

# Explanatory Memorandum

Confidential



**To** The Members  
**From** The Board of Directors  
**Date** Friday, 2 May 2025  
**Subject** Proposed New Constitution for KU Children's Services  
(ABN 89 000 006 137)

## 1. Purpose

The purpose of this Explanatory Memorandum is to outline some key provisions of the proposed new constitution (**New Constitution**). We recommend that you read the New Constitution carefully.

## 2. Introduction

- (a) The proposed New Constitution is attached to this Explanatory Memorandum for the consideration of the members of KU Children's Services (ABN 89 000 006 137) (**KU**) at the Annual General Meeting of members on 27 May 2025.
- (b) The purpose of the New Constitution is to:
  - (i) ensure a balanced and skills-based board:
    - (A) by increasing the number of appointed directors from 3 to 6 and reducing the number of elected directors from 6 to 3;
    - (B) by providing a transparent process for a board committee to ensure that any person who stands for election or is considered for appointment possesses the expertise, skills, qualifications, experience, and/or characteristics considered necessary by the board.
  - (ii) bring it in line with current best practice;
  - (iii) ensure it complies with current legal requirements, as:
    - (A) a not-for-profit company limited by guarantee under the Corporations Act 2001 (Cth) (**Corporations Act**);
    - (B) a registered charity under the Australian Charities and Not-for-profits Commission Act 2012 (Cth) (**ACNC Act**);
    - (C) a deductible gift recipient under the Income Tax Assessment Act 1997 (Cth) as the operator of a public benevolent institution (**PBI**) and school building funds; and

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- (D) an approved provider under the *Education and Care Services National Law Act 2010* (Vic) and *Children (Education and Care Services) National Law* (NSW) (**National Law**).
- (c) The most efficient way to effect these changes is to adopt a new constitution.

## 3. Charitable status

- (a) KU is a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**) and is endorsed by the Australian Taxation Office to access charity tax concessions. The New Constitution therefore includes:
  - (i) charitable objects (clause 2);
  - (ii) provisions for KU's income and property to be applied solely for the furtherance of its objects (clause 6);
  - (iii) provision for distribution on winding up to one or more funds or institutions with similar charitable purposes, the PBI in the form of the **KU Marcia Burgess Foundation (Foundation)**, or school building fund or some other form of deductible gift recipient, is similarly endorsed (clauses 75-77).
- (b) This means that any surplus made by KU may only be used for the purposes set out in clause 2 and no income or property may be distributed to members or directors, except as allowed in clause 6.3.

## 4. Objects and powers of KU

### 4.1. Objects

The objects of KU, as set out in the New Constitution, reflect the current nature of KU. KU's charitable purpose continues to be providing for and supporting a range of early childhood education and care services with a demonstrated commitment to excellence, diversity and inclusion. Further, through the Foundation, KU provides benevolent relief to vulnerable children and families. As set out in clause 2 of the New Constitution, the objects clearly reflect KU's charitable purposes to enable it to retain its registration as a charity with the 'advancing education' subtype and as an operator of a Foundation.

## 5. Membership

### 5.1. New Constitution

- (a) The existing KU Constitution (**Existing Constitution**) provides no minimum number of members.

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- (b) The New Constitution provides that the minimum number of members will be 10 members (clause 8.1).
- (c) Any person who is an existing member of KU at the time of adoption of the New Constitution will continue to be a member under the New Constitution (clause 8.2).
- (d) There is one membership class, but each member will be categorised into one of the following three categories of member:
  - (i) parent members;
  - (ii) general interest members; and
  - (iii) life members (clause 9).

## 5.2. Admission

- (a) Under clause 11, to be eligible for membership of KU, a person must:
  - (i) be a natural person of at least 18 years of age;
  - (ii) support the objects of KU;
  - (iii) consent in writing to become a member;
  - (iv) agree to comply with the New Constitution;
  - (v) not be an employee of KU; and
  - (vi) not have been convicted of, charged with, or have pending charges of an offence in relation to children, or a sexual offence in any jurisdiction.
- (b) In addition, to be a parent member, a person must be the parent or guardian of a child enrolled at and attending a service (clause 11.2).
- (c) To be a general interest member, a person must be a person who, in the opinion of the directors, has an appropriate interest in KU (clause 11.4).
- (d) A life member must be a person who, in the opinion of the directors, has given outstanding and exemplary service to KU (clause 11.6). A life member is not required to renew their membership or pay any membership fees (clause 11.7).
- (e) An application for membership must be in writing, in any form the directors prescribe (clause 12).
- (f) The directors may exercise their discretion to accept or reject a person for membership without giving any reason for their decision (clause 13.3(b)). If the directors reject an application for membership, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected (clause 13.3(a)).

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- (g) Clause 16 allows the directors to determine a membership fee payable by the members from time to time. The directors may, in their discretion, determine that no membership fee should apply to members.

## **5.3. Membership term**

- (a) The New Constitution retains the membership terms in the Existing Constitution.
- (b) Members (other than members who are directors and life members) are admitted for a maximum term of 1 year ending on 31 December in each calendar year (clause 15.1). At the end of each term of membership, each member may reapply for membership in the process prescribed by the directors (clause 15.2).

## **6. Directors**

### **6.1. Appointment**

- (a) The Existing Constitution provides that the number of directors must be between 6 and 9 persons or 10 if the board appoints the CEO as a director composed of:
  - (i) Not less than 4, but up to 6, elected directors; and
  - (ii) not less than 2, but up to 3, appointee directors (clauses 52 – 54 of the Existing Constitution).
- (b) In the New Constitution:
  - (i) there will be 3 directors elected by the members;
  - (ii) there will be 6 directors appointed by the directors to bring to the board of the directors the expertise, skills, qualifications, experience, and/or characteristics as the directors regard as necessary or useful from time to time (clause 38.1).
- (c) Under clause 39.3 a person is only eligible to be a director if they are:
  - (i) nominated by the committee with nomination responsibilities of having the relevant expertise, skills, qualifications, experience, and/or characteristics that is prescribed by the committee with nomination responsibilities from time to time;
  - (ii) approved as a suitable candidate for appointment by the directors;
  - (iii) have a director identification number;
  - (iv) consent in writing to act as a director;
  - (v) not ineligible under the Corporations Act or ACNC Act; and

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- (vi) at all times a fit and proper person (as defined by the National Law).
- (d) There must be a committee with nomination responsibilities to advise and assist the directors in fulfilling their responsibilities relating to the composition and effective operation of the board (clause 40).
- (e) This committee with nomination responsibilities must prepare a nominations policy, that must be approved by the directors, and must set out:
  - (i) the expertise, skills, qualifications, experience, and/or characteristics that it considers necessary;
  - (ii) the process for seeking and considering applications for appointed directors; and
  - (iii) the process for seeking nominations of elected directors (clause 40.1).
- (f) This committee must also consider all applicants and nominees for appointment in light of the nominations policy and consider:
  - (i) the person's fitness and propriety to be and act as a director under the nominations policy; and
  - (ii) whether the person has the expertise, skills, qualifications, experience, and/or characteristics contained in the nominations policy (clause 40.4).
- (g) The committee with nominations responsibilities must recommend to the directors the candidates which, in light of the nominations policy, should be considered for appointment (in the case of an appointed director) or eligible to stand for election (in the case of an elected director) (clause 40.4). The directors will then review these recommendations and must approve each candidate before they are eligible for appointment as an appointed director or eligible to stand as an elected director (clauses 39.3(b) and 40.5).
- (h) To ensure a smooth transition from the board composition under the Existing Constitution to the New Constitution, each director who is currently an appointee director becomes an appointed director under the New Constitution. Immediately after adopting the New Constitution, the directors will meet to reassign (by lot) the elected directors under the Existing Constitution as either elected or appointed directors under the New Constitution (clause 38.2).
- (i) The directors believe this change will help the directors of KU to adapt to KU's evolving needs by having the right mix of competencies to address new challenges and opportunities.