



SHAPINGOUTCOMES

Here to support children thrive, connect & belong



Constitution

Tweed Valley Early Childhood
Intervention Service Ltd
t/as Shaping Outcomes

Revised March 2018
Based on the Model Constitution and Replaceable Rules

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Part 1 - Preliminary

1. Definitions

(1) In this constitution:

Company is a reference to a public company as defined in s9 of the Corporations Act, and registered as a company limited by guarantee with the regulatory body ASIC.

Company Limited by Guarantee means a company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up.

Director of a company means a person who, regardless of the name that is given to their position:

- (a) is appointed to the position of a director; or
- (b) is appointed to the position of an alternate director and is acting in that capacity.

Material Personal Interest is where the interest is of some substance or value rather than merely a slight interest. To be personal, an interest need not be pecuniary.

Meeting includes any procedure by which the directors resolve any matter.

Member means a person who:

- (a) was a member of the company on its registration; or
- (b) agrees to become a member of the company after its registration and their name is entered on the register of members.

Secretary means the person holding office under this constitution as secretary of the company.

the Act means the *Corporations Act 2001*.

the Regulation means the *Corporations Regulations 2001*.

(2) In this constitution:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

Part 2 - Objectives

- (1) The objectives of the company shall be:
 - (a) To assist families of children with disabilities by providing a regular opportunity for them to meet to share and discuss information and mutual problems.
 - (b) To assist families of children with disabilities by gathering and distributing information about existing services and facilities which cater for children with disabilities.
 - (c) To promote a better understanding of children with disabilities within the community and to encourage greater community involvement for children with disability and/or developmental delay and their families.
 - (d) To identify the needs of families of children with disabilities as clearly as possible.
 - (e) To develop a resource library for families of children with disabilities and the wider community.
 - (f) To apply funds for educational and therapy programs to assist the growth and development of children with disabilities.
 - (g) To strive for the establishment of additional services and facilities for children with disabilities.
 - (h) To cooperate and/or associate with any society, company or other charitable organisation having objects not contrary to those of the company.
 - (i) To pursue charitable purposes only, applying the income of the company in promoting, delivering and attaining the above objectives.

Part 3 - Members

2. Membership generally

- (1) A person is eligible to be a member of the company if:
 - (a) the person is a natural person, and
 - (b) the person has been nominated and approved for membership of the company in accordance with clause 3.
- (2) A person is taken to be a member of the company if:
 - (a) the person is a natural person, and
 - (b) the person was a member of the registrable corporation immediately before that entity was registered as a company; or
 - (c) the person agreed to become a member of the company after its registration and their name is entered on the register of members; or
 - (d) the person was one of the individuals on whose behalf an application for registration of the company under the Act was made.
- (3) The company must have at least one member.

3. Nomination for membership

- (1) A nomination of a person for membership of the company:
 - (a) must be made by a member of the company in writing in the form set out in Appendix 1 to this constitution, and
 - (b) must be lodged with the secretary of the company.
- (2) As soon as practicable after receiving a nomination for membership, the secretary must refer the nomination to the board of directors which is to determine whether to approve or to reject the nomination.
- (3) As soon as practicable after the board of directors makes that determination, the secretary must notify the nominee, in writing, that the board of directors approved or rejected the nomination (whichever is applicable).
- (4) The secretary must enter or cause to be entered the nominee's name in the register of members and, on the name being so entered, the nominee becomes a member of the company.

4. Cessation of membership

A person ceases to be a member of the company if the person:

- (a) dies, or
- (b) resigns membership, or
- (c) is expelled from the company (refer to the Code of Conduct agreement and Confidentiality agreement outlining reasons for expulsion).

5. Resignation of membership

- (1) A member of the company may resign from membership of the company by first giving to the secretary written notice of at least one month (or such other period as the board of directors may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (2) If a member of the company ceases to be a member under subclause (1), and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

6. Register of members

- (1) The secretary of the company must establish and maintain a register of members of the company specifying the name and postal or residential address of each person who is a member of the company together with the date on which the person became a member.
- (2) The register of members must be kept in New South Wales:
 - (a) at the main premises of the company, or
 - (b) if the company has no premises, at the company's official address.
- (3) The register of members must be open for inspection, free of charge, by any member of the company at any reasonable hour.
- (4) A member of the company may obtain a copy of any part of the register on payment of a fee of not more than \$1 for each page copied.
- (5) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (6) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
 - (a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the company or other material relating to the company, or
 - (b) any other purpose necessary to comply with a requirement of the Act or the Regulation.

7. Resolution of disputes

- (1) A dispute between a member and another member (in their capacity as members) of the company, or a dispute between a member or members and the company, are to be referred to a community justice centre for mediation under the *Community Justice Centres Act 1983*.
- (2) If a dispute is not resolved by mediation within 3 months of the referral to a community justice centre, the dispute is to be referred to arbitration.
- (3) The *Commercial Arbitration Act 1984* applies to any such dispute referred to arbitration.

8. Members meetings

- (1) A director may call a meeting of the company's members.
- (2) The directors must call and arrange to hold a general meeting on the request of members with at least 5% of the votes that may be cast at the general meeting.

The request must:

- (a) be in writing; and
- (b) state any resolution to be proposed at the meeting; and
- (c) be signed by the members making the request; and
- (d) be given to the company.

The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.

The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held no later than 2 months after the request is given to the company.

- (3) Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.

The meeting must be called in the same way, so far as is possible, in which general meetings of the company may be called.

The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

- (4) At least 14 days before the entity sends a notice convening a members' meeting, it must lodge copies of documents to be given to members with ASIC. These documents include the proposed notice, resolution, explanatory statement and any other documents to be put to the meeting that could reasonably be expected to be material to the members in deciding how to vote.

In determining whether to comment on the documents, ASIC will consider case law and general principles governing notices of meetings. In particular, ASIC will consider whether the documents fully disclose material facts and whether they are clear and unambiguous.

- (5) At least 21 days' notice must be given of a meeting of a company's members.

Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director.

- (6) When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

- (7) The quorum for a meeting of the company's members is two members and the quorum must be present at all times during the meeting.

A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:

- (a) if the date is not specified--the same day in the next week; and

(b) if the time is not specified--the same time; and

(c) if the place is not specified--the same place.

If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

- (8) The directors may elect an individual to chair meetings of the company's members.
- (9) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (10) At a meeting of members of a company, on a show of hands each member has one vote.
- (11) A challenge to a right to vote at a meeting of a company's members may only be made at the meeting and must be determined by the chair, whose decision is final.
- (12) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast.

On a show of hands, a declaration by the chair is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

- (13) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs. A poll on the election of a chair or on the question of an adjournment must be taken immediately.

9. Special resolutions

If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the company, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter, the intention to propose the resolution as a special resolution.

Part 4 - Directors

10. Powers of the board of directors

Subject to the Act, the Regulation and this constitution and to any resolution passed by the company in general meeting, the board of directors:

- (a) is to control and manage the affairs of the company, and
- (b) may exercise all such functions as may be exercised by the company, other than those functions that are required by this constitution to be exercised by a general meeting of members of the company, and
- (c) has power to perform all such acts and do all such things as appear to the board of directors to be necessary or desirable for the proper management of the affairs of the company.

Any two directors of the company may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

11. Composition of board of directors

- (1) The board of directors is to consist of:
 - (a) At least three directors; and
 - (b) A secretary.
- (2) The total number of directors is not to exceed 10 with representation from but not limited to, parent members, early childhood education and care, health, allied health, finance, and legal representation.
- (3) Each director is, subject to this constitution, to retain their directorship until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election. Directors are to serve a minimum period of two years with succession planning process to be initiated.

12. Appointing directors

- (1) A company may appoint a person as a director by resolution passed in general meeting.
- (2) The directors of a company may appoint a person as a director. A person can be appointed as a director to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum. The company must confirm the appointment by resolution at the next AGM for a public company.
- (3) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period. The appointment and terms of appointment must be notified to ASIC.
- (4) The directors of a company may confer on a managing director any of the powers that the directors can exercise. The directors may revoke or vary a conferral of powers on the managing director.

- (5) The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms as the directors see fit.

13. Remuneration of directors

As a charitable organisation, the directors of the company are ineligible for remuneration.

14. Secretary

- (1) The secretary holds office on the terms and conditions that the directors determine.
- (2) The secretary of the company must, as soon as practicable after being appointed as secretary, lodge notice with the company of his or her address.
- (3) It is the duty of the secretary to keep minutes of:
 - (a) all appointments of directors, and
 - (b) the names of directors present at a directors meeting or a general meeting, and
 - (c) all proceedings at directors meetings and general meetings.
- (4) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

15. Resignation of directors

- (1) A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.
- (2) A person ceases to be managing director if they cease to be a director. The directors may revoke or vary an appointment of a managing director.

16. Board of directors meetings and quorum

- (1) The directors must meet at least 3 times in each period of 12 months at such place and time as the directors may determine (recommendation of 8 times/year including the AGM).
- (2) A directors' meeting may be called by a director giving reasonable notice individually to every other director. A director who has appointed an alternate director may ask for the notice to be sent to the alternate director.
- (3) Oral or written notice of a meeting of the board of directors must be given by the secretary to each director at least 48 hours before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under subclause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the board of directors present at the meeting unanimously agree to treat as urgent business.

- (5) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair. The directors must elect a director present to chair a meeting, or part of it, if:
 - (a) a director has not already been elected to chair the meetings; and
 - (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.
- (6) Unless the directors determine otherwise, the quorum for a directors' meeting is two directors and the quorum must be present at all times.

Directors who are not entitled to vote do not count when determining whether a quorum exists.

If there is not a quorum of directors who are eligible to vote on a matter, one or more directors may call a general meeting and the general meeting may deal with the matter.
- (7) The directors of a company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last director signs.
- (8) A director is considered present via use of technology, including but not exclusive to video conferencing and phone conferencing.

17. Voting and decisions

- (1) Questions arising at a meeting of the board of directors are to be determined by a majority of the votes of directors present at the meeting.
- (2) Each director present at a directors meeting (including the person presiding at the meeting) is entitled to one vote by show of hand, but in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) A director who has a conflict of interest in relation to a proposed matter should not be in a position to influence the decision-making and must take reasonable steps to protect the company from suffering serious harm by notifying the board of an interest, abstaining from voting and not attending meetings.

The director must account for potential profit or benefit obtained when such a conflict exists, or by reason of taking advantage of an opportunity or knowledge derived from their position.

If a director of a public company has a material personal interest in a matter being considered at a directors' meeting, they must not:

 - (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the board of directors, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any directors.

- (5) Directors should ensure they have, or have access to, enough knowledge or expertise to assess all aspects of the proposed transactions – where necessary, they should obtain appropriate professional and expert advice from any appropriately qualified person.

18. Annual statement

- (1) Upon receipt of the Annual Statement Pack from ASIC, the company will:
 - (a) pay review fee by due date;
 - (b) update company details; and
 - (c) submit a solvency resolution, passed by a majority of the directors, declaring the company solvent or insolvent. The solvency resolution is to be submitted no later than two months after the date of review and is to be kept with company records.

19. Annual general meeting

- (1) The company must hold its first annual general meeting within 18 months after its registration under the Act.
- (2) The company must hold its annual general meetings within five months after the close of the company's financial year.
- (3) The annual general meeting of the company is to be convened on such date and at such place and time as the board of directors thinks fit.
- (4) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
 - (b) to receive from the board of directors, reports on the activities of the company during the preceding financial year,
 - (c) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (5) An annual general meeting must be specified as such in the notice convening it.

Part 5 - Miscellaneous

20. Not for Profit

The assets and income of the organisation shall be applied solely to further its objects and no portion shall be distributed directly or indirectly to the members of the organisation except as genuine compensation for services rendered or expenses incurred on behalf of the organisation.

21. Dissolution

In the event of the organisation being dissolved, all assets that remain after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes, which is charitable at law and which has rules prohibiting the distribution of its assets and income to its members.

22. Deductible Gift Recipient Revocation

If the organisation is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:

- (a) gifts of money or property for the principal purpose of the organisation;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation; and
- (c) money received by the organisation because of such gifts and contributions.

23. Insurance

The company may effect and maintain insurance.

24. Funds - source

- (1) The funds of the company are to be derived from fees, grants and donations and, subject to any resolution passed by the company in general meeting, such other sources as the board of directors determines.
- (2) All money received by the company must be deposited as soon as practicable and without deduction to the credit of the company's bank or other authorised deposit-taking institution account.
- (3) The company must, as soon as practicable after receiving any money, issue an appropriate receipt.

25. Funds - management

- (1) Subject to any resolution passed by the company in general meeting, the funds of the company are to be used in pursuance of the objects of the company in such manner as the board of directors determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any two directors and/or employees authorised to do so by the board of directors.

26. Change of name, objects and constitution

An application to ASIC for registration of a change in the company's name, objects or constitution is to be made by the board of directors.

27. Custody of books etc

Except as otherwise provided by this constitution, the secretary must keep in his or her custody or under his or her control all records, books and other documents relating to the company.

28. Inspection of books etc

- (1) The following documents must be open to inspection, free of charge, by a member of the company at any reasonable hour:
 - (a) records, books and other financial documents of the company,
 - (b) this constitution,
 - (c) minutes of all board of directors meetings and general meetings of the company.
- (2) The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect the books of the company on payment of a fee of not more than \$1 for each page copied.

29. Service of notices

- (1) For the purpose of this constitution, a notice may be served on or given to a person:
 - (a) by delivering it to the person personally, or
 - (b) by sending it by pre-paid post to the address of the person, or
 - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
 - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
 - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
 - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent or, if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

30. Financial year

The financial year of the company is:

- (a) the period of time commencing on the date of incorporation of the company and ending on the following 30 June, and
- (b) each period of 12 months after the expiration of the previous financial year of the company, commencing on 1 July and ending on the following 30 June.

Appendix 1 - Application for Membership

CONSENT TO ACT AS A MEMBER

To: The Directors

Proposed company name:

I hereby consent to become a member of the company upon its registration.

Personal Details:

Full name:

Former name: (if applicable).....

Usual residential address:.....
.....

Date of birth:.....

Place of birth: [Town/City].....[State/Country]

Share Details:

Details of each share class taken up must be consented to.

I agree to subscribe for[Number] of[Class] shares at a price of [Amount agreed to be paid] per share.

These shares are to be fully/partly [Circle appropriate option] paid on registration.

The amount paid per share is [Amount paid].

The amount unpaid per share is [Amount unpaid per share].

I will hold beneficial/non-beneficial [Circle appropriate option] ownership of these shares.

Signature:

Printed name:

Date:

Appendix 2 – Application for Director

CONSENT TO ACT AS A COMPANY OFFICEHOLDER

Proposed company name:

I hereby consent to act as the Director/Secretary [Circle] of the company upon its registration.

Personal Details:

Full name:

Former name: (if applicable).....

Usual residential address:.....
.....

Date of birth:.....

Place of birth: [Town/City]..... [State/Country]

Signature:

Printed name:

Date: