when the last Member signs. 18.11. Members do not need to be physically present at a General Meeting

A General Meeting may, if the Board considers it appropriate, be held even where one or more of the Members entitled to vote are not physically present at the meeting, provided:

- (a) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
- (b) notice of the meeting is given to all persons entitled to notice pursuant to this Constitution and the Act;
- (c) if a failure in communications prevents Clause 18.11(a) from being satisfied by a quorum then the meeting must be suspended until Clause 18.11(a) is satisfied again. If a quorum is not achieved within 15 minutes from the interruption the meeting will be deemed to have terminated; and
- (d) a meeting will be valid even if no Member entitled to vote is physically present at the place for the meeting specified in the notice of meeting.

### **19. VOTING BY PROXY**

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#### **19.1. Members may vote by proxy**

Members entitled to vote at a General Meeting may vote by proxy in accordance with this Clause 19.

## **19.2. Required form of proxy**

The instrument appointing a proxy must:

- (a) be in writing by the Member appointing the proxy;
- (b) clearly name the proxy, who must be a General Member or Director;
- (c) confer authority on the holder of the proxy to demand, or join in demanding, a written poll; and
- (d) be in the form determined by the Board from time to time.

## **19.3. Members may give proxy directions**

- (a) A Member appointing a proxy is entitled (but not obliged) to direct a proxy to vote in favour of or against any proposed resolution.
- (b) Unless otherwise instructed under Clause 19.3(a), a proxy may vote as that proxy thinks fit.

## **19.4. Requirements for lodging proxy instrument**

An instrument appointing a proxy must be delivered to the Chief Executive Officer:

- (a) at least 48 hours before the time at which the vote of the person appointing a proxy is intended to be cast; or
- (b) in the case of a poll, at least 48 hours before the time appointed for the taking of the poll,

and failure to comply with this Clause 19.4 will result in the instrument appointing the proxy being deemed invalid.

## **19.5. Proxy votes to remain valid despite death of appointor or revocation of proxy**

A vote in line with the terms of an otherwise valid proxy shall remain valid despite:

- (a) the previous death or unsoundness of mind of the Member appointing the proxy; or
- (b) revocation of the proxy or power under which the instrument was executed,

provided no notice in writing of that death, unsoundness of mind or revocation is received by the Chief Executive Officer before the commencement of that meeting or adjourned meeting (as applicable).

## **19.6. Proxy may not hold more than 5 votes**

A person may not hold more than 5 proxy votes in respect of any vote or poll.

## **20. THE BOARD**

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### **20.1. The Board to conduct the business of YMCA of Canberra**

- (a) Subject to the Act and this Constitution, YMCA of Canberra is governed, and the powers of YMCA of Canberra will be exercised by, the Board.
- (b) The Board must act in pursuit of the Objects.

## **20.2. Composition of the Board**

The Board will, subject to this Constitution, comprise of no less than six and no more than nine General Members elected as Directors pursuant to Clause 21 and, in an *ex-officio* capacity, the Chief Executive Officer.

## **20.3. Board to meet**

- (a) The Board will meet as often as is deemed necessary, and in any event no less than six times, in every calendar year for the dispatch of business and may adjourn and, subject to this Constitution, otherwise regulate, its meetings as it thinks fit.
- (b) A meeting of the Board may be called at any time by a Director giving notice under Clause 20.8.

## **20.4. Chairman of Board meeting**

- (a) The Chair shall, where able and subject to this Constitution, preside as chairman at every meeting of the Board.
- (b) If the Chair is not present at a meeting of the Board, or is unable to preside, the Deputy Chair shall, where able and subject to this Constitution, preside as chairman for that meeting only.
- (c) If neither the Chair nor Deputy Chair are present at a meeting of the Board, the Board shall appoint another Director present at that meeting to preside as chairman of that meeting only.

## **20.5. Resolutions of Board**

- (a) Subject to this Constitution, questions or decisions arising at any meeting of the Board will be decided by a majority of votes and a determination of a majority, being more than 50% of Directors present and entitled to vote, shall for all purposes be deemed a resolution of the Board.
- (b) All Directors will have one vote on any question or decision. No other persons will have a vote on any question or decision before the Board.
- (c) The chair of a Board meeting will also have a second casting vote on a question or decision where voting is otherwise equal.

## **20.6. Resolutions not in Board meeting**

- (a) A resolution in writing, signed or assented to by facsimile or other form of visible or other electronic communication by all Directors is as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors and is deemed to have been passed when the last Director signs the resolution.

- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a meeting of the Board may, but does not need to, be held where one or more of the Directors is not physically present at the meeting, provided:
- (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
  - (ii) notice of the meeting is given to all Directors entitled to notice in line with the usual procedures agreed upon or laid down from time to time by the Board;
  - (iii) if a failure in communications prevents Clause 20.6(b)(i) from being satisfied by a quorum of Directors then the meeting is suspended until Clause 20.6(b)(i) is satisfied again. If a quorum is not achieved within 15 minutes from the interruption, the meeting will be deemed to have terminated; and
  - (iv) a meeting will be valid even if no Director is physically present at the place for the meeting specified in the notice of the meeting.

#### **20.7. Quorum**

At meetings of the Board the number of Directors whose presence (or participation) is required to constitute a quorum, is a majority of Directors.

#### **20.8. Notice of Board meetings**

- (a) Unless all Directors agree to hold a meeting at shorter notice (and such agreement may be sufficiently evidenced by their presence), at least 14 days' written notice of the meeting of the Board must be given to each Director.
- (b) The agenda for a Board meeting must be forwarded to each Director at least seven days before such meeting.

#### **20.9. Validity of Board decisions**

A procedural defect in decisions taken by the Board will not necessarily result in such decisions being invalidated.

### **21. ELECTION OF DIRECTORS**

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#### **21.1. Procedure for election of Directors**

An election for the office of Director deemed to be vacant at the conclusion of the next Annual General Meeting will be held in accordance with this Clause 21.

#### **21.2. Nominations to be called**

All General Members must be given notice:

- (a) of any office of Director that will be vacant at the conclusion of the next Annual General Meeting; and

(b) that YMCA of Canberra is seeking nominations for those vacancies,

at least 8 weeks prior to that Annual General Meeting, and the notice must include details of the number and description of positions available and the necessary requirements and qualifications (if any) applicable to those positions.

### **21.3. Procedure for nominations**

(a) Nominations for election as Director must be:

- (i) in writing;
- (ii) on the prescribed form (if any) provided for that purpose;
- (iii) signed by a nominator and a seconder, both of whom must be General Members; and
- (iv) certified by the nominee expressing their willingness to accept the position for which he or she is nominated.

(b) Nominations must be received by the Chief Executive Officer in writing at least four weeks prior to the date for the next Annual General Meeting.

(c) A person nominated for the office of Director must not be disqualified from office by the Act.

### **21.4. Notice of nominations to be provided to Members**

Any notice of an Annual General Meeting shall include a list of persons nominated for an office of Director under Clause 21.3.

### **21.5. Recording of votes and election of Directors**

(a) If insufficient nominations are received to fill a vacant office on the Board then the candidate(s) nominated for that office shall be deemed to be elected. Otherwise, a ballot shall be held at the Annual General Meeting to determine who is elected for each vacant office.

(b) Any ballot shall be completed at the Annual General Meeting in such manner as the Board may direct.

(c) Where two or more nominees equally have the most number of votes for a vacant office on the Board, the presiding Chair will have an additional casting vote or, if the tied vote is for office which the Chair is contesting, the Deputy Chair will have an additional casting vote.

### **21.6. A person may not hold two or more positions on the Board**

A person is not eligible to simultaneously hold more than one position on the Board.

### **21.7. Term of Appointment**

The term of appointment of each Director elected under this Clause 21 on or after 9th November 2016 is for a period until the conclusion of the third Annual General Meeting after the Annual

General Meeting of his or her appointment or earlier by resignation or removal under Clause 22. The term of appointment for Directors previously appointed for two years will not be affected.

### **21.8. Eligibility for reappointment**

A person is ordinarily eligible for re-election as a Director for a maximum of three terms of three years (or the closest equivalent for Directors previously appointed for two year terms). A person may be eligible for one further three year term of appointment with the agreement of the Board. A Director ending a tenure period after the maximum period of appointment will be eligible to stand for re-election after a period off the Board of three years.

## **22. REMOVAL FROM OFFICE AND VACANCIES OF DIRECTORS**

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### **22.1. Resignation of Directors**

A Director may resign upon written notice to the Chief Executive Officer.

### **22.2. Removal from office**

YMCA of Canberra may by ordinary resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement for the duration of the departing Director's term of office.

### **22.3. Vacancy**

In addition to the circumstances (if any) in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director at the time:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) 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;
- (d) is absent without the consent of the Board, such consent not to be unreasonably withheld, from more than any two Board meetings held during a period of 6 months;
- (e) without the prior consent or later ratification of YMCA of Canberra in General Meeting, holds any office of profit under YMCA of Canberra;
- (f) is directly or indirectly interested in any contract or proposed contract with YMCA of Canberra and fails to declare the nature of that interest;
- (g) would otherwise be prohibited from being a director of an incorporated association under the Act; or
- (h) retires, resigns or is removed from office under this Clause 22.

#### **22.4. Casual Vacancies**

- (a) The Board may fill any casual vacancy occurring in the office of Director from appropriately qualified persons if the vacancy arises more than 3 months from the next Annual General Meeting.
- (b) The term of office for any Director appointed under this Clause 22.4 shall conclude at the conclusion of the next Annual General Meeting following his or her appointment.

#### **23. CONFLICTS OF INTEREST OF DIRECTORS**

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##### **23.1. Directors must declare any real or potential conflicts of interest**

A Director must declare to the Board an interest in any matter, whether contractual, disciplinary, financial or otherwise, in which a conflict of interest arises or may be perceived to arise and shall, unless otherwise determined by the Board, absent his or her self from discussion of such matter.

##### **23.2. Register of declared conflicts of interest**

The Chief Executive Officer must maintain a register of declared conflicts of interest.

#### **24. CHAIR AND DEPUTY CHAIR**

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##### **24.1. Chair**

- (a) The Board shall appoint from amongst their number a Chair.
- (b) The Chair may resign by notice in writing to the Board.
- (c) The Chair may be removed as Chair, but not as a Director, by resolution of the Board passed by a majority of the Directors.
- (d) The Chair shall be deemed to have vacated his or her position if he or she ceases to be a Director.
- (e) A Chair shall serve a term of one year from the date of his or her appointment and may be re-elected unless such re-election would involve the Chair serving more than five consecutive terms.

##### **24.2. Deputy Chair**

- (a) The Board shall appoint from amongst their number a Deputy Chair.
- (b) The Deputy Chair may resign by notice in writing to the Board.
- (c) The Deputy Chair may be removed as Deputy Chair, but not as a Director, by resolution of the Board passed by a majority of the Directors.
- (d) The Deputy Chair shall be deemed to have vacated his or her position if he or she ceases to be a Director.

- (e) A Deputy Chair shall serve a term of one year from the date of his or her appointment and may be re-elected unless such re-election would involve the Deputy Chair serving more than five consecutive terms and the Board has not unanimously appointed the Deputy Chair.

## **25. PUBLIC OFFICER**

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### **25.1. Board to appoint a Public Officer**

The Board shall appoint a Public Officer of YMCA of Canberra for such term and on such conditions as it thinks fit.

### **25.2. Obligations of the Public Officer**

The Public Officer must, amongst any other duties conferred on him or her by the Board, fulfil all obligations of a public officer of YMCA of Canberra required under the Act.

## **26. CHIEF EXECUTIVE OFFICER**

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### **26.1. Board to appoint a Chief Executive Officer**

The Board shall appoint a Chief Executive Officer of YMCA of Canberra for such term and on such conditions as it thinks fit.

### **26.2. Obligations of the Chief Executive Officer**

The Chief Executive Officer must fulfil all duties and obligations conferred on him or her by the Board.

## **27. DELEGATIONS**

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### **27.1. Board may delegate functions**

- (a) The Board may by instrument in writing create or establish or appoint from among the Directors or otherwise, committees, individual officers or consultants to carry out such duties and functions and with such powers as the Board determines.
- (b) The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:
- (i) this power of delegation; and
  - (ii) a function exclusively imposed on the Board or the public officer by the Act, any other law or this Constitution.

### **27.2. Delegated function to be exercised in accordance with terms of delegation**

A function, the exercise of which has been delegated under this Clause 27, may whilst the delegation remains unrevoked, be exercised from time to time in line with the terms of the delegation.

### **27.3. Procedure of delegated entity**

- (a) The procedures for any delegated entity should, with any necessary or incidental amendment, be the same as those applicable to meetings of the Board.
- (b) Unless stated in the delegation instrument, the quorum for the delegated entity will be determined by the entity, but must be at least one half of the total number of the entity's members.

#### **27.4. Delegation may be conditional**

A delegation under this Clause 27 may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the instrument of delegation.

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#### **27.5. Revocation of delegation**

The Board may by instrument in writing, revoke, wholly or in part, any delegation made under this Clause 27, and may amend, repeal or veto any decision made by such body or person exercising a power delegated under this Clause.

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### **28. BY-LAWS**

#### **28.1. Board may formulate By-Laws**

- (a) The Board may (by itself or by delegation to a committee) adopt such By-Laws for the Proper advancement, management and administration of YMCA of Canberra and the advancement of the Objects as it thinks necessary or desirable.
- (b) Such By-Laws must be consistent with this Constitution and the Act.

#### **28.2. By-Laws binding**

All By-Laws made under this Clause 28 are binding on YMCA of Canberra and its Members.

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### **29. COMMON SEAL**

#### **29.1. Custody and use of common seal**

- (a) The common seal of YMCA of Canberra shall be kept in the custody of the Chief Executive Officer.
- (b) The common seal shall be affixed in such a manner as the Board considers appropriate.

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### **30. FUNDS, RECORDS AND ACCOUNTS**

#### **30.1. Source and use of funds**

The funds of YMCA of Canberra shall be derived from such sources and applied in pursuit of the Objects in such a manner as the Board considers appropriate.

#### **30.2. Chief Executive Officer to keep records**

The Chief Executive Officer must cause YMCA of Canberra to establish and maintain proper books, records and accounts concerning all transactions, business, meetings and dealings of YMCA of Canberra and the Board.

### **30.3. Inspection of accounts**

Subject to any reasonable restrictions as to time and manner of inspecting the same that may be imposed in accordance with this Constitution, the books, records and accounts of YMCA of Canberra must be open to inspection (but not copying) by the Directors or, if the Board, acting reasonably, considers appropriate, by a voting Member.

### **30.4. Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments and all receipts for money paid to YMCA of Canberra, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, only by those persons authorised by the Board.

### **30.5. Financial Year**

The financial year of YMCA of Canberra shall be the year ending 30 June.

## **31. AUDITOR**

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### **31.1. Auditor to be appointed by the Board**

- (a) A properly qualified auditor or auditors will be appointed by the Board and the remuneration of such auditor or auditors shall be fixed by the Board.
- (b) The auditor's duties will be regulated in accordance with the Act or, if no relevant provisions exist under the Act, in accordance with generally accepted principles, or any applicable code of conduct.

### **31.2. Auditor to examine the accounts of YMCA of Canberra**

The accounts of YMCA of Canberra including the profit and loss accounts and balance sheet must be examined by the auditor or auditors at least once in every year.

## **32. NOTICES**

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### **32.1. Manner of Notices**

A notice, other than a notice of General Meeting, may be given to any Member, a Director or the Chief Executive Officer by sending the notice to the person by pre-paid post, facsimile transmission or, where available, by electronic mail, using the person's nominated contact details.

### **32.2. When a notice is deemed to be given**

- (a) Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have occurred three days after posting.

- (b) Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected on the next business day after receipt of a confirmation report confirming the facsimile was sent to, or received at, the facsimile number to which it was sent.
- (c) Where a notice is sent by electronic mail, service of the notice is deemed to be effected on the next business day after the electronic mail was sent provided that there is no indication to the sender in writing that the electronic mail was not able to be sent.

### **33. INDEMNITY AND INSURANCE**

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#### **33.1. Persons to whom this Clause apply**

This Clause applies to:

- (a) each person who is or has been a committee member, Director, Chief Executive Officer or public officer of YMCA of Canberra; and
- (b) such other current or former employees of YMCA of Canberra as the Board in each case determines,

(collectively, 'those indemnified').

#### **33.2. Indemnity**

- (a) YMCA of Canberra must indemnify, on a full indemnity basis and to the full extent permitted by law, each of those indemnified for all losses or liabilities incurred by them in acting on behalf of, and with the express or implied authority of, YMCA of Canberra, including, but not limited to, any liability for negligence or for reasonable costs and expenses incurred:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (ii) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Act.
- (b) YMCA of Canberra must indemnify each person of those indemnified against all damages and costs (including legal costs) for which any such person may be or become liable to any third party in consequence of any act or omission, except wilful misconduct, performed or made whilst acting on behalf of, and with the express or implied authority of, YMCA of Canberra.

#### **33.3. Insurance**

YMCA of Canberra may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each of those indemnified under Clause 33.2 in respect of any liability incurred by that person in acting on behalf of, and with the express or implied authority of, YMCA of Canberra including,

but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever the outcome.

## **34. DISSOLUTION**

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### **34.1. Dissolution of YMCA of Canberra to be in accordance with the Act**

Subject to anything else in this Clause 34, YMCA of Canberra may be wound up, deregistered or dissolved in line with the provisions of the Act.

### **34.2. Notifying the National Council**

If YMCA of Canberra is in a position where there is a likelihood that it will be wound up or where it is served with a demand for a substantial part of its assets, the Board shall promptly notify the National Council of the situation and provide the National Council with all relevant information. The Board shall, if YMCA of Canberra is in such a position, afford the National Council every opportunity of taking steps for the preservation of the assets of YMCA of Canberra for the use of YMCA of Canberra or of the Young Men's Christian Association movement generally.

### **34.3. Distribution of Property on Dissolution**

(a) (a) If upon the winding up or dissolution of YMCA of Canberra there remains, after the satisfaction of all its debts and liabilities, any surplus assets or property, the same must not be paid to or distributed amongst the Members but must be paid to, or distributed to, the National Council, being an organisation that:

- (i) has objects similar to the Objects of YMCA of Canberra;
- (ii) is deemed by the Australian Taxation Office to be a deductible gift recipient; and
- (iii) prohibits the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on YMCA of Canberra in this Constitution,

provided, however, that if at the time of such winding up or dissolution, the National Council:

- (i) is not in existence;
- (ii) has Objects wholly dissimilar from YMCA of Canberra; or
- (iii) is not an deductible gift recipient,

then any property shall be given to or distributed to an organisation or organisations, whether incorporated or unincorporated, having objects similar to the Objects and which prohibit the distribution of its or their income amongst its or their members to an extent at least as great as is imposed on YMCA of Canberra in this Constitution and is an deductible gift recipient.

(b) The organisation referred to in Clause 34.3(a) above is to be determined by the Members at or before the time of dissolution, or, if no such determination is made, by such judge of the Supreme Court of the Australian Capital Territory as may have or acquire jurisdiction for the matter.

## **35. GENERAL**

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### **35.1. Submission to jurisdiction**

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of the Australian Capital Territory, the Federal Court of Australia and any Courts which may hear appeals from those courts.

### **35.2. Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, these Clauses which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, these Clauses which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

## **36. NATIONAL COUNCIL**

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### **36.1. Provision of minutes to the National Council**

Minutes of meetings of the Board and of General Meetings of YMCA of Canberra shall be sent to the National Council. The national Chair of the National Council, from time to time, shall be entitled to attend and to speak at all meetings of the Board and General Meetings of YMCA of Canberra but shall not be entitled to vote at such meetings, nor shall he or she be a Director of YMCA of Canberra by virtue of this Clause 36.