

# Constitution of KU Children's Services

Australian Company Number (ACN) 000 006 137

Australian Business Number (ABN) 89 000 006 137

**A company limited by guarantee**

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## Preamble

KU Children's Services, originally known as the Kindergarten Union of NSW, has been a cornerstone of early childhood education and care in Australia since 1895. It proudly opened Australia's first free kindergarten with the purpose of providing education to the community's most vulnerable children. From its inception, KU Children's Services has been unwavering in its dedication to excellence in early childhood education and care, social justice, diversity, and the inclusion of all children, including those with disabilities and additional needs.

KU Children's Services is deeply committed to the revitalisation and advancement of the cultures, histories and beliefs of Aboriginal and Torres Strait Islander children, families and communities.

KU Children's Services continues to be at the forefront of early childhood education, striving to provide every child the opportunity to thrive in a diverse, inclusive and supportive environment.

## Preliminary and charitable purposes

### 1. Name of the company

The name of the **company** is KU Children's Services (**company**).

### 2. Objects

The objects of the **company** are to:

- (a) provide and support a range of early childhood education and care services that demonstrate a commitment to excellence, diversity and inclusion;
- (b) provide benevolent relief to vulnerable children and families experiencing misfortune, distress, disability, additional needs, or in need of other benevolent relief; and
- (c) do such other things as are incidental or conducive to the attainment of the **company's** objects.

### 3. Type of company

The **company** is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 4. Liability of members limited to the guarantee

- 4.1. Each **member** must contribute an amount not more than \$2 (the guarantee) to the property of the **company** if the **company** is wound up:
  - (a) while the member is a member, or within 12 months after they stop being a member, and
  - (b) at the time of winding up, the debts and liabilities of the **company**, including

the costs of winding up, incurred before the member stopped being a member exceed the company's assets.

4.2. The liability of each member is limited to the amount of the guarantee.

## 5. Powers

Subject to clause 6, the company has the following powers, which may only be used to carry out its objects set out in clause 2:

- (a) The powers of an individual;
- (b) All the powers of a **company** limited by guarantee under the **Corporations Act**; and
- (c) Where the **company** is a trustee, the powers of the trustee under the relevant trust instrument and laws related to trusts and trustees.

## 6. Not-for-profit

- 6.1. The **company** must not distribute any income or assets directly or indirectly to its **members**, except as provided in clauses 6.3, 76.1 and 77.
- 6.2. The income and assets of the **company** must be applied solely to further its objects in clause 2.
- 6.3. Clause 6.1 does not stop the **company** from doing the following things, provided they are done in good faith:
  - (a) Paying a **member** for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**; or
  - (b) Making a payment to a **member** in carrying out the **company's** charitable purposes.

## 7. Amending the constitution

- 7.1. Subject to clause 7.3, the **members** may amend this constitution by passing a **special resolution**.
- 7.2. Any amendment to this constitution will take effect from the date of the **special resolution**, or from any later date specified in the resolution.
- 7.3. The members must not pass a **special resolution** that amends this constitution if passing it would mean the **company** would no longer be a charity.

# Members

## 8. Membership and register of members

- 8.1. The minimum number of **members** is 10.
- 8.2. The members are:

- (a) the **members** at the date of adoption of this constitution; and
- (b) any other person that the directors allow to be a **member**, in accordance with this constitution.

## 9. Membership composition and categories

- 9.1. There is one membership class, and each **member** has the same rights as set out in this **constitution**.
- 9.2. There are three categories of **members**:
  - (a) **parent member**;
  - (b) **general interest member**; and
  - (c) **life member**.
- 9.3. A **member** may only be categorised into one category of **member**.

## 10. Register

- 10.1. The **company** must establish and maintain a **register of members**. The **register of members** must be kept by the secretary and must contain:
  - (a) for each current **member**:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the **member** for the service of notices;
    - (iv) their category of membership;
    - (v) in the case of a **parent member**, the **service** that their child attends; and
    - (vi) date the **member** was entered on to the register.
  - (b) for each person who stopped being a **member** in the last 7 years:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the **member** for the service of notices;
    - (iv) their category of membership;
    - (v) in the case of a **parent member**, the **service** their child attended; and
    - (vi) dates the membership started and ended.
- 10.2. The **company** must allow **members** to inspect the **register of members**.
- 10.3. Information that is accessed from the **register of members** must only be used in a manner relevant to the interests or rights of **members**.

## 11. Who can be a member

- 11.1. To be eligible to apply to be a **member** under clause 12, a person must:
- (a) be a natural person of at least 18 years of age;
  - (b) support the objects of the **company**;
  - (c) consent in writing to become a **member**;
  - (d) agree to comply with the **company's** constitution, including paying the guarantee amount under clause 4.1 if required;
  - (e) not be an employee of the **company**; and
  - (f) have not been convicted of, charged with, or have pending charges of an offence in relation to children, or a sexual offence in any jurisdiction.
- 11.2. In addition to meeting the eligibility criteria in clause 11.1, a **parent member** shall be a parent or guardian of a child enrolled at and attending a **service** provided always that only one parent or guardian can be a **parent member** for all of their children attending a **service**.
- 11.3. A 'parent member' at the date of adoption of this constitution is categorised as a **parent member** under this constitution.
- 11.4. In addition to meeting the eligibility criteria in clause 11.1, a **general interest member** must be a person who, in the opinion of the directors, has an appropriate interest in the **company**.
- 11.5. A 'general interest member' at the date of adoption of this constitution is a **general interest member** under this constitution.
- 11.6. In addition to meeting the eligibility criteria in clause 11.1, a **life member** must be a person who, in the opinion of the directors, has given outstanding and exemplary service to the **company**.
- 11.7. Clauses 15 and 16 do not apply to a **life member**.
- 11.8. A 'life member' at the date of adoption of this constitution is a **life member** under this constitution.

## 12. How to apply to become a member

A person may apply to become a **member** by completing an application for membership:

- (a) in such form as the directors may from time to time prescribe, signed by the applicant and returned to the **company** as directed on the form; and
- (b) accompanied by the membership fee (if any) prescribed by the directors.

## 13. Directors decide whether to approve membership

- 13.1. The directors must consider an application for membership within a reasonable time after the secretary receives the application.

- 13.2. If the directors approve an application, the secretary must as soon as possible enter the new **member** on the **register of members**.
- 13.3. If the directors reject an application:
- (a) the secretary must write to the applicant as soon as possible to tell them that their application has been rejected; and
  - (b) the directors do not have to give reasons.

#### 14. When a person becomes a member

An applicant will become a **member** when they are entered on the **register of members**.

#### 15. Membership terms

- 15.1. From the date of adoption of this constitution, **members** are admitted for a maximum term of 1 year ending on 31 December in each calendar year.
- 15.2. At the end of each term of membership, each **member** may reapply for membership. The renewal process must be made in accordance with the process prescribed by the directors at the relevant time.
- 15.3. The requirement in this clause 15 to renew membership does not apply to:
- (a) a member who is a director; nor
  - (b) a **life member**.

#### 16. Membership fees

The **members** must pay such membership fees as prescribed from time to time by the directors.

#### 17. Transfer of membership

Membership of the **company** and the associated rights cannot be transferred or sold.

#### 18. When a person stops being a member

A person immediately stops being a **member** if they:

- (a) die;
- (b) resign, by writing to the secretary having immediate effect or with effect from a specified date in the notice;
- (c) cease to have **legal capacity**;
- (d) become bankrupt or insolvent or make an arrangement or composition with creditors of a person's joint or separate estate generally;
- (e) have pending charges or are charged with an offence in relation to children or violence;
- (f) cease to meet the eligibility requirements of being a member under clauses 11.1 and 11.2;

- (g) are at the end of their term of membership, unless the **member** has applied for and been readmitted as a **member** for the following term as contemplated in clauses 12 and 13; or
- (h) cease to be a director.

## Dispute resolution

### 19. Dispute resolution

- 19.1. The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a **member** or director and:
  - (a) one or more **members**;
  - (b) one or more directors; or
  - (c) the **company**.
- 19.2. Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it, or within a reasonable timeframe agreed by those involved.
- 19.3. If those involved in the dispute do not resolve it under clause 19.2, they must within 10 days (or within a reasonable timeframe agreed by those involved):
  - (a) tell the directors about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 19.4. The mediator must:
  - (a) be chosen by agreement of those involved; or
  - (b) where those involved do not agree:
    - (i) for disputes between **members**, a person chosen by the directors; or
    - (ii) for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 19.5. A mediator chosen by the directors under clause 19.4(b)(i):
  - (a) may be a **member** or former **member**;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 19.6. When conducting the mediation, the mediator must:
  - (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;

- (c) ensure that the mediation is conducted in a manner free from bias; and
- (d) not make a decision on the dispute.

## General meetings of members

### 20. General meetings called by directors

- 20.1. The directors may call a **general meeting**.
- 20.2. If **members** with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held for a proper purpose, the directors must:
  - (a) within 21 days of the **members'** request, give all **members** notice of a **general meeting**; and
  - (b) hold the **general meeting** within 2 months of the **members'** request.
- 20.3. The percentage of votes that **members** have (in clause 20.2) is to be worked out as at midnight before the request or notice is given to the **company**.
- 20.4. The **members** who make the request for a **general meeting** must:
  - (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the **company**.
- 20.5. Separate copies of a document setting out the request may be signed by **members** if the wording of the request is the same in each copy.

### 21. General meetings called by members

- 21.1. If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the **members** who made the request may call and arrange to hold a **general meeting**.
- 21.2. To call and hold a meeting under clause 21.1, the **members** must:
  - (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
  - (b) call the meeting using the list of **members** on the **company's register of members**, which the **company** must provide to the **members** making the request at no cost; and
  - (c) hold the **general meeting** within 3 months after the request was given to the **company**.
- 21.3. The **company** must pay the **members** who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

## 22. Annual general meeting

- 22.1. A **general meeting**, called the **annual general meeting**, must be held at least once in every calendar year.
- 22.2. Even if these items are not set out in the notice of meeting, the business of an **annual general meeting** may include:
- (a) a review of the **company's** activities;
  - (b) a review of the **company's** finances;
  - (c) any auditor's report;
  - (d) the election of directors; and
  - (e) the appointment and payment of auditors (if any).
- 22.3. Before or at the **annual general meeting**, the directors must give information to the **members** on the **company's** activities and finances during the period since the last **annual general meeting**.
- 22.4. The chairperson of the **annual general meeting** must give **members** as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

## 23. Notice of general meetings

- 23.1. Notice of a **general meeting** must be given to:
- (a) each **member** entitled to vote at the meeting;
  - (b) each director; and
  - (c) the auditor (if any).
- 23.2. Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3. Subject to clause 23.4, notice of a **general meeting** may be provided less than 21 days before the meeting if **members** with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4. Notice of a **general meeting** cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
  - (b) appoint a director in order to replace a director who was removed; or
  - (c) remove an auditor.
- 23.5. Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting;
  - (b) the details of any **virtual meeting technology** that will be used in holding the meeting (if any);

- (c) the general nature of the meeting's business;
- (d) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution; and
- (e) a statement that **members** have the right to appoint proxies and that, if a **member** appoints a proxy:
  - (i) the proxy does not need to be a **member**;
  - (ii) the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
  - (iii) the proxy form must be delivered to the **company** at least 48 hours before the meeting.

23.6. If a **general meeting** is adjourned for one month or more, the **members** must be given new notice of the resumed meeting.

## 24. Quorum at general meetings

- 24.1. For a **general meeting** to be held, at least 8 **members** (a quorum) must be present (in person or by proxy) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a proxy of more than one **member**).
- 24.2. No business may be conducted at a **general meeting** if a quorum is not present.
- 24.3. If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting**:
  - (a) if convened at the request of **members**, is dissolved; and
  - (b) in any other case, is adjourned to the date, time and place that the chairperson of the **general meeting** specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
    - 24.3.b.1. if the date is not specified – the same day in the next week;
    - 24.3.b.2. if the time is not specified – the same time; and
    - 24.3.b.3. if the place is not specified – the same place.
- 24.4. If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 25. Right of non-members to attend meetings

- 25.1. The chairperson of a **general meeting** may invite any person to attend and address a meeting.
- 25.2. Any auditor and any director of the **company** is entitled to attend and address a **general meeting**.

- 25.3. The **company** must give the auditor (if any) any communications relating to the **general meeting** that a **member** of the **company** is entitled to receive.

## 26. Using technology to hold meetings

- 26.1. The **company** may hold a **general meeting** using any **virtual meeting technology** that gives the **members**, as a whole, a reasonable opportunity to participate without being physically present in the same place.
- 26.2. Anyone using this **virtual meeting technology** is taken to be present in person at the meeting.

## 27. Chairperson for general meetings

- 27.1. The **chairperson** is entitled to chair **general meetings**.
- 27.2. The **members** present and entitled to vote at a **general meeting** may choose a director or **member** to be the chairperson of the **general meeting** if:
- (a) there is no **chairperson**; or
  - (b) the **chairperson** is not present within 30 minutes after the starting time set for the meeting; or
  - (c) the **chairperson** is present but says they do not wish to act as chairperson of the meeting.

## 28. Role of the chairperson

- 28.1. The chairperson of the **general meeting** is responsible for the conduct of the **general meeting**.
- 28.2. The chairperson of the **general meeting** must give **members** a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 28.3. The chairperson of the **general meeting** does not have a casting vote.

## 29. Adjournment of meetings

- 29.1. If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson of the **general meeting** to adjourn it.
- 29.2. Only unfinished business may be dealt with at a meeting resumed after an adjournment.

# Members' resolutions and statements

## 30. Members' resolutions and statements

- 30.1. **Members** with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move for a proper purpose at a **general meeting (member's resolution)**; and/or

- (b) a written request to the **company** that the **company** give all of its **members** a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting**.
- 30.2. A notice of a **members' resolution** must set out the wording of the proposed resolution and be signed by the **members** proposing the resolution.
- 30.3. A request to distribute a **members' statement** must set out the statement to be distributed and be signed by the **members** making the request.
- 30.4. Separate copies of a document setting out the notice or request may be signed by **members** if the wording is the same in each copy.
- 30.5. The percentage of votes that **members** have (as described in clause 30.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 30.6. If the **company** has been given notice of a **members' resolution** for a proper purpose under clause 30.1(a), the resolution must be considered at the next **general meeting** held more than 2 months after the notice is given.
- 30.7. This clause does not limit any other right that a **member** has to propose a resolution at a **general meeting**.

### **31. Company must give notice of proposed resolution or distribute statement**

- 31.1. If the **company** has been given a notice or request under clause 30:
  - (a) in time to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, then it must do so at the **company's** cost; or
  - (b) too late to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** with a notice of meeting, then the **members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving **members** notice of the proposed **members' resolution** or a copy of the **members' statement**. However, at a **general meeting**, the **members** may pass a resolution that the **company** will pay these expenses.
- 31.2. The **company** does not need to send the notice of proposed **members' resolution** or a copy of the **members' statement** to **members** if:
  - (a) it is more than 1,000 words long;
  - (b) the directors consider it may be defamatory;
  - (c) clause 31.1(b) applies, and the **members** who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed **members' resolution** or a copy of the **members' statement** to **members**; or

- (d) in the case of a proposed **members' resolution**, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the **members**.

## Voting at general meetings

### 32. How many votes a member has

Each **member** has one vote.

### 33. Challenge to member's right to vote

- 33.1. A **member** or the chairperson of the **general meeting** may only challenge a person's right to vote at a **general meeting** at that meeting.
- 33.2. If a challenge is made under clause 33.1, the **chairperson** of the **general meeting** must decide whether or not the person may vote. The decision of the chairperson of the **general meeting** is final.

### 34. How voting is carried out

- 34.1. At any **general meeting**, voting must be conducted and decided by:
- (a) a show of hands; or
  - (b) where the meeting is being conducted by **virtual meeting technology**, another method chosen by the **chairperson** of the **general meeting** that is fair and reasonable in the circumstances,
- unless a vote in writing is properly demanded under clause 35 and the demand is not withdrawn.
- 34.2. Before a vote is taken, the chairperson must inform the meeting whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3. On a show of hands, the decision made by the chairperson of the **general meeting** is conclusive evidence of the result of the vote.
- 34.4. The chairperson of the **general meeting** and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 35. When and how a vote in writing must be held

- 35.1. A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least 5 **members present** who are entitled to vote on the resolution;
  - (b) **members present** with at least 5% of the votes that may be passed on the resolution (worked out as at the midnight before the vote in writing is demanded); or
  - (c) the chairperson of the **general meeting**.

- 35.2. A vote in writing must be taken when and how the **chairperson** directs, unless clause 35.3 applies.
- 35.3. A vote in writing must be held immediately if it is demanded under clause 35.1:
- (a) for the election of a **chairperson** under clause 27; or
  - (b) to decide whether to adjourn the meeting.
- 35.4. A demand for a vote in writing may be withdrawn.

### 36. Appointment of proxy

- 36.1. A **member** may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2. A proxy does not need to be a **member**.
- 36.3. A proxy appointed to attend and vote for a **member** has the same rights as the **member** to:
- (a) speak at the meeting;
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4. With the exception of the **chairperson**, a **member** may only hold one proxy.
- 36.5. An appointment of proxy (proxy form) must be signed by the **member** appointing the proxy and must contain:
- (a) the **member's** name and address;
  - (b) the **company's** name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meeting(s) at which the appointment may be used.
- 36.6. A proxy appointment may be standing.
- 36.7. Proxy forms must be received by the **company**:
- (a) at the address stated in the notice under clause 23.5(e);
  - (b) at the **company's** registered address;
  - (c) at such other place within the state or territory in which the **company** has its registered office, or to an email address, as is specified for that purpose in the notice convening the meeting; or
  - (d) if the notice convening the meeting specifies other electronic means by which a proxy document may be received by the **company** and that means is provided for under the **Corporations Act**, by those other electronic means,
- not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a vote in writing, not less than 24 hours before the

time appointed for the taking of the vote in writing. Documents received after this time will not be treated as valid.

36.8. The **company** receives a document referred to in clause 36.7:

- (a) if the document is given by other electronic means as specified for that purpose in the notice convening the meeting, when the document is received by the **company** as prescribed by the **Corporations Act**; and
- (b) otherwise, when the document is received at:
  - (i) the **company's** registered office; or
  - (ii) a place specified for the purpose in the notice of meeting.

36.9. A proxy does not have the authority to speak and vote for a **member** at a meeting while the **member** is at the meeting.

36.10. Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **member**:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of an agent who appointed the proxy.

36.11. A proxy appointment may specify the way the proxy must vote on a particular resolution.

## 37. Voting by proxy

37.1. A proxy is not entitled to vote on a show of hands (but this does not prevent a **member** appointed as a proxy from voting as a **member** on a show of hands).

37.2. When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
- (b) if the way they must vote is specified on the proxy form, must vote that way; and
- (c) if the proxy is also a **member** or holds more than one proxy, may cast the votes held in different ways.

## Directors

### 38. Number of directors

38.1. Subject to clause 38.2, the directors will be comprised of:

- (a) 3 persons who are elected by the **members (elected directors)**; and

- (b) 6 persons who are appointed by the directors to bring to the board of directors the expertise, skills, qualifications, experience, and/or characteristics as the directors consider to be necessary or useful from time to time (**appointed directors**).

38.2. To facilitate a transition in governance arrangements:

- (a) each person holding office as a director by virtue of being an 'appointee director' immediately before the adoption of this constitution will continue in office as an **appointed director** subject to the provisions of this constitution;
- (b) immediately after the adoption of this constitution the directors shall meet to allocate the directors holding office as 'elected directors' immediately before the adoption of this constitution as either **elected directors** or **appointed directors** under this constitution and subject to the provisions of this constitution; and
- (c) the allocation in clause 38.2(b) shall be determined by lot, in such manner as determined by the chairperson.

### 39. Election and appointment of directors

39.1. The **members** may, at a **general meeting** at which:

- (a) an **elected director** retires or otherwise vacates office; or
  - (b) an **elected director** vacancy exists by operation of clause 38 or otherwise;
- by resolution fill the vacated office by electing an individual to that office.

39.2. Each of the **elected directors** must be appointed by a separate resolution, unless:

- (a) the **members** present have first passed a resolution that the appointments may be voted on together; and
- (b) no votes were cast against that resolution.

39.3. A person is eligible to be a director of the **company** if they:

- (a) are nominated by the committee with nomination responsibilities as having the relevant expertise, skills, qualifications, experience, and/or characteristics as prescribed by the committee with nomination responsibilities from time to time;
- (b) are approved as a suitable candidate for appointment by the directors;
- (c) have a **director identification number**;
- (d) give the **company** their signed consent to act as a director of the **company**;
- (e) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**; and
- (f) are at all times during the term of their appointment a **fit and proper person**.

39.4. In addition to the qualifications set out in clause 39.3, to be eligible for the office of

**elected director**, an individual must be a **member** at the date of appointment and at all times during their term as **elected director**.

- 39.5. Where a person is seeking election as an **elected director** at a **general meeting** for the first time, the signed consent must be lodged at the **company's** registered office at least 28 days (or such other period as determined by the directors) before the date fixed for the holding of the **general meeting**.
- 39.6. Subject to clause 38, the directors may at any time appoint an individual meeting the requirements of clause 39.3 as an **appointed director** to bring to the Board such expertise, skills, qualifications, experience, and/or characteristics as the directors regard as necessary or useful from time to time.
- 39.7. An **appointed director** holds office in accordance with clauses 42.1, 42.2, 42.3, and 42.4 and is eligible for reappointment in accordance with clause 42.5.
- 39.8. The directors may at any time appoint a person as a director to fill a casual vacancy as an **elected director**, provided the number of **elected directors** does not exceed the number of **elected directors** under clause 38, and if that person:
- (a) is nominated by the committee with nomination responsibilities as having the relevant expertise, skills, qualifications, experience, and/or characteristics as prescribed by the committee with nomination responsibilities from time to time;
  - (b) is approved by the directors as a suitable candidate for appointment as a director pursuant to the process set out in clause 40;
  - (c) is a **member** at the date of appointment and at all times during their term of appointment;
  - (d) has a **director identification number**;
  - (e) gives the **company** their signed consent to act as a director of the **company**; and
  - (f) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**; and
  - (g) are at all times during the term of their appointment a **fit and proper person**.
- 39.9. An **elected director** appointed under clause 39.9 holds office until the conclusion of the next **annual general meeting** of the **company** but is eligible for election at that meeting.
- 39.10. If the number of directors is reduced to fewer than 3 or is less than the number required for a quorum, the continuing directors may act but only:
- (a) in an emergency;
  - (b) for the purpose of increasing the number of directors to 3 (or higher if required for a quorum); or
  - (c) to call a **general meeting**.

## 40. Nominations committee

- 40.1. The **nominations committee** must prepare a **nominations policy** that outlines:
- (a) the relevant expertise, skills, qualifications, experience, and/or characteristics that it considers are necessary or desirable in successful candidates for the available director positions;
  - (b) in the case of an **appointed director**, the process for seeking and considering applications; and
  - (c) in the case of an **elected director**, the process for seeking nominations.
- 40.2. The **nominations policy** must be approved by the directors.
- 40.3. The **nominations committee** must assess all applicants and nominees in light of the **nominations policy** and determine whether or not to recommend to the directors that an applicant or nominee should be eligible for appointment or election.
- 40.4. In considering whether to recommend a person to the directors pursuant to clause 40.3, the **nominations committee** must consider the following:
- (a) Whether that person satisfies the requirements in clause 39.3; and
  - (b) Whether that person possesses some or all of the relevant expertise, skills, qualifications, experience, and/or characteristics contained in the **nominations policy**.
- 40.5. The directors must consider the recommendations of the **nominations committee** and, if they consider it appropriate to do so, must approve each candidate for **appointed director** prior to their appointment and must approve each candidate for **elected director** prior to them standing for election.

## 41. Election of chairperson

The directors must elect a director as the **company's chairperson**.

## 42. Term of office and retirement of directors

- 42.1. Subject to clauses 42.2 and 38.2, directors are elected or appointed for terms of 3 years.
- 42.2. At each **annual general meeting**, any director who has held office for 3 years or more since last being elected or appointed, must retire from office but, subject to clause 42.5, is eligible for reappointment. A retiring director holds office until the conclusion of the meeting at which that director retires.
- 42.3. The **members** may by an ordinary resolution increase or decrease the period of time for which a director holds office under clause 42.1.
- 42.4. In addition to the right to remove directors under section 203D of the **Corporations Act**, the **members** may by an ordinary resolution remove any director before the expiration of that director's period of office, and may by an ordinary resolution

appoint another person in the place of an **elected director** who is removed under this clause.

- 42.5. A director is entitled to seek reappointment as a director on 2 occasions provided that a director's period of service to the **company** as a director or as a member of a committee under clause 48 (in aggregate or consecutively) does not exceed a period of 9 years, excluding any period of service under clause 39.9.

### 43. When a director stops being a director

A director stops being a director if they:

- (a) cease to be eligible to be a director under this constitution (see clauses 39.3, 39.4 and 39.9);
- (b) give written notice of resignation as a director to the **company** having immediate effect or with effect from a specified date in the notice;
- (c) die;
- (d) become bankrupt or insolvent or making an arrangement or composition with creditors or a person's joint or separate estate generally;
- (e) are removed as a director by a resolution of the **members**;
- (f) cease to have **legal capacity**;
- (g) become an **employee** of the company;
- (h) are absent for 3 consecutive directors' meetings without approval from the directors;
- (i) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**; or
- (j) cease to be a **fit and proper person**.

## Powers of directors

### 44. Powers of directors

- 44.1. The directors are responsible for managing and directing the activities of the **company** to carry out the charitable purposes set out in clause 2.
- 44.2. The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by **members**.
- 44.3. The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 45; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

- 44.4. The directors cannot remove a director or auditor. Directors and auditors may only be removed by a **members' resolution** at a **general meeting**.

#### 45. Delegation of directors' powers

- 45.1. The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 45.2. The **company** must keep appropriate records of any delegations.

#### 46. Chief executive officer

- 46.1. The directors may appoint a chief executive officer on such terms and conditions (including as to remuneration) as they think fit.
- 46.2. The directors may delegate any of their powers to the chief executive officer and the chief executive officer must exercise those powers:
- (a) in accordance with the terms and subject to any restrictions or the directions of the directors; and
  - (b) so as to be concurrent with, or to the exclusion of, the powers of the directors, and may revoke the delegation at any time.
- 46.3. The chief executive officer may be invited to attend all meetings of the directors, but may not hold the office of a director and is not entitled to vote.

#### 47. Alternate director

- 47.1. Subject to the **Corporations Act**, a director may appoint an individual, with the approval of the directors, to be an **alternate director** in the director's place during such period as the director thinks fit. The approval of the **alternate director's** appointment may be withdrawn by the directors at any time.
- 47.2. Subject to the Corporations Act, an appointment of an **alternate director** must be effected by a notice in writing signed by the director who makes or made the appointment and delivered to the **company**.
- 47.3. An **alternate director** is entitled to notice of all meetings of the directors.
- 47.4. An **alternate director** may exercise all the powers of the appointor except the power to appoint an **alternate director** and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.
- 47.5. Whilst acting as a director, an **alternate director**:
- (a) is an officer of the company and not the agent of the appointor; and
  - (b) is responsible to the exclusion of the appointor for the **alternate director's** own acts and defaults.
- 47.6. An **alternate director** is entitled to receive from the company any remuneration or

benefit of the director in whose place the **alternate director** is standing.

- 47.7. The appointment of an **alternate director** may be terminated at any time by the appointor even if the period, if any, of the appointment of the **alternate director** has not expired, and terminates in any event if the appointor ceases to be a director.
- 47.8. The termination of an appointment of an **alternate director** must be effected by a notice in writing signed by the director who made the appointment and delivered to the **company**.
- 47.9. An **alternate director** is not to be taken into account separately from the appointor in determining the number of directors.

## 48. Committees

- 48.1. The directors may delegate any of their powers and functions to a committee consisting of 2 or more directors and such other persons as they think fit and may revoke the delegation at any time.
- 48.2. A committee to which any powers or functions have been delegated under clause 48.1 must exercise these powers or functions:
- (a) in accordance with the terms and subject to any restrictions and any directions of the directors; and
  - (b) so as to be concurrent with, or to the exclusion of, the powers of the directors, and a power so exercised is taken to have been exercised by the directors.

## 49. Payments to directors

- 49.1. The **company** must not pay fees to a director for acting as a director.
- 49.2. The **company** may:
- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 49.3. Any payment made under clause 49.2 must be approved by the directors.

## 50. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) 2 directors of the **company**;
- (b) a director and the secretary; or
- (c) by any other means provided by the **Corporations Act**.

## 51. Validity of acts of directors

All acts done at a meeting of directors or of a committee of directors, or by an individual acting as a director, are not invalid because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or
- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

## Duties of directors

### 52. Duties of directors

- (a) In addition to clause 52(b), the directors must comply with their duties as directors under the law.
- (b) While the **company** is a **registered charity**, the directors must comply with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:
  - 52.1.b.1. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**;
  - 52.1.b.2. to act in good faith in the best interests of the **company** and to further the charitable purposes of the **company** set out in clause 2;
  - 52.1.b.3. not to misuse their position as a director;
  - 52.1.b.4. not to misuse information they gain in their role as a director;
  - 52.1.b.5. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53;
  - 52.1.b.6. to ensure that the financial affairs of the **company** are managed responsibly; and
  - 52.1.b.7. not to allow the **company** to operate while it is insolvent.

### 53. Conflicts of interest

- 53.1. A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a **circular resolution**):
  - (a) to the other directors; or
  - (b) if all of the directors have the same conflict of interest, to the **members** at the next **general meeting**, or at an earlier time if reasonable to do so.
- 53.2. The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

- 53.3. Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a **circular resolution**) must not, except as provided under clauses 53.4:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 53.4. A director may still be present and vote if:
- (a) their interest arises because they are a **member**, and the other **members** have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 72);
  - (c) their interest relates to a payment by the **company** under clause 71 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
  - (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
  - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**; and
    - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

### 54. When the directors meet

The directors may decide how often, where and when they meet.

### 55. Calling directors' meetings

- 55.1. A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 55.2. A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 56. Chairperson for directors' meetings

- 56.1. The **chairperson** is entitled to chair directors' meetings.
- 56.2. The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **chairperson** is:
- (a) not present within 30 minutes after the starting time set for the meeting; or

- (b) present but does not want to act as chairperson of the meeting.

## 57. Quorum at directors' meetings

- 57.1. Unless the directors determine otherwise, the quorum for a directors' meeting is a majority of directors holding office, or 3, whichever is greater.
- 57.2. A quorum must be present for the whole directors' meeting.

## 58. Using technology to hold directors' meetings

- 58.1. The directors may hold their meetings by using any **virtual meeting technology** that is agreed to by all of the directors.
- 58.2. The directors' agreement may be a standing one.
- 58.3. A director may only withdraw their consent within a reasonable period before the meeting.

## 59. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

## 60. Alternate director and voting

- 60.1. An individual who is present at a directors' meeting as an **alternate director**:
  - (a) is entitled to participate and vote in the appointor's place if the appointor would have been entitled to vote and does not participate in that meeting; and
  - (b) has one vote for each person for whom they have been appointed as **alternate director**.
- 60.2. If that individual is also a director, then that individual also has one vote as a director in that capacity.

## 61. Circular resolutions of directors

- 61.1. The directors may pass a **circular resolution** without a directors' meeting being held.
- 61.2. A **circular resolution** is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 61.3.
- 61.3. Each director may sign:
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 61.4. A **circular resolution** is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 61.3.

## Secretary

### 62. Appointment and role of secretary

- 62.1. The **company** must have at least one secretary, who may also be a director.
- 62.2. A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 62.3. The secretary must ensure that the following are maintained:
  - (a) a register of the **company's members**; and
  - (b) the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and **circular resolutions**.

## Minutes and records

### 63. Minutes and records

- 63.1. The **company** must, within one month, make and keep the following records:
  - (a) minutes of proceedings and resolutions of **general meetings**;
  - (b) minutes of **circular resolutions** of **members**;
  - (c) a copy of a notice of each **general meeting**; and
  - (d) a copy of a **members' statement** distributed to **members** under clause 30.
- 63.2. The **company** must, within one month, make and keep the following records:
  - (a) minutes of proceedings and **circular resolutions** of directors' meetings (including meetings of any committees); and
  - (b) minutes of **circular resolutions** of directors.
- 63.3. To allow **members** to inspect the **company's** records:
  - (a) the **company** must give a **member** access to the records set out in clause 63.1; and
  - (b) the directors may authorise a **member** to inspect other records of the **company**, including records referred to in clause 63.2 and clause 64.1.
- 63.4. The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
  - (a) the **chairperson** of the meeting; or
  - (b) the **chairperson** of the next meeting.
- 63.5. The directors must ensure that minutes of the passing of a **circular resolution** (of **members** or directors) are signed by a director within a reasonable time after the resolution is passed.

## 64. Financial and related records

- 64.1. The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 64.2. The **company** must also keep written records that correctly record its operations.
- 64.3. The **company** must retain its records for at least 7 years.
- 64.4. The directors must take reasonable steps to ensure that the **company's** records are kept safe.

## By-Laws

### 65. By-Laws

- 65.1. The directors may pass a resolution to make by-laws to give effect to this constitution.
- 65.2. **Members** and directors must comply with by-laws as if they were part of this constitution.

## Notice

### 66. What is notice

- 66.1. Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 66 to 69, unless specified otherwise.
- 66.2. Clauses 66 to 69 do not apply to a notice of proxy under clause 36.7.

### 67. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office;
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the **company** to the **members** as the **company's** email address or other electronic address;
- (d) sending it to the fax number notified by the **company** to the **members** as the **company's** fax number; or
- (e) any other means provided by the **Corporations Act**.

## 68. Notice to members

- 68.1. Written notice or any communication under this constitution may be given to a **member**:
- (a) in person;
  - (b) by posting it to, or leaving it at the address of the **member** in the **register of members** or an alternative address (if any) nominated by the **member** for service of notices;
  - (c) sending it to the email or other electronic address nominated by the **member** as an alternative address for service of notices (if any);
  - (d) sending it to the fax number nominated by the **member** as an alternative address for service of notices (if any);
  - (e) by notifying the **member** at an email or other electronic address nominated by the **member**, that the notice is available at a specified place or address (including an electronic address); or
  - (f) by any other means provided by the **Corporations Act**.
- 68.2. If the **company** does not have an address for the **member**, the company is not required to give notice in person.
- 68.3. If a **member** elects to receive documents in physical form, the company must take reasonable steps to send documents in a manner that complies with the election.

## 69. When notice is taken to be given

Except in relation to service of a document referred to in clause 36.7, a notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third **business day** after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method:
  - (i) is taken to have been given by properly addressing and transmitting the electronic transmission; and
  - (ii) is taken to have been given on the **business day** after it is sent;
- (d) given under clause 68.1(e) is taken to be given on the **business day** after the notification that the notice is available is sent; and
- (e) given in any other way permitted under the **Corporations Act** is taken to have been given under the **Corporations Act**.

## Financial matters

### 70. Company's financial year

The **company's** financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### 71. Indemnity

- 71.1. The **company** must indemnify each officer of the **company** or of a **related body corporate** of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 71.2. In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 71.3. In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 71.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company** or of a **related body corporate** of the **company**.

### 72. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** or a **related body corporate** of the **company** against any liability incurred by the person as an officer of the **company** or a **related body corporate** of the **company**.

### 73. Directors' access to documents

- 73.1. A director has a right of access to the financial records of the **company** at all reasonable times.
- 73.2. The directors may resolve to give a director or former director access to other records, including documents provided for or available to the directors.

## Winding up

### 74. Winding up voluntarily

If permitted by law, the **company** may be wound up voluntarily by **special resolution**.

### 75. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a **member** or a former **member**, unless that **member** or former **member** is a charity described in clause 76.1.

## 76. Distribution of surplus assets

- 76.1. Subject to clauses 6.2 and 77, the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more funds or institutions:
- (a) with charitable purposes similar to, or inclusive of, the purposes in clause 2; and
  - (b) that are not-for-profit entities whose governing documents prohibit the distribution of any **surplus assets** to its **members** to at least the same extent as the **company** under this constitution.
- 76.2. The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of **members** at or before the time of winding up. If the **members** do not make this decision, the **company** may apply to the Supreme Court to make this decision.

## 77. Distribution of surplus assets if deductible gift recipient

- 77.1. Where the **company** has been endorsed as a deductible gift recipient under Subdivision 30 BA of the **Tax Act** in relation to a fund or institution it operates, and:
- (a) the fund or institution is wound up; or
  - (b) the endorsement under Subdivision 30 BA of the **Tax Act** in relation to a fund or institution it operates is revoked;
- any **surplus assets** of the **gift fund** for that fund or institution remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 76.1 and are each deductible gift recipients.
- 77.2. Where the **company** operates more than one fund or institution for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the **Tax Act** is revoked only in relation to one of those funds or institutions then it may transfer any **surplus assets** of that fund or institution remaining after payment of all liabilities to any other fund or institution for which it is endorsed as a deductible gift recipient.

## 78. Gift fund

- 78.1. Without limiting clause 64, the **company** may maintain a **gift fund**:
- (a) to identify and record gifts of money or property for the principal purposes of the **company** or of a fund or institution it operates;
  - (b) to identify and record contributions of money or property as described in item 7 or item 8 of the table in section 30-15 of the **Tax Act** in relation to a fundraising event held for the principal purposes of the **company** or of a fund or institution it operates;

- (c) to identify and record money received by the **company** because of such gifts or contributions; and
- (d) that does not identify and record any other money or property.

78.2. The **gift fund** forms part of the accounts of the **company**.

78.3. Where the **company** operates more than one fund or institution for which it is endorsed as a deductible gift recipient, the **company** must maintain a separate **gift fund** for the principal purposes of each fund or institution for which it is endorsed as a deductible gift recipient.

## Definitions and interpretation

### 79. Definitions

In this constitution:

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

**alternate director** means an individual appointed as an alternate director under clause 47.

**annual general meeting** has the same meaning as the term ‘**AGM**’ in the **Corporations Act**.<sup>1</sup>

**appointed director** means an individual referred to in clause 38.1(b) who is appointed as a director in accordance with clause 39.6.

**business day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in place where the **company’s** registered office is located.

**circular resolution** means a resolution proposed to **members** or directors without any meeting being held.

**company** means the company referred to in clause 1.

**Corporations Act** means the *Corporations Act 2001* (Cth)

**chairperson** means a person elected by the directors to be the **company’s chairperson** under clause 41.

**director identification number** has the same meaning it has in the **Corporations Act**.<sup>2</sup>

**elected director** means an individual referred to in clause 38.1(a) who is appointed as a director in accordance with clause 39.

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<sup>1</sup> At the time of adoption of this constitution, section 9 provides an AGM means an annual general meeting of a company that section 250N requires to be held.

<sup>2</sup> At the time of adoption of this constitution, section 9 provides that a director identification number means a director identification number given under:

- (a) section 1272; or
- (b) section 308-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**fit and proper person** has the same meaning it has in the *Education and Care Services National Law Act 2010 (Vic)*.<sup>3</sup>

**general meeting** means a meeting of **members**.

**gift fund** means a management account of the **company** that is established in accordance with clause 78.1.

**legal capacity** means, in relation to an individual, that the individual is at least 18 years of age, and that:

- (a) in the directors' reasonable assessment, the individual is capable of understanding the nature and effect of their participation in the **company's** affairs without the need of special assistance or explanation; or
- (b) in the directors' reasonable assessment, the individual is able to receive and understand communications and express their will in relation to the **company's** affairs; or
- (c) their person or estate is not liable to be dealt with under the laws relating to mental health:
  - (i) on a permanent or ongoing basis;
  - (ii) in an involuntary manner; or
  - (iii) on a court ordered basis.

**member** means a person entered on the **register of members** of the **company**.

**member present** means, in connection with a **general meeting**, a **member present** in person or by proxy at the venue or venues for the meeting.

**members' resolution** means a resolution referred to in clause 30.1(a) that the **members** propose to move at a **general meeting**.

**members' statement** means a statement referred to in clause 30.1(b) given by the **company** to the **members** about a proposed resolution or any other matter that may properly be considered at a **general meeting**.

**nominations committee** means a committee of the board of directors with nomination responsibilities that is to operate as a committee under clause 48 for the purpose of assisting and advising the directors in fulfilling their responsibilities on matters relating to the composition and effective operation of the board of directors.

**nominations policy** means the policy prepared in accordance with clause 40.1.

**registered charity** means a charity that is registered under the **ACNC Act**.

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<sup>3</sup> At the time of adoption of this constitution, section 12(2)(a) of the *Education and Care Services National Law Act 2010 (Vic)* provides that each person who will be a person with management or control of an education and care service must be a fit and proper person to be involved in the provision of an education and care service. At the time of adoption of this constitution the meaning of fit and proper person in the and *Education and Care Services National Law (WA) Act 2012* is the same as the meaning in the *Education and Care Services National Law Act 2010 (Vic)*.

**register of members** means the register of **members** under the **Corporations Act**.

**related body corporate** has the same meaning it has in the **Corporations Act**.<sup>4</sup>

**service** means any kindergarten, pre-school, childcare service, or other type of children's service that the company operates either alone, or in association with anyone else.

**special resolution** means a resolution:

- (a) of which notice has been given under clause 23.5; and
- (b) that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution; and
- (c) that is otherwise valid.

**surplus assets** means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

**Tax Act** means the Income Tax Assessment Act 1997 (Cth).

**virtual meeting technology** means any technology that allows a person to participate in a meeting without being physically present at the meeting.

## 80. Reading this constitution with the Corporations Act

- 80.1. The replaceable rules set out in the **Corporations Act** are displaced by this constitution and accordingly do not apply to the company.
- 80.2. While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 80.3. If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 80.4. A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 81. Interpretation

In this constitution:

- (a) the singular includes the plural and vice versa;
- (b) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- (c) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations);

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<sup>4</sup> At the time of adoption of this constitution, section 9 provides that a related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50 of the Corporations Act.

- (d) a reference to a meeting includes a meeting by technology provided the technology gives the persons entitled to attend the meeting, as a whole, reasonable opportunity to participate without being physically present in the same place, and includes a **general meeting**:
  - (i) at one or more physical venues;
  - (ii) at one or more physical venues and using **virtual meeting technology**; or
  - (iii) using **virtual meeting technology** only.
- (e) a reference to a person being present includes an individual participating in a meeting in person or through a proxy or attorney of a **member**;
- (f) a reference to a “place” includes the place or location where a **general meeting** may be held, is held or is taken to be held under the **Corporations Act** if **virtual meeting technology** is used in holding the meeting;
- (g) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

## **82. Signing and electronic communication:**

Where, by a provision of this constitution, a document including a notice is required to be signed or communicated, that requirement may be satisfied in any manner permitted by the applicable law of a state or territory or the Commonwealth relating to electronic signing and transmission of documents.

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The Constitution was adopted by special resolution dated 30 May 2000, amended by special resolution dated 25 November 2009, amended by special resolution dated 27 April 2016, amended by special resolution dated 26 May 2020, amended by special resolution dated 30 May 2023, and amended by special resolution dated 27 May 2025.