

# **Counteract: Building People Powered Action Inc. Constitution**

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## **PART 1—PRELIMINARY**

### **1. Name of Association**

The name of the incorporated association is CounterAct - Building People Powered Action Inc., hereinafter called the Association or CounterAct.

### **2. Acknowledgement of Country**

CounterAct acknowledges First Nations ongoing custodianship of the lands we work on, and note that sovereignty was never ceded. We acknowledge elders past, present and emerging, and honour the ongoing resilience and leadership Aboriginal people have played in care and protection of country.

### **3. Objectives of Association**

CounterAct is a not-for-profit organisation that supports communities across Australia to protect the natural environment and work for social justice and human rights. This is done by providing training, educational resources and capacity building to support communities and activists.

The Objectives of the Association are to:

1. increase the knowledge and practical ability of communities to protect the natural environment and to work for a safer climate;
2. build the ability of grassroots activists and communities to advocate and campaign for human, and legal rights, environmental & social justice, by creating educational resources, sharing skills, and conducting training;
3. build public awareness of strategic non-violence and the critical role of civil resistance to effect social, environmental and climate justice;
4. encourage and promote participatory democracy, by supporting communities to build their power, and educate them on actively engaging with political processes, and;
5. support the Aboriginal community in asserting self determination, increase awareness among non-Indigenous communities to accept and promote Aboriginal leadership, and work in effective solidarity in organising for environmental and social justice.

### **4. Financial year**

The financial year of the Association is each period of 12 months ending 30 June.

## **PART 2—POWERS OF ASSOCIATION**

### **5. Powers of Association**

1. Subject to the Act, the Association has power to do all things incidental or conducive to achieve its purposes.
2. Without limiting sub-rule (1), the Association may—
  - (a) acquire, hold and dispose of real or personal property;
  - (b) open and operate accounts with financial institutions;
  - (c) invest its money in any security in which trust monies may lawfully be invested;
  - (d) raise and borrow money on any terms and in any manner as it thinks fit;
  - (e) secure the repayment of money raised or borrowed, or the payment of a debt or liability;
  - (f) appoint agents to transact business on its behalf;
  - (g) enter into any other contract it considers necessary or desirable.
3. The Association may only exercise its powers and use its income and assets (including any surplus) for its purposes.

### **6. Not for profit organisation**

The income and assets of the Association shall be applied towards the promotion of the objects of the Association. As a non-profit organisation no portion of the income or assets shall be distributed to its individual members. However, the Association may still make payment in good faith to any employee or contractor of the Association and to any member in return for services actually rendered to the Association or for goods supplied in the ordinary way of business. This will not prevent the payment of interest or rent at a fair market rate.

## **PART 3—MEMBERS**

### **7. Minimum number of members**

The Association must have at least 5 members.

## **8. Who is eligible to be a member**

1. Membership is open to all individuals and organisations that accept the objectives and constitution of the Association.
2. An incorporated organisation is able to be a member of the Association, but it must nominate individuals as members to represent it.
3. Subject to these rules, the members of the Association shall be comprised of the members of the Association immediately prior to incorporation.

## **9. Application for membership**

To apply to become a member of the Association, a person must submit a written application to a CounterAct Council (hereafter, CC) member stating that the person—

- (a) wishes to become a member of the Association; and
- (b) supports the purposes of the Association; and
- (c) agrees to comply with this constitution

The application—

- (a) must be completed by the applicant, including a signature or equivalent digital acknowledgement indicating support for the purposes of the Association;
- (b) may be accompanied by the relevant membership fee as determined by the CC.

## **10. Consideration of membership application**

1. As soon as practicable after an application for membership is received, the CC must decide whether to accept or reject the application.
2. The Committee must notify the applicant in writing of its decision as soon as practicable after the decision is made.
3. If the Committee rejects the application, it must return any money accompanying the application to the applicant.
4. No reason need be given by the CC for the rejection or acceptance of an application.

## **11. New membership**

If an application for membership is approved by the CC—

- a. new members for the period are recorded in the minutes of the CC meeting; and
- b. the Secretary must, as soon as practicable, enter the name and address of the new member, and the date of becoming a member, in the register of members.

A person becomes a member of the Association and, subject to rule 10(2) is entitled to exercise their rights of membership from the date, whichever is the later, on which—

- a. the CC approves the person's membership; or
- b. the person pays the membership fee.

## **12. General rights of members**

1. A member of the Association who is entitled to vote has the right—
  - (a) to receive notice of general meetings; and
  - (b) to submit items of business for consideration at a general meeting, subject to the CC approval; and
  - (c) to attend and be heard at general meetings; and
  - (d) to vote at a general meeting; and
  - (e) to have access to the minutes of general meetings
2. A member is entitled to vote if—
  - (a) more than 30 business days have passed since they became a member of the Association; and
  - (b) the member's membership rights are not suspended for any reason.

## **13. Rights not transferable**

The rights of a member are not transferable and end when membership ceases.

## **14. Ceasing membership**

1. The membership of a person ceases on resignation, expulsion by the CC or death.
2. If a person ceases to be a member of the Association, the Secretary must, as soon as practicable, enter the date the person ceased to be a member in the register of members.

## **15. Resigning as a member**

1. A member may resign by notice in writing given to a member of the CC
2. A member is taken to have resigned if—
  - (a) the member's annual subscription is more than 12 months in arrears; or
  - (b) where no annual subscription is payable—
    - (i) the Secretary has made a written request to the member to confirm that he or she wishes to remain a member; and

- (ii) the member has not, within 2 months after receiving that request, confirmed in writing that they wish to remain a member.

## **16. Membership Termination**

Membership may be terminated by the CC if it is the opinion of the CC, after affording such member procedural fairness, and an opportunity to provide an explanation of their conduct either verbally or in writing as they prefer, that their conduct is such as to be contrary to the best interests of the Association, provided that:

- a. an expulsion shall not be effective unless it is confirmed by two thirds of the CC members present at a Special Meeting convened to consider the expulsion.
- b. such Special Meeting is held within a period of two months from the date of the decision of the CC to expel the member.
- c. at such a Special Meeting, the member whose expulsion is under consideration shall be allowed to offer an explanation of their conduct verbally or in writing as preferred.
- d. it shall be in the power of the CC to exclude such a member from participation in the affairs of the Association until such a Special Meeting shall be held.
- e. Written notice will be provided to the member stating the grounds for the possible membership termination and at least 21 days notice will be given to the member to provide a written statement if desired

## **17. Register of members**

A register of members shall be kept by the Association showing the name, address and date of commencement of membership for each member. Provision for noting the date of cessation of membership shall also be contained in the register.

## **18. Members Liability**

The members of the Association – including those members of the CC – shall have no liability to contribute towards the payment of debts and any liabilities of the Association or the costs, charges and expenses of the winding up of the Association.

## **PART 4 – GENERAL MEETINGS**

### **19. General Meetings**

1. An Annual General Meeting of the Association shall be held each year within six months from the end of the financial year.
2. The Association may hold its first Annual General Meeting at any time within 18 months after its incorporation.
3. At least fourteen days notice of all General Meetings and notices of meetings shall be given to members via email. In the case of a General Meeting where a Special Resolution is to be proposed, notice of the resolution shall be given to members at least fourteen days before the meeting in a like manner.
4. In the case of the Annual General Meeting the following business shall be transacted whether specified or not:
  - a. confirmation of the minutes of the last Annual General Meeting and any recent Special General Meeting;
  - b. receipt of the CC's report upon the activities of the Association in the last financial year;
  - c. election of office bearers and other members of the CC;
  - d. receipt and consideration of a statement from the Secretary which is not misleading and gives a true and fair view for the last financial year of the Association's finances.

### **20 Quorum at General Meetings**

1. No official business may be conducted at a general meeting unless a quorum of members is present.
2. The quorum for an Annual General Meeting, will be five members, present in person.

### **21 Use of technology for General Meetings**

1. A general meeting may be held at multiple venues using any technology approved by the CC that gives each of the association's members a reasonable opportunity to participate.
2. A member of an association who participates in a general meeting using that technology is taken to be present in person at the meeting and, if the member votes at the meeting, is taken to have voted in person

### **22 Voting at General Meetings**

1. Decisions at all meetings of the Association shall be decided by consensus of opinion.
2. In the event of consensus of opinion not being reached after adequate discussion, voting provisions shall apply. Any proposal can only be passed

with two thirds majority vote. Because of the collective nature of the Association there shall be no voting by proxy at any General Meeting.

3. If within thirty minutes from the time appointed for the Annual General Meeting a quorum of members is not present, the meeting shall be dissolved, stand adjourned to the same day in the next week at the same time and place or to such other day and such other time and place as the members present shall determine. If at the adjourned meeting a quorum is not present, within thirty minutes from the time appointed for the meeting the members present, being not less than three, shall be the quorum.
4. Nominations of candidates for election to the CC may be made at a General Meeting.

### **23 Special Resolutions**

1. A special resolution must be passed by a general meeting of the Association to effect the following changes:
  - a. a change of the Association's name;
  - b. a change of the Association's constitution (including objectives);
  - c. an amalgamation with another Incorporated Association;
  - d. to apply for registration as a company or a co-operative;
2. A special resolution shall be passed in the following manner:
  - a. a notice must be sent to all members advising that a general meeting is to be held to consider a special resolution;
  - b. the notice must give details of the proposed special resolution and give at least 14 days notice of the meeting;
  - c. a quorum must be present at the meeting (the number for a quorum being five members)
  - d. to pass a special resolution and in keeping with the Act voting rules must apply. There must be a majority of not less than two thirds of those present, these being members entitled under the rules to vote in person. No proxies are allowed.

### **24 Special General Meeting**

A Special General Meeting must be convened by the CC within three months of receiving a written request to do so from at least eighty percent of the membership of the Association, or as decided by the CC.

## **PART 5 – COUNTERACT COUNCIL**

### **25. Role and Powers**

1. The Association shall have its affairs controlled by and managed by a group of members that operates according to the principles of consensus building and collectivity. This group shall be called the CounterAct Council (CC) and subject to this constitution shall control and manage the affairs of the Association.
2. The CC shall consist of a minimum of five and a maximum of fifteen members elected at the Annual General Meeting.
3. The CC shall meet to manage the affairs of the Association at least once every four months and a quorum necessary to make decisions shall be four.
4. Questions arising at any meeting of the CC shall be determined by a consensus. The opinion of each member of the CC shall be equal in value and shall be considered by all other members.
5. In the event of a consensus of opinion not being reached after adequate discussion, a two-thirds majority vote shall apply.
6. No business shall be transacted at any CC meeting unless a quorum of members is present at the time the meeting proceeds to business.
7. If within thirty minutes from the time appointed for the meeting a quorum is not present the meeting shall be dissolved, stand adjourned to the same day in the next week at the same time and place, or to such other day and such other time and place as the members present shall determine. If at the adjourned meeting a quorum is not present, within thirty minutes for the time appointed, the members present, being not less than three, shall be the quorum.
8. There shall be no proxy voting due to the collective nature of the Association.
9. Meetings of the CC shall be chaired by a CC member appointed at each meeting, and a minute taker appointed at each meeting shall take minutes of all business transacted and these minutes are to be confirmed at the beginning of the next CC meeting.
10. Notice of a CC meeting shall be given via email with at least seven days notice.
11. Members of the CC (including the Secretary) shall hold their positions from the date of appointment until the next Annual General Meeting, or will cease if they

submit a written resignation, are removed by a Special Meeting or they are absent from three consecutive meetings without approval.

12. Any casual vacancy occurring among the CC may be filled by appointment from the membership at the next CC meeting after receiving a written notice of intent to join and normal consensus and/or voting rules shall apply.

## **26. General Duties**

1. As soon as practicable after being elected or appointed to the CC, each Council member must become familiar with this Constitution and the Act.
2. The CC is collectively responsible for ensuring that the Association complies with the Act and that individual members of the Council comply with this constitution.
3. CC must exercise their powers and discharge their duties with reasonable care and diligence.
4. In furtherance of the objects of the association, the CC may:
  - a. enter into any arrangement with any government or authority and obtain any privileges and concessions which the Association may think desirable.
  - b. deal with the income of the Association in such manner as the CC sees fit.
  - c. purchase, lease, hire and otherwise acquire any property and any rights and privileges which may seem requisite or capable of being conveniently used in connection with the objects of the Association.
  - d. do all such other things as are conducive to the attainment of the objects of the Association.
  - e. appoint a sub-committee for such purposes and subject to such controls as decided upon by the CC.

## **27. Secretary**

1. The CC shall ensure that a person is appointed as the Secretary.
2. The first Secretary shall be the person who completed the application for incorporation for the Association.
3. The Secretary may be a member, or any other person deemed suitable for the position by the CC.
4. The Secretary must perform any duty or function required under the Act to be performed by the secretary of an incorporated association.

## **PART 6 – FINANCIAL MATTERS**

### **28. Insurance**

The Association shall effect and maintain insurance as required by law or regarded as necessary by the CC.

### **29. Financial Management**

1. The funds of the Association shall be derived from the fees of members, donations, grants and such other sources approved by the CC. All funds received by the Association shall be deposited as soon as is practicable and without deduction to the credit of the Association's accounts as is required.
2. All and any documentation kept by and relating to business of the Association shall be retained in the custody, care and control of the Secretary of the Association.
3. An annual financial statement shall be prepared and presented to the Annual General Meeting by a member or other person deemed appropriate by the CC.

### **30. Public Fund**

The Association shall establish and maintain a public fund, to be called the CounterAct Inc. Fund:

- a. to which gifts of money or property for its purposes are to be made;
- b. to which any interest on money in the fund is to be credited;
- c. to which money derived from the property given to the fund is to be paid;
- d. that does not receive any other money or property;
- e. that is used only to support the purposes of the Association.

The fund is to be administered by a committee of whom the majority of members – because of their tenure of some public office or their position in the community – have a degree of responsibility to the community as a whole.

- a. members of the general public will be invited to contribute to the fund and all such gifts and donations will be kept separate from other funds of the Association and credited to and kept in a bank account also to be known as the CounterAct Fund.
- b. receipts will be issued in the name of the fund

- c. none of the monies accumulated by the fund are to be distributed to the members or trustees of the fund (apart from proper remuneration for services rendered).
- d. the fund shall be operated on a non-profit basis with any profit generated from fund-raising activity to be used in the furtherance of the Association's purpose.
- e. in the event of the organisation being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to a fund that has similar objects to the objects of this organisation as deemed by the CC.
- f. any allocation of funds to other organisations or persons will be made in accordance with the established objectives of the organisation and not be influenced by the expressed preference or interest of a particular donor to the organisation.
- g. the association agrees to provide statistical data about gifts to the fund to the relevant Department, within six months of the end of each financial year.

### **31. Winding-up**

1. The Association shall be dissolved by a resolution of members present at a Special General Meeting convened to consider such a question.
2. In the event of the organisation being dissolved the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.