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Constitution of Victorian Person Centred Services Ltd (VISTA)

**A Public Company Limited by Guarantee
Corporations Act 2001**

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Part A – Common provisions of the Constitution

- A. In this Constitution, the **Reference Date** shall be the date as determined by the Members in the resolution amending this Constitution to include this clause A.
- B. Prior to the Reference Date, only the provisions set out in Part B will apply (to the exclusion of Part C).
- C. On and from the Reference Date, only the provisions set out in Part C will apply (to the exclusion of Part B).

Part B – Constitution prior to the Reference Date

1. Definitions and interpretation

1.1 Definitions

In this Constitution, unless expressed or implied to the contrary:

Board means the board of directors of the Company.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Chair means the Director who is elected to this office under clause 19.7.

Company means the company described in clause 2.

Constitution means this constitution, including any amendments.

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

Deputy Chair means the Director who is elected to this office under clause 19.7.

Disciplinary Appeal Meeting means a meeting of the Members convened under clause 9.5.3.

Disciplinary Meeting means a meeting of the Board convened for the purposes of clause 9.3.1(c).

Disciplinary Subcommittee means the subcommittee appointed under clause 9.2.

Directors means the members individually or collectively of the Board.

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in Australia; and
- (b) any statute, regulation, proclamation, ordinance or by-law in Australia.

Member means a person admitted to membership of the Company in accordance with this Constitution.

Purposes means the purposes of the Company set out in clause 3.

Register means the register of Members referred to in clause 7.5.

Registered Address means the address of a Member as shown in the Register.

Relevant Law means:

- (a) the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (b) the Australian Charities and Not-for-Profits Commission Regulations 2013 (Cth);
- (c) the *Charities Act 2013* (Cth);
- (d) the Corporations Act; and
- (e) a Ruling.

Ruling means any:

- (a) public or private ruling issued by the Australian Taxation Office; and
- (b) Commissioner's interpretation statement issued by the Australian Charities and Not-for-profits Commission.

Secretary means the secretary of the Company appointed under clause 22.

Special Resolution means, subject to any Relevant Law, a resolution:

- (a) of which notice has been in accordance with clause 13.1.1; and
- (b) that has been passed by at least 75% of the votes cast by Members present in person or by proxy and entitled to vote on the resolution.

1.2 **Application of the Corporations Act**

- 1.2.1 The replaceable rules of the Corporations Act do not apply to the Company.
- 1.2.2 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 in this Constitution, unless it is given a different meaning in this Constitution.

1.3 **Inconsistency with Relevant Law**

The Relevant Law prevails over any inconsistency with this Constitution.

1.4 **Interpretation**

In this Constitution, unless the context requires otherwise:

- 1.4.1 a person includes a firm, partnership or other unincorporated body, joint venture, association, corporation or other body corporate;
- 1.4.2 any legislation (including subordinate legislation) includes every amendment, re-enactment or replacement of the legislation and any subordinate legislation made under it;
- 1.4.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;

- 1.4.4 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body;
- 1.4.5 in general terms, a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;
- 1.4.6 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.4.7 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.4.8 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.4.9 the singular includes the plural and vice versa;
- 1.4.10 a gender includes every other gender;
- 1.4.11 the word **includes** in any form is not a word of limitation; and
- 1.4.12 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

2. Name

The name of the Company is Victorian Person Centred Services Ltd.

3. Purposes

- 3.1 The Company is established as a charitable organisation for the following principal purposes:
 - 3.1.1 to deliver high quality and innovative programs and services to meet the needs of people with disabilities or who experience other significant social and economic disadvantage; and
 - 3.1.2 to maximise the range of choices and opportunities to enrich the quality of the lives of the users of services.
- 3.2 To achieve its principal purposes, the Company may, without limitation:
 - 3.2.1 promote and foster co-operation and mutually beneficial activity and support among organisations undertaking activities related to the principal purposes of the Company;
 - 3.2.2 facilitate, undertake and publish research in disciplines concerned with the principal purposes of the Company;

- 3.2.3 foster community awareness of disability and other significant social and economic disadvantage;
- 3.2.4 advocate for the reduction and eventual elimination of factors contributing to social and economic disadvantage; and
- 3.2.5 engage in such other activities as may reasonably be expected to promote improved opportunities for people with disabilities or who experience other significant social and economic disadvantage.

4. Powers

- 4.1 Subject to the Corporations Act, the Company has power to do all things incidental or conducive to achieve its Purposes.
- 4.2 Without limiting clause 4.1, the Company may:
 - 4.2.1 acquire, hold and dispose of real or personal property;
 - 4.2.2 open and operate accounts with financial institutions;
 - 4.2.3 invest its money in any security in which trust monies may lawfully be invested;
 - 4.2.4 raise and borrow money on any terms and in any manner as it thinks fit;
 - 4.2.5 secure the repayment of money raised or borrowed, or the payment of a debt or liability;
 - 4.2.6 appoint agents to transact business on its behalf;
 - 4.2.7 enter into any other contract it considers necessary or desirable.
- 4.3 The Company may only exercise its powers and use its income and assets (including any surplus) for its purposes.

5. Financial year

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

6. Application of income and property

6.1 Promotion of Purposes

- 6.1.1 The Company must apply all of its income and property solely towards the furtherance and promotion of the Purposes.

- 6.1.2 Except as provided in clause 6.2, the Company not pay or transfer directly or indirectly any surplus, income or assets to any of the Members (in their capacity as Members) or Directors.

6.2 Payments in good faith

- 6.2.1 Clause 6.1 does not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:

- (a) of remuneration for services to the Company, including services as a Director or services on a Board committee;
- (b) of reimbursement for expenses properly incurred on behalf of or for the purposes of the Company;
- (c) for goods supplied to the Company in the ordinary course of business;
- (d) of interest on money borrowed by the Company and rent for premises let to the Company, where:
 - (i) the interest or rent of the service has the prior approval of the Board; and
 - (ii) the amount payable is not more than an amount which commercially would be reasonably paid,

provided that any such payment to a Director must comply with clause 6.2.2.

- 6.2.2 The Company must not make any payment to a Director for services rendered by that Director to the Company, including services as a Director, unless:

- (a) the provision of those services has the prior consent of the Board;
- (b) the amount payable is on reasonable commercial terms; and
- (c) the payment has the prior approval of the Board.

- 6.2.3 The total of payments made to Directors under this clause 6.2 must be disclosed to the Members at the annual general meeting.

- 6.2.4 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by a Relevant Law and this Constitution.

7. Membership

7.1 General

- 7.1.1 The Company must have at least 5 Members.

- 7.1.2 The following persons are Members:

- (a) the individuals who are Members as at the date of adoption of this Constitution; and
- (b) any other individual the Board admits to membership in accordance with this Constitution.

7.1.3 The Company has the following categories of Members:

- (a) General Members; and
- (b) Life Members, for individuals who, due to their record of service to the Company and their support of the Purposes and this Constitution, the Board considers merit membership of this category.

7.1.4 The Company may at any time determine other categories of membership of the Company.

7.2 Applying for membership

7.2.1 To apply to become a General Member, a person must submit a written application to the Board stating that the person:

- (a) wishes to become a Member; and
- (b) supports the purposes of the Company; and
- (c) agrees to comply with this Constitution.

7.2.2 The application must be:

- (a) signed by the applicant; and
- (b) accompanied by the joining fee (if any).

7.3 Consideration of application

7.3.1 As soon as practicable after an application for membership is received, the Board must decide by resolution whether to accept or reject the application.

7.3.2 The Board must notify the applicant in writing of its decision as soon as practicable after the decision is made.

7.3.3 If the Board rejects the application, it must return any money accompanying the application to the applicant.

7.3.4 No reason need be given for the rejection of an application.

7.4 New membership

7.4.1 If the Board approves an application for membership:

- (a) the resolution to accept the membership must be recorded in the Board minutes; and

- (b) the Secretary must, as soon as practicable, enter in the Register the name and address of the new Member and the date of becoming a Member.

7.4.2 A person becomes a Member and, subject to clause 7.6.2, is entitled to exercise his or her rights of membership from the date on which the Board approves the person's membership.

7.5 Register

7.5.1 The Secretary must keep and maintain a register containing:

- (a) for each current Member:
 - (i) the name of each Member;
 - (ii) the address for notices last given by the Member;
 - (iii) the date of becoming a Member;
 - (iv) the category of membership; and
- (b) in the case of each former Member, the date of ceasing to be a Member.

7.5.2 Any dispute that arises in relation to the Register must be referred to the Board, whose decision will be final and binding on all Members.

7.6 Member's rights generally

7.6.1 A Member who is entitled to vote has the right:

- (a) to receive notice of general meetings and of proposed Special Resolutions in the manner and time prescribed by this Constitution;
- (b) to submit items of business for consideration at a general meeting;
- (c) to attend and be heard at general meetings;
- (d) to vote at a general meeting; and
- (e) to have access to the minutes of general meetings and other documents of the Company as provided under clause 28; and
- (f) to inspect the Register at a reasonable time and free of charge.

7.6.2 A Member is entitled to vote if:

- (a) more than 10 business days have passed since he or she became a Member;
and
- (b) the Member's membership rights are not suspended for any reason.

7.7 Not transferrable

Membership is not transferrable.

8. Cessation of Membership

A Member will cease to be a Member if they:

- 8.1 resign in writing to the Company;
- 8.2 die;
- 8.3 are expelled in accordance with clause 8.4; or
- 8.4 become, as determined by the Board in its absolute discretion, an untraceable Member because they have ceased to be located at, attend or otherwise communicate with their registered address.

9. Disciplinary action

9.1 Grounds for taking disciplinary action

The Company may take disciplinary action against a Member in accordance with this clause if it is determined that the Member:

- 9.1.1 has failed to comply with this Constitution;
- 9.1.2 refuses to support the Purposes; or
- 9.1.3 has engaged in conduct prejudicial to the Company.

9.2 Disciplinary subcommittee

9.2.1 If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a Member, the Board must appoint a Disciplinary Subcommittee to hear the matter and determine what action, if any, to take against the Member.

9.2.2 The members of the Disciplinary Subcommittee:

- (a) may be Directors, Members or anyone else; but
- (b) must not be biased against, or in favour of, the Member concerned.

9.2.3 The Disciplinary Subcommittee must act impartially and neutrally when hearing the matter and determining action, if any, to be taken against the Member.

9.3 Notice to Member

9.3.1 Before disciplinary action is taken against a Member, the Secretary must give written notice to the Member:

- (a) stating that the Company proposes to take disciplinary action against the Member;
- (b) stating the grounds for the proposed disciplinary action;
- (c) specifying the date, place and time of the meeting at which the Disciplinary Subcommittee intends to consider the disciplinary action (the **Disciplinary Meeting**);
- (d) advising the Member that he or she may do one or both of the following:
 - (i) attend the Disciplinary Meeting and address the Disciplinary Subcommittee at that meeting;
 - (ii) give a written statement to the Disciplinary Subcommittee at any time before the Disciplinary Meeting; and
- (e) setting out the Member's appeal rights under clause 9.5.

9.3.2 The notice must be given no earlier than 28 days, and no later than 14 days, before the Disciplinary Meeting is held.

9.4 **Decision of subcommittee**

9.4.1 At the Disciplinary Meeting, the Disciplinary Subcommittee must:

- (a) give the Member an opportunity to be heard; and
- (b) consider any written statement submitted by the Member.

9.4.2 After complying with clause 9.4.1 the Disciplinary Subcommittee may:

- (a) take no further action against the Member; or
- (b) subject to clause 9.4.3:
 - (i) reprimand the Member;
 - (ii) suspend the membership rights of the Member for a specified period; or
 - (iii) expel the Member from the Company.

9.4.3 The Disciplinary Subcommittee may not fine the Member.

9.4.4 The suspension of membership rights or the expulsion of a Member by the Disciplinary Subcommittee under this clause takes effect immediately after the vote is passed.

9.5 **Appeal rights**

9.5.1 A person whose membership rights have been suspended or who has been expelled from the Company under clause 9.4.2 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.

9.5.2 The notice must be in writing and given:

- (a) to the Disciplinary Subcommittee immediately after the vote to suspend or expel the person is taken; or
- (b) to the Secretary not later than 48 hours after the vote.

9.5.3 If a person has given notice under clause 9.5.2, a Disciplinary Appeal Meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.

9.5.4 Notice of the Disciplinary Appeal Meeting must be given to each Member who is entitled to vote as soon as practicable and must:

- (a) specify the date, time and place of the meeting; and
- (b) state:
 - (i) the name of the person against whom the disciplinary action has been taken; and
 - (ii) the grounds for taking that action; and
 - (iii) that at the Disciplinary Appeal Meeting the Members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.

9.6 **Conduct of Disciplinary Appeal Meeting**

9.6.1 At a Disciplinary Appeal Meeting:

- (a) no business other than the question of the appeal may be conducted; and
- (b) the Board must state the grounds for suspending or expelling the Member and the reasons for taking that action; and
- (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.

9.6.2 After complying with clause 9.6.1, the Members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.

9.6.3 A Member may not vote by proxy at the meeting.

9.6.4 The decision is upheld if not less than three quarters of the Members voting at the meeting vote in favour of the decision.

10. Grievance procedure

10.1 Application

- 10.1.1 The grievance procedure set out in this clause applies to disputes under this Constitution between:
- (a) a Member and another Member;
 - (b) a Member and the Board;
 - (c) a Member and the Company.
- 10.1.2 A Member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

10.2 Parties must attempt to resolve the dispute

The parties to a dispute must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

10.3 Appointment of mediator

- 10.3.1 If the parties to a dispute are unable to resolve the dispute between themselves within the time required by clause 10.2, the parties must within 10 days:
- (a) notify the Board of the dispute;
 - (b) agree to or request the appointment of a mediator; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 10.3.2 The mediator must be:
- (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement:
 - (i) if the dispute is between a Member and another Member - a person appointed by the Board; or
 - (ii) if the dispute is between a Member and the Board or the Company - a person appointed or employed by the Dispute Settlement Centre of Victoria.
- 10.3.3 A mediator appointed by the Board may be a Member or former Member but in any case must not be a person who:
- (a) has a personal interest in the dispute; or
 - (b) is biased in favour of or against any party.

10.4 Mediation process

10.4.1 The mediator to the dispute, in conducting the mediation, must:

- (a) give each party every opportunity to be heard; and
- (b) allow due consideration by all parties of any written statement submitted by any party; and
- (c) ensure that natural justice is accorded to the parties throughout the mediation process.

10.4.2 The mediator must not determine the dispute.

10.5 Failure to resolve dispute by mediation

If the mediation process does not resolve the dispute, the parties may seek to resolve the dispute in accordance with the Corporations Act or otherwise at Law.

11. Fees

11.1 The Board may from time to time determine a joining fee payable for admission to membership and may vary and waive that fee.

11.2 Except for a joining fee, there are no subscriptions or other amounts to be paid in respect of membership of the Company.

12. General meetings

12.1 Annual general meeting

12.1.1 The Company must hold an annual general meeting within 5 months after the end of the Financial Year.

12.1.2 The Board may determine the date, time and place of the annual general meeting.

12.1.3 The ordinary business of the annual general meeting is as follows:

- (a) to confirm the minutes of the previous annual general meeting and of any special general meeting held since then;
- (b) to receive and consider:
 - (i) the annual report of the Board on the activities of the Company during the preceding Financial Year; and
 - (ii) the financial statements of the Company for the preceding Financial Year submitted by the Board in accordance with the Corporations Act; and
- (c) to elect the Directors.

- 12.1.4 The annual general meeting may also conduct any other business of which notice has been given in accordance with this Constitution.

12.2 Special general meetings

- 12.2.1 Any general meeting of the Company, other than an annual general meeting or a Disciplinary Appeal Meeting, is a special general meeting.
- 12.2.2 The Board may convene a special general meeting whenever it thinks fit.
- 12.2.3 No business other than that set out in the notice under clause 13 may be conducted at the meeting.

12.3 Special general meeting held at request of Members

- 12.3.1 The Board must convene a special general meeting if a request to do so is made in accordance with clause 12.3.2 by at least 25% of the total number of Members.
- 12.3.2 A request for a special general meeting must:
- (a) be in writing;
 - (b) state the business to be considered at the meeting and any resolutions to be proposed;
 - (c) include the names and signatures of the Members requesting the meeting; and
 - (d) be given to the Secretary.
- 12.3.3 If the Board does not convene a special general meeting within one month after the date on which the request is made, the Members making the request (or any of them) may convene the special general meeting.
- 12.3.4 A special general meeting convened by Members under clause 12.3.3:
- (a) must be held within 3 months after the date on which the original request was made; and
 - (b) may only consider the business stated in that request.
- 12.3.5 The Company must reimburse all reasonable expenses incurred by the Members convening a special general meeting under clause 12.3.3.

13. Notice of general meetings

- 13.1 The Secretary (or, in the case of a special general meeting convened under clause 12.3.3, the Members convening the meeting) must give to each Member:
- 13.1.1 at least 21 days' notice of a general meeting if a Special Resolution is to be proposed at the meeting; or

- 13.1.2 at least 14 days' notice of a general meeting in any other case.
- 13.2 The notice of a general meeting must specify the following information:
 - 13.2.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - 13.2.2 the general nature of the meeting's business;
 - 13.2.3 if applicable, a statement that a Special Resolution is to be proposed and the words of the proposed resolution;
 - 13.2.4 a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - (a) the proxy must be a Member;
 - (b) 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
 - (c) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 13.3 The accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.
- 13.4 A person's attendance at a general meeting waives any objection that the person may have to:
 - 13.4.1 a failure to give notice, to the giving of a defective notice, of a general meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
 - 13.4.2 the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.
- 13.5 This clause 13 does not apply to a Disciplinary Appeal Meeting.

14. Proceedings at general meetings

14.1 Quorum

- 14.1.1 No business may be transacted at a general meeting, except the adjournment of the meeting, unless a quorum is present.
- 14.1.2 A quorum for general meetings is 5 Members entitled to vote present in person or by proxy.
- 14.1.3 If a quorum is not present within 30 minutes from the time appointed for a general meeting:

- (a) if convened on the requisition of Members, the meeting will be dissolved; and
- (b) in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned meeting a quorum is not present within 30 minutes from the time appointed for holding the meeting, the Members present will be a quorum.

14.2 Chairperson

- 14.2.1 The Chair, or in their absence, the Deputy Chair, will be the chairperson at every general meeting.
- 14.2.2 If at any general meeting neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for holding the meeting or if neither is willing to preside, the Members present will choose a Director to preside. If no Director is present or if all Directors present decline to preside, then those Members present will choose a Member who is present to preside as chairperson.
- 14.2.3 At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson of the meeting and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- 14.2.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

14.3 General conduct of proceedings

- 14.3.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for deciding the procedures to be adopted at the meeting.
- 14.3.2 In particular, the chairperson of a general meeting may:
 - (a) require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion or for the proper and orderly casting or recording of votes at the meeting; and
 - (b) terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- 14.3.3 A decision of the chairperson on any matter under clause 14.3.2 is final.
- 14.3.4 Subject to clause 14.3.2, the chairperson of an annual general meeting must 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.

14.4 Adjournment

- 14.4.1 The chairperson of a general meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by a vote at

any meeting at which a quorum is present, adjourn the meeting to another time or place (or both).

- 14.4.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a general meeting.
- 14.4.3 Where a general meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.
- 14.4.4 A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.

14.5 **Show of hands**

Every item of business submitted to a general meeting will be decided in the first instance by a show of hands. Those entitled to vote on a show of hands are the Members present in person or by proxy. The chairperson will not have a casting vote if a vote on a show of hands is tied.

14.6 **Poll**

- 14.6.1 The chairperson or any Member present personally or by proxy may demand a poll before or on the declaration of the result of a show of hands.
- 14.6.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 14.6.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.6.4 The demand for a poll may be withdrawn.
- 14.6.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.
- 14.6.6 The chairperson will have a casting vote in addition to any deliberative vote they may have if the vote is tied.

14.7 **Demand for poll**

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

15. **Special Resolutions**

A Special Resolution is passed if not less than three quarters of the Members voting in person or by proxy at a general meeting vote in favour of the resolution.

15.1 **Evidence of resolution**

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the

resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

15.2 Meetings conducted by electronic means

- 15.2.1 All provisions of this Constitution relating to general meetings apply, as far as they can and with any necessary changes, to general meetings by telephone or other electronic means.
- 15.2.2 The Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 15.2.3 A Member who participates in a general meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 15.2.4 A general meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Members involved was at the place for the duration of the meeting.

16. Minutes of general meeting

- 16.1 The Board must ensure that minutes are taken and kept of each general meeting.
- 16.2 The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 16.3 The minutes of each annual general meeting must include:
 - 16.3.1 the names of the Members and any other person attending the meeting;
 - 16.3.2 any proxy forms;
 - 16.3.3 a copy of the financial statements submitted to the Members;
 - 16.3.4 a copy of the certificate signed by two Directors certifying that the financial statements give a true and fair view of the financial position and performance of the Company; and
 - 16.3.5 a copy of any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Corporations Act.

17. Proxy

17.1 General

Any Member may appoint a natural person who is a Member as their proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.

17.2 Instrument appointing proxy

- 17.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at the place, fax number or electronic address specified for such purpose in the notice of meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.
- 17.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.
- 17.2.3 An appointment of a proxy may be a standing one.

17.3 Form of proxy

An instrument appointing a proxy must contain the following information:

- 17.3.1 the Member's name and address;
- 17.3.2 the Company name;
- 17.3.3 the type of Membership held by the Member;
- 17.3.4 the proxy's name or the name of the office held by the proxy; and
- 17.3.5 the meetings at which the appointment may be used,
- and be signed by the appointor.

17.4 Voting instructions

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

17.5 Authority

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

18. Attorneys

The Directors may, by power of attorney and pursuant to the Corporations Act, appoint any person to be an attorney or attorneys of the Company. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as the Directors think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and

may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

19. Board

19.1 Composition of the Board

19.1.1 There must be at least 5 and not more than 9 Directors consisting of the following:

- (a) no more than 6 Directors elected under clause 19.4 (**Elected Directors**); and
- (b) no more than 3 Directors appointed under clause 19.5 (**Appointed Directors**).

19.1.2 The Company may by resolution increase the maximum number and type of Directors for the purpose of clause 19.1. However, the maximum must not be more than 11.

19.2 General eligibility

Each candidate for election or appointment as Director must:

- 19.2.1 be a Member;
- 19.2.2 be eligible under the Relevant Law to be a Director;
- 19.2.3 give their prior written consent to be a Director;
- 19.2.4 not have been employed by the Company or The Tipping Foundation Ltd, a company limited by guarantee, within 3 years prior to election or appointment; and
- 19.2.5 not be a current recipient of services from the Company.

19.3 Term

19.3.1 Elected Directors will hold office for a term of approximately 3 years commencing at the end of the annual general meeting at which they were elected and expiring at the end of the third annual general meeting after their election, at which time they will retire.

19.3.2 Subject to clauses 19.2 (general eligibility) and 19.3.3 (maximum terms), a retiring Director will be eligible for re-appointment.

19.3.3 No Director may serve more than 3 consecutive terms without a break of at least 3 years measured:

- (a) in the case of an Elected Director, as the period between 6 consecutive annual general meetings; and
- (b) in the case of an Appointed Director, 3 years from the date of retirement.

Any time served as a Director appointed to a casual vacancy under clause 19.6 is not counted for the purposes of this clause

19.4 **Election of Directors**

The election of Directors will take place in the following manner:

- 19.4.1 Any 2 Members may nominate any Member who meets the general criteria under clause 19.2 to serve as an Elected Director. The nomination must be in writing and signed by the nominated person and their proposer and seconder. The nomination must be lodged with the Secretary at least 30 days before the annual general meeting at which the election is to take place.
- 19.4.2 If there are more candidates nominated than there are vacancies for Elected Director positions, balloting lists will be prepared containing the names of the candidates in an order determined by lot. The Board may determine the method of the ballot. Each Member is entitled to vote for any number of candidates not exceeding the number of vacancies.
- 19.4.3 If there are no more candidates nominated for Elected Director positions than there are vacancies, the chairperson of the annual general meeting will declare those candidates elected as Elected Directors.
- 19.4.4 If there is not a sufficient number of candidates nominated to meet the required minimum number of Directors, the Board must appoint a person who meets the general criteria under clause 19.2 as an Elected Director, so that the Board consists of at least the minimum number of Directors.

19.5 **Appointment of Directors**

- 19.5.1 The Board may by resolution appoint as an Appointed Director an individual who:
 - (a) meets the general criteria under clause 19.2; and
 - (b) has skills and experience beneficial to the Company,for a term not exceeding 3 years, at the end of which time they will retire.
- 19.5.2 The Board may not appoint more Directors under this clause 19.5 than there are vacancies for Appointed Directors.

19.6 **Casual vacancies**

- 19.6.1 The Board may appoint a replacement Director to fill a casual vacancy in the office of an Elected Director.
- 19.6.2 Any Director so appointed will retire at the end of the next annual general meeting but subject to clause 19.2, will be eligible for election.

19.7 **Officers on the Board**

At the first meeting of the Board after each annual general meeting, the Directors will elect from among their number a Chair and Deputy Chair, each of whom will hold office until the end of the next annual general meeting but who will be eligible for re-election.

19.8 Vacation of office of Director

The office of a Director will be vacated if:

- 19.8.1 the Director becomes bankrupt or makes any arrangement or composition with his or her creditors;
- 19.8.2 the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- 19.8.3 if the Director ceases to be a Member or becomes an employee of the Company or The Tipping Foundation Ltd, a public company limited by guarantee;
- 19.8.4 without leave of the Board the Director is absent from meetings of the Board for 3 consecutive meetings, unless the Board makes a resolution to the contrary;
- 19.8.5 by notice in writing to the Company the Director resigns from office;
- 19.8.6 the Director becomes ineligible to be a director under a Relevant Law; or
- 19.8.7 the Director ceases to hold office by reason of any order made under a Relevant Law.

20. Powers of the Board

The Board is responsible for managing the business of the Company. The Board may exercise all the powers of the Company's power what are not required by the Corporations Act or this Constitution to be exercised by the Company in a general meeting.

21. Proceedings of the Board

21.1 General

- 21.1.1 The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 21.1.2 The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to a meeting of the Board by telephone or other electronic means.
- 21.1.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present at the meeting.
- 21.1.4 A meeting by telephone or other electronic means is taken as held at the place determined by the Chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

21.2 Convening and notice of Board meetings

- 21.2.1 The Board must meet at least 4 times a year.
- 21.2.2 The Chair may convene a meeting of the Board whenever he or she thinks fit.
- 21.2.3 The Secretary must, on the request of at least 2 Directors, convene a meeting of the Board.
- 21.2.4 Not less than 7 days' notice of a Board meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Board. Shorter notice may be given if agreed by the majority of Directors.
- 21.2.5 Notice of a Board meeting:
 - (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting; and
 - (c) may be given in person or by post, telephone, fax or other electronic means.
- 21.2.6 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.
- 21.2.7 A Director's attendance at a Board meeting waives any objection that Director may have to a failure to be given notice of the meeting.

21.3 Quorum

- 21.3.1 No business may be transacted at a Board meeting unless a quorum is present at the time the business is considered.
- 21.3.2 A quorum for meetings of the Board is half of the Directors, or if the number of Directors is not a multiple of 2, then the number nearest to and greater than half of the Directors.
- 21.3.3 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:
 - (a) must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and
 - (b) until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

21.4 Chair and voting

- 21.4.1 The Chair will be the chairperson of the Board meetings.
- 21.4.2 If the Chair is not present at any Board meeting within 10 minutes after the time appointed for the meeting to begin or is present but is unwilling to act, the Deputy Chair will be the chairperson of the meeting.

- 21.4.3 If the Deputy Chair is not present at the meeting within 10 minutes after the time appointed for the meeting to begin or is present but is unwilling to act, the Directors present must elect a Director to be chairperson of the meeting.
- 21.4.4 Questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.
- 21.4.5 The chairperson of a Board meeting will have a casting vote in addition to any deliberative vote.

21.5 Circular resolutions of the Board

- 21.5.1 The Directors may pass a circular resolution without a Board meeting being held.
- 21.5.2 A circular resolution is passed if a majority of the Directors (other than a Director on leave of absence approved by the Directors) entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clauses 21.5.3 or 21.5.4.
- 21.5.3 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.
- 21.5.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 21.5.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clauses 21.5.3 or 21.5.4.

21.6 Delegation by the Board

- 21.6.1 The Board may delegate any of its powers to:
 - (a) individual Directors;
 - (b) employees;
 - (c) Members;
 - (d) any other person, including as attorney or agent; or
 - (e) committees consisting of such Directors, Members, employees or such other individuals as the Board thinks fit.
- 21.6.2 Any such delegations must be specified in writing and maintained in a register of delegated authorities.
- 21.6.3 The delegate must exercise the powers delegated in accordance with any directions of the Board.

21.6.4 The exercise of a power by a delegate is as effective as if the Board had exercised it.

21.6.5 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

21.7 Validity of acts

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director is valid despite:

21.7.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee;

21.7.2 the disqualification of any of them; or

21.7.3 the person not being entitled to vote.

22. Secretary

22.1 The Board will appoint the Secretary and may at any time suspend or remove a person from that office.

22.2 The Secretary holds office on such terms and conditions (including as to remuneration) and with the powers, duties, functions and authorities:

22.2.1 required under the Corporations Act to be performed by the Secretary of an incorporated association;

22.2.2 imposed on the Secretary by this Constitution; and

22.2.3 as otherwise as determined by the Directors.

22.3 The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.

23. Minutes of Board and committee meetings

23.1 The Board must cause proper minutes to be made of the proceedings and resolutions of all meetings of the Board and committees formed by the Board;

23.2 The minutes must record the following:

23.2.1 the names of the Directors and any other person attending the meeting;

23.2.2 the business considered at the meeting;

23.2.3 any resolution on which a vote is taken and the result of the vote; and

23.2.4 any material personal interest disclosed by a Director.

23.3 The minutes to be signed within a reasonable time by the chairperson of the meeting or by the chairperson of the next meeting the minutes to be entered in books kept for that purpose.

23.4 A minute that is recorded and signed in accordance with clause 23.3 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

24. Source of funds

The funds of the Company may be derived from joining fees, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

25. Management of funds

25.1 The Board is responsible for financial management of the Company including:

25.1.1 decisions on any delegations of power under clause 21.6;

25.1.2 decisions on how money will be managed; and

25.1.3 the maintenance of adequate and accurate accounts records of its financial transactions.

25.2 All payments by the Company including electronic transfers, cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, must be:

25.2.1 specifically authorised in writing; and

25.2.2 in the case of cheques, signed,

by at least 2 persons delegated by the Board under clause 21.6.

25.3 All money received by or on behalf of the Company must be deposited without delay into a bank account in the Company's name.

26. Financial records

26.1 The Company must keep financial records that:

26.1.1 correctly record and explain its transactions, financial position and performance; and

26.1.2 enable financial statements to be prepared as required by the Corporations Act.

26.2 The Company must retain the financial records for 7 years after the transactions covered by the records are completed.

26.3 The chief executive officer of the Company must keep in his or her custody or under his or her control:

26.3.1 the financial records for the current Financial Year; and

26.3.2 any other financial records as authorised by the Board.

27. Financial statements

For each Financial Year, the Board must ensure that the requirements under the Corporations Act relating to the financial statements of the Company are met, including.

27.1 the preparation of the financial statements;

27.2 if required, the review or auditing of the financial statements;

27.3 the certification of the financial statements by the Board;

27.4 the submission of the financial statements to the annual general meeting of the Company;

27.5 the lodgement with the Registrar of the financial statements and accompanying reports, certificates, statements and fee.

28. Custody and inspection of books and records

28.1 Members may on request inspect free of charge:

28.1.1 the Register;

28.1.2 the minutes of general meetings;

28.1.3 subject to clause 28.2, the financial records, books, securities and any other relevant document of the Company, including minutes of Board meetings.

Note: See note following clause 7.6.1 for details of access to the Register.

28.2 The Board may refuse to permit a Member to inspect records of the Company that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Company.

28.3 The Board must on request make copies of this Constitution available to Members and applicants for Membership free of charge.

28.4 Subject to clause 28.2, a Member may make a copy of any of the other records of the Company referred to in this clause and the Company may charge a reasonable fee for provision of a copy of such a record.

28.5 For purposes of this clause:

relevant documents means the records and other documents, however compiled, recorded or stored, that relate to the incorporation and management of the Company and includes the following:

- (a) its Membership records;
- (b) its financial statements;
- (c) its financial records; and
- (d) records and documents relating to transactions, dealings, business or property of the Company.

29. Auditor

The Company will observe the provisions of the Relevant Laws in relation to the appointment, removal and resignation of an auditor.

30. Registered address

The registered address of the Company is the address of the principal office of the Company unless the Board determines otherwise by resolution.

31. Common seal

31.1 The Company may have a common seal.

31.2 If the Company has a common seal:

31.2.1 the name of the Company must appear in legible characters on the common seal;

31.2.2 a document may only be sealed with the common seal by the authority of the Board and the sealing must be witnessed by the signatures of two Directors;

31.2.3 the common seal must be kept in the custody of the Secretary.

32. Amendments to this Constitution

32.1 The Company may vary, amend or repeal this Constitution by passing a Special Resolution.

32.2 The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company no longer to be a charity

Note: An alteration of this Constitution does not take effect unless or until it is approved by the Registrar.

33. Indemnity

33.1 For the purposes of this clause 33:

Indemnified Loss means, in relation to any fact, matter or circumstance:

- (a) all Loss arising out of or in connection with that fact, matter or circumstance; and
- (b) all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

Loss means damage, liability, action, loss, charge, cost or expense.

Officer means:

- (a) a Director;
- (b) a Secretary; or
- (c) any other officer of the Company, and includes former officers, but does not include any auditor or agent of the Company.

33.2 Subject to clause 33.3, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Loss of the Officer as a result of or in connection with that person's role as an Officer.

33.3 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.

33.4 The obligation of the Company in clause 33.2:

- 33.4.1 is enforceable without the Officer having to first incur any expense or make any payment;
- 33.4.2 is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the Company;
- 33.4.3 applies to Loss incurred both before and after the date of the adoption of this Constitution; and
- 33.4.4 does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.

33.5 The obligation of the Company in clauses 33.2 - 33.4 will not apply to the extent that:

- 33.5.1 the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;
- 33.5.2 an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or

- 33.5.3 the Company is not allowed by Law to make a payment for legal costs.
- 33.6 To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.
- 33.7 The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 33.
- 33.8 The Company may agree to provide continuing access for a specified period after a person ceases to be an Officer to board papers, books, records or documents of the Company and any relevant related bodies corporate which relate to the period during which the person was an Officer.

34. By-laws

- 34.1 The Board may by resolution make, revoke and amend by-laws to give effect to this Constitution.
- 34.2 Members must comply with the by-laws as if they were part of this Constitution.

35. Notices

- 35.1 A notice required by this Constitution must be in writing and may be delivered:
- 35.1.1 personally;
 - 35.1.2 by leaving it at the person's address in the Register;
 - 35.1.3 by posting it by prepaid post addressed to that person at the person's address for service;
 - 35.1.4 by facsimile to the person's facsimile number; or
 - 35.1.5 by electronic mail to the person's email address.
- 35.2 If the person receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.
- 35.3 A person may change their address, facsimile number or email address by giving notice to the Company
- 35.4 A notice sent by post or courier is taken to be served:
- 35.4.1 by properly addressing, prepaying and posting or directing the delivery of the notice; and
 - 35.4.2 on the day after the day on which it was posted or given to the courier for delivery.
- 35.5 A notice sent by facsimile transmission or electronic notification is taken to be delivered

- 35.5.1 if delivered personally or left at the person's address, upon delivery;
- 35.5.2 if posted within Australia to an Australian address, on the second day after posting that is not a Business Day and in any other case, the fifth day after posting that is not a Business Day;
- 35.5.3 if delivered by facsimile, subject to clause 35.5.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 35.5.4 if delivered by electronic mail, subject to clause 35.5.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
- 35.5.5 if received after 5.00pm in the place it is received or on a day which is not a Business Day in the place it is received, at 9.00am on the next business day.

36. Distribution of property on winding-up

- 36.1 If the Company is wound up and the assets of the Company are more than sufficient:
 - 36.1.1 to pay all of the debts and liabilities of the Company; and
 - 36.1.2 the costs, charges and expenses of the winding up,the surplus assets must not be distributed to a Member or former Member.
- 36.2 Instead, the surplus assets must be distributed to one or more charities:
 - 36.2.1 with charitable purpose(s) similar to, or inclusive of, the Purposes; and
 - 36.2.2 which prohibits the distribution of its assets to its members to at least the same extent as this Constitution.
- 36.3 If the Company is endorsed as a deductible gift recipient under subdivision 30BA of the *Income Tax Assessment Act 1997* (Cth) at the time it is wound up, then in addition to the requirements under clause 36.2, the charity or charities to which the surplus assets are distributed must also be endorsed as a deductible gift recipient at the time the distribution is made.
- 36.4 The charity or charities to be given the surplus assets must be determined:
 - 36.4.1 by a special resolution of the Members at or before the time of winding up; or
 - 36.4.2 if no such special resolution is passed, by a Judge of the Supreme Court or such other court of competent jurisdiction.

Part C – Constitution on and from the Reference Date

Preamble

Victorian Person Centred Services Ltd (ABN 64 762 103 425) (**Vista**) and its associated entities, The Tipping Foundation Ltd (ACN 152 848 505) (**Tipping**) and House with No Steps (ACN 001 813 403) through their separate, but related activities, seek to enhance the lives of people with disabilities, furthering the initiatives of their founders.

Each member of House with No Steps is central to the activities of all three organisations and is empowered under the Constitution of House with No Steps and in turn this Constitution and the Constitution of Tipping to control the composition of the Boards of all three organisations and hold those Boards to account for fulfilling the aligned objects of the group.

1. Definitions and interpretation

1.1 Definitions

In this Constitution, unless expressed or implied to the contrary:

ASIC means the Australian Securities and Investments Commission.

Board means the board of directors of the Company.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Chair means the Director who is elected to this office under clause 19.7.

Company means the company described in clause 2.

Constitution means this constitution, including any amendments.

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

Deputy Chair means the Director who is elected to this office under clause 19.7.

Directors means the members individually or collectively of the Board.

HWNS means House with No Steps being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 001 813 403.

HWNS Director means a director of HWNS.

Law includes:

- (a) any law, regulation, authorisation, ruling, judgment, order or decree of any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in Australia; and
- (b) any statute, regulation, proclamation, ordinance or by-law in Australia.

Member means a person admitted to membership of the Company in accordance with this Constitution.

Purposes means the purposes of the Company set out in clause 3.

Register means the register of Members referred to in clause 7.5.

Registered Address means the address of a Member as shown in the Register.

Relevant Law means:

- (a) the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (b) the Australian Charities and Not-for-Profits Commission Regulations 2013 (Cth);
- (c) the *Charities Act 2013* (Cth);
- (d) the Corporations Act; and
- (e) a Ruling.

Representative means a body corporate representative under section 250D of the Corporations Act.

Ruling means any:

- (a) class order or regulatory guide issued by the ASIC;
- (b) public or private ruling issued by the Australian Taxation Office; and
- (c) Commissioner's interpretation statement issued by the Australian Charities and Not-for-profits Commission.

Special Resolution means, subject to any Relevant Law, a resolution:

- (a) of which notice has been in accordance with clause 10.1; and
- (b) that has been passed by at least 75% of the votes cast by Members present in person or by proxy and entitled to vote on the resolution.

1.2 **Application of the Corporations Act**

1.2.1 The replaceable rules of the Corporations Act do not apply to the Company.

1.2.2 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 in this Constitution, unless it is given a different meaning in this Constitution.

1.3 **Inconsistency with Relevant Law**

The Relevant Law prevails over any inconsistency with this Constitution.

1.4 Interpretation

In this Constitution, unless the context requires otherwise:

- 1.4.1 a person includes a firm, partnership or other unincorporated body, joint venture, association, corporation or other body corporate;
- 1.4.2 any legislation (including subordinate legislation) includes every amendment, re-enactment or replacement of the legislation and any subordinate legislation made under it;
- 1.4.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.4.4 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body;
- 1.4.5 in general terms, a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;
- 1.4.6 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.4.7 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 1.4.8 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.4.9 the singular includes the plural and vice versa;
- 1.4.10 a gender includes every other gender;
- 1.4.11 the word **includes** in any form is not a word of limitation; and
- 1.4.12 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

2. Name

The name of the Company is Victorian Person Centred Services Ltd.

3. Purposes

- 3.1 The Company is established as a charitable organisation for the following principal purposes:

- 3.1.1 to enhance the lives of people with disabilities or who experience other significant social and economic disadvantage; and
 - 3.1.2 to provide opportunities and assistance for people with disabilities or other needs by reason of disadvantage through the provision of accommodation, employment and other appropriate support services, to enrich their quality of life.
- 3.2 To achieve its principal purposes, the Company may, without limitation:
 - 3.2.1 promote and foster co-operation and mutually beneficial activity and support among organisations undertaking activities related to the principal purposes of the Company; and
 - 3.2.2 do all other lawful things as are incidental or ancillary to the attainment of these objects or any of them or which may be calculated to advance directly or indirectly the interests of the Company.

4. Powers

Subject to this Constitution and solely for carrying out the Purposes, the Company has the legal capacity and powers of an individual and all the powers of a body corporate under the Corporations Act other than the power to issue shares.

5. Member liability and guarantee

- 5.1 The liability of each Member is limited to the amount specified in clause 5.2.
- 5.2 Each Member undertakes to contribute a maximum of \$10.00 to the Company if it is wound up:
 - 5.2.1 while the Member is a Member; or
 - 5.2.2 within one year after that Member ceases to be a Member,for:
 - 5.2.3 the debts and liabilities of the Company contracted before that Member ceases to be a Member; and
 - 5.2.4 the costs, charges and expenses of winding up.

6. Application of income and property

6.1 Promotion of Purposes

- 6.1.1 The Company must apply all of its income and property solely towards the furtherance and promotion of the Purposes.

- 6.1.2 Except as provided in clause 6.2, the Company not pay or transfer directly or indirectly any surplus, income or assets to any of the Members (in their capacity as Members) or Directors.

6.2 Payments in good faith

- 6.2.1 Clause 6.1 does not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:

- (a) of remuneration for services to the Company, including services as a Director or services on a Board committee;
- (b) of reimbursement for expenses properly incurred on behalf of or for the purposes of the Company;
- (c) for goods supplied to the Company in the ordinary course of business;
- (d) of interest on money borrowed by the Company and rent for premises let to the Company, where:
 - (i) the interest or rent of the service has the prior approval of the Board; and
 - (ii) the amount payable is not more than an amount which commercially would be reasonably paid,

provided that any such payment to a Director must comply with clause 6.2.2.

- 6.2.2 The Company must not make any payment to a Director for services rendered by that Director to the Company, including services as a Director, unless:

- (a) the provision of those services has the prior consent of the Board;
- (b) the amount payable is on reasonable commercial terms or on terms more favourable to the Company; and
- (c) the payment has the prior approval of the Board.

- 6.2.3 The total of payments made to Directors under this clause 6.2 must be disclosed to the Members at the annual general meeting.

- 6.2.4 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by a Relevant Law and this Constitution.

7. Membership

7.1 Sole member

- 7.1.1 The membership of the Company comprises HWNS as the sole member.

7.2 Register

7.2.1 The Company must establish and maintain a Register at its registered office or its principal place of business.

7.2.2 Any dispute that arises in relation to the Register must be referred to the Board, whose decision will be final and binding on all Members.

7.3 Member's rights generally

A Member has the right to receive notices of any general meeting, to attend and be heard at any general meeting and to one vote at any general meeting.

7.4 Not transferrable

Membership is not transferrable.

8. Cessation of Membership

8.1 Grounds for cessation

A Member will cease to be a Member if they resign in writing to the Company.

8.2 Expulsion

The Board may not expel a Member.

8.3 Removal from the Register

8.3.1 Where a Member ceases to be a Member, their name must be removed from the Register.

8.3.2 Upon the removal of a Member's name from the Register:

- (a) the Member will forfeit all rights and privileges attaching to membership and all rights which the Member may have against the Company arising out of the membership; and
- (b) the Company will have no liability to such Member in respect of the removal from the Register.

8.4 Surviving liability

8.4.1 Any Member who ceases to be a Member remains liable:

- (a) for any money owing to the Company; and
- (b) if the Company is wound up within one year of the date of cessation of Membership, for the Member's contribution under clause 5.2.

9. General meetings

9.1 Resolutions of Company with sole member

- 9.1.1 Where the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record (without holding a meeting).
- 9.1.2 A Representative may sign such a resolution.
- 9.1.3 Passage of a resolution under this clause 9.1 must be recorded in the Company's minute books.

9.2 General meetings called by the Board

- 9.2.1 The Board may convene a general meeting at such time and place as the Board thinks fit.
- 9.2.2 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, the Board 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.
- 9.2.3 For the purposes of clause 9.2.2, the percentage of votes held by Members requesting the general meeting is calculated as at midnight immediately prior to the request being made of the Company.
- 9.2.4 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.
- 9.2.5 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.

9.3 General meetings called by Members

- 9.3.1 If the directors do not call the meeting within 21 days of being requested under clause 9.2.2, 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- 9.3.2 To call and hold a meeting under clause 9.3.1, 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 Register, 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.

9.3.3 The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Board did not call and hold the meeting.

9.4 Annual general meeting

9.4.1 Subject to clause 9.4.2, the Company must hold an annual general meeting at least once in every calendar year at the time and place determined by the Board.

9.4.2 Where the Company has only one Member, it is not required to hold an Annual General Meeting.

9.4.3 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;
- (e) the appointment and payment of auditors (if any); and
- (f) any other business which may lawfully be transacted at a general meeting.

9.4.4 Before or at the annual general meeting, the Board must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.

9.4.5 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.

10. Notice of general meetings

10.1 General

The Board must give not less than 21 days' written notice of a general meeting to the Members, the Directors and the auditor (if any).

10.2 Shorter notice

10.2.1 Subject to clause 10.2.2, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; or
- (b) for any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

10.2.2 Notice of a 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.

10.3 **Contents of notice**

The notice of a general meeting must specify the following information:

- 10.3.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- 10.3.2 the general nature of the meeting's business;
- 10.3.3 if applicable, a statement that a special resolution is to be proposed and the words of the proposed resolution;
- 10.3.4 a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - (a) the proxy must be a Member;
 - (b) 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
 - (c) the proxy form must be delivered to the Company at least 48 hours before the meeting.

10.4 **Failure to receive notice**

- 10.4.1 The accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.
- 10.4.2 A person's attendance at a general meeting waives any objection that the person may have to:
 - (a) a failure to give notice, to the giving of a defective notice, of a general meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and

- (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

11. Proceedings at general meetings

11.1 Quorum

- 11.1.1 No business may be transacted at a general meeting, except the adjournment of the meeting, unless a quorum is present.
- 11.1.2 A quorum for general meetings is a majority of the Members entitled to vote present in person or by proxy.
- 11.1.3 If a quorum is not present within 30 minutes from the time appointed for a general meeting:
 - (a) if convened on the requisition of Members, the meeting will be dissolved; and
 - (b) in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned meeting a quorum is not present within 30 minutes from the time appointed for holding the meeting, the Members present will be a quorum.

11.2 Chairperson

- 11.2.1 The Chair, or in their absence, the Deputy Chair, will be the chairperson at every general meeting.
- 11.2.2 If at any general meeting neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for holding the meeting or if neither is willing to preside, the Members present will choose a Director to preside. If no Director is present or if all Directors present decline to preside, then those Members present will choose a Member who is present to preside as chairperson.
- 11.2.3 At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson of the meeting and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- 11.2.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

11.3 General conduct of proceedings

- 11.3.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for deciding the procedures to be adopted at the meeting.
- 11.3.2 In particular, the chairperson of a general meeting may:

- (a) require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion or for the proper and orderly casting or recording of votes at the meeting; and
- (b) terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.

11.3.3 A decision of the chairperson on any matter under clause 14.3.2 is final.

11.3.4 Subject to clause 14.3.2, the chairperson of an annual general meeting must 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.

11.4 **Adjournment**

11.4.1 The chairperson of a general meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by a vote at any meeting at which a quorum is present, adjourn the meeting to another time or place (or both).

11.4.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a general meeting.

11.4.3 Where a general meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

11.4.4 A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.

11.5 **Members' resolutions and statements**

11.5.1 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 at a general meeting (**Members' 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 (**Members' statement**).

11.5.2 A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

11.5.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.

11.5.4 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.

11.5.5 The percentage of votes that Members have (as described in clause 11.5.1) is to be worked out as at midnight before the request or notice is given to the Company.

11.5.6 If the Company has been given notice of a Members' resolution under clause 11.5.1(a), the resolution must be considered at the next general meeting held more than 2 months after the notice is given.

11.5.7 This clause does not limit any other right that a Member has to propose a resolution at a general meeting.

11.6 Company must give notice of proposed resolution or distribute statement

11.6.1 If the Company has been given a notice or request under clause 11.5:

- (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, 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.

11.6.2 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 11.6.1(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.

11.7 Show of hands

Every item of business submitted to a general meeting will be decided in the first instance by a show of hands. Those entitled to vote on a show of hands are the Members present in person or by proxy. The chairperson will not have a casting vote if a vote on a show of hands is tied.

11.8 Poll

11.8.1 The chairperson or any Member present personally or by proxy may demand a poll before or on the declaration of the result of a show of hands.

11.8.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.

11.8.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

11.8.4 The demand for a poll may be withdrawn.

11.8.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.

11.8.6 The chairperson will have a casting vote in addition to any deliberative vote they may have if the vote is tied.

11.9 Demand for poll

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

11.10 Evidence of resolution

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

11.11 Auditor's right to be heard

The auditor (if any) is entitled to:

11.11.1 attend any general meeting of the Company;

11.11.2 be heard at any general meeting of the Company on any part of the business of the meeting that concerns the auditor in their capacity as auditor, even if:

(a) the auditor retires at the general meeting; or

(b) the Members pass a resolution to remove the auditor from office; and

11.11.3 authorise a person in writing to attend and speak at any general meeting as the auditor's representative.

11.12 Meetings conducted by electronic means

11.12.1 All provisions of this Constitution relating to general meetings apply, as far as they can and with any necessary changes, to general meetings by telephone or other electronic means.

11.12.2 The Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.

11.12.3 A Member who participates in a general meeting by telephone or other electronic means is taken to be present in person at the meeting.

- 11.12.4 A general meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Members involved was at the place for the duration of the meeting.

12. Proxy

12.1 General

Any Member may appoint a natural person who is a Member as their proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.

12.2 Instrument appointing proxy

12.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at the place, fax number or electronic address specified for such purpose in the notice of meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

12.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

12.2.3 An appointment of a proxy may be a standing one.

12.3 Form of proxy

An instrument appointing a proxy must contain the following information:

12.3.1 the Member's name and address;

12.3.2 the Company name;

12.3.3 the type of Membership held by the Member;

12.3.4 the proxy's name or the name of the office held by the proxy; and

12.3.5 the meetings at which the appointment may be used,

and be signed by the appointor.

12.4 Voting instructions

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

12.5 Authority

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote

for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

13. Attorneys

The Directors may, by power of attorney and pursuant to section 39 of the Corporations Act, appoint any person to be an attorney or attorneys of the Company. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as the Directors think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

14. Board

14.1 Composition of the Board

The Board comprises such number of the HWNS Directors as the Member prescribes from time to time.

14.2 Term

Directors will hold office for the term of their office as a HWNS Director

14.3 Appointment of Chief Executive Officer

The Directors may appoint a chief executive officer for the time being employed by the Company.

14.4 Officers on the Board

The Directors will elect from among their number a Chair and Deputy Chair, each of whom will hold office for such term as determined by the Directors.

14.5 Vacation of office of Director

The office of a Director will be vacated if the Director ceases to be a director of HWNS.

15. Powers of the Board

The Board is responsible for managing the business of the Company. The Board may exercise all the powers of the Company's power what are not required by the Corporations Act or this Constitution to be exercised by the Company in a general meeting.

16. Financial management

The Board must decide on the responsible financial management of the Company including:

- 16.1 any delegations of power under clause 21.6; and
- 16.2 how money will be managed, including electronic transfers, cheques, promissory notes, drafts, bills of exchange and other negotiable instruments must be authorised and signed or otherwise approved.

17. Proceedings of the Board

17.1 General

- 17.1.1 The Board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 17.1.2 The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to a meeting of the Board by telephone or other electronic means.
- 17.1.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present at the meeting.
- 17.1.4 A meeting by telephone or other electronic means is taken as held at the place determined by the Chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

17.2 Convening and notice of Board meetings

- 17.2.1 The Board must meet as often as it thinks fit.
- 17.2.2 The Chair may convene a meeting of the Board whenever he or she thinks fit.
- 17.2.3 The Secretary must, on the request of at least 2 Directors, convene a meeting of the Board.
- 17.2.4 Not less than 7 days' notice of a Board meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Board. Shorter notice may be given if agreed by the majority of Directors.
- 17.2.5 Notice of a Board meeting:
 - (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting; and
 - (c) may be given in person or by post, telephone, fax or other electronic means.

17.2.6 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.

17.2.7 A Director's attendance at a Board meeting waives any objection that Director may have to a failure to be given notice of the meeting.

17.3 **Quorum**

17.3.1 No business may be transacted at a Board meeting unless a quorum is present at the time the business is considered.

17.3.2 A quorum for meetings of the Board is half of the Directors, or if the number of Directors is not a multiple of 2, then the number nearest to and greater than half of the Directors.

17.3.3 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:

- (a) must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and
- (b) until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

17.4 **Chair and voting**

17.4.1 The Chair will be the chairperson of the Board meetings.

17.4.2 If the Chair is not present at any Board meeting within 10 minutes after the time appointed for the meeting to begin or is present but is unwilling to act, the Deputy Chair will be the chairperson of the meeting.

17.4.3 If the Deputy Chair is not present at the meeting within 10 minutes after the time appointed for the meeting to begin or is present but is unwilling to act, the Directors present must elect a Director to be chairperson of the meeting.

17.4.4 Questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.

17.4.5 The chairperson of a Board meeting will have a casting vote in addition to any deliberative vote.

17.5 **Circular resolutions of the Board**

17.5.1 The Directors may pass a circular resolution without a Board meeting being held.

17.5.2 A circular resolution is passed if a majority of the Directors (other than a Director on leave of absence approved by the Directors) entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clauses 21.5.3 or 21.5.4.

17.5.3 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.

17.5.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

17.5.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clauses 21.5.3 or 21.5.4.

17.6 Delegation by the Board

17.6.1 The Board may delegate any of its powers to:

- (a) individual Directors;
- (b) employees;
- (c) Members;
- (d) any other person, including as attorney or agent; or
- (e) committees consisting of such Directors, Members, employees or such other individuals as the Board thinks fit.

17.6.2 Any such delegations must be specified in writing and maintained in a register of delegated authorities.

17.6.3 The delegate must exercise the powers delegated in accordance with any directions of the Board.

17.6.4 The exercise of a power by a delegate is as effective as if the Board had exercised it.

17.6.5 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

17.7 Validity of acts

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director is valid despite:

- 17.7.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee;
- 17.7.2 the disqualification of any of them; or
- 17.7.3 the person not being entitled to vote.

17.8 Interests of Member

The Directors are authorised to act in the best interests of HWNS where it is the sole member of the Company in the circumstances contemplated by and for the purposes of section 187 of the Corporations Act.

18. Secretary

- 18.1 The Board will appoint the Secretary and may at any time suspend or remove a person from that office.
- 18.2 The Secretary holds office on such terms and conditions (including as to remuneration) and with the powers, duties, functions and authorities:
- 18.2.1 required under the Corporations Act to be performed by the Secretary of the Company;
 - 18.2.2 imposed on the Secretary by this Constitution; and
 - 18.2.3 as otherwise as determined by the Directors.
- 18.3 The Secretary must give to the Registrar notice of his or her appointment within 14 days after the appointment.

19. Minutes and records

19.1 Minutes to be kept

The Board must cause:

- 19.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Board and committees formed by the Board;
- 19.1.2 the minutes to be entered in books kept for that purpose; and
- 19.1.3 the minutes to be signed within a reasonable time by the chairperson of the meeting or by the chairperson of the next meeting.

19.2 Evidence of proceedings and resolutions

A minute that is recorded and signed in accordance with clause 19.1.3 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

20. Accounts

20.1 Books of account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be

deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

20.2 Location of books of account

The books of account will be kept at the registered office or place or places as the Board thinks fit and will be open to the inspection of the Directors during usual business hours.

21. Auditor

The Company will observe the provisions of the Relevant Laws in relation to the appointment, removal and resignation of an auditor.

22. Amendments to this Constitution

22.1 The Company may vary, amend or repeal this Constitution in a manner previously endorsed by HWNS by passing a Special Resolution.

22.2 The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company no longer to be a charity or if the amendment has not been endorsed by HWNS.

23. Indemnity

23.1 To the extent permitted by law including by the Corporations Act 2001 (as if the provision of that Act concerning the indemnification of officers applied to the Company) and the *Competition and Consumer Act 2010* (Cth), the Company must indemnify each person who is, or has been, a director or secretary of the Company against any liability arising directly or indirectly from the person serving or having served in that capacity:

23.1.1 to any other person except for:

- (a) a liability owed to the Company or a related body corporate;
- (b) a liability for a pecuniary penalty or compensation order;
- (c) a liability that is owed to someone (other than the Company or a related body corporate) which did not arise out of conduct in good faith; or
- (d) liability which is covered by insurance; and

23.1.2 for legal costs incurred in defending an action for liability incurred as a director or a secretary of the Company if the costs are not incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 23.1.1;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;

- (c) in defending or resisting proceedings brought by a regulator or a liquidator for a court order if the grounds for making the order are found by the court to be established; or
 - (d) in connection with proceedings for relief in which the court denies relief.
- 23.2 Clause 23.1.2(c) does not apply to costs incurred in responding to actions brought by a regulator or a liquidator as part of an investigation before commencing proceedings for the court order.
- 23.3 To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.
- 23.4 The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 33.
- 23.5 The Company may agree to provide continuing access for a specified period after a person ceases to be an Officer to board papers, books, records or documents of the Company and any relevant related bodies corporate which relate to the period during which the person was an Officer.

24. Access to records

- 24.1 A person who is not a Director does not have the right to inspect any of the board papers, books, records or documents of the Company, except as:
 - 24.1.1 allowed or required by any Law; or
 - 24.1.2 as authorised by the Directors or by resolution of the Members.
- 24.2 The Company may agree to provide continuing access for a specified period after a person ceases to be an Officer to board papers, books, records or documents of the Company and any relevant related bodies corporate which relate to the period during which the person was an Officer.
- 24.3 Notwithstanding clause 24.1, HWNS may, in its capacity as a Member, inspect any accounting record or document of the Company, and the Directors may determine at what times and places and under what conditions, the accounting records and other documents of the Company will be open to inspection by it.

25. By-laws

- 25.1 The Board may by resolution make, revoke and amend by-laws to give effect to this Constitution.
- 25.2 Members must comply with the by-laws as if they were part of this Constitution.

26. Notices

- 26.1 A notice required by this Constitution must be in writing and may be delivered:
- 26.1.1 personally;
 - 26.1.2 by leaving it at the person's address in the Register;
 - 26.1.3 by posting it by prepaid post addressed to that person at the person's address for service;
 - 26.1.4 by facsimile to the person's facsimile number; or
 - 26.1.5 by electronic mail to the person's email address.
- 26.2 If the person receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.
- 26.3 A person may change their address, facsimile number or email address by giving notice to the Company.
- 26.4 A notice sent by post or courier is taken to be served:
- 26.4.1 by properly addressing, prepaying and posting or directing the delivery of the notice; and
 - 26.4.2 on the day after the day on which it was posted or given to the courier for delivery.
- 26.5 A notice sent by facsimile transmission or electronic notification is taken to be delivered
- 26.5.1 if delivered personally or left at the person's address, upon delivery;
 - 26.5.2 if posted within Australia to an Australian address, on the second day after posting that is not a Business Day and in any other case, the fifth day after posting that is not a Business Day;
 - 26.5.3 if delivered by facsimile, subject to clause 35.5.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
 - 26.5.4 if delivered by electronic mail, subject to clause 35.5.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
 - 26.5.5 if received after 5.00pm in the place it is received or on a day which is not a Business Day in the place it is received, at 9.00am on the next business day.

27. Distribution of property on winding-up

- 27.1 If the Company is wound up and the assets of the Company are more than sufficient:

- 27.1.1 to pay all of the debts and liabilities of the Company; and
- 27.1.2 the costs, charges and expenses of the winding up,
the surplus assets must not be distributed to a Member or former Member.
- 27.2 Instead, the surplus assets must be distributed to one or more charities:
 - 27.2.1 with charitable purpose(s) similar to, or inclusive of, the Purposes; and
 - 27.2.2 which prohibits the distribution of its assets to its members to at least the same extent as this Constitution.
- 27.3 If the Company is endorsed as a deductible gift recipient under subdivision 30BA of the *Income Tax Assessment Act 1997* (Cth) at the time it is wound up, then in addition to the requirements under clause 36.2, the charity or charities to which the surplus assets are distributed must also be endorsed as a deductible gift recipient at the time the distribution is made.
- 27.4 The charity or charities to be given the surplus assets must be:
 - 27.4.1 endorsed by HWNS and supported by a special resolution of the Members at or before the time of winding up; or
 - 27.4.2 if no such special resolution is passed in favour of the charity or charities endorsed by HWNS, by a Judge of the Supreme Court or such other court of competent jurisdiction.