

## **Constitution**

### **Baptistcare WA Limited**

**ACN 632 648 009**

**A Public Company Limited by Guarantee**

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## 1 Preamble

- (a) The Baptist Union was established in 1897 with the objects of providing resources and positive supportive leadership for the building of healthy missional church; promoting the unity of the Churches in faith, fellowship and ministry; and to provide opportunity for the Churches of the Union to do together such work for the advancement of the Kingdom of God as may be impossible or difficult for each to do separately, or as may more beneficially or powerfully be done together. It operates under the business name "Baptist Churches Western Australia."
- (b) The Company was an agency of The Baptist Union which had specific powers and responsibilities in relation to the Company as referred to in this Constitution, including to:
  - (i) control the composition of the Board by confirming Director appointments;
  - (ii) approve Director remuneration; and
  - (iii) approve changes to this Constitution.
- (c) The Baptist Union also had representation on the Board. The Director of Ministries of The Baptist Union from time to time was a director of the Company.
- (d) In 2023, the Constitution of this Company was amended, including on the items referred to in paragraphs (b) & (c) above.

## 2 Definitions and interpretation

### 2.1 Definitions

In this Constitution unless a contrary intention appears:

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

**Annual General Meeting** has the same meaning as the term 'AGM' in the Corporations Act.

**Approved Provider** has the meaning given to that term in the *Aged Care Quality and Safety Commission Act 2018* (Cth).

**ASIC** means the Australian Securities and Investments Commission.

**Baptist Union (The)** means The Baptist Union of Western Australia Incorporated (ABN 59 739 180 494) and which operates under the business name 'Baptist Churches Western Australia'

**Company** means Baptistcare WA Limited being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 632 648 009.

**Constitution** means this constitution as amended from time to time. Corporations Act means the *Corporations Act 2001* (Cth).

**Deductible Contributions** means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for that purpose.

**Director** means an individual holding office as director of the Company. Directors or Board means some or all of the Directors acting as a board.

**Executive Director WA** means the Executive Director WA appointed from time to time by the Directors under clause 26.

**General Meeting** means a meeting of the Members of the Company and includes an Annual General Meeting.

**Gifts** means gifts of money or property for the principal purpose of the Company.

**Gift Fund** means a fund established in accordance with clause 7.

**Member** means a person entered on the Register of the Company as a member.

**Non-Baptist** means a person who is a practising, active Christian who belongs to a church other than a Baptist Church.

**Non-Baptist Director** means a person who is appointed as a Director and is a Non-Baptist.

**Object** means the object of the Company as set out in clause 3.

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

**Registered Office** means the registered office for the time being of the Company. Related Body Corporate has the same meaning it has in the Corporations Act. Rule means a rule made by the Directors in accordance with clause 17.

**Schedule** means a schedule to this Constitution.

**Secretary** means an individual appointed as a secretary of the Company in accordance with clause 27.1.

**Special Resolution** takes the meaning given by Section 9 of the Corporations Act.<sup>1</sup>

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

## 2.2

### Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;
- (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (g) a reference to a person being present in person includes an individual participating in a meeting as described in clause 2.2(f);
- (h) a reference to a person includes a natural person, corporation or other body corporate;

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<sup>1</sup> At the time of registration of this Company, section 9 provides that a Special Resolution is a resolution:

- (a) of which notice has been given to the Members in accordance with clause 10.3; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

- (i) a power, an authority or a discretion reposed in a Director, the Directors, the Company in General Meeting or a Member may be exercised at any time and from time to time;
- (j) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (k) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

## **2.3 Signing**

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

## **2.4 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;
- (b) "section" means a section of the Corporations Act; and
- (c) while the Company is a registered charity under the ACNC Act:
  - (i) subject to clause 2.4(c)(ii), the provisions of the Corporations Act in Part 2G.2 and Part 2G.3 (except section 249X) apply as if section 111L(1) of the Corporations Act was not enacted; and
  - (ii) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the Company.

## **2.5 Headings**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

## **2.6 Replaceable rules do not apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

## **3 Object of the Company**

The Company is motivated by transforming lives by expressing the love of Christ. It is a charitable institution established to provide relief to the disadvantaged, vulnerable and marginalised, as well as people at serious risk of experiencing those conditions, in accordance with the principles of the Baptist Church. The Company achieves this object by:

- (a) supporting and providing care to vulnerable elderly persons, and persons who need assistance with everyday tasks due to their vulnerability.
- (b) providing benevolent relief of suffering, distress, misfortune, helplessness and disadvantage experienced by people living in local, regional and metropolitan communities throughout Australia, particularly by providing homes, social and affordable housing and related support to people who are disadvantaged through

homelessness, sickness, disability, mental illness, ageing, low income or financial hardship.

- (c) providing relief to people suffering from mental illness and/or who are affected by family violence and/or abuse.
- (d) providing poor and disadvantaged persons anywhere with relief in money or in kind and to give them board, lodging, clothing, food, medical attendances, nursing services, medicine and all things and appliances of a medical, surgical, dietetic and dental nature.
- (e) doing all such other lawful acts, matters and things as are incidental or conducive to the attainment of the above objects or any of them or any objects of a like or similar nature.

#### **4 Powers**

The Company has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Corporations Act.

#### **5 Application of income for Object only**

##### **5.1 Application of income and property**

The income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the Object; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise unless the relevant Member is a company, fund or institution which:
  - (i) has charitable purposes similar to, or inclusive of, the Object; and
  - (ii) is a not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to an extent at least as great as imposed on the Company under this Constitution.

##### **5.2 Payment in good faith**

Clause 5.1 does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

- (a) of reasonable remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of fair and reasonable interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause 5.2(c) by the Company in a General Meeting;
- (d) of reasonable rent for premises let by a Member; or
- (e) in furtherance of the Object.

## **6 Winding up**

### **6.1 Guarantee by Members**

- (a) Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within 1 year after they cease to be a Member.
- (b) This contribution is for:
  - (i) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$1.

### **6.2 Application of property**

- (a) If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, then, subject always to clause 6.3, that property may only be paid to or distributed among the Members to the extent permitted under clause 5.1, or transferred to one or more companies, funds or institutions, not being Members:
  - (i) that have charitable purposes similar to, or inclusive of, the Object; and
  - (ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to an extent at least as great as imposed on the Company under this Constitution.
- (b) The funds or institutions will be determined by the Members at or before the time of dissolution.

### **6.3 Transfer of surplus assets – deductible gift recipients**

- (a) Where the Company has been endorsed as a deductible gift recipient, as an organisation under Subdivision 30-BA of the Tax Act, then where:
  - (i) the Company is wound up; or
  - (ii) the endorsement under Subdivision 30-BA of the Tax Act is revoked;any surplus assets of the Gift Fund remaining after payment of all liabilities must be transferred to one or more funds or institutions that comply with clause 6.2 and are deductible gift recipients.
- (b) Where the Company has been endorsed as a deductible gift recipient in relation to a public fund under Subdivision 30-BA of the Tax Act, then, where the fund is wound up, any surplus assets of the fund remaining after payment of all liabilities must be transferred to one or more institutions or funds that:
  - (i) comply with clause 6.2; and
  - (ii) are each an endorsed deductible gift recipient.
- (c) Where the Company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Tax Act is revoked only in relation to those funds, then it may transfer any surplus assets of that fund

after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient.

## **7 Gift Fund**

- (a) Without limiting clause 30, the Company must maintain a management account (**Gift Fund**):
  - (i) to identify and record Gifts and Deductible Contributions;
  - (ii) to identify and record any money received by the Company because of those Gifts and Deductible Contributions; andthat does not identify and record any other money or property.
- (b) The Directors must use the Gift Fund only for purposes of receiving Gifts and Deductible Contributions for the objects of the Company.
- (c) The Gift Fund forms part of the accounts of the Company.

## **8 Membership**

### **8.1 Number of Members**

- (a) The minimum number of Members of the Company will be 1.
- (b) The Members at the date of registration of the Company and any person the Directors admit to membership under clause 8.2 are the Members of the Company.

### **8.2 Admission as a Member**

The Directors may admit any person as a Member if the person is eligible under clause 8.3 and makes an application in accordance with clause 8.4.

### **8.3 Membership criteria**

To be eligible to be a Member, the individual or entity must:

- (a) be approved by a Special Resolution of the Members;
- (b) consent in writing to become a Member; and
- (c) agree to be bound by this Constitution.

### **8.4 Not used**

### **8.5 Not used**

### **8.6 Registration as Member**

If a Special Resolution of the Members is passed resolving that an individual or entity that otherwise meets the requirements of clause 8.3 be accepted as a Member the Directors must, as soon as practicable, cause the name of the person to be entered in the Register.

### **8.7 Not used**

### **8.8 Membership fees**

The Members must pay such membership fees as prescribed from time to time by the Directors.



## **8.9 Register**

- (a) The Company must establish and maintain a Register. The Register must be kept by the Secretary and must contain:
  - (i) for each current Member:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notice; and
    - (D) date the Member was entered on to the Register.
  - (ii) for each person who stopped being a Member in the last 7 years:
    - (A) name;
    - (B) address;
    - (C) any alternative address nominated by the Member for the service of notices; and
    - (D) date the membership started and ended.
- (b) The Company must provide access to the Register in accordance with the Corporations Act.

## **9 Ceasing to be a Member**

### **9.1 Cessation of membership**

A Member ceases to be a Member on:

- (a) death;
- (b) resignation by written notice to the Company having effect at the date and time specified in the notice;
- (c) failing to pay any fee that may be prescribed by the Directors from time to time within 12 months after the fee was due and payable;
- (d) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health; or
- (e) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally.

### **9.2 Not used**

### **9.3 Limited liability**

The Members have no liability as Members except as set out in clause 6.1.

## **10 General Meetings**

### **10.1 Annual General Meetings**

Annual General Meetings of the Company are to be held in accordance with the Corporations Act.

## **10.2 Convening a General Meeting**

The Directors may convene and arrange to hold a General Meeting when they think fit and must do so if required to do so under the Corporations Act.

## **10.3 Notice of a General Meeting**

- (a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 33.
- (b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

## **10.4 Calculation of period of notice**

In computing the period of notice under clause 10.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

## **10.5 Cancellation or postponement of General Meeting**

- (a) Where a General Meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause 10.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

## **10.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

## **10.7 Contents of notice of postponement of meeting**

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

## **10.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the General Meeting required to be given under clause 10.3.

## **10.9 Business at postponed meeting**

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

#### **10.10 Non-receipt of notice**

The non-receipt of notice of a General Meeting or the convening, cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or the convening, cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the convening, cancellation or postponement of a meeting.

### **11 Proceedings of Members**

#### **11.1 Number of a quorum**

- (a) If there is more than 1 Member of the Company, a majority of Members, present are a quorum at a General Meeting.
- (b) If there is only 1 Member of the Company, that member being present is a quorum at a General Meeting.

#### **11.2 Requirement for a quorum**

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairperson of the meeting (on the chairperson's own motion or at the request of a Member who is present) declares otherwise.

#### **11.3 If quorum not present**

If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

#### **11.4 Adjourned meeting**

At a meeting adjourned under clause 11.3(b), a majority of Members present in person at the meeting are a quorum. If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **11.5 Appointment and powers of chairperson of General Meeting**

If the Directors have elected one of their number as chairperson of their meetings under clause 21.1, that person is also entitled to preside as chairperson at a General Meeting.

#### **11.6 Absence of chairperson at General Meeting**

If a General Meeting is held and:

- (a) a chairperson has not been elected by the Directors; or
- (b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following persons may preside as chairperson of the meeting (in order of precedence):

- (c) the deputy chairperson if a Director has been so elected by the Directors under clause 21.1; or
- (d) a Director or Member elected by the Members present in person to preside as chairperson of the meeting.

#### **11.7 Conduct of General Meetings**

- (a) The chairperson of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
  - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chairperson under this clause 11.7 is final.

#### **11.8 Adjournment of General Meeting**

- (a) The chairperson of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
  - (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present in person; and
  - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person in respect of any adjournment.

#### **11.9 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 1 month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **11.10 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **11.11 Equality of votes – no casting vote for chairperson**

If there is an equality of votes, either on a show of hands or on a poll, then the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or attorney, and consequently the resolution fails.

#### **11.12 Voting on show of hands**

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.

- (b) A declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact.
- (c) Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

#### **11.13 Poll**

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairperson or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **11.14 Votes of Members**

- (a) Every Member has one vote.
- (b) Subject to this Constitution:
  - (i) on a show of hands, each Member present in person has one vote; and
  - (ii) on a poll, each Member present in person has one vote.

#### **11.15 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as an attorney, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member revokes the appointment or authority; or
- (c) the Member is mentally incapacitated.

#### **11.16 Objection to voting qualification**

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
  - (i) may not be raised except at that meeting or adjourned meeting; and
  - (ii) must be referred to the chairperson of that meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

#### **11.17 Written resolutions of Members**

- (a) If the Company has only 1 Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.

- (b) If the Company has more than 1 Member, the Company may pass a resolution without a meeting of Members if all the Members 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.
- (c) To pass a resolution under clause 11.17(b)
  - (i) each Member of a joint membership must sign;
  - (ii) separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy; and
  - (iii) the resolution will be passed when the last Member signs.

## **12 Directors**

### **12.1 Number of Directors**

The number of Directors must be such number between 2 and 6 as the Members determine from time to time and subject to the provisions of the Corporations Act.

### **12.2 Composition of the Board**

Subject to clause 12.1, the Board of the Company shall consist of 2 to 6 Directors elected by the General Meeting under clause 12.3 or by the Board under clause 12.9.

### **12.3 Appointment of Directors**

The Company may, at a General Meeting at which:

- (a) a Director retires or otherwise vacates office; or
- (b) a Director vacancy exists by operation of clause 12.1 or otherwise,

by resolution fill the vacated office by electing a person to that office.

### **12.4 Qualification of Directors**

To be eligible for the office of Director a person:

- (a) must consent in writing to act as a Director; and
- (b) be a practising, active Christian within a Baptist Church or be a Non-Baptist.

### **12.5 Not used**

### **12.6 Not used**

### **12.7 Removal of Directors**

The Members may by ordinary resolution remove any Director and may by an ordinary resolution appoint another person in the place of a Director so removed.

### **12.8 Not used**

### **12.9 Board may appoint Director**

The Directors may at any time appoint any person meeting the relevant qualifications in clause 12.4 to be a Director, either to fill a vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number in clause 12.1.

### **13 Remuneration of Directors**

The Directors may be paid reasonable remuneration for their services as Directors in accordance with the following provisions:

- (a) The Directors propose the total remuneration to be paid to them for approval by the Company in General Meeting;
- (b) Subject to clause 13(c), the Directors are to be paid the remuneration that the Company determines in General Meeting;
- (c) The Company determines by resolution only the total remuneration to be paid to the Directors, and the Directors determine(s) how the total remuneration is divided among them.

### **14 Expenses of Directors**

- (a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company.
- (b) Any payment to a Director must be approved by the Directors.

### **15 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be eligible under clause 12.4;
- (b) resigns from the office by notice in writing to the chairperson of the Company;
- (c) is not present at 3 successive meetings of the Directors without leave of absence from the Directors;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;
- (f) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator; or
- (g) dies.

### **16 Powers and duties of Directors**

#### **16.1 Directors to manage the Company**

- (a) The Directors are to manage the business of the Company consistent with the Object and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.
- (b) The Directors are responsible for the overall strategy, governance and performance of the Company.
- (c) If:
  - (i) the Company is a wholly-owned subsidiary; and

- (ii) the Company is not an Approved Provider; or
- (iii) the Company is an Approved Provider and the Company's holding company is also an Approved Provider,

a Director is authorised to act in the best interests of its holding company provided that the Director acts in good faith in the best interests of that holding company and the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

## **16.2 Specific powers of Directors**

Without limiting the generality of clause 16.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to:

- (a) borrow or raise money;
- (b) charge any property or business of the Company; and
- (c) give any security for a debt, liability or obligation of the Company or of any other person.

## **16.3 Compliance with duties under the Law**

Each Director must comply with the duties described in Governance Standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the Corporations Act from time to time.

## **16.4 Delegation**

- (a) The Directors may resolve to delegate any of their powers to:
  - (i) a committee in accordance with clause 23;
  - (ii) a Director;
  - (iii) the Executive Director WA ; or
  - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.
- (d) The Directors may continue to exercise any power they have delegated.

## **17 Rules**

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Company.

## **18 Appointment of attorney**

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.



- (b) A power of attorney granted under clause 18(a) may contain any provisions for the protection and convenience of the attorney and persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

## **19 Conflicts of interest**

### **19.1 Disclosure of conflict of interest**

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

### **19.2 Disclosure recorded in minutes**

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

### **19.3 Material personal interest**

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 19.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

### **19.4 Present and voting**

A Director with a material personal interest in a matter may still be present and vote if:

- (a) their interest arises because they are a Member of the Company and the other Members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 34.2);
- (c) their interest relates to a payment by the Company under clause 34.1, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (d) their interest arises in relation to the director's remuneration as a director of the Company;
- (e) ASIC makes an order allowing the Director to vote on the matter; or
- (f) the Directors who do not have material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Company; and
  - (ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **20 Proceedings of Directors**

### **20.1 Directors' meetings**

- (a) Subject to clause 20.1(c) the Directors must meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.
- (c) The Directors must meet at least once each year (excluding the Annual General Meeting).

### **20.2 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

## **21 Chairperson and deputy chairperson of Directors**

### **21.1 Election of chairperson and deputy chairperson**

The Directors may elect from their number a chairperson and a deputy chairperson of their meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.

### **21.2 Absence of chairperson at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairperson has not been elected under clause 21.1; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 21.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

### **21.3 No casting vote for chairperson at Directors' meetings**

In the event of an equality of votes cast for and against a resolution, the chairperson of the Directors' meeting does not have a second or casting vote, and consequently the resolution will not be passed.

## **22 Quorum for Directors' meeting**

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is a majority of Directors holding office.
- (b) The Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 12.1, the Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

## **23 Committees**

### **23.1 Delegation to committees**

- (a) The Directors may delegate any of their powers, to a committee consisting of such one or more of their number and any other persons as they think fit.

- (b) A committee to which any powers have been delegated under clause 23.1(a) must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

## **23.2 Meetings of committees**

A committee may meet and adjourn as it thinks proper.

## **23.3 Chairperson of a committee**

The members of a committee may elect one of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chairperson of the meeting.

## **23.4 Determination of questions**

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members present and voting.
- (b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

## **24 Circular resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of 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.
- (b) 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.
- (c) The resolution is passed when the last Director signs.

## **25 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director, are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote.

## **26 Executive Director WA**

- (a) Subject to clause 26(b), the Directors may appoint an Executive Director WA (on the terms determined by the Directors) who will have the day to day responsibility for the operation of the services of the Company.
- (b) To be eligible to be the Executive Director WA, a person must be a practising and active member of a Christian Church.

- (c) The Executive Director WA shall be invited to attend all Directors' meetings, but may not vote.

## **27 Secretary**

### **27.1 Appointment of Secretary**

There must be at least one Secretary who is to be appointed by the Directors.

### **27.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **27.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

## **28 Not used**

## **29 Execution of documents**

Documents executed for and on behalf of the Company must be executed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; or
- (c) such other persons as the Directors by resolution appoint from time to time.

## **30 Accounts**

- (a) The Directors must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Company or otherwise considered by the Directors to be appropriate, cause the accounts of the Company to be audited or reviewed accordingly.
- (b) The Directors must distribute to the Members copies of the annual financial reports of the Company accompanied by a copy of the report of the auditor or reviewer (as required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.

## **31 Seals**

### **31.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **31.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the

Directors to countersign that document or a class of documents in which that document is included.

## **32 Inspection of records**

### **32.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors).

### **32.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

## **33 Service of documents**

### **33.1 Document includes notice**

In this clause 33, a reference to a document includes a notice.

### **33.2 Methods of service**

- (a) The Company may give a document to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
  - (iii) by sending it to an electronic address nominated by the Member.
- (b) A document sent by post:
  - (i) if sent to an address in Australia, may be sent by ordinary post and is taken to have been received 2 business days after the date of its posting; and
  - (ii) if sent to an address outside Australia, must be sent by airmail and is taken to have been received on the 7th business day after the date of its posting.
- (c) If a document is sent by electronic transmission, delivery of the document is taken:
  - (i) to be effected by properly addressing and transmitting the electronic transmission; and
  - (ii) to have been delivered on the day following its transmission.

### **33.3 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

## **34 Indemnity and insurance**

### **34.1 Indemnity**

The Company must indemnify any current or former Director, Secretary or executive officer of the Company and may indemnify the governing body members, officers or executive officer of a Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity; and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by law (including the Corporations Act) to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by any law; or
- (e) the person is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).
- (f) The indemnity is a continuing obligation and is enforceable by a person even though they are no longer a Director, Secretary or executive officer of the Company, or of a wholly owned subsidiary.

### **34.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or a governing body member, officer or executive officer of a Related Body Corporate of the Company against liability arising out of conduct by the person in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or
- (b) the contract would, if the Company paid the premium, be made void by any law (including the Corporations Act).

### **34.3 Contract**

The Company may enter into an agreement with a person referred to in clauses 34.1 and 34.2 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause 34 may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

## **35 Amendment to Constitution**

- (a) Subject to clause 35(c), this Constitution may only be amended by Special Resolution of the Members of the Company.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.
- (c) Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.