



# Peninsula Home Hospice

ACN 153 071 928

ABN 28 520 756 548

# Constitution



**This Constitution of Peninsula Home Hospice was adopted at the 2016 Annual General Meeting (AGM) on 14 November 2016.**



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# CONSTITUTION OF PENINSULA HOME HOSPICE

ACN 153 071 928  
ABN 28 520 756 548

A public company limited by guarantee under the *Corporations Act 2001* (Cth) not having a share capital.

## 1 Name

The Company's name is Peninsula Home Hospice. It was formerly called Frankston-Mornington Peninsula Hospice Service Inc.

## 2 Purpose

- 2.1 The Company's principal purpose is to provide specialist palliative care to all people living with and dying from a life threatening illness, and for whom the primary goal is quality of life. The families of these clients are considered to be part of the unit of care.
- 2.2 Without limiting clause 2.1, the Company's purposes are:
- 2.2.1 To provide palliative care to people, irrespective of nationality, race, religious affiliation, age or financial status;
  - 2.2.2 To provide practical, medical, nursing, psychological, social and spiritual support to palliative care clients and their families during the life threatening illness and subsequent bereavement;
  - 2.2.3 To promote community awareness, understanding and participation in meeting the needs of terminally ill people; and
  - 2.2.4 To work in co-operation with existing groups in the community to reduce service duplication
- 2.3 Incidental to the above purposes, the Company's incidental purposes include:
- 2.3.1 To provide education and training that promotes palliative care and improves the understanding and skills of other health care professionals;
  - 2.3.2 To participate in research activities relevant to the function of the Company and to inform an evidence based approach to care and service delivery; and
  - 2.3.3 To engage in information sharing with the community of palliative care providers locally, nationally and internationally
- 2.4 Despite clauses 2.1 to 2.3, the Company pursues only charitable and benevolent purposes.



### **3 Application of Income and Property**

The Company's income and property, however derived, must be applied solely towards the promotion of the Company's purposes.

### **4 No Distribution to Members**

4.1 The Company must not distribute, pay or transfer to its Members directly or indirectly, by way of dividend, bonus or otherwise, any of the Company's property or income.

4.2 Clause 4.1 does not prevent the payment in good faith:

4.2.1 Of remuneration to an officer or employee of the Company;

4.2.2 To a Member in return for services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;

4.2.3 Of interest at a commercial rate not exceeding the rate for the time being published by the National Australia Bank for unsecured overdrafts less than \$100,000 on money borrowed from a Member;

4.2.4 Of reasonable and proper rent for premises rented from a Member; or

4.2.5 Of a type permitted under clauses 42, 81 or 68, or a deed entered into under clause 81,

Provided such payment has the Board's prior approval.

### **5 Limited Liability**

The liability of the Members is limited.

### **6 Guarantee**

Every Member undertakes to contribute an amount not exceeding twenty dollars (\$20.00) to the Company's property if it is wound up while the person is a Member, or within one (1) year after the person ceases to be a Member, for payment of:

6.1 The debts and liabilities of the Company (contracted before the person ceases to be a Member);

6.2 The costs, charges and expenses of winding up; and

6.3 The adjustment of the rights of the contributories among themselves



## 7 Amendment to Constitution

The Members may modify or repeal this Constitution or any of its provisions by special resolution in accordance with the Corporations Act and the ACNC Act.

## 8 Winding-up

8.1 If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the Members but must be given or transferred to one or more institutions chosen by the Members at or before the time of dissolution which meet the requirements in clause 8.3.

8.2 If the Members do not choose any institutions under clause 8.1, the Board may choose the institutions, failing that, the Company may apply to the Supreme Court of Victoria to approve the institutions.

8.3 No institution is eligible to receive property under this clause 8 unless:

8.3.1 It has charitable and benevolent purposes similar to the Company; and

8.3.2 It prohibits the distribution of its income and property among its members, including on a winding up, to an extent at least as great as is imposed on the Company under clauses 3, 4 and this clause 8;

8.3.3 If the Company is a registered charity under the ACNC Act — the institution is also a registered charity; and

8.3.4 If the Company is endorsed by the Australian Taxation Office as income tax exempt — the institution is also currently endorsed as income tax exempt on the same basis that the Company was endorsed.

## 9 Definitions and Interpretation

9.1 In this Constitution, unless the context otherwise requires:

9.1.1 “**ACNC Act**” means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

9.1.2 “**Auditor**” means the auditor of the Company from time to time;

9.1.3 “**Board**” means the Directors of the Company from time to time convened as the Board;

9.1.4 “**Chairperson**” means a person appointed as chairperson of the Company under clause 42;

9.1.5 “**Chief Executive Officer**” means a person appointed as chief executive officer of the Company under clause 49;

9.1.6 “**Company**” means Peninsula Home Hospice ACN 153 071 928;





- 9.1.7 "Constitution" means this constitution of the Company;
  - 9.1.8 "Corporate Member" means a Member in the class set out at clause 11.1.2;
  - 9.1.9 "Corporations Act" means the *Corporations Act 2001* (Cth);
  - 9.1.10 "Gift Fund" means a fund created in accordance with clause 84;
  - 9.1.11 "ITAA" means the *Income Tax Assessment Act 1997* (Cth);
  - 9.1.12 "Member" means a member of the Company;
  - 9.1.13 "Ordinary Member" means a Member in the class set out at clause 11.1.1;
  - 9.1.14 "Register" means the Register of Members kept in accordance with clause 13;
  - 9.1.15 "Representative" means a representative of a Corporate Member;
  - 9.1.16 "Seal" means the common seal of the Company and includes any official seal of the Company;
  - 9.1.17 "Secretary" means a person appointed to perform the duties of a Secretary of the Company for the purposes of the Corporations Act;
  - 9.1.18 "Treasurer" means a person appointed as Treasurer of the Company under clause 42; and
  - 9.1.19 "Vice Chairperson" means a person appointed as Vice Chairperson of the Company under clause 42.
- 9.2 Unless the contrary intention appears in this Constitution:
- 9.2.1 An expression in this Constitution has the same meaning as in the Corporations Act; and
  - 9.2.2 If an expression is given different meanings for the purposes of different provisions of the Corporations Act, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- 9.3 Headings are for convenience only and do not affect the interpretation of this Constitution.
- 9.4 Reference to:
- 9.4.1 One gender includes each other gender;
  - 9.4.2 The singular includes the plural and the plural includes the singular;
  - 9.4.3 A person includes a body corporate, company, trust, association, partnership or other body whether incorporated or unincorporated;



- 9.4.4 A person includes that person's successors, legal personal representatives and permitted transferees;
  - 9.4.5 Writing includes all modes of representing or reproducing words, figures or symbols in a visible form; and
  - 9.4.6 A reference to any legislation or legislative provision includes any statutory modification, replacement, consolidation or re-enactment of, or legislative provision substituted for, and any subordinate legislation or other instrument issued under, that legislation or legislative provision.
- 9.5 The Constitution is to be interpreted subject to the Corporations Act. However, the rules that apply as replaceable rules to companies under the Corporations Act do not apply to the Company.

## MEMBERSHIP

### 10 Membership

- 10.1 A person may be admitted to membership if:
- 10.1.1 The person applies for membership in accordance with clause 10.2;
  - 10.1.2 The application is approved by the Board; and
  - 10.1.3 The person pays the first annual subscription in accordance with clause 10.5.2,
- And the person's name is entered in the Register in accordance with clause 10.6.
- 10.2 An application for membership of the Company must be:
- 10.2.1 Made in writing in the form approved by the Board; and
  - 10.2.2 Lodged with the Secretary
- 10.3 As soon as practicable after receiving an application, the Secretary must refer the application to the Board.
- 10.4 The Board must determine whether to approve or reject the application for membership in its absolute discretion.
- 10.5 If the Board approves an application for membership, the Secretary must, as soon as practicable:
- 10.5.1 Notify the applicant in writing that the Board approved the applicant; and
  - 10.5.2 Request payment within twenty-eight (28) days after receipt of the notification of the sum payable under this Constitution as the entrance fee and the first annual subscription
- 10.6 The Secretary must, within twenty-eight (28) days after receipt of the amounts referred to in clause 10.5, enter the applicant's name in the Register.



- 10.7 An applicant for membership becomes a Member and is entitled to exercise the rights of membership, when his or her name is entered in the Register.
- 10.8 If the Board rejects an application, the Board must, as soon as practicable, notify the applicant in writing that the application has been rejected.
- 10.9 The Board is not required to give any reason for the approval or rejection of an application. No further application may be made by a person whose application has been rejected until twelve (12) months has passed.
- 10.10 A right, privilege, liability or obligation of a Member:
  - 10.10.1 Cannot be transferred or transmitted to another person; and
  - 10.10.2 Terminates upon the cessation of membership, whether by death, resignation or otherwise.
- 10.11 The annual subscription shall be determined by the Board from time to time.
- 10.12 The annual subscription is due on the 1st of July each year (the “**due date**”) and is payable within thirty (30) days. Members are only permitted to vote at general meetings after the payment of their subscription for the current financial year. All Members or Representatives are permitted to speak at general meetings, but only Members or Representatives of Corporate Members who have paid their subscription for the current financial year are entitled to vote.

## 11 Classes of Members

- 11.1 The Members of the Company will comprise:
  - 11.1.1 Ordinary Members — open only to individuals who are not Company employees;
  - 11.1.2 Corporate Members — open to all persons who are not individuals (ie corporates);
  - 11.1.3 Life Members

If a Member will cease to qualify for a class of membership, the Board may transfer the Member into another class of membership for which the Member will qualify.
- 11.2 Each Corporate Member may appoint a Representative for the purposes of section 250D of the Corporations Act.
- 11.3 A Corporate Member is taken to be personally present at a meeting attended by its Representative.

## 12 Honorary Life Membership

Honorary Life Membership may be conferred upon any person who has rendered outstanding service to the Company. Nominations for Honorary Life Membership may be submitted to the Board and where it is recommended that such recognition be given, the



awarding of Honorary Life Membership absolves the recipient from the payment of annual subscriptions. Honorary Life Membership otherwise carries all of the rights and obligations of a Member. The form of the Honorary Life Membership will be determined by the Board.

## **13 Register of Members**

- 13.1 The Company must keep a Register in accordance with the Corporations Act.
- 13.2 The following details must be entered in the Register in respect of each Member:
  - 13.2.1 The full name of the Member;
  - 13.2.2 The address, telephone number and email, if any, of the Member; and
  - 13.2.3 The date of admission to and cessation of membership
- 13.3 Each Member must notify the Secretary in writing of any change in that Member's details within three (3) months after the change.
- 13.4 All notices given in accordance with this Constitution to the address last notified shall be considered fully received.

## **14 Resignation**

A Member may resign from membership of the Company by giving one (1) month's written notice to the Secretary, unless the person is the only Member.

## **15 Cessation of Membership**

A person ceases to be a Member:

- 15.1 If the Member resigns by written notice to the Company — effective one (1) month after the Secretary's receipt of the notice or a later date specified in the notice;
- 15.2 If the Member ceases to be qualified to be a Member under this Constitution;
- 15.3 For an Ordinary Member – on the death of the Member or the person becomes a Company employee;
- 15.4 For a Corporate Member – if the Member becomes an insolvent under administration, within the meaning of Corporations Act, or ceases to be a company, body corporate, trust, other incorporated or unincorporated body or partnership;
- 15.5 If the Member fails to pay the annual subscription, and despite at least one reminder, it remains unpaid for three (3) months after the due date; or
- 15.6 If the Member is expelled in accordance with this Constitution



## 16 Disciplining Members

16.1 If a Member:

16.1.1 Wilfully refuses or neglects to comply with this Constitution; or

16.1.2 Is guilty of conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the Company's interest,

The Board may by ordinary resolution resolve to censure, suspend or expel the Member.

16.2 At least one (1) week before the Board meeting at which a resolution of the type referred to in clause 16.1 will be considered, the Board must give to the Member notice of:

16.2.1 The meeting;

16.2.2 What is alleged against the Member; and

16.2.3 The proposed resolution

16.3 During the relevant part of the meeting and before the passing of the resolution, the Member must be given a reasonable opportunity to give evidence orally or in writing or present a defence or other explanation the Member thinks fit.

16.4 A Member may by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.

16.5 If at the general meeting such a resolution is passed by a two thirds majority of Members present and voting by secret ballot, the Member concerned shall be disciplined accordingly.

16.6 If a person ceases to be a Member in accordance with the clause 16.5 the Board may reinstate the Member upon and subject to such terms and conditions as it thinks fit.

## 17 Effect of Cessation of Membership

A person who ceases to be a Member remains liable to pay the Company any moneys whatsoever which, at the time of the person ceasing to be a Member, the Member owes to the Company on any account whatsoever.



## GENERAL MEETINGS

### 18 Annual General Meetings

An annual general meeting of the Company shall be held in accordance with the Corporations Act and the ACNC Act at such times and places as the Board determines.

### 19 Ordinary and Special Business

- 19.1 The ordinary business of an annual general meeting is to:
- 19.1.1 Receive and consider the Board, financial and Auditor reports as required by the Corporations Act or the ACNC Act;
  - 19.1.2 Elect Directors in place of those retiring or otherwise;
  - 19.1.3 When necessary, appoint and remove Auditors; and
  - 19.1.4 Transact any other business which under this Constitution, the ACNC Act or the Corporations Act ought to be transacted at an annual general meeting.
- 19.2 All business at a general meeting, except ordinary business under clause 19.1, is special business.

### 20 Special General Meetings

- 20.1 In addition to the annual general meeting, other general meetings may be held in the same year.
- 20.2 All general meetings other than the annual general meeting are special general meetings.
- 20.3 The Board may convene a special general meeting of the Company.
- 20.4 Subject to section 249F of the Corporations Act and the ACNC Act, the Board must, on the request in writing of Members representing not less than 5% of the total number of Members, convene a special general meeting of the Company.
- 20.5 The request for the special general meeting must:
- 20.5.1 State the objects of the meeting; and
  - 20.5.2 Be signed by the Members requesting the meeting; and
  - 20.5.3 Be sent to the address of the Secretary.
- 20.6 If the Board does not cause a special general meeting to be held within one (1) month after the date of which the request is sent to the address of the Secretary, the Members making the request, or any of them, may convene a special general meeting to be held not later than three (3) months after that date.



- 20.7 If the Members convene a special general meeting in accordance with this clause 20, it must be attended and run by the Board, and all reasonable expenses incurred in convening the special general meeting must be refunded by the Company to the persons incurring the expenses.

## **21 Notice of General Meetings**

- 21.1 Notice of every general meeting must be given to each person who is at the date of the notice a Member and the Auditor at least fourteen (14) days before the general meeting, except where the Corporations Act or ACNC Act requires that a different period of notice must or may be given.
- 21.2 A notice of general meeting must specify:
- 21.2.1 The place, date and time of the meeting; and
  - 21.2.2 In the case of special business — the general nature of the special business
- 21.3 A Member intending to bring business before a general meeting must notify the Secretary in writing of that business in sufficient time for the Secretary to include notification of that business in the notice calling the next general meeting.

## **22 Accidental Omission to Give Notice**

Failure to give notice of a general meeting or a proxy form does not invalidate anything done, or any resolution passed, at the general meeting if the failure occurred by accident or inadvertent error.

## **23 Postponement of General Meetings**

- 23.1 The Board may postpone a general meeting if it thinks fit (except a meeting requisitioned by Members pursuant to the Corporations Act) for not more than twenty one (21) days after the date for which it was originally called.
- 23.2 If a general meeting is postponed (rather than adjourned under clause 28) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

## **24 Attendance by Proxy or Attorney**

A Member may be represented at a general meeting by a proxy or attorney (being a person given legal authority to act on behalf of a Member) and if so represented is deemed to be personally present.



## PROCEEDINGS AT GENERAL MEETINGS

### 25 Quorum

25.1 No business may be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business.

25.2 Subject to clause 25.2.2, a quorum will be as follows:

Total Number of Members	Quorum
Three (3) or less	All Members present, excluding by proxy
Four (4) to Fourteen (14)	All Members present, including by proxy
Fifteen (15) or more	Fifteen (15) Members present including by proxy, provided that at least five (5) Members personally present.

### 26 Absence of Quorum

If a quorum is not present within thirty (30) minutes after the time appointed for the general meeting:

26.1 Where the general meeting was convened by Members' requisition the meeting is dissolved; or

26.2 In any other case:

26.2.1 The meeting stands adjourned to the date, time and place, which the Board determines or, if no determination is made by the Board, to the same day in the next week at the same time and place; and

26.2.2 If at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting then the Members personally present, being not less than the lesser of three (3) or the number of Members, will constitute a quorum.

### 27 Chairperson

27.1 The Chairperson may chair every general meeting.

27.2 Where a general meeting is held and:

27.2.1 There is no Chairperson; or

27.2.2 The Chairperson is not present within thirty (30) minutes after the time appointed for the meeting or is unwilling to act,





The Vice Chairperson may chair the meeting or, if the Vice Chairperson is not present or is unwilling to act, the Board Directors present must elect one of their number to act as chair of the meeting.

## **28 Adjournment of Meetings**

- 28.1 The chair of a general meeting may, and must if so directed by the Members at a general meeting at which a quorum is present, adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- 28.2 When a general meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as for an original meeting.
- 28.3 Except as provided by clause 28.2, it is not necessary to give notice of an adjournment, or of the business to be transacted at an adjourned meeting

## **VOTING AT GENERAL MEETINGS**

### **29 Voting Rights**

- 29.1 Each financial Ordinary Member present has one (1) vote on a show of hands (not by proxy) and on a poll (including by proxy).
- 29.2 Each financial Corporate Member present has one (1) vote on a show of hands (not by proxy) and on a poll (including by proxy).
- 29.3 Each life member present has one (1) vote on a show of hands (not by proxy) and on a poll (including by proxy).

### **30 Power to Demand a Poll**

At a general meeting a resolution put to the vote of the meeting is decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded:

- 30.1 By the chair of the meeting; or
- 30.2 By at least three (3) Members

### **31 Evidence of Resolutions**

Unless a poll is demanded:

- 31.1 A declaration by the chair of the meeting that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost; and
- 31.2 An entry to that effect in the Company's minutes,



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

## **32 Conduct of Poll**

- 32.1 If a poll is duly demanded, it must be taken in such manner and subject to clause 32.2 either at once or after an interval or adjournment or otherwise as the chair of the meeting directs, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- 32.2 A poll demanded on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- 32.3 The demand for a poll does not prevent the meeting from transacting business other than the question on which a poll has been demanded.
- 32.4 The demand for a poll may be withdrawn.

## **33 Casting Vote**

Where the votes on a proposed resolution are equal, the chair of the meeting has a second or casting vote.

## **34 Objections to Exercise of Voting Rights**

- 34.1 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 34.2 The objection must be referred to the chair of the meeting, whose decision is final.
- 34.3 A vote not disallowed following the objection is valid for all purposes.

## **PROXIES**

### **35 Appointment of Proxy**

A Member may appoint one (1) proxy. A proxy need not be a Member. Part 2G.2 Division 6 of the Corporations Act applies to the appointment of a proxy.

## **BOARD**

### **36 Number of Directors**

- 36.1 The Company shall have a Board which comprises all of the Directors from time to time.



- 36.2 There must be at least three (3) and not more than ten (10) Directors.
- 36.3 The Members in general meeting may by resolution increase or reduce the minimum and maximum number of Directors, but the minimum number may not be reduced below three (3).

### **37 Directors' Qualifications**

No person may be a Director unless that person:

- 37.1 Is over eighteen (18) years of age;
- 37.2 Consents in writing to become a Director;
- 37.3 Is not prohibited or disqualified or otherwise prevented from acting as a Director under the Corporations Act or a responsible person of a registered charity under the ACNC Act; and
- 37.4 Is a Member

### **38 Election of Directors**

- 38.1 The Directors are elected by the Members at the annual general meeting of the Company.
- 38.2 Unless determined otherwise by the Board in order to provide an orderly rotation of Directors, each Director shall hold office from the end of the annual general meeting at which he or she is elected or appointed until the end of the third (3rd) annual general meeting after his or her election or appointment, but is eligible for re-election or re-appointment.
- 38.3 There is no maximum number of terms that a Director may serve, but Directors are encouraged to review their commitment to the Board after serving three (3) consecutive terms.

### **39 Nomination for Election**

- 39.1 Each candidate for election as a Director must:
- 39.1.1 Be proposed by a Member; and
  - 39.1.2 Be seconded by another Member.
- 39.2 A nomination of a candidate for election must:
- 39.2.1 Be in writing;
  - 39.2.2 Be signed by the candidate;
  - 39.2.3 Be signed by the proposer and seconder; and



39.2.4 Be received at the registered office of the Company not later than 5.00 pm on the day which is thirty (30) days before the annual general meeting at which the candidate seeks election.

39.3 A list of the candidates' names in alphabetical order together with the proposers' and seconders' names must be sent to Members with the notice of the annual general meeting.

## **40 Election Procedure - Directors**

40.1 If the number of candidates for election is equal to or less than the number of Board vacancies, the chair of the annual general meeting must declare those candidates to be duly elected as Directors.

40.2 If the number of candidates for election is greater than the number of Board vacancies a ballot must be held to elect the candidates.

40.3 If a ballot is required balloting lists must be prepared listing the candidates' names alphabetically by family name.

40.4 At the annual general meeting each Member entitled to vote and voting on the ballot must cast the number of votes equal to the number of vacancies but limited to one (1) vote in favour of each candidate.

40.5 The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the annual general meeting to be elected as Directors.

40.6 Where there are an equal number of votes the chair of the annual general meeting, before declaring the result of the ballot and in addition to his or her deliberative vote (if any) is entitled to a casting vote provided that if the chair abstains, the candidates must draw lots.

## **41 Office Bearers**

The office bearers of the Company are:

41.1 The Chairperson;

41.2 The Vice Chairperson;

41.3 The Treasurer; and

41.4 Any other office bearer positions determined by the Board.

## **42 Election at Board Meeting**

The office bearers will be, if necessary, elected at the first meeting of the Board held after the annual general meeting, for the term and on the terms and conditions determined by the Board.



## **GENERAL PROVISIONS AS TO BOARD MEMBERSHIP**

### **43 Casual Vacancies**

If there is a casual vacancy the Board may at any time appoint a person qualified to be a Director under clause 37 to fill that vacancy for the balance of the original term of office.

### **44 Insufficient Directors**

The Board may continue to act notwithstanding a vacancy on the Board. However, if the number of Directors falls below the minimum set under clause 36, they may act only to fill casual vacancies, convene a general meeting of the Company or act in the case of emergencies.

### **45 Resignation of Director**

A Director may retire from office by giving one (1) months' notice in writing to the Company.

### **46 Removal of Directors**

Subject to this Constitution, the ACNC Act and the Corporations Act the Company may by resolution passed at a general meeting remove a Director and may appoint another person in his or her place.

### **47 Vacation of Office of Director**

The office of a Director becomes vacant if the Director:

- 47.1 Dies;
- 47.2 Becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- 47.3 Is absent from two (2) consecutive Board meetings without leave of absence or, where no leave is granted, the Board is not satisfied that the absence was justified;
- 47.4 Ceases to be a Member;
- 47.5 Becomes a bankrupt or makes an arrangement or composition with personal creditors generally;
- 47.6 Resigns from office by notice in writing given to the Secretary with effect from one (1) months after the Secretary receives the notice or a later date specified in the notice;



- 47.7 Becomes disqualified from being a director of a Company pursuant to the Corporations Act or the responsible person of a registered charity pursuant to the ACNC Act; or
- 47.8 Holds any office of profit under the Company

## **48 Remuneration and Expenses of Directors**

No Director may receive any payments or remuneration for his or her services in his or her capacity as a Director of the Company, with the exception of payments:

- 48.1 For reimbursement of all reasonable travelling and other expenses properly incurred when engaged in the business of the Company, in attending and returning from Board meetings, committee meetings or general meetings of the Company or otherwise in carrying out the duties of a Director with the Board's prior approval; and
- 48.2 For any service rendered to the Company in a professional or technical capacity outside the scope of the ordinary duties of a Director shall be made where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

## **CHIEF EXECUTIVE OFFICER**

### **49 Power to Appoint**

The Board may appoint a person, not being a Director, to the position of Chief Executive Officer for such period and on such terms as they think fit and, subject to the terms of any agreement entered into in a particular case, may revoke the appointment.

### **50 Not a Member of the Board**

The Chief Executive Officer is not a Director but may attend Board meetings, except where the Board otherwise requests.

### **51 Temporary Appointments**

If a Chief Executive Officer becomes incapable of acting in that capacity the Board may appoint another person, not being a Director, to act temporarily as Chief Executive Officer.

### **52 Powers of Chief Executive Officer**

- 52.1 The Board may, upon such terms and conditions and with such restrictions as it thinks fit, confer upon a Chief Executive Officer any of the powers exercisable by them.



- 52.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the Board.
- 52.3 The Board may at any time withdraw or vary any of the powers so conferred on a Chief Executive Officer.

### **53 Remuneration of Chief Executive Officer**

Subject to the Corporations Act and to the provisions of any contract between the Company and a Chief Executive Officer, the remuneration of the Chief Executive Officer is fixed by the Board.

## **POWERS AND DUTIES OF BOARD**

### **54 Company Powers and General Business Management**

- 54.1 Solely for the purpose of carrying out the Company's purpose, the Company may, in any manner permitted by the Corporations Act exercise any power, take any action and engage in any conduct or procedure, which under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its constitution.
- 54.2 The Board is responsible for managing the Company's affairs and carrying out the Company's purposes. The Board may exercise all powers of the Company which are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.
- 54.3 No resolution passed by the Company in general meeting can invalidate any prior act of the Board which would have been valid if that resolution had not been passed.

### **55 Borrowing Powers**

Without limiting clause 54.1, the Board may exercise all the powers of the Company:

- 55.1 To borrow money;
- 55.2 To charge any property or business of the Company; and
- 55.3 To issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person

### **56 Negotiable Instruments**

All cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two (2) Directors or in such other manner as the Board determines from time to time.



## **57 Appointment of Attorney**

- 57.1 The Board may appoint attorney or attorneys of the Company for the purposes, with the powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for the period and subject to the conditions they think fit.
- 57.2 Any power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## **BOARD PROCEEDINGS**

### **58 Meetings of Board**

- 58.1 The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit, but must meet at least six (6) times per year.
- 58.2 The minutes of a Board meeting must state the method of meeting and the persons present.

### **59 Convening of Meeting**

A Director may at any time, and a Secretary must on the requisition of a Director, convene a Board meeting.

### **60 Notice of Meeting**

- 60.1 Notice of every Board meeting must be given to each Director except that it is not necessary to give notice of a Board meeting to a Director who:
- 60.1.1 Has been given special leave of absence; or
  - 60.1.2 Is absent from Australia and has not left an email address at which he or she may be given notice.
- 60.2 A notice of a Board meeting may be given in writing or orally, and whether by email or other communication by which the Director consents to receiving notice.

### **61 Quorum**

- 61.1 No business may be transacted at a Board meeting unless a quorum is present at the time when the meeting proceeds to business.
- 61.2 At a Board meeting, quorum is half the number of Directors entitled to vote (rounded down) plus one, provided that at least one of whom must be an office bearer.





## 62 Chairperson at Board Meetings

- 62.1 The Chairperson may chair all Board meetings.
- 62.2 At a Board meeting, if:
- 62.2.1 No Chairperson has been elected; or
  - 62.2.2 The Chairperson is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act,
- The Vice Chairperson may chair the meeting, but if:
- 62.2.3 No Vice Chairperson has been elected; or
  - 62.2.4 The Vice Chairperson is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act,
- The Directors present may elect one of their number to act as the Chair of the meeting.

## 63 Voting

- 63.1 Subject to this Constitution, questions arising at a Board meeting are decided by a majority of votes of Directors present and voting and any such decision is for all purposes deemed a decision of the Board.
- 63.2 Subject to this Constitution, in case of an equality of votes, the chair of the Board meeting, in addition to his or her deliberative vote (if any), has a casting vote. The chair has discretion both as to whether or not to use the casting vote.

## 64 Use of Technology

- 64.1 For the purpose of this Constitution the contemporaneous linking by telephone or other technology ("**technological meeting**") of a number of Directors not less than a quorum is deemed to constitute a Board meeting as long as:
- 64.1.1 All the Directors will be entitled to notice of such a meeting;
  - 64.1.2 All the Directors participating in the meeting must be linked by the technology;
  - 64.1.3 Each Director taking part in the meeting must be able to hear and be heard by each other Director taking part; and
  - 64.1.4 At the commencement of the meeting each Director must announce his or her presence to all the other Directors taking part in the meeting.
- 64.2 If the Secretary is not present at a technological meeting one of the Directors present must take minutes of the meeting.



- 64.3 A Director may not leave a technological meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that Director has previously notified the chair of the meeting.
- 64.4 A Director is presumed to have been present and to have formed part of a quorum at all times during a technological meeting unless the Director has previously obtained the express consent of the chair to leave the meeting.
- 64.5 A minute of the proceedings of a technological meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the majority of Directors who participated in the meeting.

## **65 Circulated Resolutions**

- 65.1 If all the Directors at that time present in Australia and any Director absent from Australia who has left an email address at which he or she may be given notice have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms is deemed to have been passed at a Board meeting held on the day on which and at the time at which the document was last signed by a Director.
- 65.2 For the purposes of clause 65.1, two (2) or more separate documents containing statements in identical terms each of which is signed by one (1) or more Directors are deemed together to constitute one (1) document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- 65.3 A reference in clause 65.1 to all the Directors does not include a reference to a Director who, at a Board meeting, would not be entitled to vote on the resolution.
- 65.4 Every resolution passed under clause 65.1 must as soon as practicable be entered in the minutes of the Board meetings.
- 65.5 An email or other communication addressed to or received by the Company and purporting to be signed by a Director for the purpose of this Constitution is deemed to be a document in writing signed by that Director.

## **66 Committees**

- 66.1 The Board may establish a Committee consisting of Directors, Members or other persons for the purposes of:
- 66.1.1 Advising or assisting the Board in relation to its activities or projects;  
or
  - 66.1.2 Performing functions delegated to the committee by the Board.
- 66.2 The Board may by regulation determine:
- 66.2.1 The name and purpose of the committee;



- 66.2.2 The composition of the committee, provided that it includes at least one Director; and
- 66.2.3 Meeting, reporting and other arrangements regarding the committee
- 66.3 The Board may delegate any of its powers and/or functions (not being duties imposed on the Board or Directors by the Corporations Act, the ACNC Act or the general law) to a committee established under this clause 66.
- 66.4 A committee formed under clause 66.1 must in the exercise of the powers so delegated conform to any directions given or regulations that may from time to time be imposed upon it by the Board.
- 66.5 In the absence of any regulations, the meetings and proceedings of a committee consisting of two (2) or more members are governed by the provisions in this Constitution regulating the meetings and proceedings of the Board.

## **67 Validation of Acts**

An act done by a person acting as a Director, a Board meeting, or a committee, is not invalidated merely because of:

- 67.1 A defect in the appointment of a person as a Director;
- 67.2 The person being disqualified to be a Director or having vacated office; or
- 67.3 The person not being entitled to vote,

If that circumstance was not known by the person, the Board or the committee (as applicable) when the act was done

## **DIRECTORS' INTEREST**

### **68 Prohibition on Being Present or Voting**

- 68.1 Except to the extent permitted by the Corporations Act a Director who has a material personal interest in a matter that is being considered at a Board meeting:
  - 68.1.1 Must not be counted in a quorum; and
  - 68.1.2 Must not vote on the matter
- 68.2 If a Director who has a material personal interest in a matter which is being considered at a Board meeting is not prohibited by the Corporations Act from being present at the meeting and voting, the Director may be present, be counted in the quorum and may be heard but not vote on the matter.

### **69 Existence of Interest**

- 69.1 A Director may not hold any other office or place of profit under the Company while he or she is a Director.



- 69.2 A Director may, to the extent permitted by the Corporations Act:
- 69.2.1 Enter into contracts or arrangements or have dealings with the Company either as a vendor, purchaser, mortgagee or otherwise; or
  - 69.2.2 Be interested in any contract, operation, undertaking or business entered into undertaken or assisted by the Company or in which the Company is or may be interested.
- 69.3 The Director is not because of entering into any relationship or transaction referred to in clause 69.2:
- 69.3.1 Disqualified from the office of Director; or
  - 69.3.2 Liable to account to the Company for any profit arising from the relationship or transaction by reason of being a Director, or of the fiduciary relationship between the Director and the Company
- 69.4 For the purpose of this clause 69 “Company” includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder.

## **70 Disclosure of Interest**

- 70.1 The nature of the Director’s interest as referred to in clause 69.2 must be disclosed by the Director before or at the Board meeting at which the question of entering into the contract or arrangement is first taken into consideration if the interest then exists, or in any other case at the first Board meeting after the Director becomes so interested.
- 70.2 It is the duty of a Director who is in any way whether directly or indirectly interested in a contract or proposed contract with the Company to declare the nature of his or her interest in accordance with the provisions of the Corporations Act.
- 70.3 It is the duty of a Director who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as Director, to declare the fact and the nature, character and extent of the conflict in accordance with the provisions of the Corporations Act.

## **INADVERTENT OMISSIONS**

### **71 Formalities Omitted**

If some formality required by this Constitution is inadvertently omitted or is not carried out, the omission does not invalidate any resolution, act, matter or thing which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission has directly prejudiced the Company. The decision of the Board is final and binding on all Members.



## SECRETARY

### 72 Terms of Office of Secretary

A Secretary must be appointed by the Board and holds office on such terms and conditions as determined by the Board.

## MINUTES

### 73 Minutes to be Kept

- 73.1 The Board must carry out the obligations imposed on the Company by the Corporations Act to cause:
- 73.1.1 Minutes of all the resolutions and proceedings of all general meetings, Board meetings and committee meetings to be kept and entered, within one (1) month after the relevant meeting is held, in books kept for that purpose; and
  - 73.1.2 Those minutes to be signed by the Chairperson or other chair of the meeting at which the proceedings took place, or by the Chairperson or other chair of the next succeeding meeting
- 73.2 Without limiting clause 73.1.1, the Board must cause minutes to be made of:
- 73.2.1 All appointments of officers and servants;
  - 73.2.2 The names of the Directors present at all meetings of the Board and the Company; and
  - 73.2.3 The method by which a Board meeting was held
- 73.3 Where minutes have been so entered and signed then, unless the contrary is proved:
- 73.3.1 The meeting shall be deemed to have been duly convened and held;
  - 73.3.2 All proceedings and resolutions that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and
  - 73.3.3 All appointments of Directors, office bearers, Auditors etc that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

## SEAL

### 74 Company Seal

- 74.1 The Board will determine whether or not the Company is to have a common seal and, if so, must provide for the safe custody of the seal.



- 74.2 The seal, if any, must be used only by the authority of the Board or a committee authorised by the Board to authorise the use of the seal.
- 74.3 Every document to which the seal is affixed must be signed by at least one (1) Director and countersigned by another Director, a secretary, or another person appointed by the Board to countersign that document or class of documents in which that document is included.

## **75 Affixing of Seal by Interested Director**

Any document which is signed or countersigned by an interested Director is considered as complying with the above clause 74.3.

## **ACCOUNTS, AUDITS AND RECORDS**

### **76 Accounts**

- 76.1 The Board must, in accordance with the Corporations Act and the ACNC Act, cause proper accounting and other records to be kept.
- 76.2 The Board must make available the financial and other reports as required by the Corporations Act and the ACNC Act.

### **77 Audit**

- 77.1 If required by the Corporations Act and the ACNC Act, a properly qualified Auditor must be appointed and the Board must cause the Company's affairs to be audited or reviewed.
- 77.2 The remuneration of the Auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act and ACNC Act.

### **78 Rights of Inspection**

- 78.1 Subject to the Corporations Act, the ACNC Act and this Constitution, the Board may determine whether and to what extent (if any), and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members who are not Directors. A Member who is not a Director does not have the right to inspect any document of the Company except as provided by the Corporations Act or authorised by the Board.
- 78.2 Where the Board considers it appropriate, the Company may:
- 78.2.1 Give a Director or former Director access to various Company papers, including documents provided or available to the Board and other papers referred to in those documents; and



- 78.2.2 Bind itself in a deed (in such terms as the Board considers appropriate) with a Director or former Director to give that access.
- 78.3 Nothing contained in clause 78.2 or in any deed entered into between the Company and any Director or former Director pursuant to that clause will in any way exclude, limit or restrict the right of access to the Company's books conferred on such persons by the Corporations Act.

## NOTICES

### 79 Service of Notices

A notice may be given by the Company to any Member personally or by sending it by post or email to the Member at the address shown in the Register or the postal address, or email address supplied by the Member to the Company for the giving of notices.

### 80 Method of Service

- 80.1 If a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to be effected six business days after the date of posting.
- 80.2 If a notice is sent by email transmission, service of the notice is deemed to be effected on the earlier of when the sender's e-mail system confirms successful transmission of the e-mail and the next business day after the date of transmission unless, within 1 business day after that transmission, the sender receives notice that the e-mail has been rejected or its delivery has been delayed.
- 80.3 In all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a business day is taken to be received by the recipient at 9.00am on the next business day.
- 80.4 For the purpose of this clause "**business day**" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where the Company has its registered office.

## INDEMNITY AND INSURANCE

### 81 Indemnity

- 81.1 Subject to clause 81.2 and to the extent permitted by the Corporations Act, the Company will indemnify:
- 81.1.1 Every person who is or has been an officer of the Company; and
- 81.1.2 Where the Board considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company,

Against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be):



- 81.1.3 To any other person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith; and
- 81.1.4 For costs and expenses:
  - (a) In defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; and
  - (b) In connection with an application in relation to those proceedings in which the Court grants relief to the person under the Corporations Act
- 81.2 Clause 81.1 applies:
  - 81.2.1 To the extent the Company is not precluded by law from doing so;
  - 81.2.2 To the extent, and for the amount that the officer of the Company or related body corporate of the Company is not otherwise entitled to be indemnified and is not otherwise actually indemnified; and
  - 81.2.3 Where the liability is incurred in or arises out of the conduct of the business of another corporation, or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- 81.3 Without limiting clause 81.1, the Company may, to the extent to which the Company is not precluded by law from doing so, execute and deliver any deed, agreement or other document in favour of any officer or former officer of the Company or related body corporate of the Company to whom this clause 81 applies, confirming the indemnities contained in this clause 81, in relation to that person. This clause 81 shall apply whether or not any such deed, agreement or other document is given.

## 82 Insurance

Where the Board consider it appropriate to do so, the Company may, to the extent permitted by law:

- 82.1 Purchase and maintain insurance; or
- 82.2 Pay or agree to pay a premium for insurance,

For any indemnified officer of the Company or of a related body corporate of the Company against any liability incurred by the person as an officer of the Company or of a related body corporate of the Company.





## 83 Director Voting on Contract of Insurance

Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate of the Company.

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## 84 Deductible Gift Recipient Status

- 84.1 If the Company has been notified by the Australian Taxation Office that gifts and contributions to the Company will be an allowable deduction:
- 84.1.1 The Company must promptly notify the Australian Taxation Office of all amendments to the Constitution (if required by law); and
  - 84.1.2 The Board must, if required to do so under the ITAA or chooses to do so, maintain a gift fund for the Company's purposes:
    - (a) To which gifts of money or property for that purpose are to be made;
    - (b) To which any money received by the Company because of such gifts is to be credited; and
    - (c) That does not receive any other money or property.
- 84.2 Any Gift Fund:
- 84.2.1 Must be kept in a bank account separate from the other accounts of the Company; and
  - 84.2.2 Will, unless the Board determines otherwise, be governed by this Constitution
- 84.3 Upon any Gift Fund being wound up or if the endorsement (if any) as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, will be transferred to an entity or entities:
- 84.3.1 That has similar charitable and benevolent purposes to the Company;
  - 84.3.2 That also prohibits the distribution of profit, income and assets to its members to at least as great an extent as provided in this Constitution;
  - 84.3.3 To which income tax deductible gifts can be made on the same basis as made to the Gift Fund; and
- Such entity or entities to be determined by:
- 84.3.4 Resolution of the Members, and failing that,
  - 84.3.5 Resolution of the Board, and failing that,
  - 84.3.6 Application to the Supreme Court of Victoria for determination



84.4 To the extent that the Company is not required to maintain a Gift Fund, on winding up of the Company or revocation of the Company's deductible gift recipient endorsement, any surplus gifts, fundraising contributions or money received because of them as set out in section 30-125(6) of the ITAA must be transferred to a fund, authority or institution which:

84.4.1 Has similar charitable and benevolent purposes to the Company;

84.4.2 Is endorsed as a deductible gift recipient on the same basis as the Company was endorsed under the ITAA; and

Such fund, authority or institution to be determined by:

84.4.3 Resolution of the Members, and failing that,

84.4.4 Resolution of the Board, and failing that,

84.4.5 Application to the Supreme Court of Victoria for determination.

84.5 Without limiting clause 84.1, any funds given to the Company which are expressed by the donor to be for a specific purpose must only be used for that specific purpose in such manner as the Board determines.

