

Corporations Act 2001 Constitution

Banksia Villages Ltd
ACN 054 142 282

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1. Definitions and interpretation

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

Acts means the *Corporations Act* and the *ACNC Act* as it applies to the Company for the time being.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as it applies to the Company for the time being.

Annual Subscription means the amount determined by the Board from time to time.

Board means the Board of Directors of the Company from time to time.

Chairperson means the chairperson of the Board appointed at clause 18.1 from time to time.

Company means Banksia Villages Ltd ACN 054 142 282.

Constitution means this constitution.

Corporations Act means the *Corporations Act 2001* (Cth) as it applies to the Company for the time being.

Directors means the Directors of the Company in office for the time being.

Entrance Fee means the amount (if any) determined by the Board from time to time which is payable by a Member upon his or her election as such.

General Meeting means a meeting of Members duly called and constituted in accordance with this Constitution and any adjourned holding of it.

ITAA means the *Income Tax Assessment Act 1997* (Cth) as amended from time to time.

Life Member means a person elected upon the recommendation of the Board at an annual or extraordinary General Meeting as a life member for distinguished services to the Company by way of special resolution of members present at the meeting and entitled to vote.

Member means any person entered in the Register as a member for the time being of the Company.

Membership means membership of the Company.

Non-Voting Member means those Members that have no entitlement to vote at General Meetings, only having the rights set out in clause 8.5(b).

Objects of the Company means the objects set out in clause 3.2.

Officer means a person:

- (a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
- (b) who has the capacity to affect significantly the corporation's financial standing;
- (c) in accordance with whose instructions or wishes the Directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the Company); or
- (d) who is otherwise appointed as an Officer under clause 18.2.

Ordinary Member means those Members that are entitled to the rights set out in clause 8.5(a).

Ordinary Resolution means a resolution of a general meeting where more than 50% of the total votes cast on the resolution are in favour of the resolution.

Patron means a person who has been appointed as a patron of the Company pursuant to clause 22.

Register means the Register of Members kept by the Company.

Registered Office means the Registered Office for the time being of the Company.

Remuneration includes, without limitation, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentive schemes or profit sharing schemes.

Resident means a resident of a residential care facility, retirement village or other seniors housing operated by the Company who is in necessitous circumstances and/or suffering distress.

Secretary means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily.

Service User means a client or user of any of the Services who is in necessitous circumstances and/or suffering distress.

Services means those services provided by the Company as set out in clause 3.2(b) and any ancillary or incidental services or activities of the Company as set out in clauses 3.2(c) and 3.3.

Special Resolution means a resolution of a general meeting where at least 75% of the votes cast on the resolution are in favour of the resolution and which is passed in accordance with sections 249H and 249L of the Corporations Act.

1.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;

- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) except for the definitions in the preceding clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (e) words such as **including** or **for example** do not limit the meaning of the words preceding them; and
- (f) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

2. Replaceable rules

2.1 Replaceable rules

The operation of each of the sub-sections of the Corporations Act which are defined as replaceable rules are displaced by this Constitution and do not apply to the Company.

3. Objects

3.1 Pursuance of objectives

The Objects of the Company are to be pursued principally within Australia.

3.2 Objects

The objects for which the Company is established are:

- (a) to establish, maintain and operate facilities for the purpose of providing accommodation and care and support Services for Residents and Service Users;
- (b) to do all such things as may be necessary to the attainment of the object described in paragraph (a), including the provision of:
 - (i) aged care, nursing homes, convalescent homes, rest homes, respite care and palliative care;
 - (ii) retirement village accommodation and services;
 - (iii) home care services, concierge services, and other independent living support and services;
 - (iv) rehabilitation and restorative care, services or accommodation;
 - (v) disability and reduced capacity services and care;
 - (vi) general medical, diagnostic, therapeutic, nutritional, dental or other general health and wellbeing services;
 - (vii) facilities providing social, spiritual, educational, or mental support or care; and
 - (viii) all other forms of care services and accommodation for the purposes of caring for and supporting Residents and Service Users; and

- (c) to do all other such incidental and ancillary things as the Company considers necessary from time to time to carry on and further the Objects of the Company.

3.3 Activities in pursuance of objectives

For the attainment of its objects, the Company is permitted:

- (a) to purchase, construct, acquire, alter, lease, license, produce, or otherwise provide, procure or receive facilities, amenities and assets (or any interest in them) as is reasonable to achieve the Objects of the Company or to ensure the continuance of the Company and its commitment to these Objects;
- (b) to sell, trade, lease, license, assign, novate, grant an interest in or over, or otherwise reasonably deal with any interest, facility, amenity or asset as is reasonable to further the objects and to ensure the continuance of the Company and its commitment to these Objects;
- (c) to invest and deal with the money of the Company not immediately required in such manner as may be permitted by law for the investment of trust funds;
- (d) to subscribe to or affiliate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which shall prohibit the distribution of their income and property among their members to an extent at least as great as that imposed upon the Company under clause 5 of this Constitution;
- (e) to perform all such acts and things necessarily incidental, ancillary and conducive to the benefit, advancement and promotion for the purposes of caring for and supporting Residents and Service Users; and
- (f) to cooperate with, encourage and provide assistance to any charitable institution, charitable body or charitable fund having objects similar to the Objects of the Company.

4. Limited liability

4.1 Members' liability

The liability of the Members is limited.

4.2 Members' contributions

Every Member of the Company undertakes to contribute to the assets of the Company if it is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for:

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

4.3 Amount of Members' contributions

The amount of the contribution under clause 4.2 must not exceed \$20 per member in any circumstances.

5. Use of the property by the Company

5.1 Conduit policy

Any allocation of funds or property to other institutions, bodies, entities, organisations, government departments or persons must be made in accordance with the established Objects of the Company and not be influenced by the expressed preference or interest of a particular donor to the Company.

5.2 Application of Company property

Subject to clauses 5.3 and 5.4 below, all income and property of the Company must be applied for the Objects of the Company. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to any Member.

5.3 Payments of Company expenses

Nothing in clause 5.2 prevents the payment in good faith of reasonable and proper:

- (a) remuneration to any of the officers or employees of the Company or to any Member in return for any services actually rendered by them to the Company;
- (b) interest on money borrowed from any Member for any of the purposes of the Company (provided the interest rate does not exceed the rate charged by the Company's bank on similar borrowings);
- (c) rent for premises let by any Member to the Company; or
- (d) payment for any goods supplied to the Company by any Member.

5.4 Remuneration of Directors

No remuneration or other benefit may be paid or given by the Company to any Director except:

- (a) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director;
- (b) for any service rendered to the Company in a professional or technical capacity, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Directors; or
- (c) for attending upon the functions and duties of a Director, or any committee established by the Board, provided that the remuneration or benefit paid or given complies with all applicable laws and:
 - (i) is on reasonable commercial terms commensurate with other not-for-profit organisations; and
 - (ii) does not exceed an amount previously approved by a special resolution of the Directors and confirmed by ordinary resolution of the Members.

5.5 Conflict of interest resolution

At any general meeting of the Members or the Directors at which a resolution is put for approval of a payment to be made pursuant to clause 5.4(a) or (b) (**conflict of interest**

resolution) the Director who is the object of the conflict of interest resolution and any other Director or Member who is related to that Director is not entitled to:

- (a) be present or heard in discussions on the conflict of interest resolution other than with the permission of the other Members or Directors;
- (b) propose or second the conflict of interest resolution;
- (c) vote on the conflict of interest resolution; or
- (d) be present at the meeting when the conflict of interest resolution is put to the vote other than with the permission of the other Directors or Members.

6. Use of property on winding up and on revocation of endorsement

6.1 Surplus

If on the:

- (a) winding up or dissolution of the Company; or
- (b) the revocation of the Company's endorsement as a deductible gift recipient or an income tax exempt entity under the ITAA,

after the satisfaction of all its debts and liabilities, any property remains (**surplus**), the surplus must not be paid or distributed among the Members.

6.2 Transfer of surplus

The surplus must be given or transferred to an institution, body, entity, or organisation (**Transferee Entity**):

- (a) having objects similar to the Objects of the Company and which is endorsed as a deductible gift recipient under the ITAA;
- (b) is registered as a charity under the ACNC Act; and
- (c) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under clause 5.

6.3 Choice of transferee

The Transferee Entity must be chosen by the Directors (as the Directors were constituted at the commencement of the winding up). If the Directors do not choose a Transferee Entity within a reasonable time, any Member at the commencement of the winding up or the liquidator may apply to the Supreme Court of New South Wales to choose the Transferee Entity.

7. Fundraising authority

If the Company holds an authority to fundraise from NSW Fair Trading (or such other government entity responsible fundraising in NSW from time to time), no addition, alteration or amendment may be made to clauses 4 or 5 without the prior written approval of the Minister responsible for the administration of the *Charitable Fundraising Act 1991*.

8. Members

8.1 General

The Members consist of:

- (a) those persons registered as a Member at the date this Constitution is adopted as the Constitution of the Company, as set out in Schedule 1; and
- (b) all other persons after the date this Constitution is adopted, qualified to be a Member in accordance with this Constitution.

8.2 Members' qualification

A person is qualified to be a Member of the Company who:

- (a) is a natural person who is at least 18 years of age;
- (b) is not a current Resident, although current Residents may still be eligible for Non-Voting Membership;
- (c) is not a paid employee of the Company;
- (d) if a former employee of the Company, has ceased to be an employee of the Company for a period of 12 months from the date of applying to become a Member;
- (e) has been nominated for Membership of the Company as provided by clause 8.6; and
- (f) has been approved for Membership of the Company by the Board.

8.3 Rights of categories

The Board may determine additional categories of Members and rights attaching to each category of Members.

8.4 Categories of Members

As at the date of the adoption of this Constitution, the categories of Members are:

- (a) Ordinary Members;
- (b) Non-Voting Members;
- (c) Life Members.

8.5 Rights of Members

Members are entitled to different rights, depending on their category of membership, as follows:

- (a) Members admitted as Ordinary Members or Life Members are entitled to:
 - (i) receive notices of meetings of Members;
 - (ii) be counted towards a quorum of Members present at a General Meeting;
 - (iii) appoint a proxy to vote at a General Meeting;

- (iv) vote at a General Meeting;
- (v) attend all General Meetings of Members including any extraordinary or annual General Meeting;
- (vi) receive annual financial reports and statements of the Company; and
- (vii) be eligible for election to the Board; and
- (b) Members admitted as Non-Voting Members are entitled to:
 - (i) receive notices of meetings of Members;
 - (ii) attend all General Meetings of Members including any extraordinary or annual General Meeting; and
 - (iii) receive annual financial reports and statements of the Company.

8.6 Nomination for Membership

A nomination of a person for Membership of the Company:

- (a) must be proposed by two Members of the Company, both of who must personally know the nominee;
- (b) must be in writing in the form approved by the Board from time to time; and
- (c) must be lodged with the Secretary of the Company.

8.7 Admitting Members

- (a) As soon as practicable after receiving a nomination for Membership, the Secretary must refer the nomination to the Board which must determine whether to approve or to reject the nomination.
- (b) The Board must consider the application for Membership at the next meeting of the Board after the receipt of the application for Membership.
- (c) Where the Board determines to approve a nomination for Membership, the Secretary must, as soon as practicable after that determination, notify the nominee in writing of that approval and:
 - (i) upon payment of the nominee's Entrance Fee and Annual Subscription, the Secretary must enter the nominee's name in the Register and, upon the name being so entered, the nominee becomes a Member of the Company; or
 - (ii) if payment of the nominee's Entrance Fee and Annual Subscription is not made within two calendar months after receipt of this written notice, the Board may, in its discretion, cancel its approval of the nomination for Membership.
- (d) No nominee may be admitted to Membership and have their name entered in the Register unless the applicant agrees in writing to be bound by this Constitution.

8.8 Discretion to admit

The Board may refuse to admit any person as a Member. If the Board refuses to admit a person as a Member, the Board is not obliged to give reasons for so refusing.

8.9 Delegation

The Directors will not at any time delegate the power to:

- (a) admit persons as Members;
- (b) re-admit such persons;
- (c) amend categories of Membership for Members; and
- (d) refuse applications for Membership.

9. Fees to be paid by Members

9.1 Entrance Fee

The Entrance Fee payable by Members is such amount as determined by the Directors from time to time.

9.2 Annual Subscription

- (a) The Annual Subscription payable by Members is such amount as determined by the Directors from time to time.
- (b) All Annual Subscriptions must be paid in advance for the period beginning on 1 July in every year or a date determined by the Directors from time to time.

9.3 Waiver

The Board may at any time suspend or waive, in whole or in part, payment of the Entrance Fee or Annual Subscription in favour of any Member.

9.4 Annual Subscription in arrears

If any Member fails to pay his or her Annual Subscription within one month of the date determined by the Directors, that Member is not entitled, while the subscription remains due and unpaid, to:

- (a) nominate a Member as a candidate for election to the office of Director;
- (b) vote in any ballot;
- (c) receive notices of meetings of Members; or
- (d) attend, be counted in forming a quorum for, exercise any vote at, or be a proxy for any Member for, any general meeting.

10. Cessation of Membership

10.1 Cessation

A person ceases to be a Member of the Company if the person:

- (a) dies;

- (b) becomes of unsound mind or bankrupt;
- (c) resigns that Membership;
- (d) fails to pay that person's Annual Subscription within one month from the date determined by the Directors pursuant to clause 9.4;
- (e) has refused or neglected to comply with a provision of the Constitution;
- (f) has acted in a manner prejudicial to the reputation or interests of the Company;
- (g) is expelled from the Company under this Constitution;
- (h) is a person whose actions in the opinion of the Directors brings the Company into serious disrepute; or
- (i) no longer meets the criteria of being a member under clause 8.2(b).

10.2 Appointment as Member not transferable

A right, privilege or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of the person's Membership.

10.3 Resignation

Subject at all times to clause 4 of this Constitution, a Member of the Company may resign their Membership by giving written notice to the Secretary (**Notice**). The resignation is deemed to take effect from the date of receipt of the Notice, or such later date as is provided in the Notice. A Member remains liable to the pay all amounts due to the Company up to the date of resignation.

10.4 Failure to pay

If a Member has not paid all arrears under clause 9.4 or, if paid, the Member's rights are not reinstated:

- (a) the Member remains liable for all obligations and liabilities of Membership for 6 months after the date of the notice of default under clause 9.4; and
- (b) at the end of the 6 month period, the Member's details must be removed from the Register.

11. Discipline of Members

11.1 Initial resolution of Directors

Where the Directors, in their absolute discretion, are of the opinion that a Member:

- (a) is no longer suitable to be a member of the Company;
- (b) has refused or neglected to comply with a provision of the Constitution; or
- (c) has acted in a manner prejudicial to the reputation or interests of the Company,

the Directors may, by Ordinary Resolution (**Initial Resolution**):

- (d) reprimand the Member;
- (e) suspend the Member for a specified period; or
- (f) expel the Member from the Company,

and are not required to give reasons for proposing the Initial Resolution.

11.2 Suspended operation

An Initial Resolution is of no effect unless it is confirmed at a meeting of the Directors in accordance with the following clauses. For that purpose, the meeting of Directors must be held not earlier than 7 days and not later than 21 days after service on the Member of a notice under clause 11.3.

11.3 Notice to Member

The Secretary must, as soon as practicable following the passing of the Initial Resolution, cause a notice in writing to be served on the Member. The notice must:

- (a) set out the Initial Resolution and the grounds on which it is based;
- (b) state that the Member may personally address the Directors in relation to the Initial Resolution at a meeting of the Directors to be held in accordance with clause 11.2;
- (c) state the date, place and time of that meeting of the Directors; and
- (d) inform the Member that the Member may submit to the Directors at or before the date of that meeting a written representation relating to that resolution and speak to the representation.

11.4 Confirming resolution of Directors

At a meeting of the Directors held and convened in accordance with the preceding clause, the Directors must:

- (a) give to the Member an opportunity to speak to the written representation;
- (b) give due consideration to any written representation submitted to the Directors by the Member at or before the meeting; and
- (c) by Ordinary Resolution (**Confirming Resolution**) confirm, vary or revoke the Initial Resolution.

11.5 Immediate or suspended effect

The Confirming Resolution may take effect immediately, after any period of time or only on conditions specified in the Confirming Resolution.

12. Register of Members

12.1 Register to be kept

The Secretary must maintain at the Company's offices a Register of Members containing the following details of each Member:

- (a) full name;
- (b) mailing address;
- (c) facsimile/telephone number;
- (d) electronic mail address; and
- (e) date on which the entry of the Member's name in the Register is made.

12.2 Notices in writing or electronic means

Any notice required to be issued to a Member under this Constitution may be issued in writing or by electronic mail or facsimile to the last nominated email address or facsimile number held by the Company in its records. Each Member is required to notify the Company of a change of address or contact details. The last notified address will be deemed to be the proper address for all future correspondence. The receipt by the Company of an acknowledgment of correspondence sent by electronic mail or facsimile to the last nominated email address or facsimile held by the Company in its records will be deemed to have been properly received by the Member at the time of transmission.

13. Meetings of Members

13.1 Act to apply

A general meeting of the Company and an Annual General Meeting must be held in accordance with the provisions of the Corporations Act or the ACNC Act as applicable unless the provisions of this Constitution provides otherwise.

13.2 Calling of meetings

- (a) Any three Directors may call a General Meeting.
- (b) General Meetings will be convened on such requisition by Members as provided by the Corporations Act.
- (c) The Company must convene an Annual General Meeting as required to do so under the Corporations Act.

13.3 Notice of meeting

- (a) Notice of a General Meeting may be given by post, facsimile or by electronic mail.
- (b) Every notice of a General Meeting must:
 - (i) set out the place, date and time of meeting;
 - (ii) in the case of special business, state the general nature of the business;
 - (iii) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
 - (iv) in the case of an election of Directors, give the names of the candidates for election;
 - (v) contain a statement setting out the following in relation to proxy voting:

- (A) that the Member has a right to appoint a proxy; and
- (B) that a proxy must be a Member.

13.4 Entitlement to notice

Notice of a General Meeting must be given to:

- (a) each Member, apart from any Member who under this Constitution or by the terms of issue of any category of Membership is not entitled to the notice;
- (b) the auditor of the Company; and
- (c) each Director.

13.5 Notice period

Notice of a General Meeting must be given in accordance with section 249H of the Corporations Act and where those provisions no longer apply to the Company, must be given in writing upon no less than 21 days' notice unless 95% of the Members agree to a shorter period.

13.6 Proxy voting by Members

A Member may appoint a proxy to attend and vote at any General Meeting at which the Member is entitled to attend and vote. To be valid, a proxy appointment must be in writing in the form prescribed by the Company from time to time (**Form**). The Form must be delivered to the place nominated by the Directors in the notice of General Meeting (or, if no place is nominated, the Office) at least 48 hours before the scheduled commencement of the General Meeting. A proxy appointment may be delivered by post, electronic mail or facsimile transmission.

13.7 Omission to give notice

The accidental omission to give notice of a General Meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such General Meeting, does not invalidate the proceedings at, or any resolution passed at, any such General Meeting.

13.8 Consent to short notice

With the consent in writing of all the Members entitled to vote at a General Meeting, any General Meeting may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly.

13.9 Notice of cancellation or postponement

The Directors may notify the Members of a cancellation or postponement of a General Meeting by such means as they see fit, but must provide notice of the cancellation or postponement at least two business days prior to the time of the meeting as specified in the notice of meeting. If any General Meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Members of the postponed General Meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed General Meeting.

13.10 Venue

Despite any other rule, the Company may hold a General Meeting of Members at two or more venues using any such technology that gives the Members as a whole a reasonable opportunity to participate in the General Meeting.

14. Representation at meetings

14.1 Persons entitled to attend

The following persons only may attend a General Meeting:

- (a) each Member, apart from any Member who under this Constitution or by the terms of issue of any Membership is not entitled to attend;
- (b) each Director, Secretary, Officer and auditor of the Company;
- (c) a proxy who is a Member; and
- (d) other persons only with leave of the meeting or its chairperson and then only while the leave has not been revoked in accordance with the terms of the leave.

15. Proceedings at meetings of Members

15.1 Quorum

No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as provided in clause 15.2, 8 Members present are a quorum.

15.2 Failure of quorum

If a quorum is not present within 30 minutes from the time appointed for a General Meeting:

- (a) where the meeting was called by, or in response to, the requisition of Members made under the Corporations Act, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Directors may determine.

If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, 2 Members constitute a quorum, or where 2 Members are not present, the meeting is dissolved.

15.3 Business of Annual General Meeting

The business of an Annual General Meeting is:

- (a) to receive the Company's financial report, the Director's report and the auditor's report on the financial statements;
- (b) to elect Directors;

- (c) to transact any other business which under this Constitution, the Corporations Act or the ACNC Act ought to be transacted at an Annual General Meeting; and
- (d) consider any matters referred by Members to the Company at least 21 days before the meeting, to be included in the agenda.

The chairperson of the Annual General Meeting may allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about, or make comments on, the management of the Company.

15.4 Report on Company's activities

The Board must at each Annual General Meeting in addition to the matters in clause 15.3, submit to the Members a report on the activities of the Company, including any remuneration or payments made to Directors, in the period since the previous general meeting.

15.5 Frequency of Annual General Meeting

The Company must hold an Annual General Meeting at least once every calendar year and within 5 months after the end of its financial year.

15.6 Special business

No special business may be transacted at any Annual General Meeting or General Meeting other than that stated in the notice calling the meeting unless

- (a) it is a matter that is required by this Constitution, the Corporations Act or the ACNC Act to be transacted at the meeting; or
- (b) notice in writing of the agenda items is provided to the Board at least 21 days before the Annual General Meeting or General Meeting.

15.7 Chairperson of meeting

The Chairperson, or in the Chairperson's absence the deputy chairperson of the Directors (if any), is entitled to take the chair at each General Meeting. If neither of those persons is present at any General Meeting within 30 minutes after the time appointed for holding the meeting, or neither of them is willing to take the chair, the Members present must elect a Member to be chairperson of the meeting.

15.8 Passing the chair

If the Chairperson of a General Meeting is unwilling or unable to be the chairperson for any part of the business of the meeting:

- (a) that chairperson may withdraw as chairperson for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairperson. The prior chairperson is then entitled to resume as the chairperson of the meeting.

15.9 Responsibilities of chairperson

The Chairperson of a General Meeting is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning any item of business which is properly

before the meeting. For these purposes the chairperson of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

15.10 Admission to meetings

The chairperson of a General Meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under this Constitution to attend the meeting.

15.11 Adjournment of meeting

The Chairperson may with the consent of any meeting at which a quorum is present (and must if so directed by the meeting) adjourn the meeting from time to time and from place to place as the Chairperson determines.

15.12 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and no notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting. However, when a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

16. Voting at meetings of Members

16.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any Membership, each natural person who is present at a General Meeting may vote if he or she is a Member having the right to vote at the meeting or a proxy of a Member having the right to vote at the meeting.

16.2 Number of votes

Each Member who is, under the preceding clause, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote; and
- (b) on a poll, one vote.

16.3 Voting restrictions

If permitted or contemplated by the Corporations Act, the ACNC Act or this Constitution, the Directors may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.

16.4 Method of voting

Every resolution put to a vote at a General Meeting (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the chairperson of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

16.5 Demand for poll

A demand for a poll under the preceding clause may be made by:

- (a) the chairperson of the meeting; or
- (b) at least 10% of the Members present having the right to vote at the meeting.

16.6 Declaring result of vote on show of hands

In respect of any General Meeting (unless a poll is so demanded):

- (a) a declaration by the chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and
- (b) an entry made in the book containing the minutes of proceedings of the Company,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

16.7 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a chairperson or on any question of adjournment must be taken at the meeting

and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

16.8 No casting vote of chairperson

In the case of an equality of votes, whether on a show of hands or on a poll, the resolution will be deemed to have failed. The chairperson is not entitled to a second or casting vote.

16.9 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll.

16.10 Ruling on votes

The chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairperson is final and conclusive.

17. Appointment and removal of Board of Directors

17.1 Board of Directors

The Board comprises:

- (a) at least 4 and not more than 9 Directors, or such other number as the Board may determine from time to time; and
- (b) as at the date this Constitution is adopted as the constitution of the Company, those individuals listed in Schedule 2, who will continue their current term in office with their retirement determined under clauses 17.3 and 17.5.

17.2 Directors qualification

- (a) A Director must be:
 - (i) a natural person;
 - (ii) over the age of 18 years;
 - (iii) a Member of the Company;
 - (iv) not a person disqualified from managing a corporation, within the meaning of the Corporations Act;
 - (v) not a person disqualified by the Australian Charities and Not-for-profit Commissioner at any time during the preceding 12 months from being a Director of the Company under the ACNC Act; and
 - (vi) not a current employee of the Company or current Resident.
- (b) The Board may from time to time identify the skills requirements and the needs of the Board Members to establish a skills-based Board in accordance with good governance structure to give effect to the Company's objects.

17.3 Term of appointment and rotation

- (a) There is no maximum aggregate term of office of any Director.
- (b) At each Annual General Meeting of the Company, one third of the Directors, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office but shall be eligible for re-election.
- (c) A Director who is required to retire under this clause 17.3 retains office until conclusion of the meeting at which the retiring Director retires.
- (d) A retiring Director is eligible for re-election.
- (e) The Directors to retire at the Annual General Meeting are those who have been longest in the office since their last election. If two or more persons became Directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (f) Those individuals listed in Schedule 2 as the Directors at the date this Constitution is adopted will have their election into office under the preceding constitution of the Company continue as though they were appointed under this Constitution.

17.4 Casual appointment

The Directors may at any time appoint any person as a Director, either to fill a casual vacancy or as an addition to the Directors. Until that person is re-elected at a general meeting, that Director is a 'casual appointee'.

17.5 Retirement of casual appointee

A casual appointee, following his or her appointment by the Directors, holds office only until the conclusion of the next Annual General Meeting. The casual appointee is eligible for re-election at that Annual General Meeting.

17.6 Deemed re-appointment

If there are fewer persons standing for election or re-election than vacancies, all persons are deemed to be elected without the need for an actual election.

17.7 Candidates requiring nomination

No person is eligible for election to the office of Director at any General Meeting unless duly nominated, except for:

- (a) a casual appointee; or
- (b) a person recommended by the Directors for election.

17.8 Valid nominations

- (a) Any two Members of the Company may nominate two nominees to serve as either an Officer or Director of the Company.
- (b) For a nomination to be valid:
 - (i) the nomination must name the candidate and be signed by the nominee and his or her two nominating Members;

- (ii) the person nominated must consent to act if elected;
- (iii) the nomination and consent must be lodged with the Secretary at least 21 days before the Annual General Meeting at which the election is to take place;
- (iv) the nomination must provide information as to how the nominee meets the skill requirements of the Board (if any); and
- (v) at least 14 days before the holding of the meeting, the nomination must be reviewed by the Board and the Board must confirm the nominee satisfies the skill requirements and needs of the Company from time to time, and in doing so:
 - (A) the Board must formally provide its consent to a nomination and confirm if the nomination satisfies the skills requirements and needs of the Company;
 - (B) if the Board rejects a nomination, it will provide the nominee with its reasons for rejection; and
 - (C) no nominee may appeal against any determination by the Board in relation to any nomination.
- (c) The Board by resolution may nominate a person to be a Director, but such person must satisfy the requirements in clause 17.2 and that person must consent to the nomination.
- (d) The Board must indicate on the voting ballot of a nomination whether and how the nominee satisfies the skills requirements of the Company as described in clause 17.8(b)(iv) and clause 17.8(b)(v).
- (e) The Secretary must provide information to any prospective nominee of the skills requirement of the Board from time to time.
- (f) A list of accepted nominees and their nominating Members will be made available at the Registered Office for at least seven days immediately preceding the Annual General Meeting.

17.9 Resignation of Director

Any Director may retire from office by giving notice in writing to the Company of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time. However the resignation must take effect within 3 months from the date of the giving of the notice.

17.10 Vacation of office

A Director will cease to be a Director if the Director:

- (a) dies;
- (b) ceases to be a Director by virtue of a provision or any order under the Corporation Act or ACNC Act;
- (c) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;

- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) is suspended or expelled as a Member in accordance with clause 11;
- (f) resigns his or her office by notice in writing to the Company;
- (g) for more than three consecutive Board meetings, is absent without permission of the Board;
- (h) is disqualified from managing a corporation, within the meaning of the Corporations Act;
- (i) is disqualified by the Australian Charities and Not-for-profit Commissioner at any time during the preceding 12 months from being a Director of the Company under the ACNC Act; or
- (j) ceases to be a Member of the Company.

17.11 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in their body. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a general meeting; or
- (c) in emergencies.

18. Appointment and removal of office bearers

18.1 Election of Chairperson

The Directors must elect from among their number a Chairperson of their meetings and may determine the period for which each is to hold office, unless otherwise decided by the Directors that another Officer will act as Chairperson, in accordance with clause 18.2.

18.2 Election of other Officers

The Directors may elect such other Officers as determined by the Directors from time to time and the Directors may determine:

- (a) the period for which each is to hold office;
- (b) the rights, obligations and duties of each Officer; and
- (c) the remuneration (if any) and any conditions thought fit for each Officer.

18.3 Secretary

The Secretary will be appointed by the Board for such term and upon such conditions as it thinks fit. Any Secretary so appointed may be removed by the Board.

19. Proceedings of Directors

19.1 Mode of meeting

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (b) Without limiting the general power conferred on the Directors by the provisions of this clause, a meeting of Directors may be held using any means of audio or audio-visual communication, including telephone, by which each Director participating can hear and be heard by each other Director participating or in any other means using any technology consented to by all the Directors. Such consent to the use of technology may be a standing consent and a Director may only withdraw their consent within a reasonable period before a meeting.
- (c) A meeting of the Directors held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Chairperson of the meeting is located.

19.2 Quorum

A quorum of the Board comprises three Directors or such other number determined by the Directors from time to time.

19.3 Directors or Secretary calling a meeting

A Director may at any time, and a Secretary must on the requisition of a Director, call a meeting of the Directors to be held at such time and place as the Director chooses.

19.4 Notice of meeting

Notice of each meeting of the Directors:

- (a) may be given by such means as is convenient, including by email or electronic transmission; and
- (b) must be given to all Directors.

19.5 Recipients of notice

For the purposes of the preceding clause, the accidental omission to give notice of any meeting of the Directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

19.6 Appointment of chairperson

Where a Directors' meeting is held and a chairperson has not been elected in accordance with 18.1 or the Chairperson is not present within 15 minutes after the time appointed for holding of the Directors' meeting or is unwilling to act, the Directors present must elect one of their number to be a chairperson of the Directors' meeting.

19.7 Votes of Directors

- (a) Subject to this Constitution, questions arising at any meeting of the Board will be decided by a majority of votes. Each Director has one vote. A determination by a majority of the Directors will for all purposes be deemed a determination of the Board.

In case of an equality of votes, the chairperson of the meeting will have a second or casting vote.

- (b) Despite anything in this clause, a Director's entitlement to vote, or be present, at a meeting of the Directors, where a Director who has a material personal interest in a matter that is being considered at the meeting, is restricted in accordance with section 195 of the Corporations Act (and every other mandatory law) as may apply from time to time to the Company.

19.8 Circular resolution of Directors

If all the Directors entitled to receive notice of a meeting of the Directors and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution of the Directors in those terms is passed at the time when the last Director signs. If the Directors sign the documents on different days, then a resolution is treated as having been passed on the day on which the document was last signed by a Director thereby constituting a majority. A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier date. Two or more separate copies of a document may be used for signing by the directors if the wording of the resolution and statement is identical in each copy. A facsimile or electronic message containing the text of the document expressed to have been signed or agreed by a Director that is sent to the Company is deemed to be a document signed by that Director at the time of its receipt by the Company.

19.9 Deemed minute

The document or documents referred to in clauses 19.7 and 19.8 are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

19.10 Validity of acts of Directors

All acts done in respect of any meeting of:

- (a) the Directors;
- (b) a committee of Directors;
- (c) other persons or by any person acting as a Director; or
- (d) any person purporting to act as an attorney under power of the Company,

are, despite the fact that it may later be discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

20. Director's contracts with Company

20.1 Director's contracts and conflicts of interest

In relation to Director's contracts and conflicts of interest, but subject at all times to clause 5:

- (a) despite any rule of law or equity to the contrary, no Director is disqualified by that office from contracting with the Company;

- (b) any such contract, or any contract entered into by or on behalf of the Company in which any Director is in any way interested, is not avoided;
- (c) any Director so contracting or being so interested is not liable to account to the Company for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established;
- (d) the nature of the Director's interests must be disclosed by that Director at the meeting of the Directors at which the contract is decided on if that interest then exists and has not previously been disclosed. In any other case at the first meeting of the Directors after the acquisition of those interests; and
- (e) a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is interested if prohibited by the Acts from doing so. However, such Director may, despite that interest, participate in the execution of any instrument by or on behalf of the Company, whether through signing or sealing it or otherwise.

20.2 Notice of interest

A general notice given to the Directors by any Director in accordance with the Corporations Act and to the effect that he or she:

- (a) is an officer or a member of, or interested in, any specified firm or body corporate; and
- (b) is to be regarded as interested in all transactions with such firm or body,

is sufficient disclosure as required by the Corporations Act as regards such Director and those transactions. After such general notice it is not necessary for such Director to give any special notice relating to any transaction with such firm or body.

21. Powers and duties of Directors

21.1 Powers generally

Subject to the Acts and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Directors who may exercise all such powers of the Company and do all such acts or things not expressly required by this Constitution or by the Acts to be exercised or done by a general meeting. No clause adopted or resolution passed by a general meeting invalidates any prior act of the Directors which would have been valid if that clause or resolution had not been adopted or passed.

21.2 Borrowing

The Directors have the power to raise or borrow any sum of money and to secure the payment or repayment of such money and any other obligation or liability of the Company in such manner and on such terms as they think fit. This includes upon the security of any mortgage.

21.3 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be, in such manner as the Directors at any time determine.

21.4 Delegation

- (a) The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under the Constitution by the Directors for such time as they may think fit and to be exercised for such objects and purposes as they think expedient.
- (b) They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that respect.
- (c) They may at any time revoke, withdraw, alter or vary all or any of such powers.
- (d) Such powers may be granted by power of attorney or by any other lawful means.
- (e) Such powers may be granted upon such terms and with such restrictions as the Directors think appropriate.

21.5 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid.

22. Patron

22.1 Appointment

The Board may from time to time:

- (a) appoint Patrons to represent the Company and promote the Objects of the Company throughout the community for a term of one year from the date of appointment; and
- (b) determine the number of Patrons that may be appointed at any one time.

22.2 Rights

A Patron does not need to be a Member of the Company, but the Board may at any time, by Ordinary Resolution, determine the rights, obligations and restrictions of the Patrons, including being a Member of the Company.

22.3 Re-appointment and revocation

- (a) A Patron who has held membership for one year is eligible for re-appointment, in accordance with this Constitution and only with the mutual consent of the Patron and the Board.
- (b) The Board may, by Ordinary Resolution, vote to revoke a Patron's appointment at any time.

23. Committees

23.1 Delegation to committee

- (a) The Board may from time to time establish such committees as it sees fit to assist it in carrying out its functions.
- (b) The Directors may:
 - (i) delegate any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit; or
 - (ii) establish advisory committees (or other similar committees) not having delegated authority or powers.
- (c) At least one Director must be a member of any committee established by the Board.

23.2 Committee powers

- (a) The Directors may determine from time to time the functions, purpose and objectives of each committee.
- (b) Any committee so formed or persons appointed to those committees must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Directors.

23.3 Committee meetings

A chairperson must be nominated for any committee established and that chairperson must be a Director. The meetings and proceedings of any committee are to the extent possible, be conducted in accordance with the principles of meetings of Directors.

24. Minutes

The Board will cause minutes to be made:

- (a) of all appointments of statutory officers;
- (b) of names of Directors present at all meetings of the Company and of the Board; and
- (c) of all proceedings at all meetings of the Company and of the Board.

Such minutes must be signed by the Chairperson of the relevant meeting or the Chairperson of the next meeting of the relevant body.

25. Accounts and audit

25.1 Distribution of documents

The Board will cause proper accounting and other books of account to be kept and will distribute to the Members with the notice of the Annual General Meeting all accounts and other documents required by law to be so distributed in accordance with relevant legislation and the Board will table at each Annual General Meeting all accounts and other documents

required by law to be tabled. Accounts may be distributed by electronic mail or be made available on the Company's website.

25.2 Inspection

The Board will determine in accordance with this clause at what times and places, under what conditions or regulations the accounting and other records of the Company will be open to the inspection of Members of the Company and no Member (not being a Director) will have any right of inspecting any accounts or documents of the Company, except as conferred by law or authorised by the Board or by the Company in general meeting.

25.3 Audit

The Company must in accordance with the Acts and any State or Territory legislation applicable to registration of charities, or charitable fundraising arrange for the accounts to be audited in accordance with the Acts and the applicable State or Territory legislation.

26. Notices

26.1 Service of notices

Where this Constitution, the Acts or other legislation require or permit a document to be served on, given or sent any person, whether any such expression or any other expression is used (in this clause referred to as **served**), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by sending it, whether by post, contractor, agent, electronic means or otherwise, to:
 - (i) the address of the place of residence last notified and recorded by the Company as entered on the Register; or
 - (ii) the electronic email address of the Member as entered in the Register.

26.2 Date of deemed service

A document served under clause 25.1 is treated as having been duly served, regardless of whether it is actually received:

- (a) where delivered personally – on the day of delivery; and
- (b) where sent by post or electronic means - on the day following the day when dispatch occurred.

26.3 Signature

The signature to any document to be given by the Company may be written, printed or stamped personally or electronically.

27. Indemnity

27.1 Indemnity for officers

To the extent that the Acts allows it, each Director and Officer of the Company and each Director and Officer of a related body corporate of the Company, must be indemnified by the Company against any liability incurred by that person in that capacity.

27.2 Insurance premiums

- (a) The Company may at any time pay premiums in respect of a contract insuring a person (whether with others or not) who is a Director or Officer of the Company against a liability incurred by the person.
- (b) The liability insured against may not include that which the Acts prohibit.
- (c) Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration approved by Members under this Constitution.

28. Alteration of Constitution

This Constitution may only be amended, added to, or rescinded by a Special Resolution of the Company.