



Brightwater

Constitution

Brightwater Care Group Limited
ACN 612 921 632

A company limited by guarantee
incorporated in Western Australia
under the *Corporations Act 2001* (Cth)

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Constitution
of
Brightwater Care Group Limited
ACN 612 921 632

1. Definitions and Interpretation

1.1 Definitions

In this Constitution:

- ACNC Act** means the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) and all regulations made under that Act.
- Alternate Director** means a person appointed as alternate director of the Company under rule 7.12.
- Auditor** means the person appointed for the time being as the auditor of the Company.
- Bad Leaver** means a former Director who has:
- (a) been dismissed for cause;
 - (b) committed serious misconduct;
 - (c) acted in a manner that has brought, or is likely to bring, the Company into serious disrepute;
 - (d) committed a material, serious or persistent breach of their engagement as a Director, the Constitution, Board Charter or Code of Conduct;
 - (e) committed a breach of duties under the *Corporations Act 2001* (Cth) or the *Australian Charities and Not-for-profits Commission Act 2012* (Cth); or
 - (f) committed any act of fraud, theft, dishonesty or gross misconduct in relation to the affairs of the Company (whether or not charged with an offence).
- Board** means the board of directors of the Company constituted in accordance with rule 7.

Business Day	means a day on which banks are open for business in Perth, Western Australia, excluding a Saturday, Sunday or public holiday in that city.
CEO	means the Chief Executive Officer appointed as, or to perform the duties of, the Chief Executive Officer of the Company.
Chair	means the person occupying the position of chairperson under rules 6.8 or 8.4 (where appropriate).
Company	means Brightwater Care Group Limited ACN 612 921 632 .
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Deductible Gift Recipient	means an organisation that is endorsed by the Commissioner of Taxation as a deductible gift recipient pursuant to section 30-120 of the <i>Income Tax Assessment Act 1997</i> (Cth).
Director	means a director of the Company and (where appropriate) includes any Alternate Director.
Directors Present	means, in connection with a meeting, the Directors present at the venue or venues for the meeting in person (including by technology).
Good Leaver	means a former Director who is not a Bad Leaver.
Guarantee	means the guarantee provided by the Members pursuant to rule 5.3.
Member	means a person whose name is entered in the Company's register of members.
Member Present	means, in connection with a meeting, a Member present at the venue or venues for the meeting in person (including by technology), by proxy, by attorney or, where the Member is a body corporate, by representative.
Replaceable Rules	means the replaceable rules applicable to a public company under section 135 of the Corporations Act (as referred to in section 141 of the Corporations Act).
Secretary	means a person appointed to perform the duties of secretary of the Company and (where appropriate), includes any acting or assistant Secretary appointed under rule 13(a).
Special Resolution	has the meaning given to that term in the Corporations Act.

1.2 Interpretation

In this Constitution, unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this rule 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a rule, party, annexure, exhibit or schedule is a reference to a rule of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any rule, annexure, exhibit and schedule;
- (h) a reference to a document (including this Constitution) includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing and includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Western Australia time;
- (k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a body, other than a party to this Constitution (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Constitution do not limit what else is

included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;

- (o) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (p) a reference to a month is a reference to a calendar month;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (r) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
- (s) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia;
- (t) a reference to a signature, the requirement for a document or thing to be signed, or its execution, includes an electronic signature (including a digital signature) and signing or execution in electronic form (including through an electronic platform such as DocuSign or its equivalent), to the extent permitted by law; and
- (u) an expression which is not defined in this Constitution has the same meaning as given under the Corporations Act.

1.3 **Business Day**

If anything under this Constitution is required to be done by or on a day that is not a Business Day, that thing must be done by or on the next Business Day.

1.4 **Replaceable Rules**

The Replaceable Rules in the Corporations Act do not apply to the Company.

1.5 **Application of the Corporations Act**

Despite any other provision in this Constitution, if:

- (a) the Corporations Act prohibits a thing being done, the thing may not be done;
- (b) the Corporations Act requires something to be done, authority is given for that thing; and
- (c) a provision of this Constitution is or becomes inconsistent with the Corporations Act, that provision must be read down or, failing that, severed from this Constitution to the extent of the inconsistency.

2. Preliminary

2.1 Name

The name of the Company is Brightwater Care Group Limited.

2.2 Type of Company

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

2.3 Restriction on Shares

The Company does not have the power to issue shares of any kind.

3. Objects and Powers of the Company

3.1 Objects

The principal objects of the Company are to:

- (a) provide and manage services, housing, facilities, and support for elderly people, children, people with long-term or incurable physical or mental health conditions, and people with temporary or permanent disabilities, as well as the families and carers of these groups of people;
- (b) promote and support ways to improve health, wellbeing, and quality of life for those groups of people describe in rule 3.1(a), and for people at risk of developing those conditions; and
- (c) undertake and support research to improve knowledge and contribute to better health, wellbeing, care and quality of life for those groups of people described in rules 3.1(a) and (b) above.

3.2 Powers

- (a) The Company has the following powers, which may only be used to carry out its objects as set out in rule 3.1:
 - (i) the powers of an individual; and
 - (ii) all the powers of a public company limited by guarantee under the Corporations Act.
- (b) Without limiting rule 3.2(a), the Company intends to carry out its objects by:

- (i) disseminating information and knowledge derived from research and best practices in aged care and disability services for the benefit of the public, service providers, and policymakers;
- (ii) providing education, training, and professional development to staff, carers, volunteers and the general community to enhance aged care and disability support capabilities;
- (iii) collaborating with government agencies, research institutions, health and community service providers, and other relevant stakeholders in achieving the above objects;
- (iv) raising funds and apply for grants or subsidies, including government, philanthropic, and community-based funding, to support the activities of the Company;
- (v) carrying on an investment activity, commercial activity or business provided the profits from the activity or business are applied to further the Company's objects; and
- (vi) undertaking any lawful activity consistent with the above, which furthers or is incidental to the achievement of the Company's objects.

4. Not-for-profit

4.1 Promotion of the objects

The Company's income and property must only be applied towards promoting the Company's objects set out in rule 3.1. The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in rule 4.2.

4.2 Payment of income or property to a Member

Rule 4.1 does not stop the Company from doing the following things, provided they are done in good faith:

- (a) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company;
- (b) making a payment to a Member in carrying out the Company's charitable objects; or
- (c) making a distribution or donation of any income or assets to a Member where such donation or distribution is consistent with rule 3.1.

5. Membership

5.1 Number of Members

The Company must have at least five Members.

5.2 Limited liability of Members

The liability of the Members is limited in accordance with rule 5.3.

5.3 Guarantee

In a winding up of the Company, each Member, and each person who was a Member in the year ending on the date of the commencement of the winding up, undertakes to contribute a maximum of ten dollars (\$10.00) to the Company for the payment of the:

- (a) debts and liabilities of the Company incurred before the Member stopped being a Member;
- (b) costs, charges and expenses of any winding up; and
- (c) adjustments of the rights of the Members amongst themselves.

5.4 Admission to Membership

- (a) Subject to rules 5.7 and 5.8, the Members are:
 - (i) those Members set out in Annexure 1, being the current 'Subscriber Members' of the Company on the date of adoption of this Constitution;
 - (ii) every person that is appointed as a Director under rule 7.2 whilst they remain a Director;
 - (iii) every former Director, provided the Board considers they are a Good Leaver; and
 - (iv) any other person the Board admits to membership under rule 5.4(b).
- (b) The Board may from time to time in its absolute discretion admit any person to membership of the Company on receipt of an application from the person in a form determined by the Board.
- (c) The Board may in its absolute discretion reject any applicant for membership.
- (d) A register of Members must be kept and contain the name and address of each Member, the date on which each Member was admitted to membership of the Company, and if applicable, the date of the Member's membership.

5.5 Membership Fees

- (a) Each Member must pay a joining fee and an annual membership fee unless the Directors decide otherwise.
- (b) The Directors may increase or decrease the amount of any joining fee and/or annual membership fee payable by Members from time to time. Notice of any change must be promptly notified to Members.
- (c) Unless the Directors determine otherwise in accordance with rule 5.5(b), there is no joining fee, and the annual membership fee is twenty dollars (\$20.00) plus GST (if applicable).
- (d) A Member that has not paid the required membership fee in accordance with this rule may not exercise any of the rights associated with that Member's membership, including the right to exercise any vote the Member may have at a meeting of Members.

5.6 Classes of Membership

The Board may establish different classes of Members and prescribe the qualifications, rights and privileges of persons to become a Member of a particular class.

5.7 Cessation of Membership

A Member ceases to be a Member if they:

- (a) die;
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated Member);
- (c) fails to pay any required membership fee in accordance with rule 5.5 within three months after the date on which that membership fee becomes due, or such later time as the Directors may determine;
- (d) resign in writing;
- (e) are expelled in accordance with rule 5.9;
- (f) have been a Member by virtue of being a former Director under rule 5.4(a)(iii) for ten (10) years, (excluding any initial period as a Member under rule 5.4(a)(ii)); or
- (g) have not responded within three months to a written request from the Board or Company Secretary that they confirm in writing that they want to remain a Member.

5.8 Effect of Cessation

A Member who ceases to be a Member continues to be liable for all moneys due by them to the Company and the Guarantee (if required by rule 5.3).

5.9 Suspension and expulsion

- (a) If a Member:
- (i) wilfully refuses or neglects to comply with the provisions of this Constitution; or
 - (ii) is guilty of any conduct which, in the unanimous opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company,
- the Board has the power to suspend or expel the Member from the Company by resolution.
- (b) At least one week prior to the meeting of the Board at which a resolution under rule 5.9(a) is considered, the Company must provide the Member with:
- (i) notice of the meeting;
 - (ii) any allegations against them;
 - (iii) the intended resolution; and
 - (iv) advice that the Member may, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation or defence they think fit.
- (c) Any Member referred to in rule 5.9(a) may, by notice in writing lodged with the Secretary at least 24 hours prior to 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 a mediator elected by the then current president of the Law Society of Western Australia.
- (d) The role of the mediator is to assist in negotiating a resolution of the matter and, if agreed by the parties, make a decision that is binding on the Company and the relevant Member.
- (e) The reasonable costs of the parties incurred under the procedures under this rule 5.9 will be borne by the Company.

6. General Meetings

6.1 Annual General Meeting

An annual general meeting of the Company must be held at least once in each calendar year after the end of the financial year of the Company, at a time and place determined by the Board.

6.2 Calling a general meeting

A general meeting of the Company may only be called:

- (a) by a resolution of the Board; or
- (b) as otherwise provided in the Corporations Act.

6.3 Postponing or cancelling a general meeting

Subject to the Corporations Act, the Board may in its discretion:

- (a) adjourn or postpone a general meeting;
- (b) cancel a general meeting; or
- (c) change the place for a general meeting.

6.4 General Meetings called by Members

- (a) If the Members request that the Directors call and arrange to hold a general meeting in accordance with the Corporations Act (**Request**), the Request must:
 - (i) be in writing;
 - (ii) state any resolution to be proposed at the general meeting;
 - (iii) be signed by the Members making the Request; and
 - (iv) be given to the Company.
- (b) Separate copies of a document setting out the Request may be used for signing by Members if the wording of the Request is identical in each copy.
- (c) The percentage of votes that Members have is to be worked out as at midnight before the Request is given to the Company.

6.5 Notice of general meeting

- (a) Notice of a general meeting must be given in accordance with section 249H of the Corporations Act.

- (b) Notice of a general meeting must be given to:
 - (i) each Member entitled to vote at the meeting;
 - (ii) each Director; and
 - (iii) the auditor (if any).
- (c) Subject to any determination of the Board in accordance with rule 6.5(d), a notice of a general meeting must include:
 - (i) the place, date and time for the meeting (and if the meeting is to be held in one or more physical venues and using virtual technology or using virtual technology only, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - (iv) a statement that Members have the right to appoint proxies and that, if a Member appoints a proxy:
 - (A) the proxy does not need to be a Member of the Company;
 - (B) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - (C) the proxy form must be delivered to the company at least 48 hours before the meeting.
- (d) The Board may decide:
 - (i) the content of a notice of a general meeting, but the notice must include the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act; and
 - (ii) subject to the Corporations Act, the manner in which the notice of a general meeting may be given.
- (e) The accidental omission to give or send notice of any general meeting or the postponement of any general meeting or the non-receipt of a notice by any person entitled to receive such notice will not invalidate the proceedings or any resolution passed at any such general meeting.

6.6 General Meetings Utilising Technology

- (a) The Company may hold a general meeting at:

- (i) one or more physical venues,
 - (ii) one or more physical venues and using technology, or
 - (iii) using only technology.
- (b) Any type of technology may be used to hold a general meeting, provided the Members as a whole must be given a reasonable opportunity to participate in the meeting.
- (c) Anyone using this technology is taken to be present in person at the meeting.

6.7 Quorum

- (a) Subject to rule 8, no business may be transacted at any general meeting except the election of the Chair unless a quorum of Members is present.
- (b) Except as otherwise provided in this Constitution, three Members, in person or by proxy, constitutes a quorum at a general meeting.
- (c) If there is no quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Chair or the Directors adjourn the meeting to a date, time and place determined by the Chair or the Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

6.8 Conduct of general meetings

- (a) Subject to rule 6.8(b), the Chair or, in the Chair's absence, the deputy Chair is entitled to preside as chairperson at every general meeting.
- (b) Where a general meeting is held and:
- (i) there is no Chair or deputy Chair; or
 - (ii) the Chair or deputy Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as Chair of the meeting,

the Directors Present may choose one of their number to be Chair of the meeting.

- (c) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to, the meeting by the Chair.
- (d) The Chair may make rulings without putting the question (or any question) to the vote if the Chair considers action is required to ensure the orderly conduct of the meeting.

- (e) At any time the Chair considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (f) Any determination by the Chair in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to:
 - (i) a right to vote (whether on a show of hands or on a poll); or
 - (ii) a determination to allow or disregard a vote,may only be made at the meeting and may be determined by the Chair.

6.9 Adjournments

- (a) During the course of the meeting, the Chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair. If the Chair exercises a right of adjournment of a meeting under this rule, the Chair has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

6.10 Voting at general meetings

- (a) Each resolution submitted to a general meeting is to be decided by a show of hands of the Members Present and entitled to vote (including by way of proxy), unless a poll is demanded.
- (b) Unless a poll is demanded, a declaration by the Chair following a vote on a show of hands that a resolution has been passed or lost is conclusive.

6.11 When a Poll is effectively demanded

- (a) A poll may be demanded by:
 - (i) at least three Members Present and entitled to vote on the resolution;
 - (ii) Members Present with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chair of the meeting.
- (b) The poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

6.12 Special Meetings

All of the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members which may be held pursuant to this Constitution or the Corporations Act.

6.13 Procedure for Polls

- (a) When demanded, a poll may be taken in the manner and at the time the Chair directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the Chair considers appropriate.
- (c) The demand for a poll does not prevent a meeting from continuing in relation to any transaction or any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

6.14 Casting vote

In the event of an equality of votes on a show of hands or on a poll, the Chair has a casting vote in addition to any vote to which the Chair may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.

6.15 Representation and voting of Members

- (a) Subject to this Constitution, and any rights or restrictions for the time being attached to any class or classes of Members, at meetings of Members or classes of Members:
 - (i) each Member entitled to attend and vote may attend and vote in person or by proxy, by attorney or (where the Member is a body corporate) by representative; and

- (ii) each Member Present has one vote.
- (b) The power of attorney or proof of appointment of a representative must be produced for inspection at the Company's registered office not less than 24 hours before the time for holding the meeting or adjourned meeting, unless the document has previously been produced for inspection in accordance with this rule 6.15.
- (c) A proxy need not be a Member.

6.16 Form of proxy

- (a) A Member who is entitled to attend and vote at a meeting of the Company may appoint an individual or a body corporate as a proxy to attend and vote for the Member in accordance with the Corporations Act.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote at a meeting of the Company may exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act.
- (c) The instrument appointing a proxy:
 - (i) must be in writing (in a form prescribed by the Board) and duly executed by the appointer;
 - (ii) is deemed to confer authority to demand or join in demanding a poll; and
- (d) must be in accordance with the Corporations Act. The instrument appointing a proxy must be deposited at the Company's registered office not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote. No instrument appointing a proxy will be valid after the expiration of 12 months from the date of its execution.
- (e) Any appointment of proxy under this rule 6.16 which is incomplete may be completed by the Secretary on the authority of the Directors and the Directors may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- (f) Where a notice of meeting provides for electronic lodgement of proxies, a proxy lodged at the electronic address specified in the notice is taken to have been received at the Company's registered office and validated by the Member provided that the requirements for electronic lodgement of proxies set out in the notice have been complied with.

6.17 Validity of proxies

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal; or
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power,

if no notice in writing of the death, unsoundness of mind or revocation (as the case may be) has been received by the Company at its registered office before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.
- (c) Voting instructions given by a Member to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if:
 - (i) the voting instructions are contained in the document form of appointment of the Company Proxy; or
 - (ii) in the case of new instructions or variations to earlier instructions, the new instructions or variations to earlier instructions are either:
 - (A) received at the Company's registered office before the meeting or adjourned meeting by a notice in writing signed by the Member; or
 - (B) otherwise validated by the Member in a manner acceptable to the Directors in their discretion prior to the commencement of the meeting.

6.18 Circulating resolutions

- (a) If all Members entitled to receive notice of a general meeting and to vote on a resolution of Members sign a document containing a statement that they are in favour of the resolution set out in the document, a Members' resolution in those terms is passed when the last Member signs such a document.
- (b) For the purpose of this rule 6.18:
 - (i) two or more separate documents in identical terms, each of which is signed by one or more Members, will be treated as one document; and
 - (ii) an email or facsimile containing the text of the document expressed to have been signed by a Member that is sent to the Company is deemed

to be a document signed by that Member at the time of its receipt by the Company.

6.19 Sole Member resolutions

Where the Company has only one Member, it may pass a resolution by the Member recording it and signing the record.

6.20 Members' Resolutions and Statements

- (a) Members with at least 5% of the votes that may be cast on a resolution may give:
 - (i) written notice to the Company of a resolution they propose to move at a general meeting (**Members' Resolution**); and/or
 - (ii) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (**Members' Statement**).
- (b) A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- (c) A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.
- (d) Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- (e) The percentage of votes that Members have (as described in rule 6.20(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a Members' Resolution under rule 6.20(a)(i), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- (g) This rule does not limit any other right that a Member has to propose a resolution at a general meeting.
- (h) If the Company has been given a notice or request under rule 6.20:
 - (i) in time to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of meeting, it must do so at the Company's cost; or
 - (ii) too late to send the notice of proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must

pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members' Resolution or a copy of the Members' Statement. However, at a general meeting, the Members may pass a resolution that the Company will pay these expenses.

- (i) The Company does not need to send the notice of a proposed Members' Resolution or a copy of the Members' Statement to Members if:
 - (i) it is more than 1,000 words long;
 - (ii) the Directors consider it may be defamatory;
 - (iii) rule 6.20(h)(ii) applies, and the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' Resolution or a copy of the Members' Statement to Members; or
 - (iv) in the case of a proposed Members' Resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the Members.

7. Directors

7.1 Number of Directors

- (a) The number of Directors (not including Alternate Directors) must be not less than three and no more than ten, and at least two Directors must ordinarily reside in Australia.
- (b) Each Director must be a natural person.
- (c) The Members may, by ordinary resolution passed at a general meeting, impose or alter a higher minimum or maximum number of Directors, but may not reduce the minimum number of Directors as provided in rule 7.1(a).
- (d) The Directors in office on the date of adoption of this Constitution continue in office until they resign or are removed in accordance with this Constitution.

7.2 Appointment of Director

- (a) The Members may appoint any person to be a Director by resolution at a general meeting of the Company.
- (b) The Directors may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors, provided that the person gives the Company their signed consent to act as a Director, and the Company confirms the appointment by resolution at the next annual general meeting. If the Company

does not confirm the appointment at the next annual general meeting, that person ceases to be a Director at the end of the annual general meeting.

7.3 Maximum Tenure of Directors

- (a) Subject to rule 7.3(b) and (d) Directors automatically retire on the third anniversary of their appointment.
- (b) Subject to rule 7.3(c) a Director will be eligible for re-appointment at the expiration of their term as director.
- (c) Subject to rule 7.3(d) and (e) no Director may serve as a director for more than nine (9) years.
- (d) Where a Director is the elected Chair at the expiration of the period referred to in rule 7.3(c) then that person is eligible for re-appointment for a further three (3) years save that they may not serve for more than twelve (12) years as a Director.
- (e) This rule 7.2(b) does not apply to a CEO that is appointed as a Director.

7.4 Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) At least two (2) months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.
- (c) If notice of the intention to move a resolution to remove a Director at a general meeting is received by the Company, that Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed by the Company that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least twenty one (21) days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

7.5 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) fails to attend three or more consecutive Board meetings without a prior written leave of absence granted by the Board in any twelve month period, and the Board subsequently resolves that the person should cease to be a Director;
- (e) dies; or
- (f) is disqualified from acting as a Director under the Corporations Act.

7.6 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

7.7 Membership requirement

Directors are required to be Members.

7.8 Powers of Directors

The business of the Company is managed by the Directors, who may exercise all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.

7.9 Duties of Directors

The Directors must comply with their duties as directors at law (including under the Corporations Act and at common law) which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director;
- (b) to act in good faith in the best interests of the Company
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;

- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 9.1;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

7.10 Payments to Directors

- (a) Subject to the Corporations Act and the ACNC Act, the Company may remunerate Directors for performing their duties and responsibilities as a Director subject to the following requirements:
 - (i) the aggregate annual amount payable to all Directors must not exceed the aggregate maximum annual amount approved by resolution of the Members in general meeting from time to time; and
 - (ii) the aggregate annual amount payable to all Directors under rule 7.10(a)(i) must be allocated among the Directors as determined by the Board in its discretion or, failing any such determination, on an equal basis having regard to the proportion of the relevant year that the Director has held office:
- (b) The Company may pay a Director for work that the Director undertakes for the Company, other than as a Director (including for serving as chair of any committee), if the amount is no more than a reasonable fee for the work completed.
- (c) The Company may reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- (d) Subject to applicable law and the terms of the relevant Director's appointment, any payment made under this rule 7.10 may be paid or provided in any manner the Board may decide, including as superannuation or as part of a salary sacrifice arrangement.
- (e) Any payment made under this rule 7.10 must be approved by the Directors.
- (f) The Company may pay premiums for insurance indemnifying Directors, as permitted by any law (including the Corporations Act) and this Constitution.

7.11 Directors may lend to the Company

Any Director may lend money to the Company at interest with or without taking security over the Company's assets or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

7.12 Alternate Directors

Subject to this Constitution, a Director (**Appointing Director**) may appoint any person (who is approved by a majority of the other Directors) to act as an alternate Director in the Appointing Director's place, either for a stated period or until the happening of a specified event. The appointment must be in writing and signed by the Appointing Director and a copy of the appointment must be sent to the Company's registered office or given at a meeting of the Directors. The appointment takes effect on approval by a majority of the other Directors or any later time specified in the appointment. The following provisions apply to any Alternate Director:

- (a) the appointment of the Alternate Director is terminated or suspended on receipt at the Company's registered office of notice in writing from the Appointing Director terminating or suspending the appointment;
- (b) the Alternate Director is entitled to receive notice of meetings of the Directors and to attend and vote at the meetings if the Appointing Director is not present;
- (c) the Alternate Director is entitled to exercise all of the powers (except the power to appoint an Alternate Director) and perform all the duties of the Appointing Director, subject to any limitations set out in the instrument appointing the Alternate Director;
- (d) the office of the Alternate Director is terminated on the death of, or termination of office of, the Appointing Director;
- (e) the Alternate Director is not to be taken into account in determining the number of Directors (but the Appointing Director must be); and
- (f) the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults and is not the agent of the Appointing Director.

8. Directors Meetings

8.1 Proceedings

- (a) The Directors may meet together for the dispatch of business and may adjourn and otherwise regulate their meetings as they determine
- (b) A Directors' meeting may be called by a Director giving reasonable notice to every other Director.
- (c) Notice of a Board meeting may be given by mail, personal delivery or email to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

- (d) Notice of a Board meeting must be sent to all Directors that sets out:
 - (i) the date, time and place of the meeting; and
 - (ii) the items to be included on the agenda.

8.2 Quorum

- (a) Until otherwise determined by the Directors, three Directors form a quorum at a Directors' meeting.
- (b) Where the number of Directors is insufficient to constitute a quorum of a meeting of Directors, the Directors will be deemed to constitute a quorum of a meeting of Directors to:
 - (i) deal with an emergency;
 - (ii) convene a general meeting of the Company; or
 - (iii) appoint a person as a Director in accordance with rule 7.2(b).

8.3 Meetings by technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director, consents to the use of each of the following technologies for holding a Directors' meeting:
 - (i) video conferencing;
 - (ii) telephone;
 - (iii) any other technology which permits each Director to communicate with every other Director; and
 - (iv) any combination of these technologies.
- (b) A Director may withdraw the consent given under rule 8.3(a) (in respect of a particular meeting or all meetings) within a reasonable period before the relevant Directors' meeting.

8.4 Chair of Directors

- (a) The Directors may elect one of their number as their Chair and may decide the period for which the Chair is to act as Chair. References to the Chair in this Constitution include, in the absence of the Chair, the deputy Chair (unless the context otherwise requires).
- (b) The Directors may elect one of their number as the deputy Chair.

- (c) Where a Directors' meeting is held and:
- (i) a Chair has not been elected as provided by rule 8.4(a); or
 - (ii) the Chair is not present at the time appointed for the holding of the meeting or does not wish to Chair the meeting,
- the deputy Chair is Chair of the meeting or, if rule 8.4(c)(i) or 8.4(c)(ii) applies to the deputy Chair, the Directors Present may elect one of their number to be Chair of the meeting.

8.5 Directors' voting rights and exercise of Powers

- (a) Subject to this Constitution, resolutions put to Directors are decided by a majority of votes of Directors Present and entitled to vote.
- (b) Directors each have one vote.
- (c) In the case of an equality of votes at a Directors' meeting, the Chair of the meeting has a casting vote in addition to the Chair's deliberative vote.
- (d) Subject to rule 9 and the Corporations Act, a Director:
 - (i) may enter into contracts with, or otherwise have dealings with, the Company; and
 - (ii) may hold other offices in the Company.
- (e) A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (f) Despite having an interest in any contract or arrangement, a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

8.6 Circulating resolutions

- (a) A resolution in writing, signed by at least 75% of all the Directors entitled to vote on the resolution, will be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.
- (b) Any such resolution may consist of several counterparts, each signed by one or more of the Directors.
- (c) The Company may send a resolution in writing by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect or by signing the resolution.

- (d) A resolution in writing is passed when at least 75% of all the Directors entitled to vote on the resolution have signed or otherwise agreed to the resolution in the manner set out in rule 8.6(b) or rule 8.6(c).

8.7 Defects in appointments

All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.

9. Material Personal Interests

9.1 Declaration of interest

- (a) Any Director who has a material personal interest in a matter that relates to the affairs of the Company, including in a contract or proposed contract, any office or any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting unless section 191(2) of the Corporations Act applies.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

9.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

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

unless:

- (c) sections 195(2) or (3) of the Corporations Act allows the Director to be present; or

- (d) the interest does not need to be disclosed under section 191 of the Corporations Act.

10. Delegation of Directors to Committees

- (a) The Directors may delegate any of their powers (including this power to delegate) to committees consisting of any one or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any lawful directions that may be imposed by the Directors. A delegate of the Directors may be authorised by the Board to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not in conflict with, or superseded by, any lawful directions made by the Directors under rule 10(a).
- (c) Nothing in this rule 10 limits the power of the Directors to delegate.
- (d) The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.
- (e) The exercise of a delegated power by a committee is as effective as if the Board exercised the power.

11. Delegation by Directors to Individuals

- (a) The Directors may delegate any of their powers (including this power to delegate) to the CEO, the secretary or an employee of the Company or a Member as the Directors think fit. In the exercise of delegated power, any person or persons appointed as a delegate must conform to any lawful directions that may be imposed by the Directors. A delegate of the Directors may be authorised by the Board to sub-delegate any of the powers for the time being vested in the delegate.
- (b) Nothing in this rule 11 limits the power of the Directors to delegate.
- (c) The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.
- (d) The exercise of a delegated power by a person is as effective as if the Board exercised the power.

12. Chief Executive Officer

12.1 Appointment

- (a) The Board may appoint a person as the chief executive officer (CEO), for any period and on any terms (including as to remuneration) as the Board resolve.
- (b) Subject to any agreement between the Company and the CEO, the Board may remove or dismiss or suspend the CEO at any time, with or without cause.
- (c) Subject to any agreement between the Company and the CEO the Board may:
 - (i) revoke or vary the appointment of the CEO;
 - (ii) revoke or vary any power delegated to the CEO; and/or
 - (iii) suspend the appointment of the CEO or suspend the delegation of powers to the CEO for such period and on such terms as the Board may bona fide determine.
- (d) If the Directors appoint the CEO as a Director under rule 7.2 then the following shall apply:
 - (i) the CEO will cease to be a Director if the CEO is removed, dismissed for any reason, or otherwise resigns as CEO;
 - (ii) the CEO is not entitled to attend, speak or vote as a Director at any meeting of the Board if the CEO is under suspension from office.

13. Secretaries

- (a) The Company must have at least one Secretary who ordinarily resides in Australia. Subject to any contrary provisions of the Corporations Act, Secretaries may be appointed by the Directors. The Directors may also appoint acting and assistant Secretaries.
- (b) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.
- (c) The Directors may at any time remove a Secretary.

14. Execution of Documents

14.1 Execution

The Company may execute a document if the document is signed by:

- (a) two Directors;
- (b) a Director and a Secretary; or
- (c) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

14.2 Directors' Interests

A Director may sign a document notwithstanding that the Director is interested in the contract or arrangement to which the document relates.

15. Notices

15.1 Notice requirements

Any notice, demand, approval, consent or other communication under this Constitution (**Notice**) must be in writing and must be delivered:

- (a) personally;
- (b) by prepaid registered post; or
- (c) sent by email to a current email address for notices,

to a party at the address of the party set out in the relevant Company register (**Nominated Contact Details**).

15.2 When Notices considered given and received

A Notice given in accordance with rule 15.1 takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or five Business Days after the date of posting if posted to or from outside Australia);
or
- (c) if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has

entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt or transmission.

16. Indemnity of Officers, Insurance and Access

- (a) In this rule 16:
- (i) **Officer** means:
- (A) a Director or Secretary or executive officer of the Company; or
- (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,
- and includes a former officer;
- (ii) **Duties of the Officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer by the Company or, where applicable, the subsidiary of the Company;
- (iii) **to the Relevant Extent** means:
- (A) to the extent the Company is not precluded by law from doing so;
- (B) to the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including a subsidiary or an insurer under any insurance policy); and
- (C) where the Liability is incurred in or arising 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; and
- (iv) **Liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind, including legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

- (b) The Company is to indemnify each Officer out of the assets of the Company to the Relevant Extent against any Liability incurred by the Officer in, or arising out of, the conduct of the business of the Company or in, or arising out of, the discharge of the Duties of the Officer for the period ending seven years after the date the Officer ceases to be an officer of the Company, except for fraud and wilful misconduct or any Liability arising out of conduct involving lack of good faith.
- (c) Subject to this rule 16, where the Directors consider it appropriate, the Company may execute an indemnity document in any form in favour of any Officer of the Company or a subsidiary.
- (d) Where the Directors consider it appropriate, the Company may to the Relevant Extent:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer of the Company or a subsidiary against any Liability incurred by the Officer in, or arising out of, the conduct of the business of the Company or in, or arising out of, the discharge of the Duties of the Officer; and
 - (ii) bind itself in any contract or deed with any Officer of the Company to make the payments.
- (e) Where the Directors consider it appropriate, the Company may:
 - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.

17. Winding up and revocation of endorsement

17.1 No distribution to Members

If, upon the winding up or dissolution of the Company, there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same must not be paid to or distributed among the Members.

17.2 Distribution of surplus assets

- (a) Subject to rule 17.2(c), the Corporations Act, the ACNC Act, any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up or dissolved must be distributed to another fund, authority or institution:

- (i) with objects similar to, or inclusive of, the Company's objects in rule 3;
 - (ii) whose constitution prohibits the distribution of its income and property to its members to an extent at least as is imposed on the Company under this Constitution;
 - (iii) is charitable at law; and
 - (iv) that is a Deductible Gift Recipient, if the Company is a Deductible Gift Recipient immediately prior to its winding up.
- (b) The fund, authority or institution to be given the surplus assets under rule 17.2(a) must be decided upon:
- (i) by the Board at or before the time of winding up or dissolution; or
 - (ii) if no decision is made under rule 17.2(b)(i), by applying to the Supreme Court of Western Australia to make this decision.
- (c) If the Company's endorsement as a Deductible Gift Recipient is revoked, any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, and to which income tax deductible gifts can be made, and no portion shall be transferred to Members:
- (i) gifts of money or property for the principal objects of the Company;
 - (ii) contributions made in relation to an eligible fundraising event held for the principal objects of the Company; and
 - (iii) money received by the Company because of such gifts and contributions.

18. Modification or repeal of this Constitution

- (a) This Constitution and any of its provisions may be modified, repealed or replaced by Special Resolution.
- (b) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to cease being a Deductible Gift Recipient.

19. Reading this Constitution with the Corporations Act

- (a) The records rules set out in the Corporations Act do not apply to the Company.
- (b) While the Company is a registered charity, the ACNC Act and the Corporations Act override any rules in this Constitution which are inconsistent with those Acts.

- (c) If the Company is not a registered charity (even if it remains a charity), the Corporations Act overrides any rule in this Constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the Corporations Act or used in that Act and covering the same subject has the same meaning as in this Constitution.

Annexure 1 – Existing Members

Ms	Anna	Dartnell
Ms	Joanne	Farrell
Dr	Maria	Kailis
Ms	Gail	Milner
Mr	Brian	Roche
Ms	Kellie	Benda
Ms	Yasmin	Naglazaras
Mr	Darren	Hayes
Mr	Richard	Thomas
Ms	Eugenia	Cutri
Mr	Gavin	Bunning
Mr	David	Craig
Mr	Trevor	Hoddy
Mrs	Frances	Hoddy
Mr	David	Hyde
Ms	Elizabeth	Hyde
Mr	Martin	Kane
Mr	Steven	Cole
Mr	Bob	de la Motte
Ms	Karen	Fleischer
Ms	Prudence	Ford
Mr	Massimo	Montisci
Mr	John	Nicolaou
Mr	Martin	Langridge
Mr	Paul	Sadleir
Mr	Michael	Snell
Mr	Richard	Lee
Dr	Adele	Thomas
Mr	Chris	Bashall
Dr	Ann	Zubrick