

**CONSTITUTION**  
**SUNCARE COMMUNITY SERVICES LTD**  
**ACN 603 561 502**  
A Company Limited by Guarantee

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# 1 DEFINITIONS AND INTERPRETATION

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## Definitions

1.1 In this Constitution unless the contrary intention appears:

**“ACNC”** means the Australian Charities and Not-for-Profits Commission or any national body responsible for the regulation of Australian charities established by the Australian Federal Government in its place.

**“ACNC Act”** means the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth).

**“Act”** means the *Corporations Act 2001* (Cth), and words and expressions defined in the Corporations Act have the same meaning in this Constitution.

**“Annual General Meeting”** means a meeting of the Members called under Rule 12.1.

**“Associate”** means a natural person with an association arising from a family relationship as defined in s 9AA of the Act or a body corporate which is an associate as defined in s10 and s11 of the Act.

**“Auxiliary”** means a voluntary support group of the Company.

**“Board”** means the Board of Directors and is the controlling body referred to in this Constitution.

**“By-Laws”** means the By-Laws of the Company in force from time to time.

**“Chair”** means the person appointed chair of the Board in accordance with this Constitution.

**“Chief Executive Officer”** or **“CEO”** means the person appointed as chief executive officer of the Company by the Board.

**“Committee”** means a committee established by the Board which reports to the Board and which may include Directors and other appointees.

**“Company”** means Suncare Community Services Ltd ACN 603 561 502.

**“Company Secretary”** means the person appointed by the Board to act as secretary of the Company.

**“Competition”** means engaging in a business of providing products and services that are the same or substantially similar to those products and services produced, provided, sold and/or marketed by the Company in the provision of community services, particularly aged care and disability services as determined by the Board in its reasonable opinion.

**“Competitor”** means a person who:

- (i) is or was in Competition with the Company;
- (ii) is or has been an Associate of a person who is in Competition with the Company;
- (iii) is or has been an employee of a person who is in Competition with the Company;
- (iv) is or has been a director of a company which is in Competition with the Company;
- (v) is or has been a shareholder of a company (other than a holding of less than 5% in a company listed on a stock exchange) which is in Competition with the Company

within the previous three (3) years.

**“Constitution”** means this constitution and any supplementary, substituted or amended constitution being in force from time to time.

**“Contractor”** means a person who, in the reasonable opinion of the Board:

- (i) has a contract with the Company;
- (ii) is an Associate of a person who has a contract with the Company;
- (iii) is an employee of a person who has a contract with the Company;
- (iv) is a director of a company which has a contract with the Company;
- (v) is a shareholder of a company (other than a company listed on a stock exchange) which has a contract with the Company

to provide goods or services directly required for the provision of aged care and/or disability services, but does not include

a person who provides goods or services without payment and as a volunteer or a person to whom the Company provides aged care and/or disability services.

**“Court”** means the Supreme Court of Queensland.

**“Deputy Chair”** means the person appointed deputy chair of the Board in accordance with this Constitution.

**“Director”** means a director of the Company from time to time.

**“Employee”** means an employee of the Company or an employee of any other legal entity consolidated into the financial accounts of the Company but does not include Directors.

**“Financial Year”** means the twelve (12 month) period commencing 1 July and ending 30 June in each and every year.

**“Honorary Life Member”** means a Member designated an honorary life member pursuant to Rule 9.7.

**“ITAA”** means the Income Tax Assessment Act 1936 (Cth), and the Income Tax Assessment Act 1997 (Cth).

**“Material Personal Interest”** means a Personal Interest in which the interest needs to be of some substance or value or any interest that has the capacity to influence the vote of the person, regardless of how it arises but does not include a Personal Interest which arises from a person receiving aged care and/or disability services from the Company.

**“Member”** means a natural person who has been accepted for Membership of the Company and whose name is included in the Register.

**“Membership”** means membership in the Company.

**“Membership Fee”** means such amount (as an initial fee and/or an annual fee) as the Board may prescribe from time to time for each class of Member.

**“Month”** means calendar month.

**“Objects”** means the objects of the Company contained in Rule 2.4 and Rule 2.5.

**“Officer”** has the same meaning as an “officer of a corporation” under s9 of the Act.

**“Ordinary Member”** means a Member admitted to the Company and designated ordinary membership pursuant to Rule 9.1 and a reference to an Ordinary Member includes an Honorary Life Member who is an Ordinary Member.

**“Patron”** means the natural person appointed pursuant to Rule 21.

**“Personal Interest”** means an interest which provides a personal benefit (whether that interest is direct, indirect, contingent, contractual or perceived) to a person or an Associate of that person provided it does not affect the person as a member of a wide group or class and in the same manner and to the same degree that it affects the other members of the group or class (such as Members of the Company).

**“Principal Object”** means the object specified in Rule 2.4.

**“Register”** means the register of Members kept by the Company in accordance with the Act.

**“Registered Address”** means the address of a Member as recorded in the Register.

**“Regulation”** means any advice direction or instruction, not being a By-Law, issued by the Board for the guidance of Members and others.

**“Related Body Corporate”** has the meaning under s50 of the Act;

**“Rule”** means a rule of this Constitution.

**“Special Resolution”** has the meaning given to it in the Act.

**“Supporter Member”** means a Member admitted to the Company and designated a supporter member pursuant to Rule 9.6.

### **Interpretation**

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular number includes the plural and vice versa;
- (b) a word which suggests one gender includes all other genders;
- (c) persons include partnerships, associations, companies and corporations as well as natural persons;
- (d) natural person means a human being;
- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force at the relevant date; and
- (f) headings are for ease of reference only and do not affect the construction of this Constitution.

## **2 NAME, INCORPORATION, OBJECTS AND CHARITABLE STATUS**

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### **Name and Incorporation**

2.1 The name of the Company is Suncare Community Services Ltd.

2.2 The liability of the Members is limited by guarantee.

2.3 Every Ordinary Member of the Company undertakes to contribute to the assets of the Company for such amounts as may be required the total sum of which is not to exceed Five Hundred Dollars (\$500.00) if the Company is wound up while they are an Ordinary Member or within a year afterwards for:

- (a) payment of debts and liabilities of the Company contracted before they ceased to be a member, and;
- (b) the cost, charges and expenses of winding up the Company and for the adjustment of the rights of the contributories among themselves.

### **Objects**

2.4 The Principal Object of the Company is to provide direct relief, care and assistance to older people and people living with disabilities by establishing and delivering a range of individual and community programs.

2.5 For the purpose of furthering the Principal Object, the additional objects of the Company are to:

- (a) develop and deliver support services that assist individuals to maintain personal independence and community engagement;
- (b) advance community understanding of ageing, disability and mental health and to enable all sectors of the community to plan for positive ageing through education, advice and activity programmes;

- (c) advance research that is beneficial to the general public in matters concerning people who are elderly, have a disability or mental illness;
- (d) promote reconciliation, mutual respect and tolerance;
- (e) promote diversity and inclusion of all people;
- (f) promote recognition of Australia's First Peoples; and
- (g) do such other things as are incidental or conducive to the attainment of the Objects set out in Rule 2.5(a) to (f).

### **Replaceable Rules**

- 2.6 The operation of each section of the Act which is defined as a replaceable Rule is displaced by this Constitution and do not apply to the Company.

## **3 CHARITABLE STATUS**

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- 3.1 The income and property of the Company however derived will be applied solely towards the promotion of the Objects.
- 3.2 No income or property may be paid or transferred directly by way of profit to the Members except as:
- (a) remuneration to any officer or servant of the Company or to any Member in return for any service actually rendered to the Company;
  - (b) payment of principal and interest (at a rate not exceeding the rate being charged by bankers in Brisbane for overdrawn accounts on money lent) on money borrowed by the Company from a Member;
  - (c) reasonable rent for premises leased by any Member to the Company.
- 3.3 Directors may be remunerated for their services to the Company as a member of the Board in the amount determined by the Board, provided:
- (a) the remuneration advances the Company's charitable purpose;
  - (b) the remuneration is permitted by the Act and any regulations imposed or enforced by the ACNC from time to time;
  - (c) the remuneration is reasonable having regard to the circumstances of the Company and the relevant Director's role and responsibilities; and
  - (d) the remuneration paid to each Director is disclosed annually to the Members.
- 3.4 Directors may also be reimbursed by the Company for:
- (a) reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Board or when otherwise engaged on the affairs of the Company; and
  - (b) reasonable out-of-pocket expenses incurred by a member of the Board in attending to the affairs of the Board or of the Company
- which have been approved by the Board.

## **4 DISSOLUTION OR WINDING UP OF THE COMPANY**

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- 4.1 Subject to Rule 5, in the event of the winding up or dissolution of the Company, surplus assets remaining after payment of the Company's liabilities must be transferred to another organisation in Australia which is a public benevolent institution for the purposes of the ITAA with similar objects to those of the Company, as determined by an ordinary resolution of the Ordinary Members prior to the dissolution, and in default, by a Court of competent jurisdiction.

## **5 DEDUCTIBLE GIFT RECIPIENT STATUS**

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- 5.1 The Company must use all reasonable endeavours to maintain at all times its endorsement by the Commissioner of Taxation of the Commonwealth of Australia (or any other authorised person or entity) as a deductible gift recipient for the purposes of the ITAA.
- 5.2 If the endorsement of the Company as a deductible gift recipient is revoked, the following shall be transferred to another organisation as determined by an ordinary resolution of the Ordinary Members to which income tax deductible gifts can be made:
- (a) gifts of money or property for the principal purpose of the Company;
  - (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
  - (c) money received by the Company because of such gifts and contributions.

## **6 FINANCIAL RECORDS**

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- 6.1 The Company must keep accounting records to record correctly and explain the Company's transactions (including any transactions as trustee) and the financial position of the Company.
- 6.2 The Company must keep its accounting records in a manner that will enable:
- (a) the preparation of true and fair accounts of the Company; and
  - (b) the accounts of the Company to be conveniently and properly audited in accordance with the Act, the ITAA, and any requirements or regulations imposed or enforced by the ACNC from time to time.
- 6.3 At least once in every year the accounts of the Company must be examined by a qualified auditor who must report to the Members in accordance with the provisions of the Act, the ITAA, and any requirements or regulations imposed or enforced by the ACNC from time to time.

## **7 ALTERATIONS TO THE CONSTITUTION**

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- 7.1 This Constitution may only be amended by a Special Resolution of the Ordinary Members except that any amendment to the rights or obligations of the Supporter Members must also be approved by a Special Resolution of the class or classes of Members which are affected by that amendment.
- 7.2 Any addition, alteration or amendment made to this Constitution that affects the not-for-profit nature of the Company in its disposition of funds obtained through fundraising appeals must be in accordance with the Act, the ITAA, any requirements or regulations imposed or enforced by the ACNC, and any other law applicable to the operation of charities as may be in force from time to time.

## **8 MEMBERS**

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- 8.1 A prospective member must:
- (a) apply in the form and manner determined by the Board;
  - (b) be nominated by two (2) Ordinary Members; and
  - (c) agree in writing:
    - (i) to be bound by this Constitution (as amended from time to time);
    - (ii) uphold the values and Objects of the Company; and
    - (iii) not to hold themselves out at any time as being a representative of the Company without the written consent of the Board.



The Board must consider an application for membership and decide whether to admit or reject the applicant and the appropriate class of membership for that applicant. The Board is not required to provide reasons for its decision concerning an acceptance or refusal of an application for membership.

- 8.2 The applicant must be given written notice of the Board's decision and, if the application is approved by the Board, a request for payment of the Membership Fee (if any).
- 8.3 A person becomes a Member when:
- (a) that person signifies in writing to the Company agreement to become a Member of the membership class for which they have been accepted by the Board;
  - (b) the Membership Fee (if any) is received by the Company; and
  - (c) that person's name is placed on the Register.
- 8.4 An applicant who has been accepted as an Ordinary Member shall have no voting rights until a period of ninety (90) days has elapsed after the Secretary sends the acceptance notice under Rule 8.2.
- 8.5 If the Membership Fee is not paid within twenty-eight (28) days after the date of the request, the Board may, in its absolute discretion, revoke its acceptance of the applicant.
- 8.6 The Board may set the Membership Fee payable to the Company by Members of each class of Membership (except Honorary Life Members).

## **9 CLASSES OF MEMBERSHIP**

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### **Ordinary Membership**

- 9.1 Ordinary Membership is available to a person who:
- (a) is a natural person over 18 years of age; and
  - (b) commits to the philosophy of the Company being that the Company is a community directed organisation for the benefit of its clients and the happiness of its volunteers
- and is not an Employee, Competitor or Contractor to the Company and does not have a Material Personal Interest in the Company, except as a Director.
- 9.2 If a person who was an Ordinary Member at the date that this Rule 9.2 is adopted does not have the eligibility required for an Ordinary Member or is otherwise excluded from Ordinary Membership, the Directors may resolve with the consent of that Member to convert the class of Membership held by that Member to another more appropriate class of Membership and refund any difference in Membership Fee to that Member, or the Directors may resolve to expel that Member under Rule 11.2(b).
- 9.3 The number of Ordinary Members shall be limited to thirty (30) natural persons plus the number of Directors appointed from time to time, provided that all Ordinary Members appointed at the date that this Rule 9.3 is adopted may remain as Ordinary Members but no new applications for Ordinary Membership may be accepted under Rule 8.1 while the number of Ordinary Members exceeds thirty (30) natural persons plus the number of Directors appointed from time to time. For the avoidance of doubt, the Directors may accept an application for Ordinary Membership by a person who the Directors intend to appoint as a Director under Rule 16.1(b).
- 9.4 An Ordinary Member:
- (a) has the right to receive notice of each general meeting of the Company;
  - (b) has the right to attend and speak at each general meeting of the Company;
  - (c) has the right to vote at each general meeting of the Company; and
  - (d) must contribute to the assets of the Company to a maximum sum of five hundred dollars (\$500.00) in the event the Company is wound up.

## **Supporter Membership**

- 9.5 Supporter Membership is available to any person who commits to the philosophy of the Company being that the Company is a community directed organisation for the benefit of its clients and the happiness of its volunteers including, for the avoidance of doubt,:
- (a) a partnership, association, company or corporation;
  - (b) a natural person who is over 18 years of age;
  - (c) a person who has a Material Personal Interest in the Company, including as:
    - (i) an Employee;
    - (ii) a Competitor; or
    - (iii) a Contractor.
- 9.6 A Supporter Member
- (a) has the right to receive notice of each general meeting of the Company;
  - (b) has the right to attend but not to speak at a general meeting of the Company;
  - (c) does not have the right to vote at a general meeting of the Company; and
  - (d) is not required to contribute to the assets of the Company in the event the Company is wound up.

## **Honorary Life Membership**

- 9.7 A Member, who is a natural person, may be appointed as an Honorary Life Member by an ordinary resolution of a general meeting of the Company following a recommendation from the Board that the natural person be elected as an Honorary Life Member.
- 9.8 Honorary Life Membership is conferred only in recognition of special or outstanding service to the Company or its precursor entity, Suncare Community Services Inc.
- 9.9 An Honorary Life Member will be considered to remain within the class of Membership that he/she had prior to appointment as an Honorary Life Member and to be subject to all other provisions of this Constitution and his/her Membership status is not altered on appointment as an Honorary Life Member to the effect that:
- (a) an Honorary Life Member who is an Ordinary Member has the rights and obligations of an Ordinary Member and is eligible to be elected to the Board; and
  - (b) an Honorary Life Member who is a Supporter Member has the rights and obligations of a Supporter Member
- but is not obliged to pay the Membership Fee.

## **10 REGISTER**

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- 10.1 The Company Secretary must keep the Register at the registered office of the Company.
- 10.2 Every Member must advise the Company Secretary of an address for service of notices including the residential address of the Member, a postal address and an email address (if applicable) and any change of address. The address supplied to the Company Secretary and kept in the Register will be the Registered Address of that Member.

## **11 CESSATION OF MEMBERSHIP**

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- 11.1 A person ceases to be a Member if that person: -
- (a) in the case of a natural person, dies, becomes bankrupt or is of unsound mind or is a patient under laws relating to mental health or whose estate is administered under the laws about mental health;
  - (b) resigns from Membership by notice in writing to the Company Secretary:

- (c) fails to pay any Membership Fee by the due date (unless the Member is an Honorary Life Member); or
  - (d) if that Member is expelled as a Member by resolution of the Board for conduct detrimental to the interest of the Company.
- 11.2 Subject to this clause 11, the Board may expel a Member if the Member:
- (a) is found guilty of a criminal offence;
  - (b) in the reasonable opinion of the Board, ceases to be eligible for that class of Membership pursuant to Rule 9;
  - (c) in the reasonable opinion of the Board, acts in their own interests while performing any official duties for the Company;
  - (d) refuses or neglects to comply with the provisions of this Constitution, any By-Law or policy or procedure of the Company; or
  - (e) engages in conduct that, in the opinion of the Board, is prejudicial or injurious to the character or interests of the Company.
- 11.3 The Member must be given at least fourteen (14) days' notice of the Board Meeting at which the expulsion will be considered and is entitled to attend the meeting and have an opportunity to show cause why he or she should not be excluded as a Member by circulating written reasons of not more than 1,000 words to the Board or by presenting to the Board an oral argument not exceeding fifteen (15) minutes.
- 11.4 The name of any expelled Member must be removed from the Register.
- 11.5 Rights or privileges of Members are non-transferable and cease upon the death termination of membership or resignation of the Member.
- 11.6 A person who for any reason ceases to be a Member has no claim, monetary or otherwise, on the Company, its funds or property.

## **12 GENERAL MEETINGS**

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- 12.1 A general meeting must be held:
- (a) at least once in every calendar year;
  - (b) within five (5) months of the end of the Company's Financial Year; and
  - (c) at a time and place determined by the Board.
- 12.2 Any:
- (a) two (2) Directors; or
  - (b) any five (5) Ordinary Members
- may request that the Company Secretary convene a general meeting of the Company. The general meeting must be held not later than two (2) months after the date of the receipt of the request by the Company Secretary.
- 12.3 Every notice convening a general meeting must:
- (a) be in writing;
  - (b) specify the place, the day and the time of the meeting;
  - (c) specify the nature of the business to be transacted; and
  - (d) specify the right of Ordinary Members to appoint a proxy.
- In the case of a general meeting where a Special Resolution is to be proposed, the notice must also set out an intention to propose the Special Resolution and state the resolution.
- 12.4 At least twenty-one (21) days' notice of all general meetings and proposed resolutions must be given to Members. The period of notice is exclusive of the day upon which notice is served but inclusive of the day on which the meeting is to be held.

- 12.5 The business of the Annual General Meeting is:
- (a) to receive and consider the accounts, statements and reports;
  - (b) to elect the members of the Board for the coming year under Rule16;
  - (c) to appoint the auditor (where necessary); and
  - (d) to deal with any other business included in the notice of meeting.
- 12.6 The accidental omission to give notice of a meeting or the non-receipt of a notice of meeting by any Member will not invalidate the proceedings at the relevant meeting.

## **13 PROCEEDINGS AT GENERAL MEETINGS**

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- 13.1 All business transacted at a general meeting or an Annual General Meeting, (except for the consideration of financial statements and reports of the Board, the election of members of the Board and appointment of auditors) is special business.
- 13.2 At least five (5) Ordinary Members may give the Company Secretary notice of their intention to move a resolution at a general meeting of Members. Any such resolution will be put to the Ordinary Members at the next general meeting that occurs more than two (2) months after the notice is given to the Company Secretary.
- 13.3 No business will be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum is a total of eleven (11) Ordinary Members (including, for the avoidance of doubt, any Honorary Life Member who is also an Ordinary Member).
- 13.4 A Member is taken to be present for the whole of the meeting which they attend by electronic means or in person unless the chair of the meeting gives permission for the Member to leave the meeting. If within fifteen (15) minutes from the time appointed for the meeting a quorum is not present and the meeting was convened on the requisition of Members, it will be dissolved. In any other case it will stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within fifteen (15) minutes from the time appointed for the meeting the Ordinary Members present will be a quorum.
- 13.5 If any general meeting is adjourned for more than twenty-one (21) days a notice of the adjourned meeting must be given to all Members entitled to vote at the meeting.

## **14 CHAIR**

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- 14.1 The Chair or in the Chair's absence the Deputy Chair will preside as chair at every general meeting of the Company.
- 14.2 If at any general meeting the Chair or Deputy Chair is not present within fifteen (15) minutes after the time appointed for holding the meeting or is unwilling to act as chair the Ordinary Members present must elect one of their number to act as chair for the purposes of the meeting.
- 14.3 The chair may with the consent of any general meeting where a quorum is present (and will if directed by the general meeting) adjourn the meeting and no business will be transacted at any adjourned meeting other than the business left unfinished at the adjourned meeting.

## **15 VOTING**

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### **Polls**

- 15.1 Subject to the Act and this Constitution, at any general meeting a resolution must be decided on a show of hands of the Ordinary Members unless a poll is demanded by the chair of the meeting or at least five (5) Ordinary Members entitled to vote on the resolution.

- 15.2 If a poll is demanded it must be taken in such manner as the chair of the meeting directs. Unless the meeting is adjourned, the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.
- 15.3 A poll demanded for the election of a chair of the meeting or on a question of adjournment must be taken forthwith. A poll demanded on any other question must be taken at such time as the chair of the meeting of the meeting directs.

#### **Votes of Members**

- 15.4 Each Ordinary Member is entitled to exercise one (1) vote.
- 15.5 Any Ordinary Member may vote at a general meeting either personally or by proxy.
- 15.6 In the case of an equality of votes whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded is not entitled to a second or casting vote and the resolution is taken to be rejected.

#### **Proxies**

- 15.7 An Ordinary Member who is entitled to attend and vote at the meeting may vote by proxy on all matters.
- 15.8 A person appointed as proxy of an Ordinary Member must themselves be an Ordinary Member.
- 15.9 A single individual may act as proxy for multiple Ordinary Members.
- 15.10 The document appointing a proxy must be in writing.
- 15.11 The document appointing a proxy and any power of attorney or other authority under which it is signed must be deposited at the registered office of the Company or sent by electronic means not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy will be invalid.
- 15.12 A document appointing a proxy may be in the following form or such other form as the Board approves:

*"SUNCARE COMMUNITY SERVICES LTD. (ACN 603 561 502)*

*I [Ordinary Member Name] of [Ordinary Member Address] in the State of [State] being an Ordinary Member of Suncare Community Services Ltd appoint [Proxy Name], an Ordinary Member of the Company, to act on my behalf at the meeting to be held on [Date] and at any adjournment thereof.*

*Signed this day of [Date]"*

- 15.13 The document appointing a proxy is deemed to confer authority to demand or join in demanding a poll.

#### **General meetings by technology**

- 15.14 The contemporaneous linking together by telephone or other electronic means of a sufficient number of the Ordinary Members in person, to constitute a quorum constitutes a meeting of the Ordinary Members, provided each Ordinary Member has a reasonable opportunity to participate at the meeting.
- 15.15 All the provisions in this Constitution relating to meetings of the Members apply, so far as they can and with any necessary changes, to meetings of the Members by telephone or other electronic means.
- 15.16 A Member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.

- 15.17 A meeting by telephone or other electronic means is taken as held at the place decided by the chair of the meeting, as long as at least one of the Ordinary Members involved was at that place for the duration of the meeting.
- 15.18 A general meeting may be held:
- (a) at one or more physical venues;
  - (b) at one or more physical venues and using virtual meeting technology; and
  - (c) using virtual meeting technology only.

## **16 BOARD**

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- 16.1 Subject to Rule 16.2, the business of the Company and its affairs and property must be managed by a Board comprising no fewer than four (4) and no more than nine (9) Directors, comprising:
- (a) up to seven (7) Directors elected for a term of three (3) years; and
  - (b) up to two (2) Directors with special qualifications appointed by the Board for a term of two (2) years which may be extended by the Board for a further term of two (2) years (maximum term of four (4) years).
- 16.2 In order to be eligible for appointment to the Board, an individual must:
- (a) be an Ordinary Member of the Company (including, for the avoidance of doubt, an Honorary Life Member who is also an Ordinary Member);
  - (b) for elected Directors pursuant to Rule 16.1(a), not have served as a Director for a period exceeding nine (9) years; and
  - (c) for Directors appointed by the Board pursuant to Rule 16.1(b), not have served as a Director for a period exceeding four (4) years.

A person who has served the maximum period under this Rule 16.2 may be appointed as a Director if a period of at least two (2) years has elapsed since that person was last appointed as a Director of the Company.

### **Appointment of Directors**

- 16.3 The appointment of a Director under Rule 16.1(a) will be effective from the conclusion of the general meeting at which the election is announced.
- 16.4 The Board may appoint any Ordinary Member to fill a casual vacancy in the Directors appointed under Rule 16.1(a) or in addition to their number, but the total number of Directors must not exceed the number fixed in accordance with this Constitution.
- 16.5 Subject to Rule 16.7, any Director appointed pursuant to Rule 16.4 holds office until the conclusion of the next general meeting at which an election of Directors occurs.
- 16.6 The office of a Director becomes vacant if the Director:
- (a) becomes bankrupt or makes any arrangement or composition with their creditors generally;
  - (b) is prohibited from being a director of a company by reason of any order made under the Act or due to a provision of the ACNC Act;
  - (c) ceases to be a Director by operation of any provision of the Act or the ACNC Act;
  - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under legislation relating to mental health;
  - (e) resigns as a Director by notice in writing to the Company;
  - (f) is absent from three (3) consecutive meetings of the Board without having previously obtained leave of the Board;
  - (g) appointed under Rule 16.1(b), reaches the maximum term of four (4) years;

- (h) appointed under Rule 16.1(a), reaches the maximum term of nine (9) years; or
- (i) is removed by a special resolution of the Ordinary Members or otherwise in accordance with the ACNC Act.

### **Rotation of Directors**

- 16.7 Rules 16.8 to 16.14 do not apply to any Director or Directors appointed under Rule 16.1(b).
- 16.8 At one general meeting of the Company in each calendar year, one third of the Directors must retire from office. If one-third of the Directors is not a whole number, then the nearest whole number (by rounding down) of Directors must retire from office.
- 16.9 Unless otherwise agreed, the Directors that must retire in accordance with Rule 16.8 will be determined by the length each Director has held office with the Company since they were last elected, so that those who have the longest record must retire first.
- 16.10 If two or more Directors have been in office an equal length of time, the Directors who must retire will be determined by lot.
- 16.11 A Director who retires under this Rule 16 will be eligible for re-election.
- 16.12 The retirement of a Director who retires under this Rule 16 will be effective from the close of the relevant general meeting.
- 16.13 If a Director elected under Rule 16.1(a) is required to retire at or before a general meeting in accordance with Rule 16.6, the Board may appoint a director in accordance with Rule 16.4 to fill the vacancy.
- 16.14 All other issues in relation to the election of Directors and the conduct of a ballot will be determined by the chair of the meeting in accordance with any By-Laws and policies whose decision will be final and binding.
- 16.15 The Company may by Special Resolution of the Ordinary Members at a general meeting remove any Director whether elected or appointed and the resulting vacancy may be filled in the manner provided by Rule 16.4. The Director must be given at least fourteen (14) days' notice of the general meeting at which their removal as a Director will be considered and is entitled to attend the meeting and have an opportunity to show cause why he or she should not be removed as a Director by circulating written reasons of not more than 1,000 words to the Ordinary Members or by presenting to the general meeting at which the Special Resolution to remove the Director will be considered an oral argument not exceeding fifteen (15) minutes.

## **17 POWERS AND DUTIES OF THE BOARD**

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- 17.1 Subject to the ACNC Act and this Constitution, the management of the business and affairs of the Company is vested in the Board which may exercise all powers of the Company that this Constitution and the ACNC Act do not require to be exercised by the Company in general meeting.
- 17.2 The management, custody, oversight of property, business and general affairs of the Company will be under the management of the Board. Without limiting the generality of Rule 17.1 the Board will have power to:
  - (a) appoint a Committee for any purpose and to delegate any powers to the Committee. A Committee must exercise its powers in accordance with any regulations imposed on it by the Board;
  - (b) make By-Laws, rules and regulations for the proper control administration and internal management of the Company's affairs, interests, effects and property, for the convenience comfort and well-being of the Members and to amend or rescind any By-laws Rules and regulations provided this power does not include power to amend the Constitution or make Rules regulations or By-laws inconsistent with the Constitution;

- (c) make By-Laws and policies regarding: -
  - (i) the admission of Members;
  - (ii) proceedings at general meetings;
  - (iii) the nomination and election of Directors;
  - (iv) the appointment of Directors with special skills relevant to the Objects;
  - (v) proceedings of the Board; and
  - (vi) the general conduct of the affairs of the Company;
- (d) enforce the provisions of the Constitution, By-laws, policies, rules and Regulations;
- (e) appoint any delegate to represent the Company at meetings of any association, group or body with which the Company is affiliated or for any other purpose;
- (f) oversee the engagement control and dismissal of the Company's employees or paid officials and other persons referred to in the Constitution;
- (g) determine who is entitled to sign or endorse on the Company's behalf contracts, receipts, acceptances, cheques, bills of exchange, promissory notes and other documents or instruments;
- (h) oversee the financial administration and expenditure and the raising of funds on behalf of the Company;
- (i) bring to the notice of Members and employees all rules, policies, Regulations, By-Laws as well as any alterations or repeals in force and binding on all Members and employees of the Company;
- (j) regulate the procedure at all meetings of the Company, the Board and any Committees so as to comply with the provisions of this Constitution and the Act;
- (k) pay reasonable out-of-pocket expenses incurred by any Director or the Company in attending to the affairs of the Board or of the Company in accordance with Rule 3.3;
- (l) pay remuneration to Directors in accordance with Rule 3.3; and
- (m) delegate such powers, authorities and discretions (being the powers, authorities and discretions vested in the Directors) for such period and subject to such conditions as they think fit to the CEO, provided that such powers, authorities and discretions are not required to be exercised by the Company in general meeting or by the Board.

## **18 DISQUALIFICATION OF A DIRECTOR**

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- 18.1 A Director must vacate office and cease to be an officer of the Company if that person:-
- (a) becomes bankrupt;
  - (b) is prohibited from being a director of a company under the Act;
  - (c) is prohibited or disqualified or otherwise prevented from being a director of a company or a responsible person of a registered charity under the ACNC Act;
  - (d) becomes of unsound mind or a person whose estate is unable to be dealt with in any way under the law relating to mental health;
  - (e) resigns the office by notice in writing addressed to the Company Secretary; or is removed by special resolution of the Company pursuant to Rule 16.15; or
  - (f) has their seat on the Board declared vacant pursuant to Rule 16.6; or
  - (g) ceases to be an Ordinary Member (including, for the avoidance of doubt, ceases to be an Honorary Life Member who is an Ordinary Member).



- 18.2 A Director who has, directly or indirectly, a Material Personal Interest in any matter that is being considered at a meeting of the Board, must not:
- (a) vote on the matter; or
  - (b) be present while the matter is being considered
- but may be counted in a quorum for the purposes of the meeting.
- 18.3 Subject to Rule 18.2, but despite any rule of law or equity to the contrary, if a Director has disclosed the nature of his or her interest in any matter that relates to the affairs of the Company :
- (a) transactions that relate to the interest may proceed;
  - (b) the transactions may not be avoided by the Company by reason of the Director's position or interest; and
  - (c) the Director is not liable to account to the Company for any profit or benefit made under the transaction.
- 18.4 Where the Board resolves by majority vote that a Director has:
- (a) breached, failed, refused or neglected to comply with:
    - (i) a Rule of this Constitution;
    - (ii) his or her duties, obligations or responsibilities as a Director;
    - (iii) the policies of the Company; or
    - (iv) any other resolution or determination of the Board or any duly authorised Sub-committee;
  - (b) acted in a manner unbecoming of a Member;
  - (c) acted in a manner prejudicial to the Objects and/or the interests of the Company; or
  - (d) prejudiced the Company or brought the Company or themselves into disrepute,
- the Board may suspend that Director from their position on the Board pending the outcome of investigation and determination of the Director's conduct in accordance with the procedures set out in the By-Laws or policies of the Company or by such other procedure as the remaining Directors consider appropriate.

## **19 PROCEEDINGS OF THE BOARD**

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- 19.1 The Board must elect a Director to chair their meetings and may determine the period for which the Director is to be the Chair.
- 19.2 The Board must elect a Director to be Deputy Chair to chair their meetings in the absence of the Chair and may determine the period for which the Director is to be the Deputy Chair.
- 19.3 Where a meeting of the Directors is held and:
- (a) a Director has not already been elected to chair that meeting under Rule 19.1 or 19.2; or
  - (b) the previously elected Chair declines to act or is not present with 15 minutes after the time appointed for the holding of the meeting,
- the Directors present must elect one of their number to chair the meeting or part of the meeting (as the case may be).
- 19.4 The members of the Board may meet and regulate their meetings as necessary. Questions arising at any meeting must be decided by a majority of votes except as provided in the Constitution or By-laws. If the voting on any question is equally divided, the Chair of the meeting is not entitled to exercise a second or casting vote and the resolution is taken to be rejected.

- 19.5 The Company Secretary must upon request of the Chair or at least two (2) other Directors convene a meeting of the Board. Where practicable the Board must meet at least once every three (3) months.
- 19.6 The quorum necessary for the transaction of the business of the Board is half of the then current Directors plus one.
- 19.7 The Chair or in his or her absence, the Deputy Chair, will preside at a meeting of the Board. If neither the Chair nor Deputy Chair is present at a meeting, Directors present must choose another Director to act as chair for the purposes of the meeting.
- 19.8 If the number of Directors falls below the minimum number referred to in Rule 16.1, then the remaining Directors may only act for the purpose of;
- (a) increasing the number of Directors to the minimum number referred to in Rule 16.1;
  - (b) calling a general meeting of the Company; or
  - (c) dealing with an emergency.
- 19.9 All acts done by any meeting of the Board, a Committee or by any person acting as a member of the Board or Committee will if discovered afterwards that there was:
- (a) a defect in the appointment of any member of the Board or person acting; or
  - (b) that person was disqualified from acting as a director under the Act or a responsible person under the ACNC Act
- be valid as if every person had been duly appointed and qualified as a member of the Board or Committee.
- 19.10 Subject to Rule 19.8, the Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document or send an email to the Company Secretary containing a statement that they are in favour of the resolution set out in the document. Identical copies of the document may be distributed for signing by different Directors and taken together will constitute one and the same document. The resolution is passed when the last Director signs the document, or an email is received by the Company Secretary from the last director containing a statement that they are in favour of the resolution set out in the document.
- 19.11 If any Director intends to be unavailable or uncontactable for a period in excess of three (3) weeks, the Director may advise the Company Secretary in writing of that unavailability and the period of the unavailability. Any Director advising the Company Secretary in writing of any period of unavailability is not entitled to vote on the resolution under Rule 19.10 during the period of unavailability.
- 19.12 A Board meeting may be called or held by using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent a reasonable time before the meeting.
- 19.13 A Board meeting may be held:
- (a) at one or more physical venues;
  - (b) at one or more physical venues and using virtual meeting technology; and
  - (c) using virtual meeting technology only.

## **20 APPOINTMENT OF COMPANY SECRETARY**

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- 20.1 The Directors must appoint at least one (1) Company Secretary.

### **Suspension and removal of Company Secretary**

- 20.2 The Board may suspend or remove a Company Secretary from that office.

## **Powers, duties and authorities of Company Secretary**

- 20.3 A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board.

## **21 PATRON**

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- 21.1 The Board may from time to time in its discretion invite any person to accept office as Patron of the Company.

## **22 AUXILIARY BODIES**

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- 22.1 The Board may establish Auxiliary bodies. The Auxiliary bodies must be overseen by the Board.
- 22.2 The functions of Auxiliary bodies will be the raising of funds for the Company and/or the dissemination of information and advice concerning the Company and its Objects.
- 22.3 The name of any proposed Auxiliary body must be submitted to the Board for its approval and the name must where practicable consist of the full name of the Company with a descriptive name identifying the Auxiliary body's character and location.
- 22.4 An Auxiliary body must not operate an account with a bank or other financial organisation except with the written approval of and under the supervision of the Board. All assets of an Auxiliary body are assets of the Company.

## **23 MINUTES**

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- 23.1 The Board must cause minutes to be entered in the books in relation to:
- (a) appointment of officers;
  - (b) the names of the persons present at each meeting of the Company or the Board or any Committee;
  - (c) all orders, policies, rules, regulations and by-laws made by the Board or by any Committee; and
  - (d) all resolutions and proceedings of general meetings and of the meetings of the Board, Committees of the Board and any minutes of any of those bodies received and passed at any subsequent meetings of those bodies will be evidence of the matters contained in the minutes.

## **24 EXECUTION OF DOCUMENTS**

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- 24.1 Instruments of the Company must be executed:
- (a) in accordance with Section 127 of the Act; or
  - (b) as resolved by the Board from time to time.

## **25 ACCOUNTS**

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- 25.1 The Board must keep accounting records in respect of: -
- (a) all gifts received by the Company;
  - (b) all other monies received and expended by the Company and the matters in respect of which the receipts and expenditures take place; all sales and purchases of goods by the Company; and
  - (c) all assets and liabilities of the Company.
- 25.2 The accounts will be kept at the registered office of the Company or any other place the Board thinks fit.

- 25.3 The Board may determine at what times and places and under what conditions the accounting and other records of the Company shall be open for inspection by Ordinary Members who are not Directors. Subject to the Act, no Ordinary Member (who is not a Director or former Director of the Company) has the right to inspect any account or book or paper of the Company unless authorised by the Board or by the Company in general meeting.
- 25.4 The Company must in accordance with the ACNC Act prepare and present to the Company at the Annual General Meeting all financial statements and reports as required by the ACNC Act, the Income Tax Assessment Act and any other relevant legislation as may be in force from time to time.
- 25.5 The Board must ensure that all monies received by the Company or any Auxiliary body, including membership subscriptions and donations, are deposited to the credit of the Company's bank account or such other account as the Board approves.
- 25.6 Official receipts for donations or other payments to the Company must be given by any authorised officer of the Company.

## **26 AUDIT**

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- 26.1 The Company must in accordance with the Act, the ACNC Act and any state or territory legislation applicable to the registration of charities, or charitable fundraising arrange for the accounts to be audited in accordance with the Act and the applicable state or territory legislation.

## **27 NOTICES**

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- 27.1 A notice may be given by the Company to Members either personally or by posting it to the Member at their Registered Address or to any electronic mail that a Member nominates in writing to the Company or (if they have no registered address) at their last known place of business or abode.
- 27.2 A notice of meeting sent by post is taken to be given three (3) days after it is posted.
- 27.3 Where a notice is forwarded by email, service will be deemed to be effected on the day of the transmission, so long as the sender of the notice does not receive a delivery failure message in respect of the email.
- 27.4 Where a given number of days' notice or notice extending over any other period is required to be given the day of service is excluded but the day upon which such notice will expire must be included in the number of days or other period.

## **28 INDEMNITY**

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### **Indemnity of members of the Board**

- 28.1 To the extent that the Act allows, every Director and Officer of the Company must be indemnified by the Company against a liability incurred as a Director or officer of the Company other than:
- (a) a liability owed to the Company or a Related Body Corporate;
  - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
  - (c) a liability that is owed to someone other than the Company or a Related Body Corporate and did not arise out of conduct in good faith.

### **Indemnity of Auditors Officers or Employees**

- 28.2 Every auditor and employee of the Company may by resolution of the Board be indemnified by the Company against a liability incurred as an auditor, employee of the Company other than:

- (a) a liability owed to the Company or a Related Body Corporate;
- (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
- (c) a liability that is owed to someone other than the Company or a Related Body Corporate and did not arise out of conduct in good faith.

#### **Indemnity for legal costs**

28.3 Every Director, auditor and other Officer or employee of the Company may by resolution of the Board be indemnified out of the assets of the Company against a liability for legal costs incurred by that person as a Director, auditor, other Officer or employee of the Company in defending an action for liability incurred in that capacity unless the costs arise:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

The outcome of the proceedings refers to the outcome of the original proceedings and any appeal in relation to those proceedings.

#### **Payment for Insurance Premiums**

28.4 The Company may by resolution of the Board pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, auditor or other Officer or employee of the Company against:

- (a) a liability for legal costs;
- (b) any other liability except a liability incurred by the person as such a member of the Board, auditor or other Officer or employee and arising out of conduct involving:
  - (i) conduct involving a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of sections 182 or 183 of the Act.