Confidential
Commercial-in-Confidence

Avenue Neighbourhood House @ Eley Inc

Victorian Registration & Qualifications Authority, Registered Training Organisation #20213
Australian Business Number 22 762 469 739
Association Registration Number A0001063J

Explanatory Memorandum
– Summary of Changes to the Constitution

1.	**Executive Summary – Change to Purposes**
	Current Primary Purpose The current Purposes of the Avenue Neighbourhood House @ Eley Inc (**Association**), as set out in clause 2 of the current Constitution, are as follows: *"The Association is a public institution with the charitable purpose of advancing social and public welfare by:* *a) advancing mental health and preventing social isolation; and* *b) advancing education; and* *c) providing a physical location where it supports individuals to undertake learning, social and recreational activities in the company of others."* **Current ACNC Registration** The Association is registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) with the following charitable sub-types: (a) Purposes beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the other charitable purposes, and (b) Advancing social or public welfare. **Deficiencies – not PBI/DGR endorsed** The Board has identified deficiencies with the current Purposes because they do not express the full range of benevolent purposes, so as to potentially enable registration with the ACNC with charitable sub-type 'public benevolent institution' (**PBI**) and they also do not express adequately the Association's existing registration as a Registered Training Organisation (**RTO**). The main issue with these deficiencies is that the Association is not currently endorsed by the Australian Taxation Office (**ATO**) as a Deductible Gift Recipient (**DGR**) which would mean that the Association can receive tax-deductible donations and also access grant and foundation (ancillary fund) distributions, which can only be given to a DGR.

Current Funded RTO Courses

The limitation also does not allow the Association to extend its course offerings.

Current funded courses conducted by the Association include;

a) 22694VIC - Certificate I in Initial Adult Literacy and Numeracy;
b) 22705VIC – Certificate I in Transition Education;
c) 22688VIC – Course in Initial General Education for Adults;
d) 22690VIC – Certificate I in General Education for Adults;
e) 22689VIC - Certificate I in General Education in Adults (Introductory); and
f) 22693VIC – Course in Initial Adult Literacy and Numeracy

Changes to address deficiencies

To address the limitations imposed by funding caps and ensure financial sustainability, the Board is recommending exploring additional or alternative funding opportunities by applying for registration with charitable sub-types ‘advancing education’ and ‘public benevolent institution’ and then seeking endorsement as a DGR as both a PBI and RTO.

Therefore, the proposed amendment recommendation is to change the Principal Purpose to focus on the function, identity and operation of the Association as a PBI providing benevolent assistance to those in need and as an RTO providing accredited courses as approved by the Victorian Registration & Qualifications Authority (**VRQA**) and as set out in the *Student Assistance (Education Institutions and Courses) Determination 2019.*

This will allow the Association to diversify course offerings in order to explore additional or alternative funding opportunities, to broaden courses and activities to better reflect current practices and to allow the Association to be endorsed by the ATO as a DGR to increase possible funding avenues and ensure financial sustainability.

Main Benefits of Change

Making changes to the Purposes has five main benefits:

1) It better reflects the Association’s mission to provide benevolent assistance and relief to those in poverty, sickness, destitution, helplessness, suffering, misfortune, disability and distress;
2) It allows the Association to be registered as a PBI by the ACNC (subject to ACNC review) and then endorsed by the ATO as a DGR under item 4.1.1 of the table in section 30-45(1) of the *Income Tax Assessment Act 1997 (Cth)* as a PBI;
3) Registration as a PBI also allows the Association to be endorsed by the ATO as Fringe Benefits Tax Exempt which allows it to offer some salary packaging to employees;
4) It allows the Association to provide **<u>any</u>** accredited course and so the Association can freely change its curriculum and course offerings as required from time to time without the need to also change the purposes; and
5) It allows the Association to be endorsed as a DGR under item 2.1.7 of the table in section 30-25(1) of the *Income Tax Assessment Act 1997 (Cth)* as an institution that the Student Assistance Minister has

	determined to be a technical and further education institution under the *Student Assistance Act 1973* (Cth). Pursuant to section 8 of the *Student Assistance (Education Institutions and Courses) Determination 2019* (Cth), RTO's are to be regarded as technical and further education institutions for the purposes of the *Student Assistance Act 1973* (Cth) and so, with its focus and operation as a RTO, the Association can apply for endorsement as a DGR. This strategic shift will aim to align with emerging industry trends and student interests and enhance the Association's competitive position and financial sustainability.
2.	**Executive Summary – Membership Eligibility**
	Governance Review The Board has conducted a Governance Review and has identified areas of improvement for good governance. The Board understands its role is to exercise the powers of the Association as an incorporated body, to be responsible for the conduct of the Association, establish policies for good management and operation, to make significant and strategic decisions and to oversee the Association's activity. **Separation of Powers** In line with modern good governance principals and in order to maintain the important separation of powers between governance and management, and the Association as an employer with employees. It is the Boards responsibility to oversee management, finances, and quality; set strategic direction; build community relationships; establish ethical standards, values, and compliance; and select a CEO and monitor his or her progress, all done in order to establish the direction of the Association. The CEO is the full-time agent of the board and is the only person directly accountable to the board, whereas employees are accountable to the CEO and in accordance with their employment agreements. It is then the responsibility of the management team and employees to develop the strategic plan, however it is the board's responsibility to accept or modify the strategic plan and to set the direction. The Board has the legal duty and responsibility to ensure the use of financial controls; ensure that funds are prudently used and invested, consider cash management, banking, and contracting parameters; and establish policies related to budgets, salaries and employment agreements. The Board's duty is to ensure the assets and income of the Association are used for its charitable purposes and this also involves risk management in addition to continuous quality improvement. **What is good governance** In line with *Fair Work Commission* guidelines, good governance 'good governance' is taken to mean the routine, everyday procedures, systems and processes that the Association can put into place to ensure it achieves best governance and organisational practice when it comes to:

- leadership;
- accountability;
- transparency;
- compliance;
- trust;
- integrity;
- efficiency;
- consistency;
- effective use of resources;
- improvement;
- member engagement; and
- accurate and truthfully-based financials.

Good governance creates a culture that encourages the Association and its officers and employees to aim to achieve the best for its clients and members while minimising risks of non-compliance, misconduct, and incorrect use of funds.

An organisation should rely on its Directors to provide stewardship and oversight of the organisation and to have the resolve to take steps to deal with any problems if and when they arise. Adopting good governance structures and practices that promote professionalism and accountability is the key to developing a culture of good governance in, and excellent service by, the Association.

Accountable to Members

In accordance with ACNC Governance Standard 2, the Board remains accountable to Members, which will include both Ordinary Members (Voting) and Associate Members (Non-voting). Governance Standard 2 requires the Association, as a registered charity to take reasonable steps to be accountable to its members, and allow its members adequate opportunities to raise concerns about how the Association is run. This will include, but is not limited to, holding the Annual General Meeting and preparing Financial Statements and Annual Reports.

ACNC 'Governance for Good' Guidelines

As set out in the ACNC's, Governance for Good, governance refers to the processes, activities and relationships that make sure the Association is effectively and properly run. The Association can demonstrate 'good governance' by having practices and procedures in place that help it work effectively.

The roles and responsibilities of those in the Association must be clearly understood – this includes those of Responsible People (ie. Directors), as well as staff, volunteers and members.

Good governance goes beyond the Association's Constitution and processes – it involves a culture of accountability and transparency, and supports the Association to work towards achieving its charitable purposes.

Directors will often delegate work to staff and volunteers, although there are some tasks that are usually reserved for them, including:

- appointing most senior staff members (for example, the chief executive officer);
- developing (or approving) a strategic plan;
- managing organisational risks; and
- calling meetings of members.

	Because Directors are in charge of governing the Association, they are generally in charge of: • accountability – ensuring the charity meets its obligations, manages its finances and operates transparently; • strategy – setting the charity's long-term goals and ensuring it pursues its charitable purposes; • resourcing – securing funding and other resources to support the work of the charity; • advocacy – representing the charity to the community and to its members and stakeholders, and • monitoring – ensuring the charity is run in line with its governing document and any relevant laws. It is important that charities have clearly defined roles and responsibilities for Directors, as well as staff. It is also recommended that the Association has bylaws and other policies to ensure that term limits for Directors and separation of powers, roles and responsibilities are established and respected.
3.	**Specific Clause Changes and Explanation**
Clause 2.1 – Principal Purpose	The Principal Purpose of the Association has been changed from the very broad, general and unspecific: *"The Association is a public institution with the charitable purpose of advancing social and public welfare by:* *a) advancing mental health and preventing social isolation; and* *b) advancing education; and* *c) providing a physical location where it supports individuals to undertake learning, social and recreational activities in the company of others."* To a specific PBI purpose: *"The Association's principal purpose is to be a public benevolent institution established to relieve poverty, sickness, destitution, helplessness, suffering, misfortune, disability and distress by providing assistance to those in need, mainly but not limited to within the Whitehorse City Council area and evoking compassion within this community (**Principal Purpose**)."* This is so that the Association can make a 'change of charity sub-type' application to the ACNC to be registered with both the 'advancing education' and PBI subtypes and so be endorsed by the ATO as a DGR and for FBT Exemption. Further, as set out in clause 2.2.9, a 'supporting purpose' (ie. activity to fulfill the Primary Purpose) is to 'advance education' primarily to support those in need and disadvantage specifically by operating as a Learn Local Course Provider, a Childcare and Early Learning Centre and an RTO for the purposes of providing Accredited Courses. Phrases requiring defining, such as RTO and Accredited Courses, are included as defined terms in clause 15.14 with definitions aligned to the *Student Assistance (Education Institutions and Courses) Determination 2019 (Cth)* which was made for the purposes of the *Student Assistance Act 1973 (Cth)*. Further, these definitions, and the Association's registration as a RTO will enable it to endorsed as a DGR under item 2.1.7 of the table in section 30-25(1) of the *Income Tax Assessment Act 1997 (Cth)* as an institution that the Student Assistance Minister has determined to be a technical and further

	education institution under the *Student Assistance Act 1973 (Cth)*.
Clause 2.2 – Supporting Purposes	Clause 2.2 has been amended to identify the range of 'disadvantaged' people the Association is seeking to provide with benevolent assistance (clause 2.2.1) and then the types of activities it will conduct in order to fulfill the Primary Purpose (clauses 2.2.2 to 2.2.9). Clause 2.2.10 then includes a 'catch all' general supporting purpose of doing all lawful things consistent with, necessary or desirable to support and further the Principal Purpose and to do such other things as are incidental or conducive to the attainment of the Principal Purpose.
Clause 4.1 to 4.4 – Winding up and DGR revocation	The existing Constitution was <u>not</u> drafted with a 'DGR revocation' clause and this has now been included at clause 4.4. This is required for the Association's DGR endorsement applications as both an RTO and PBI. Clauses 4.2 and 4.4 states that, on winding up or revocation of DGR endorsement, 'Deductible Gifts' cannot be paid to members but must only be paid to another charitable entity, registered as such under the ACNC Act and that is also endorsed as a DGR.
Classes of Members and Eligibility – clause 5, 6 and 10	The category of Associate Member (non-voting) (see clause 5.3, 5.4.2 and clause 10) may include other stakeholders. In order to seek and maintain good governance (as set out above), Directors will also be Members. The transitional arrangement is set out in clause 6.4.
Clause 15.14 – additions to Definitions	In order to give effect to the above changes, the following new definitions are required and have been added to the existing definitions clause 15.14: • Accredited Courses; • Childcare and Early Learning Centre; • Deductible Gifts; • Learn Local Course Provider; and • RTO. Importantly, 'Member' is defined as both an Ordinary Member and Associate Member (as those terms are understood from clauses 5 and 10).
Schedule 1	Schedule 1 confirms and shows that the matters that must be provided for in the rules of an incorporated association, pursuant to the *Associations Incorporation Reform Act 2012* (Vic), are all set out in the Constitution.
	Apart from these clauses set out above, no other substantial changes have been made to the existing Constitution which maintains the same structure for meetings and Board composition and terms.