

NICK XENOPHON'S SA-BEST INCORPORATED

CONSTITUTION

1. NAME OF ASSOCIATION

- 1.1 The name of the incorporated association is '**Nick Xenophon's SA-BEST Incorporated**'.
 - 1.2 The Association is incorporated for political purposes under the *Associations Incorporation Act 1985* (South Australia).
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2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the contrary intention appears:

Associations Incorporation Act means the *Associations Incorporation Act 1985* (South Australia) as amended.

Association means '**Nick Xenophon's SA-BEST Incorporated**'.

Annual General Meeting means a meeting of the kind described in clause 18.1.

Candidate means a Member who is endorsed by the Association as a candidate for election to Parliament.

Candidate Deed means a deed or other agreement entered into by the Association and a Member who wishes to be endorsed as a Candidate, including all amendments and supplementary agreements between the Association and that Member.

Conscience Vote Issue means a motion, resolution, question, issue, matter, point of order or procedure (including any legislation, proposed legislation or amendment of legislation) that may be voted upon in Parliament by a Parliamentary Member, or which is the subject of public debate or interest, and which the Management Committee has determined is a Conscience Vote Issue under clause 9.6.

Constitution means this constitution of the Association.

Convener at any time means Nick Xenophon, or another Voting Member holding the position of Convener under clause 10 of this Constitution.

Electoral Act means the *Electoral Act 1985* (South Australia) as amended.

Financial Year means the year ending on the next 30 June following incorporation and thereafter each period of 12 months commencing on 1 July and ending on 30 June each year.

General Meeting means a general meeting of Members and includes the Annual General Meeting or any Special General Meeting.

Key Policies at any time means policies, proposed policies and positions that the Management Committee has determined are Key Policies at that time under clause 9.5.

Management Committee means the body described in clause 9.

Member means a member for the time being of the Association.

Membership means membership of the Association.

Nominations Committee means a committee established under clause 14.

Objects means the objects of the Association in clause 3.

Officer means a person holding office as a member of the Management Committee.

Ordinary Resolution means:

- a) at a meeting of Members, a resolution passed at a General Meeting by a majority of Voting Members present, entitled to vote and voting;
- b) at a meeting of the Management Committee or a committee of the Management Committee, a resolution passed by a majority of the Officers present, entitled to vote and voting; or
- c) at a meeting of the Nominations Committee or a committee of the Nominations Committee, a resolution passed by a majority of the members of the Nominations Committee present, entitled to vote and voting.

Parliamentary Member at any time means a Member who is a member of the Parliament of South Australia at that time;

Rule means a rule, regulation, by-law or policy made by the Management Committee under this Constitution.

Seal means the common seal of the Association.

Special General Meeting means a general meeting of Members convened in accordance with clause 19.

Special Resolution means a resolution passed at a General Meeting of the Members if:

- a) at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all Voting Members; and
- b) it is passed at a duly convened meeting of the Voting Members by a majority of not less than three-quarters of Voting Members present, entitled to vote and voting.

Supporting Member means a person admitted as a Supporting Member or 'Supporter' of the Association under clause 5.7.

Voting Member means a person which is admitted as a Voting Member under clause 5.6.

2.2 Interpretation

In this Constitution:

2.2.1 words in the singular include the plural and vice versa;

2.2.2 words in any gender include all genders;

2.2.3 reference to a statute or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

2.3 Resolutions

Where this Constitution requires or permits a decision to be made or a resolution to be passed by a General Meeting or the Management Committee, the decision may be made or the resolution may be passed by Ordinary Resolution unless either this Constitution or the Associations Incorporation Act requires otherwise.

2.4 Associations Incorporation Act

2.4.1 Words and phrases which are defined in the Associations Incorporation Act and which are not specifically defined in clause 2.1 have the same meanings in this Constitution as they do in the Associations Incorporation Act.

2.4.2 Model rules under the Associations Incorporation Act are expressly displaced by this Constitution.

3. OBJECTS OF THE ASSOCIATION

The Objects of the Association are:

3.1 Promote Candidates to Parliament of South Australia

To promote candidates endorsed by the Association for election to the House of Assembly or the Legislative Council of the Parliament of South Australia;

3.2 Political Party under Electoral Act

To become registered, and maintain registration, by the Electoral Commissioner of South Australia as a political party under the Electoral Act;

3.3 Represent South Australians

To represent the people of South Australia through the parliamentary system of South Australia;

3.4 South Australian Issues

To identify, raise awareness of, focus upon and represent at a South Australian state level the interests of South Australians in relation to issues that affect the State of South Australia;

3.5 Conscience Voting

To allow and encourage Parliamentary Members of the Association to vote according to their consciences in relation to Conscience Vote Issues (and only in relation to Conscience Vote Issues);

3.6 Support Campaigns

To support campaigns of endorsed candidates for election to the Parliament of South Australia, including financial, logistical and administrative support;

3.7 Promote Policies

To promote the Objects and activities referred to in this clause 3 including awareness, understanding and support for policies of the Association (including the Key Policies);

3.8 Incidental Activities

To undertake and do other things or activities necessary, incidental or conducive to the advancement of these Objects.

4. POWERS OF THE ASSOCIATION

For furthering the Objects, the Association has:

- 4.1 the specific rights, powers and privileges conferred on it by section 25 of the Associations Incorporation Act; and
- 4.2 in addition, all the powers it would have if it were a company incorporated under the *Corporations Act 2001* (C'th).

5. MEMBERS

5.1 Categories of Members

The Members of the Association consist of:

- 5.1.1 Parliamentary Members;
- 5.1.2 Voting Members;
- 5.1.3 Supporting Members (or 'Supporters'); and
- 5.1.4 any other classes or categories of Membership resolved by the Management Committee.

5.2 Inaugural Voting Members

The Voting Members upon establishment of the Association are:

- 5.2.1 Nick Xenophon, current Senator for South Australia;
- 5.2.2 John Darley, current member of the Legislative Council of South Australia; and
- 5.2.3 Ms Connie Bonaros.

5.3 Mandatory Membership Requirements

The Association must at all times have Membership of the description required to be an eligible political party within the meaning of the Electoral Act.

5.4 Admission of Members

- 5.4.1 Subject to clause 5.7, a candidate for membership must apply to the Management Committee in writing.
- 5.4.2 A candidate must be a natural person.
- 5.4.3 A person is not eligible to apply for Membership, or to become or remain a Member, at a particular time if the person is, at that time, a member of another political party (whether or not registered) within the meaning of the Electoral Act or the laws of any other State or Territory of Australia governing the registration of political parties other than:
 - (a) Nick Xenophon Team Incorporated (incorporation number A41859 under the Associations Incorporation Act); and
 - (b) a political party resolved by the Management Committee for the purposes of this clause 5.4.3.
- 5.4.4 If a person is or becomes ineligible to apply for Membership, or to become or remain a Member, under clause 5.4.3, that person must:
 - (a) not apply to be a Member for so long as he or she is ineligible; and
 - (b) (if he or she is a Member at that time) - resign his or her Membership effective immediately.
- 5.4.5 The application must:
 - (a) be in a form approved by the Management Committee;
 - (b) contain full particulars of the name, address and contact details of the applicant;
 - (c) identify the category of membership for which the applicant is applying; and

- (d) contain any other information prescribed by the Associations Incorporation Act or by the Rules for an application for membership in that category.

5.5 Discretion to accept or reject application

- 5.5.1 The Management Committee may accept or reject an application for Membership at its sole and absolute discretion, whether or not the applicant has complied with the requirements in clause 5.4.
- 5.5.2 The Officers are not required, nor can they be compelled to provide, any reason for rejection.
- 5.5.3 Membership begins on the later to occur of:
 - (a) acceptance by the Membership Committee of an application for membership; or
 - (b) payment of any fees payable by the new Member.

5.6 Voting Members

- 5.6.1 Each Parliamentary Member is a Voting Member.
- 5.6.2 A natural person may apply to the Management Committee for admission to membership as a Voting Member.
- 5.6.3 A Voting Member has the right to receive notice of General Meetings and to be present, debate and vote at General Meetings.
- 5.6.4 Each Voting Member is taken, by virtue of that membership, to have agreed:
 - (a) that he/she will observe and comply with this Constitution and the Rules;
 - (b) that he/she will conscientiously attend General Meetings;
 - (c) to pay the subscriptions, fees and levies (if any) set out in the Rules as payable by Voting Members within the period stated in the Rules.

5.7 Supporting Members (Supporters)

- 5.7.1 A natural person may apply to the Management Committee for admission to membership as a Supporting Member.
- 5.7.2 A Supporting Member may also be known as a 'Supporter' of the Association.
- 5.7.3 A Supporting Member has the right to receive notice of General Meetings and to be present but not to debate or vote at General Meetings.
- 5.7.4 A Supporting Member is under no obligation to attend General Meetings.

5.7.5 Each Supporting Member is taken, by virtue of that membership, to have agreed:

- (a) that he/she will observe and comply with this Constitution and the Rules; and
- (b) to pay the subscriptions, fees and levies (if any) set out in the Rules as payable by Supporting Members within the period stated in the Rules.

5.8 **Obligations of Members**

Each Member must:

- 5.8.1 treat all other Members, Officers, staff and representatives of the Association with respect and courtesy at all times;
- 5.8.2 uphold and enhance the standards and reputation of the Association;
- 5.8.3 support the Key Policies;
- 5.8.4 in the case of Parliamentary Members, exercise their rights and powers including voting rights as members of the Parliament of South Australia and use their best endeavours to procure the enactment, adoption and implementation of Key Policies by the Parliament of South Australia to the greatest extent possible;
- 5.8.5 observe the directions, procedures and decisions of the Management Committee and, in the case of a General Meeting, the chairperson of that meeting; and
- 5.8.6 not act in a manner unbecoming of a Member or prejudicial to the Objects or the interests or reputation of the Association.

5.9 **Public Statements**

5.9.1 Each Member acknowledges that it is in the best interests of the Association that public statements (including press releases and other formal and informal statements to the media) for or on behalf of the Association, or representing Objects or policies of the Association (including Key Policies), be made only by:

- (a) the Convener;
- (b) Members who are elected to Parliament;
- (c) Members who are Candidates; and
- (d) as expressly authorised in writing by the Convener.

5.9.2 Each Member must not make public statements (including press releases and other formal and informal statements to the media) purporting to be for or on behalf of the Association, or representing Objects or policies of the Association (including Key Policies), unless that Member is:

- (a) the Convener;
- (b) a Member who is at that time elected to Parliament (but subject to the obligations of the Member under his or her Candidate Deed);
- (c) a Candidate (but subject to the obligations of that Member under his or her Candidate Deed); or
- (d) expressly authorised in writing by the Convener to make such statements.

5.10 Register of Members

- 5.10.1 The Association must keep and maintain a register of Members in accordance with the Associations Incorporation Act.
- 5.10.2 In addition to the information required by the Associations Incorporation Act, the register may contain such other information as the Management Committee considers appropriate.
- 5.10.3 Members must provide the Association with the details required by the Association to keep the register complete and up to date.

5.11 Effect of Membership

- 5.11.1 This Constitution constitutes a contract between each of the Members and the Association.
- 5.11.2 Each Member is bound by this Constitution and the Rules.

6. CESSATION OF MEMBERSHIP

6.1 General

A Member ceases to be a Member of the Association if:

- 6.1.1 the Member dies;
- 6.1.2 the Management Committee determines that the Member has ceased to have legal capacity;
- 6.1.3 the Member ceases to be eligible to apply for Membership, or to become or remain a Member, under clause 5.5;
- 6.1.4 the Member resigns from membership in accordance with clause 6.2;
- 6.1.5 the Member was admitted as a member of the Association for a fixed or specified period which has expired;
- 6.1.6 the Member is bankrupted or makes any arrangement or composition with creditors generally;
- 6.1.7 the Member is convicted of an indictable offence; or

6.1.8 membership of the Member is terminated by the Membership Committee under clause 6.3.

6.2 **Notice of Resignation**

A Member may resign from membership of the Association either without notice or with not more than one month's notice in writing to the Association. A resigning Member is liable for any outstanding and unpaid fees, subscriptions or levies which may be recovered as a debt due to the Association.

6.3 **Termination of membership for breach**

6.3.1 The Management Committee may terminate membership of a Member of the Association if, in the opinion of the Management Committee, the Member has breached any of its obligations under this Constitution or the Rules.

6.3.2 The Management Committee may, in its discretion, convene a committee under clause 7.2 to hear and determine any allegation that a Member has breached one or more of its obligations under this Constitution or the Rules and to make recommendations to the Management Committee about the appropriate consequences of its findings. The committee must comprise no more than four persons of which at least one is a Voting Member and at least one is not a Member.

6.3.3 The Management Committee may rely on the findings and recommendations of the committee, but is not required to do so.

6.3.4 The Management Committee may terminate membership of a Member of the Association under this clause 6.3 at its sole and absolute discretion and is not required to observe the rules of natural justice in considering and determining whether or not to terminate membership of a Member.

6.3.5 Clause **Error! Reference source not found.** applies despite anything contained in any Rule made under clause 7.1.

6.4 **Return of Property**

A Member who ceases to be a Member must not thereafter use any property of the Association (including, without limitation, its copyright, trademarks, and other intellectual property) and must immediately return to the Association all of the Association's documents, records or other property in the possession, custody or control of the former Member.

6.5 **Membership may be Reinstated**

6.5.1 Nothing in this clause 6 prevents a former Member from applying for readmission to Membership.

6.5.2 In considering an application for readmission, the Management Committee is entitled to take into account the facts and

circumstances in which the prior membership (or memberships) ceased.

6.5.3 Membership which has ceased under this clause 6 may be reinstated at the discretion of the Management Committee without an application having been made under clause 6.5.1, with such conditions as it deems appropriate.

6.6 Refund of Membership Fees

Membership fees, subscriptions or levies paid by the former Member may, at the Management Committee's discretion, be refunded on a pro-rata basis to the Member on cessation of the membership.

7. DISCIPLINE

7.1 Disciplinary Rules

The Management Committee may make Rules governing the hearing and determination of disagreements, disputes, grievances, protests or complaints by or against Members and any other matter involving the enforcement of this Constitution or the Rules against Members.

7.2 Scope of Disciplinary Rules

A Rule made under clause 7.1 may:

7.2.1 provide for one or more committees to hear and resolve cases falling under clause 7.1;

7.2.2 prescribe penalties for breaches of this Constitution or the Rules; and

7.2.3 otherwise prescribe the procedures for dealing with cases falling under clause 7.1.

7.3 Management Committee may deal

Despite any Rules made under clause 7.1, the Management Committee may itself deal with any disciplinary matter referred to it or appoint a committee to do so.

7.4 Fairness

All proceedings relating to cases falling under clause 7.1 must be conducted fairly.

7.5 Termination of membership

This clause 7 is subject in all respects to clause 6.3.

8. FEES, SUBSCRIPTIONS AND LEVIES

8.1 Fix Fees, Subscriptions and Levies

The Management Committee will:

- 8.1.1 fix annual membership subscriptions;
- 8.1.2 fix such other fees or levies as the Management Committee considers prudent for the effective and sustainable management of the affairs of the Association; and
- 8.1.3 determine the time and manner of payment of the subscriptions, fees and levies by Members to the Association.

8.2 **Different Rates**

The Management Committee may fix subscriptions, fees or levies at different rates for different categories of Membership and may determine that no subscriptions are payable by one or more of the categories for any year.

8.3 **Authorise Payment**

The Management Committee may also authorise payment of subscriptions, fees or levies by instalments for some or all of the categories of membership and it may prescribe different terms of instalments for different categories of membership.

8.4 **Full Payment**

On admission to membership a new Member must pay the current full year's subscription unless the Management Committee agrees to accept payment in instalments.

8.5 **Waiver**

The Management Committee may waive all or part of a Member's subscriptions, fees or levies, and may agree terms of payment for a Member different from those applicable to other Members of the same category, if the Management Committee is satisfied that there are special reasons to do so.

9. **THE MANAGEMENT COMMITTEE**

9.1 **Committee**

The Management Committee constitutes the 'committee' for the purposes of the Associations Incorporation Act.

9.2 **Responsibility of Management Committee**

The Management Committee is responsible for the management and stewardship of the Association.

9.3 **General Powers of Management Committee**

- 9.3.1 Subject to the Associations Incorporation Act and this Constitution, the business and affairs of the Association must be managed by the Management Committee which may exercise the powers of the Association for that purpose.

9.3.2 The Management Committee must perform its functions in the pursuit of the Objects and in the interests of the Association as a whole, having regard to the Association's position as a political party under the Electoral Act.

9.4 **Limitation**

The Management Committee may not cause the Association to cease to be a political party under the Electoral Act without a Special Resolution of the Voting Members in General Meeting.

9.5 **Key Policies**

The Management Committee may determine by Ordinary Resolution whether or not any policy, proposed policy or position of the Association is a Key Policy, and may by subsequent Ordinary Resolution determine that such policy, proposed policy or position is no longer a Key Policy.

9.6 **Conscience Vote Issues**

9.6.1 The Management Committee may determine by Ordinary Resolution whether or not any motion, resolution, question, issue, matter, point of order or procedure (including any legislation, proposed legislation or amendment of legislation) that may be voted upon in Parliament by a Parliamentary Member, or which is the subject of public debate or interest, is a Conscience Vote Issue.

9.6.2 The Management Committee may by subsequent Ordinary Resolution determine that such motion, resolution, question, issue, matter, point of order or procedure (including any legislation, proposed legislation or amendment of legislation), or subject of public debate or interest, is no longer a Conscience Vote Issue.

10. **COMPOSITION OF THE MANAGEMENT COMMITTEE**

10.1 **Composition**

The Management Committee must comprise at least two (2) persons, each of which must be a Voting Member.

10.2 **Office Positions**

The Management Committee comprises the following positions:

10.2.1 Convener;

10.2.2 Secretary;

10.2.3 Treasurer; and

10.2.4 any additional positions that the Management Committee creates for the purpose of administering and managing the Objects and activities of the Association.

10.3 **Multiple Positions**

One Officer of the Management Committee may hold two or more positions, but may not hold all positions.

10.4 **Initial Management Committee**

The initial Management Committee upon and with effect from establishment of the Association comprises:

10.4.1 Nick Xenophon, current Senator for South Australia (Convener);

10.4.2 John Darley, current member of the Legislative Council of South Australia; and

10.4.3 Ms Connie Bonaros (Public Officer, Secretary and Treasurer).

10.5 **Portfolios and Tasks**

The Management Committee may allocate portfolios and tasks to Officers.

10.6 **Convener**

The Convener is responsible for making public statements (including press releases and other formal and informal statements to the media) on behalf of the Association.

11. **OFFICERS OF THE MANAGEMENT COMMITTEE**

11.1 **Nominations**

11.1.1 The Management Committee must call for nominations for Officers of the Management Committee at least twenty (20) days prior to the Annual General Meeting.

11.1.2 The Management Committee may, when it calls for nominations, indicate which positions on the Management Committee it wishes to fill, the job descriptions for those positions and the qualifications or experience it considers desirable for those positions.

11.2 **Form of Nomination**

Nominations must:

11.2.1 be in writing;

11.2.2 be in the prescribed form (if any) provided for that purpose;

11.2.3 be signed by the nominee, who must be a Voting Member;

11.2.4 disclose any position the nominee holds in any company and any political party, or has held during the preceding five years; and

11.2.5 be delivered to the Association not less than five (5) days before the date fixed for the Annual General Meeting.

11.3 Elections

- 11.3.1 If the number of nominations received for the Management Committee does not exceed the number of vacancies to be filled, then, subject to clause 11.3.5, those nominated will be declared elected at the Annual General Meeting.
- 11.3.2 If there are insufficient nominations received to fill all vacancies on the Management Committee, nominations for the remaining positions may be made from the floor of the Annual General Meeting. If the number of nominations received from the floor does not exceed the number of vacancies to be filled, then, subject to clause 11.3.5, those nominated will be declared elected at the Annual General Meeting.
- 11.3.3 If at any stage the number of nominations for the Management Committee exceeds the number of vacancies then to be filled, an election must be conducted at the Annual General Meeting.
- 11.3.4 Elections must be conducted by secret ballot of Voting Members, or in such manner and by such method as may be determined by the Management Committee from time to time. If the Management Committee has not made a determination, then the election must be conducted by the method determined by the chairperson of the Annual General Meeting.
- 11.3.5 At the end of the procedures described in clauses 11.3.1 to 11.3.4, any Voting Member may demand a confirmatory vote in which case each Officer appointed or elected under the preceding clauses at that meeting must have his or her appointment or election approved by Ordinary Resolution of the meeting. If the appointment or election of that Officer is not approved by the meeting, he or she will not be entitled to take office.
- 11.3.6 If at the close of the Annual General Meeting, vacancies on the Management Committee remain unfilled, the vacant positions will be casual vacancies under clause 12.1.

11.4 Term of Appointment for Officers

- 11.4.1 Subject to clause 11.4.2, the term of office of each Officer begins at the conclusion of the Annual General Meeting at which their election occurs.
- 11.4.2 If the law requires the Officer to have a particular qualification or clearance (for example, police clearance), the Officer's term will not begin until the qualification or clearance has been established.
- 11.4.3 The term of office of each Officer ends at the conclusion of the second Annual General Meeting following their election, but the Officer is eligible for re-election.

12. VACANCIES ON THE MANAGEMENT COMMITTEE

12.1 Casual Vacancies

Any casual vacancy occurring in a position on the Management Committee on may be filled by the remaining Officers. A person appointed to fill a casual vacancy holds office only until the end of the next Annual General Meeting irrespective of the term of office of the person whom he or she replaces.

12.2 Termination of Officer on Management Committee

A person ceases to be an Officer on the Management Committee, and the position of that Officer becomes vacant, if the Officer:

- 12.2.1 dies;
- 12.2.2 becomes bankrupt or makes any arrangement or composition with creditors generally;
- 12.2.3 suffers from legal incapacity;
- 12.2.4 ceases to be a Voting Member;
- 12.2.5 resigns his or her office by notice in writing to the Association;
- 12.2.6 is disqualified from office under section 30 of the Associations Incorporation Act;
- 12.2.7 is absent without the consent of the Management Committee for three (3) successive meetings of the Management Committee;
- 12.2.8 is removed by the Members in General Meeting; or
- 12.2.9 would otherwise be prohibited from being a director of a corporation under the *Corporations Act 2001 (Cth)*.

13. MEETINGS OF THE MANAGEMENT COMMITTEE

13.1 Committee to Meet

- 13.1.1 The Management Committee must meet as often as it considers necessary in every calendar year for the dispatch of business (and must meet at least as often as is required under the Associations Incorporation Act).
- 13.1.2 The Management Committee must meet not less than once in each quarter.
- 13.1.3 Subject to this Constitution, the Management Committee may adjourn and otherwise regulate its meetings as it thinks fit.
- 13.1.4 Any Officer may at any time convene a meeting of the Management Committee on not less than seven (7) days' notice to the other Officers.

13.2 Attendance by Telephone

An Officer may attend a meeting by telephone or other electronic means by which he or she can hear and be heard.

13.3 Chairperson

13.3.1 The Convener is the chairperson of meetings of the Management Committee.

13.3.2 The chairperson will act as chair of any Management Committee meeting or General Meeting at which he or she is present.

13.3.3 If the chairperson is not present, or is unwilling or unable to preside at a meeting the remaining Officers must appoint another Officer to preside as chair for that meeting only.

13.4 Decisions of Committee

Subject to this Constitution, questions arising at any meeting of the Management Committee may be decided by Ordinary Resolution of the Management Committee. Each Officer has one (1) vote on any question.

13.5 Chairperson has Casting Vote

The chairperson has a casting vote in decisions of the Management Committee.

13.6 Resolutions not in Meeting

13.6.1 Subject to clause 13.6.4, the Management Committee may pass a resolution without a Management Committee meeting being held if all the Officers entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Officer signs.

13.6.2 For the purposes of clause 13.6.1, separate copies of a document may be used for signing by those entitled to vote if the wording of the resolution and statement is identical in each copy.

13.6.3 Any document referred to in this clause may be in the form of a facsimile or email transmission.

13.6.4 A resolution may not be passed under clause 13.6.1 if, before it is circulated for voting under clause 13.6.1, the Management Committee resolves that it can only be put at a meeting of the Management Committee.

13.6.5 A resolution passed under this clause must be recorded in the minute book.

13.7 Quorum

At meetings of the Management Committee the number of Officers whose presence is required to constitute a quorum is the greater of:

13.7.1 two (2) Officers; or

13.7.2 half of the number of Officers on the Management Committee, rounded up to the next whole number.

13.8 **Officers' Interests**

The Officers must comply with sections 31 and 32 of the Associations Incorporation Act regarding disclosure of interests and voting on contracts in which an Officer has an interest.

13.9 **Decisions and Business of the Management Committee**

All decisions of the Management Committee may be made at the sole and absolute discretion of the Management Committee in accordance with this Constitution. Except as otherwise required by law, the Management Committee is not required to give, publish or disclose the nature of business conducted and considered by the Management Committee, its deliberations or the reasons for its decisions.

14. **NOMINATIONS COMMITTEE**

14.1 **Establishment of the Nominations Committee**

A committee of Members of the Association is established and known as the Nominations Committee.

14.2 **Nominations Committee**

The Nominations Committee is responsible for:

14.2.1 formulating criteria for selection of potential Candidates;

14.2.2 implementing and conducting the processes for inviting and procuring Members to nominate themselves for endorsement as Candidates;

14.2.3 interviewing and vetting potential Candidates;

14.2.4 making recommendations to the Voting Members and the Management Committee about suitability and endorsement of particular Members as Candidates;

14.2.5 correspondence and communication with potential Candidates about the selection process and the endorsement of potential Candidates; and

14.2.6 formation, membership, management, conduct, funding and dissolution of branches and sub-branches of the Association for the purpose of carrying out the Objects.

14.3 **Composition of the Nominations Committee**

The Nominations Committee must comprise at least three persons, at least two of which must be Voting Members.

14.4 Initial Members of the Nominations Committee

The Nominations Committee initially comprises:

- 14.4.1 Nick Xenophon, current Senator for South Australia;
- 14.4.2 John Darley, current member of the Legislative Council of South Australia; and
- 14.4.3 Ms Connie Bonaros.

14.5 Membership of the Nominations Committee

Membership of the Nominations Committee is determined by Ordinary Resolution of the Voting Members. The Voting Members may, by ordinary Resolution, appoint, remove and replace members of the Nominations Committee on terms and conditions that the Voting Members so resolve.

14.6 Decisions and Business of the Nominations Committee

Except as otherwise required by law, the Nominations Committee is not required to give, publish or disclose the nature of business conducted and considered by the Nominations Committee, its deliberations or the reasons for its decisions.

14.7 Meetings of the Nominations Committee

- 14.7.1 The Nominations Committee must meet as often as it considers necessary for the dispatch of business, but not less than twice per year.
- 14.7.2 The Nominations Committee may adjourn and otherwise regulate its meetings as it thinks fit.
- 14.7.3 Any member of the Nominations Committee may at any time convene a meeting of the Nominations Committee on not less than seven (7) days' notice to the other members of the Nominations Committee.

14.8 Attendance by Telephone

A member of the Nominations Committee may attend a meeting by telephone or other electronic means by which he or she can hear and be heard.

14.9 Chairperson

- 14.9.1 Nick Xenophon is the initial chairperson of meetings of the Nominations Committee.
- 14.9.2 The chairperson will act as chair of any Nominations Committee meeting at which he or she is present.
- 14.9.3 If the chairperson is not present, or is unwilling or unable to preside at a meeting the remaining members of the Nominations Committee must appoint another member to preside as chair for that meeting only.

14.10 Decisions of Committee

Questions arising at any meeting of the Nominations Committee may be decided by Ordinary Resolution of the Nominations Committee. Each member has one (1) vote on any question.

14.11 Chairperson has Casting Vote

The chairperson has a casting vote in decisions of the Nominations Committee.

14.12 Resolutions not in Meeting

14.12.1 Subject to clause 14.12.4, the Nominations Committee may pass a resolution without a Nominations Committee meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last member signs.

14.12.2 For the purposes of clause 14.12.1, separate copies of a document may be used for signing by those entitled to vote if the wording of the resolution and statement is identical in each copy.

14.12.3 Any document referred to in this clause may be in the form of a facsimile or email transmission.

14.12.4 A resolution may not be passed under clause 14.12.1 if, before it is circulated for voting under clause 14.12.1, the Nominations Committee resolves that it can only be put at a meeting of the Nominations Committee.

14.12.5 A resolution passed under this clause must be recorded in the minute book.

14.13 Quorum

At meetings of the Nominations Committee the number of members whose presence is required to constitute a quorum is the greater of:

14.13.1 two (2) members; or

14.13.2 half of the number of members on the Nominations Committee, rounded up to the next whole number.

14.14 Decisions of the Nominations Committee

The Nominations Committee may exercise its discretion in making decisions in accordance with this Constitution and may provide reasons for its decisions.

15. EXECUTIVE AND STAFF

The Management Committee may, from time to time, employ a chief executive, manager and other personnel and staff it considers necessary or appropriate, in each

case for such period and on such conditions as the Management Committee determines.

16. **DELEGATIONS**

The Management Committee may, in writing, establish subcommittees and delegate to each of them the exercise of the functions of the Management Committee that are specified in the instrument of delegation, other than:

16.1 this power of delegation; and

16.2 a function that is a function imposed on the Management Committee by the Associations Incorporation Act, by any other law, or by resolution of the Association in General Meeting.

17. **COMMON SEAL**

17.1 **Seal**

The Association may have a Seal on which its corporate name appears in legible characters.

17.2 **Use of Seal**

The Seal may not be used without the express authorisation of the Management Committee and every use of the Seal must be recorded in the minute books of the Association. The affixing of the Seal must be witnessed by two Officers, or by one Officer and another person authorised by the Management Committee for that purpose.

18. **ANNUAL GENERAL MEETING**

18.1 **Convene Annual General Meeting**

An Annual General Meeting of the Association must be held in accordance with the Associations Incorporation Act and this Constitution and on a date and at a venue to be determined by the Management Committee.

18.2 **Other General Meetings**

All General Meetings other than the Annual General Meeting will be Special General Meetings.

19. **SPECIAL GENERAL MEETINGS**

19.1 **Special General Meetings may be held**

The Management Committee may, whenever it thinks fit, convene a Special General Meeting of the Association.

19.2 **Requisition of Special General Meetings**

- 19.2.1 On the requisition in writing of not less than five per cent (5%) of the total number of Voting Members, the Management Committee must, within one month after the receipt of the requisition, convene a Special General Meeting for the purpose specified in the requisition.
- 19.2.2 Every requisition for a Special General Meeting must be signed by requisitioning Members, state the purpose of the meeting and be sent to the Association. The requisition may consist of several documents in a like form, each signed by one or more of the Members making the requisitions.
- 19.2.3 If the Management Committee does not cause a Special General Meeting to be held within one month after the receipt of the requisition, the Members making the requisition may convene a Special General Meeting to be held not later than three (3) months after the receipt of the requisition.
- 19.2.4 A Special General Meeting convened by Members under this Constitution must be convened in the same manner, or as nearly as practical to the same manner, as a meeting convened by the Management Committee.
- 19.2.5 The Management Committee must ensure that the Members making the requisition are supplied free of charge with particulars of the Members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting must be borne by the Association.

20. **ATTENDANCE AT GENERAL MEETINGS**

20.1 **Attendance and Voting**

Unless this Constitution expressly provides otherwise, Members, the auditor and the Officers are entitled to attend General Meetings, but only Voting Members are entitled to debate and vote.

20.2 **Delegates**

Each Voting Member, by notice to the Association, may appoint a natural person to act as its delegate in all matters connected with the Member as if the Association were a body corporate to which section 253B of the Corporations Act applies. The appointed Delegate will have the powers in relation to the Member as if section 253B applied to the Association.

20.3 **Revocation of Delegation**

A Voting Member may, by notice to the Association, revoke an appointment made under clause 20.2.

20.4 **Assumed Presence**

For all the purposes of this Constitution, A Voting Member represented at a General Meeting by a Delegate is to be taken to be present in person at the meeting.

21. **NOTICE OF GENERAL MEETINGS**

21.1 **Notice**

Notice of every General Meeting must be given to every Member, the auditor and the Officers by the means authorised in clause 32.

21.2 **Content of Notice**

A notice of a General Meeting must specify the place, day and hour of the meeting and state the nature and order of the business to be transacted at the meeting.

21.3 **Period of Notice**

At least twenty-one (21) days' notice of a General Meeting must be given to those Members entitled to receive notice, together with:

21.3.1 the agenda for the meeting; and

21.3.2 any notice of motion received from Voting Members entitled to vote.

22. **BUSINESS**

22.1 **Ordinary Business**

The ordinary business to be transacted at the Annual General Meeting includes:

22.1.1 the consideration of accounts and the reports of the Management Committee and auditors;

22.1.2 the election of Officers to the Management Committee under this Constitution; and

22.1.3 the appointment of the auditors.

22.2 **Special Business**

All business that is transacted at a General Meeting or an Annual General Meeting, other than those matters referred to in clause 22.1, is special business.

22.3 **No Other Business**

No business other than that stated on the notice for a General Meeting may be transacted at that meeting.

23. PROCEEDINGS AT GENERAL MEETINGS

23.1 Quorum

No business may be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. Subject to clause 23.3.1(b), a quorum for General Meetings is ten per cent (10%) of Voting Members.

23.2 Chairperson to preside

The chairperson of the Management Committee will, subject to this Constitution, preside as chairperson at every General Meeting except:

23.2.1 in relation to any election for which the chairperson of the Management Committee is a nominee; or

23.2.2 where the chairperson of the Management Committee has a conflict of interest.

If the chairperson of the Management Committee is not present or is unwilling or unable to preside, the Voting Members present must appoint another Officer to preside as chair for that meeting only.

23.3 Adjournment of meeting

23.3.1 If within half an hour from the time appointed for the General Meeting a quorum is not present, the meeting must be adjourned until the same day in the next week at the same time and place or to such other day, time and place as the chairperson determines. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the adjourned meeting

(a) if the meeting was convened on the requisition of Voting Members under clause 19.2, the meeting will lapse; and

(b) in any other case, those Voting Members present will constitute a quorum.

23.3.2 The chairperson may, with the consent of any meeting at which a quorum is present, and must, if directed by the meeting, adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

23.3.3 When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

23.3.4 Except as provided in clause 23.3.3, it is not necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

23.4 Voting Procedure

At any meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is demanded by:

23.4.1 the chairperson; or

23.4.2 a simple majority of Voting Members present at the meeting.

23.5 Demanding a Poll

A poll may be demanded before or on the declaration of the result of the show of hands.

23.6 Recording of Determinations

A declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Association is conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

24. VOTING AT GENERAL MEETINGS

24.1 Members entitled to vote

Each Voting Member is entitled to one (1) vote at General Meetings.

24.2 Chairperson may not exercise casting vote

The chair of a General Meeting does not have a casting vote.

25. RECORDS AND ACCOUNTS

The Association must comply with its obligations under the Associations Incorporation Act in respect of accounts, records and minutes.

26. AUDITOR

26.1 Appointment if Required

The Association is not required to appoint an auditor except if required by the Associations Incorporation Act.

26.2 Appointment at Annual General Meeting

An auditor may be appointed at each Annual General Meeting as the Association's auditor for the then current Financial Year.

26.3 Vacancy

If the Annual General Meeting appoints an auditor, any vacancy occurring during the year in the office of auditor must be filled by the Management Committee.

26.4 Powers of Auditor

The auditor has power at any time to call for the production of all books, accounts and other documents relating to the affairs of the Association.

27. APPLICATION OF INCOME

27.1 Application to Objects

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

27.2 No Benefit to Members

Except as prescribed in this Constitution or the Associations Incorporation Act, no portion of the income or property of the Association may be paid or transferred, directly or indirectly or whether by way of dividend, bonus or otherwise, to any Member or any associate of a Member.

27.3 Permitted Payments

Subject to clause 27.4, nothing in clauses 27.1 or 27.2 prevents a payment in good faith to any Member:

27.3.1 in accordance with clause 27.1 where that Member is a not-for-profit entity with a similar purpose to the Association;

27.3.2 for any services actually rendered to the Association whether as an employee, Officer or otherwise;

27.3.3 for goods supplied to the Association in the ordinary and usual course of operation;

27.3.4 for interest on money borrowed from any Member;

27.3.5 for rent for premises let by any Member to the Association; and

27.3.6 for any reasonable out-of-pocket expenses incurred by the Member on behalf of the Association.

27.4 Amount of Payments

No payment made under clause 27.3 may exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

28. **WINDING UP**

Subject to this Constitution, the Association may be wound up or deregistered in accordance with the Associations Incorporation Act.

29. **DISTRIBUTION OF ASSETS ON WINDING UP**

29.1 **Surplus Assets**

If, on winding up, dissolution or deregistration of the Association and after satisfaction of all the Association's debts and liabilities, there remain surplus assets (as defined in the Associations Incorporation Act) those surplus assets must not be paid to or distributed amongst the Members but must be distributed to another organisation or organisations which has objects similar to the Objects and a constitution which prohibits the distribution of income and property to Members.

29.2 **Determination of Recipients**

The organisation or organisations to whom the distribution is to be made under clause 29.1 may be determined by the Members in General Meeting at or before the time of winding up, dissolution or deregistration, and in default of a determination by the Members, by a judge of the Supreme Court of South Australia or any other Court that has jurisdiction in the matter.

30. **CONSTITUTION**

30.1 **Alteration of Constitution by General Meeting**

Subject to clauses 30.2 and 30.3, this Constitution may be repealed or altered or a new provision may be added by Special Resolution passed at a duly convened General Meeting.

30.2 **Alteration of Constitution by Management Committee**

Subject to clause 30.3, the Management Committee may, by Ordinary Resolution, make amendments to this Constitution if, in the opinion of the Management Committee, such amendments are necessary:

- 30.2.1 to achieve or maintain registration as a political party under the Electoral Act;
- 30.2.2 to comply with the Associations Incorporation Act;
- 30.2.3 to alter the name of the Association pursuant to clause 34.3; or
- 30.2.4 to achieve or maintain a particular tax status or to comply with taxation laws (including Commonwealth and State laws relating to taxation, stamp duty, land tax, payroll tax and other taxes, duties and levies).

30.3 **Condition of Alteration**

No part of this Constitution may be repealed, altered or amended if the Association would cease to be an eligible political party under the Electoral Act as a result of that repeal, alteration or amendment.

31. **RULES**

31.1 **Management Committee to formulate Rules**

The Management Committee may make and amend Rules for the proper advancement, management and administration of the Association and the advancement of the purposes of the Association as it thinks necessary or desirable. Rules may include, without limitation, regulations governing:

- 31.1.1 the requirements for Membership;
- 31.1.2 subscriptions, fees and levies for Membership;
- 31.1.3 the conduct of meetings;
- 31.1.4 the resolution of disputes;
- 31.1.5 breaches of this Constitution or Rules;
- 31.1.6 Conscience Vote Issues; and
- 31.1.7 any other matter for which this Constitution authorises the Management Committee to make Rules or which the Management Committee considers is necessary or appropriate for the good governance of the Association and its affairs.

31.2 **Consistency**

The Rules must be consistent with the Constitution.

31.3 **Rules Binding**

All Rules are binding on the Association and all Members.

31.4 **Publication Of Rules**

Rules and any amendments, alterations or other changes to or interpretations of the Rules may be communicated to Members by a notice on the Association's website, or in any publication which is published by or on behalf of the Association and which is circulated or available to Members.

32. **NOTICE**

32.1 **Notice to Members**

Any notice required or authorised by this Constitution to be given to a Member may be served on the Member personally or by sending it through the post in a prepaid envelope addressed to the Member at the Member's last known place of business, or by facsimile, email or other electronic means or by its insertion on the Association's website or in any journal or publication which is

published by or on behalf of the Association and which is circulated by the Association to its members.

32.2 Notice to Association

Any notice required or authorised by this Constitution to be given to the Association may be served by delivering it personally to the Association at its registered office or by sending it through the post in a prepaid envelope addressed to the Association at the registered office.

32.3 Notice by Post

A notice served by post will be taken to have been received by the recipient on the second working day after it was posted.

32.4 Notice by Fax or Email

A notice served by facsimile, email or other electronic means will be taken to have been received by the Member two hours after it was successfully transmitted.

33. INDEMNITY

33.1 Indemnity for Legal Proceedings

Every Officer and employee of the Association is entitled to be indemnified out of the property and assets of the Association against any liability incurred by them in their capacity as Officer or employee in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application in relation to any proceedings in which relief is granted by the Court.

33.2 Indemnity for Conduct

The Association must indemnify its Officers and employees against all damages and losses (including legal costs) for which any Officer or employee may be or become liable to any third party in consequence of any act or omission:

33.2.1 in the case of an Officer, performed or made in good faith whilst acting on behalf of and with the authority, express or implied of the Association; and

33.2.2 in the case of an employee, performed or made in good faith in the course of, and within the scope of their employment by the Association.

34. CHANGE OF NAME

34.1 Cessation of Membership of Nick Xenophon

If Nick Xenophon ceases to be a Member of the Association, other than as a result of death or legal incapacity, then the Management Committee must, unless otherwise agreed in writing by Nick Xenophon:

34.1.1 immediately cause the name of the Association to be changed to a new name that does not expressly or impliedly suggest any association, connection or affiliation with, or endorsement by, Nick Xenophon; and

34.1.2 apply to the Electoral Commissioner of South Australia to record that change of name.

34.2 Death or Incapacity

If Nick Xenophon dies or is legally incapacitated, the Management Committee must abide by the directions of his executors, administrators or legal personal representatives (including a person acting under power of attorney) in relation to ongoing use of the names "Nick Xenophon's SA-BEST", "Nick Xenophon Team", "Nick Xenophon" and "Xenophon" in relation to the Association and its objectives and activities.

34.3 Other Alterations to the Name of the Association

Subject to clauses 34.1 and 34.2, the name of the Association may at any time be altered by Ordinary Resolution of the Management Committee.

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**CONSTITUTION OF
NICK XENOPHON'S SA-BEST INCORPORATED**