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**CONSTITUTION**  
**MENTAL HEALTH VICTORIA LIMITED**

APPROVED BY SPECIAL RESOLUTION ON 21 FEBRUARY 2018

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*Corporations Act 2001 (Cth)*

**Public company limited by guarantee**

**Mental Health Victoria Limited**

**ACN 624 895 549**

**1 NATURE OF COMPANY AND LIABILITY**

**Nature of Company**

- 1.1 The Company is a public company limited by guarantee.

**Liability of Members and guarantee on winding up**

- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$10.00 to the assets of the Company if it is wound up while they are a Member, or within one year afterwards, for:

- 1.2.1 payment of the Company's debts and liabilities contracted before they ceased to be a Member; and
- 1.2.2 costs and expenses of winding up.

**2 OBJECT**

- 2.1 The Company's purpose is to ensure that people living with a mental illness can access effective and appropriate treatment and community support to enable them to participate fully in society.

- 2.2 The Company will achieve its purpose by:

- 2.2.1 developing policy and undertaking research to improve the mental health system;
- 2.2.2 supporting organisations through training and other quality improvement mechanisms to deliver recovery-orientated services that enable people living with a mental illness to participate meaningfully in society;
- 2.2.3 collaborating with key stakeholders to address the premature mortality, morbidity and diminished quality of life of people living with a mental illness;
- 2.2.4 promoting mental health, social and emotional wellbeing; and
- 2.2.5 all things incidental to the above, including fundraising.

### **3 MEMBERSHIP**

#### **Membership**

3.1 The Members of the Company are Organisations as may be admitted to membership in accordance with this constitution, in each case until such time as the relevant person ceases to be a Member under clause 5.

3.2 The membership of the Company will consist only of eligible Organisations, as follows:

3.2.1 A Member must be an Organisation.

3.2.2 A Member must deliver mental health or related services, or meet other criteria as set by the Board.

3.2.3 A Member must have an Australian Business Number (ABN).

#### **Rights of Members**

3.3 Unless this constitution provides otherwise, all Members have the same rights.

#### **Membership not transferable**

3.4 A Member's rights, privileges and benefits of membership are personal to the Member and membership of the Company is not transferable.

#### **Trust and related arrangements**

3.5 Except as required by law:

3.5.1 No person is to be recognised by the Company as holding its membership on trust or otherwise holding the membership as a representative of another person.

3.5.2 Regardless of it having notice of any other interest or right, the Company is not bound by, or compelled in any way to recognise, any equitable, contingent, future, partial or other right or interest in a Member's membership of the Company.

#### **Members**

3.6 A Member must do both of the following:

3.6.1 Pay the application fee determined in accordance with clause 4.1 (if any).

3.6.2 Pay the annual subscription determined in accordance with clause 4.2 (if any).

3.7 Each Member must comply with the provisions of this constitution.

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

**Form of application**

- 3.9 An application for membership that is submitted after the date the Company is registered must comply with the following requirements:
- 3.9.1 It must be signed by the applicant.
  - 3.9.2 It must be accompanied by the application fee determined in accordance with clause 4.1 (if any) and the annual subscription determined in accordance with clause 4.2 (if any).
  - 3.9.3 It must be accompanied by such documents or evidence as to qualification for membership as the Board may in its absolute discretion determine from time to time.

**Admission to membership**

- 3.10 Any Organisation that considers that it satisfies the eligibility criteria set out in clause 3.2 may apply for membership of the Company, in the manner prescribed by the Board from time to time.
- 3.11 The Board must consider an application for membership that is submitted in accordance with clause 3.10 as soon as practicable after its receipt and determine (with reference to the eligibility criteria set out in clause 3.2 but otherwise in the Board's absolute discretion) the admission or rejection of the applicant.
- 3.12 The Board does not have to give reasons for admitting or rejecting an applicant for membership.
- 3.13 If an application for membership is rejected, the Secretary must notify the applicant in writing of that fact within a reasonable period and refund to the applicant any application fee and any annual subscription paid by the applicant.
- 3.14 If an applicant is accepted for membership, the Secretary must notify the applicant of admission in such form as the Board may determine from time to time, and the name and details of the applicant must be entered in the Register.
- 3.15 An applicant that is accepted for membership becomes a Member when the applicant's name is entered in the Register.

**Register of Members**

- 3.16 A register of the Members of the Company must be kept in accordance with the Corporations Act.
- 3.17 The following details must be entered in the Register in respect of each Member:
- 3.17.1 The full name of the Member including the ACN or ABN of a Member that is a body corporate.

- 3.17.2 The address of the Member (being the registered address in the case of a corporate Member).
- 3.17.3 The date on which the entry of the Member's name in the Register is made.
- 3.18 The Register must also show the following information, which may be kept separately from the rest of the Register:
  - 3.18.1 The name and details of each entity which stopped being a Member within the last 7 years.
  - 3.18.2 The date on which each such entity stopped being a Member.
- 3.19 The Company may also keep further registers recording other information about Members that is not required to be kept under the Corporations Act, for example:
  - 3.19.1 The telephone number, facsimile number and email address (as applicable) of the Member.
  - 3.19.2 The full name, address, telephone number, facsimile number and email address (as applicable) of the Member's representative.
  - 3.19.3 Such other information as the Board may require.
- 3.20 Each Member must notify the Secretary in writing of any change in that Member's name, address, telephone or facsimile number or email address within one month after the change.

#### **4 APPLICATION FEE AND ANNUAL SUBSCRIPTION**

##### **Application fee**

- 4.1 The application fee payable by each applicant for membership after the date the Company is registered is such sum as the Board may prescribe from time to time. For the avoidance of doubt, the application fee may be different for different applicants and may be nil.

##### **Annual subscription**

- 4.2 The annual subscription payable by a Member is such sum as the Board may prescribe from time to time. For the avoidance of doubt, the annual subscription may be different for different Members and may be nil.
  - 4.2.1 Where the Board has prescribed that an annual subscription is payable, all annual subscriptions are due and payable in advance by no later than 30 June in each year.
  - 4.2.2 If an Organisation applies for membership after 1 July in any year, the Board may reduce the annual subscription payable by the applicant in such manner as the Board considers fit.



- 4.2.3 The Board may prescribe that the annual fee payable by a Member prior to the First AGM occurring will represent full payment of their subscription for the period ending on 30 June in the following year, even if that period is longer or shorter than 12 months.

#### **Unpaid annual subscriptions**

- 4.3 A Member ceases to be entitled to any of the rights or privileges of membership if any annual subscription payable by the Member in accordance with this clause 4 remains unpaid for two months after it becomes payable and a notice of default is given to the Member pursuant to a resolution of the Board. However, the rights or privileges of membership may be reinstated on payment of all arrears if the Board (in its absolute discretion) so resolves.

## **5 REMOVAL AND CESSATION OF MEMBERSHIP**

### **Resignation**

- 5.1 A Member may resign from membership of the Company by giving written notice to the Secretary.
- 5.2 Without limiting clause 5.12, the resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

### **Other cessation of membership**

- 5.3 Without limiting clause 5.12, a Member ceases to be a Member immediately upon any Termination Event occurring in respect of the Member.

### **Failure to pay**

- 5.4 If a Member has not paid all arrears of annual subscriptions in accordance with clause 4.2 or, if paid, the Member's rights and privileges are not reinstated by the Board in accordance with clause 4.3, all of the following apply in respect of that Member:
- 5.4.1 The Member remains liable for all the obligations and liabilities of membership for six months after the date of notification under clause 4.3.
- 5.4.2 Without limiting clause 5.12, the Member ceases to be a Member and the Member's name must be removed from the Register at the end of the six month period.

### **Removal from membership**

- 5.5 The Board may convene a meeting of Members to consider the removal of a Member from the Register if the Board in its absolute discretion resolves that the Member is no longer considered suitable for membership of the Company including where (in the Board's opinion):

- 5.5.1 the Member no longer satisfies the eligibility criteria set out in clause 3.2; or
  - 5.5.2 the Member has committed any act or omission which is unbecoming of a Member or which has adversely affected the Company's interests or has the potential to do so.
- 5.6 The Board does not have to give reasons for recommending the removal of any Member from the Register.
- 5.7 The Board must provide at least two month's written notice to any Member of any intention to remove the Member from the Register, so as to enable the Member to provide any written representations to the Company.
- 5.8 Where a Member referred to in clause 5.7 makes any written representations and the Member requests that the representations be notified to Members of the Company, the Company must do both of the following:
- 5.8.1 State that the representations have been made in any notice of the resolution given to Members of the Company.
  - 5.8.2 Send a copy of the representations to every Member of the Company to whom the notice of the meeting has been or is sent.
- 5.9 The requirements in clause 5.8 do not apply to the Company if the Company receives the representations too late for it to satisfy those requirements.
- 5.9.1 If a copy of the representations is not so sent because they were received too late or because of the Company's default, the Member referred to in clause 5.7 may, without affecting any right to be heard orally, require the representations be read out at the meeting.
- 5.10 Despite clauses 5.8 and 5.9, copies of the representations need not be sent out and the representations need not be read out at the meeting if the Board is satisfied on reasonable grounds that the rights conferred by clause 5.8 are being abused, including to secure publicity for a defamatory matter.
- 5.11 An ordinary resolution of Members is required to pass the necessary resolution to remove the Member referred to in clause 5.7 under clause 5.5.

**Consequences of resignation or other cessation of membership**

- 5.12 Resignation from membership in accordance with clause 5.1, or a Member's membership ceasing in accordance with clause 5.3, clause 5.4 or clause 5.11, does not limit the Member's liability under this constitution, and despite that cessation of membership the former Member continues to be liable for all fees and other money owing to the Company as at the date of the cessation of its membership of the Company and for any amount payable in accordance with clause 1.2.

## **6 NO PROFITS FOR MEMBERS**

### **Transfer of income or property**

- 6.1 Subject to clauses 6.2 and 19, the Company may not pay or transfer any income or property, directly or indirectly, to any Member.

### **Payments, services and information**

- 6.2 Nothing in this clause 6 prevents the Company:

- 6.2.1 making a payment in good faith to a Member in carrying out the Company's charitable purposes;
- 6.2.2 making a payment in good faith of any of the following:
- (a) remuneration to any officers or employees of the Company for services actually rendered to the Company (including payment of directors' fees in accordance with clause 12.1);
  - (b) an amount to any Member in return for any services actually rendered to the Company or for goods supplied to the Company by the Member on commercial arm's-length terms or terms more favourable to the Company;
  - (c) reasonable and proper interest on money borrowed from any Member;
  - (d) reasonable and proper rent for premises let by any Member to the Company; or
  - (e) reimbursement of expenses reasonably and properly incurred by any Member on the Company's behalf with the consent of the Board; or
- 6.2.3 from providing services or information to the Members on terms which are different from the terms on which services or information are provided to persons who are not Members, or from providing services or information to Members on different terms from time to time.

## **7 GENERAL MEETINGS**

### **Convening of meetings by Directors**

- 7.1 Any Director may convene a general meeting.

### **Convening of meetings by Members**

- 7.2 The Board must call and arrange to hold a general meeting if required to do so under the Corporations Act and in accordance with any requirements under the Corporations Act.

**Notice of general meeting**

- 7.3 The Board may give notice of a general meeting by any form of communication permitted by the Corporations Act.
- 7.3.1 The notice of a general meeting must specify the place, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.
- 7.3.2 The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

**Cancellation of general meetings**

- 7.4 The Board may cancel a general meeting, other than a general meeting which the Board is required to convene and hold under the Corporations Act.
- 7.5 The Board may cancel a general meeting if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in notice of meeting.

**Quorum at general meetings**

- 7.6 The Members in general meeting may not transact any business unless a quorum of Members is present at the time when the meeting proceeds to business.
- 7.7 Except as otherwise set out in this constitution, a quorum for the purposes of a general meeting is the greater of:
- 7.7.1 three Members entitled to vote at the meeting (whether present by representative, proxy or attorney); and
- 7.7.2 the number equal to 40% of the total number of Members entitled to vote at the meeting (whether present by representative, proxy or attorney), rounded up to the next highest whole number.
- 7.8 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:
- 7.8.1 If the meeting was convened by or on the requisition of Members, it must be dissolved.
- 7.8.2 Otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.
- 7.9 If a meeting has been adjourned to another time and place determined by the Board, not less than five business days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

**Quorum at adjourned general meetings**

- 7.10 At the adjourned meeting, the quorum requirements in clause 7.7 apply, but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

**Appointment of chairperson**

- 7.11 Every general meeting must be chaired by a chairperson. The chairperson will be determined as follows:
- 7.11.1 If the Board has elected a Director as Chair in accordance with clause 14.7, that person is entitled to chair every general meeting.
- 7.11.2 Secondly, if the Board has elected a Director as Deputy Chair in accordance with clause 14.8, that person is entitled to chair that meeting if either of the following applies:
- (a) No Chair has been elected in accordance with clause 14.7.
  - (b) The Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.
- 7.11.3 Thirdly, the Directors present at the meeting must elect one of their number to chair that meeting if either of the following applies:
- (a) No Chair has been elected in accordance with clause 14.7, and no Deputy Chair has been elected in accordance with clause 14.8.
  - (b) Neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting, or if present is not willing to act.
- 7.11.4 Fourthly, the Members entitled to vote at the meeting present by representative, proxy or attorney at the meeting must elect one of those Members to chair that meeting if either of the following applies:
- (a) There are no Directors present within 15 minutes after the time appointed for the holding of the meeting.
  - (b) All Directors present decline to chair the meeting.

**Chairperson's powers**

- 7.12 The chairperson may temporarily vacate the chair at a general meeting in favour of another person present at any time and for any reason they see fit, and must do so if the Members are voting on the chairperson's election or re-election as a Director (if applicable).
- 7.13 Subject to the terms of this constitution regarding adjournment of meetings, the chairperson's ruling on all matters relating to the order of business, procedure and conduct

of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

- 7.14 The chairperson may, in his or her absolute discretion, refuse any person admission to a general meeting, or expel the person from the general meeting and not permit them to return, if the chairperson reasonably considers that the person's conduct is inappropriate. Inappropriate conduct in a general meeting includes:

- 7.14.1 The use of offensive or abusive language which is directed to any person, object or thing.
- 7.14.2 Attendance at the meeting while under the influence of any kind of drug, or using or consuming any drug at the meeting, including any alcoholic substance.
- 7.14.3 Possession of any article, including a recording device or other electronic device or a sign or banner, which the chairperson considers is dangerous, offensive or disruptive or likely to become so.

#### **Adjournment of meetings**

- 7.15 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- 7.15.1 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- 7.15.2 When a meeting is adjourned for 20 business days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- 7.15.3 Except when a meeting is adjourned for 20 business days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

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

- 7.16 At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- 7.17 If a poll is not duly demanded, 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, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

#### **Demand for a poll**

- 7.18 A poll may be demanded by either:
- 7.18.1 The chairperson.

- 7.18.2 At least five Members entitled to vote on the resolution.
- 7.18.3 Any Member or Members with at least 5% of the votes that may be cast on the resolution on a poll.
- 7.19 The demand for a poll may be withdrawn.
- 7.20 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- 7.21 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- 7.22 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

#### **Voting rights of Members**

- 7.23 The voting rights of members are that:
  - 7.23.1 on a Ballot every Member has one vote;
  - 7.23.2 on a show of hands every Member present by representative, proxy or attorney has one vote; and
  - 7.23.3 on a poll every Member present by representative, proxy or attorney has one vote.

#### **Vote of the chairperson at general meetings**

- 7.24 In a case of an equality of votes, whether on a show of hands or on a poll, the chairperson of a general meeting does not have a second or casting vote in addition to any votes he or she may have as a representative, proxy or attorney of a Member.

#### **Objections to voter qualification**

- 7.25 No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 7.26 An objection to the qualification of a voter must be referred to the chairperson, whose decision is final.
- 7.27 A vote not disallowed according to an objection as provided in this constitution is valid for all purposes.

**Mode of meeting for Members**

- 7.28 A general meeting may be called or held (including at more than one venue) using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting. The Members may otherwise regulate their meetings as they think fit.

**Resolution in writing**

- 7.29 A resolution in writing signed by all Members entitled to vote on the resolution is to be treated as a determination of the Members passed at a meeting of the Members duly convened and held.

**Form of resolution in writing**

- 7.30 A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.
- 7.31 If a resolution in writing is signed by a proxy of a Member, it must not also be signed by the appointing Member and vice versa.
- 7.32 In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

**8 BALLOTS****General rules regarding Ballots**

- 8.1 Subject to the requirements of the law and this clause 8, the Board may submit any question or proposed resolution (including the proposed election of any Director) to the vote of Members by means of a Ballot.
- 8.2 A resolution of Members decided by Ballot is as valid and effective as if the resolution had been passed at a duly convened and constituted general meeting of the Company.
- 8.3 Subject always to the requirements of the law, where the Corporations Act or this constitution provides that the relevant resolution may only be passed as a special resolution:
- 8.3.1 The Ballot paper and any relevant background material that accompanies it when it is sent to Members must set out an intention to propose the special resolution and state the resolution.
  - 8.3.2 The resolution must be passed by at least 75% of the votes cast by Members entitled to vote on the resolution.
- 8.4 Subject always to the requirements of the law and clause 8.3, a Ballot may be conducted in any manner that the Board may, in its absolute discretion, determine from time to time, subject always to the following requirements:



- 8.4.1 The Ballot must be a secret ballot, and the Board must take all reasonable steps to ensure that the manner in which the Ballot is taken will preserve its secrecy.
- 8.4.2 A Ballot may be conducted by post or by facsimile or other electronic means, as the Board may determine in its absolute discretion from time to time.
- 8.4.3 A Ballot must not be combined with any other method of voting provided for in this constitution (for example, voting at a general meeting of Members).
- 8.4.4 Every Ballot must be conducted by a returning officer appointed by the Board.
  - (a) The returning officer may be any type of person or entity, but must not be a Director (or, if clause 8.6 applies, a person who is seeking election as a Director under the relevant Ballot).
  - (b) If the Board does not appoint a returning officer, or if the person appointed by the Board cannot or will not act, a Secretary must act as returning officer.
- 8.4.5 Only votes that are received by the applicable returning officer on before 5.00 pm on the Polling Date will be counted. All votes received after that time will be invalid and must be disregarded.
- 8.4.6 Without limiting clause 8.3, the proposed resolution or other question submitted to Members by means of a Ballot will be determined by a simple majority according to the number of valid votes cast for or against the resolution or question. If there is an equality of votes, the Chair does not have a second or casting vote in addition to any votes he or she may have as a representative, proxy or attorney of a Member (without limiting clause 9.3), and the proposed resolution is therefore lost.
- 8.4.7 No resolution or other question determined by Ballot is invalid merely because there has been an accidental omission to give the Ballot paper or other relevant material to a Member, or a Member has not received those documents.
- 8.4.8 An objection to the qualification of a Member to vote in a particular Ballot must be referred to the Chair no later than five business days prior to the relevant Polling Date. The Chair's decision is final. A vote not disallowed according to an objection as provided for in this clause 8.4.8 is valid for all purposes.
- 8.5 For the avoidance of doubt, subject to the requirements set out in this clause 8 the Board may in its absolute discretion determine:
  - 8.5.1 The form of the Ballot paper and the form and content of any material that is intended to accompany the Ballot paper.
  - 8.5.2 The Polling Date.

8.5.3 The manner in which objections regarding the conduct or outcome of a Ballot must be raised, and the manner in which any such disputes will be resolved.

8.5.4 All other matters relevant to the form, conduct and outcome of the Ballot.

#### **Election of Directors conducted by Ballot**

8.6 Where the election of Directors to any of the Elected Director positions is to occur by means of a Ballot (as opposed to where the election of Directors is to occur by means of a show of hands or poll at the relevant AGM), the following rules apply in addition to the general rules set out in clauses 8.1 to 8.5:

8.6.1 The requirements of clause 11.13.2 apply for all nominations for the position of Director to be voted upon by Members by means of a Ballot.

8.6.2 The requirements of clauses 11.13.3 to 11.13.5 apply to Directors elected by means of a Ballot including under clause 8.6.6.

8.6.3 Where the relevant Board positions will fall vacant at the close of the next AGM:

(a) The Polling Date must be a date that is not more than 40 business days, and not less than 10 business days, before the intended date for holding the AGM, with the intention that the outcome of the Ballot will be determined at least 5 business days before the intended date for holding the AGM.

(b) A Director (other than a retiring Director seeking re-election) who is elected by means of a Ballot will only commence to hold that office on and from the close of the relevant AGM, and not on and from the Polling Date or the date that the outcome of the Ballot is determined.

8.6.4 Without limiting clause 8.6.6, the Board must ensure that the Ballot paper to be sent to Members contains only the names of each of the Approved Candidates for election in alphabetical order, along with the number of vacancies to be filled, and enables each Member to specify the manner in which the Member votes on each proposed resolution. The Board may also cause the Ballot paper to be accompanied by an explanatory statement detailing any information the Board considers appropriate.

8.6.5 Elected Director positions will be determined by a 'first past the post' voting system such that Board positions are filled by candidates with the highest number of votes in descending order. However, if two or more candidates receive an equal number of votes under the Ballot, the returning officer will determine their respective rankings for the purposes of the election by lot.

8.6.6 Where the number of Approved Candidates for the position of Director is equal to or less than the number of vacant positions to be filled by the Members in a

Ballot, none of those Approved Candidates will be deemed to be elected and a Ballot must be conducted.

## **9 REPRESENTATIVES, PROXIES AND ATTORNEYS**

### **Representatives, proxies and attorneys of Members**

- 9.1 At meetings of Members each Member entitled to vote may vote in person or by representative, proxy or by attorney in accordance with clause 7.23.
- 9.2 Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Member, or as a representative of a Member appointed in accordance with this Constitution, has all the powers of a Member at a meeting of Members, except where expressly stated to the contrary.
- 9.3 Where a vote is conducted by Ballot, a Member may only vote by representative, unless the Board in its absolute discretion approves in writing some other method of voting.

### **Appointment and removal of representatives: Members that are bodies corporate**

- 9.4 A Member which is a body corporate may from time to time appoint a natural person as its sole representative in any matters connected with the Company, including as permitted by the Corporations Act.
- 9.4.1 A Member may appoint, and remove, its representative for the time being by written notice to the Secretary in such form as the Board may in its absolute discretion prescribe from time to time.
- 9.4.2 A document executed by a Member in accordance with section 127 of the Corporations Act (where applicable to the Member) is rebuttable evidence of the appointment, or removal, of the named representative.
- 9.4.3 For the avoidance of doubt, a representative is entitled to exercise the powers of the Member which appointed him or her (in accordance with clause 9.2) and a representative present must be counted towards a quorum on the basis that the Member is to be considered personally present at the general meeting by its representative.

### **Appointment and removal of representatives: Members that are not legal persons**

- 9.5 A Member which is not a legal person (such as a partnership) must appoint the chairperson for the time being of the Member's governing body (for example, the chair of the partnership board or executive committee or such other person occupying an equivalent role with respect to the Member) as its sole representative in any matters connected with the Company, unless the Board in its absolute discretion determines otherwise in writing from time to time.
- 9.6 Without limiting clause 9.5:

- 9.6.1 A Member may appoint, and remove, its representative for the time being by written notice to the Secretary in such form as the Board in its absolute discretion may prescribe from time to time.
- 9.6.2 A document signed by two members of the Member's governing body (for example, the partnership board or management committee) or by such other person or persons as the Board in its absolute discretion may determine from time to time, is rebuttable evidence of the appointment, or removal, of the named representative.
- 9.6.3 For the avoidance of doubt, a representative is entitled to exercise the powers of the Member which appointed him or her (in accordance with clause 9.2) and a representative present must be counted towards a quorum on the basis that the Member is to be considered personally present at the general meeting by its representative.

#### **Appointment of attorneys**

- 9.7 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership of the Company, the Member must promptly provide the Company with any or all of the following upon written request from the Company:
- 9.7.1 The original executed instrument appointing the attorney, for notation.
- 9.7.2 A certified copy of the original executed instrument appointing the attorney, for the Company to retain.
- 9.7.3 Any other evidence the Company may request from time to time regarding the power of attorney, including evidence that the power of attorney is effective and remains in force.

#### **Appointment of proxies**

- 9.8 A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be, or be associated with, a Member.
- 9.8.1 A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed by the Member making the appointment.
- 9.8.2 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- 9.8.3 Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting.

**Verification of proxies**

- 9.9 Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company:
- 9.9.1 The document appointing the proxy.
- 9.9.2 If the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority (even if previously provided to the Company in accordance with clause 9.7).
- 9.10 Those documents must be received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than 24 hours before the time for holding the meeting.
- 9.11 If a general meeting has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

**Validity of proxies**

- 9.12 A proxy document is invalid if it is not deposited prior to a meeting or a vote being taken as required by this constitution.

**Revocation of appointment of proxy**

- 9.13 A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the revocation of the instrument or of the authority under which the instrument was executed if no notice in writing of the revocation has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used.

**10 NON-MEMBER STAKEHOLDERS****Non-Member Stakeholders**

- 10.1 The Board may create a register of Non-Member Stakeholders.
- 10.2 A Non-Member Stakeholder of the Company is a person or Organisation which:
- 10.2.1 is not a Member;
- 10.2.2 has applied to become a Non-Member Stakeholder in accordance with any procedures or policies applicable to Non-Member Stakeholders as may be determined by the Board from time to time (including if applicable payment of any fee or annual subscription determined by the Board from time to time); and
- 10.2.3 has been admitted by the Board as a Non-Member Stakeholder.
- 10.3 A Non-Member Stakeholder:

- 10.3.1 is not a Member of the Company and has none of the rights enjoyed by a Member under this document and the Corporations Act;
  - 10.3.2 has the right to attend and speak but not vote at any general meeting of the Company;
  - 10.3.3 may be granted access to certain sections of any website maintained by or on behalf of the Company that are not accessible to the general public;
  - 10.3.4 may be invited to attend certain events hosted by the Company which are not open to the general public; and
  - 10.3.5 has such other rights not inconsistent with this clause 10 as the Board may determine from time to time.
- 10.4 The Board may determine from time to time that Non-Member Stakeholders will be referred to by some other name or names, provided that any such name could not reasonably be misconstrued as representing that Non-Member Stakeholders are Members or otherwise enjoy the same rights as a company's members.

#### **Admission as a Non-Member Stakeholder**

- 10.5 The Board must consider an application for admission as a Non-Member Stakeholder as soon as practicable after its receipt and determine, in its absolute discretion, the admission or rejection of the applicant as a Non-Member Stakeholder.
- 10.6 The Board does not have to give reasons for accepting or rejecting an application for admission as a Non-Member Stakeholder.
- 10.7 If an application for admission as a Non-Member Stakeholder is rejected, the Secretary must notify the applicant in writing of that fact within a reasonable period.
- 10.8 If an applicant is admitted as a Non-Member Stakeholder the Secretary, must notify the applicant of that fact in writing in such form as the Board may determine from time to time and the name and details of the applicant must be entered in a register of Non-Member Stakeholders maintained for this purpose.

#### **Removal**

- 10.9 The Board may in its absolute discretion determine that a person ceases to be a Non-Member Stakeholder. The Board does not need to provide its reasons for doing so.

## **11 APPOINTMENT AND RETIREMENT OF DIRECTORS**

### **Number of Directors**

- 11.1 The number of Directors must not be less than three nor more than eleven. Prior to the First AGM, the directors in office must either agree or choose by lot which of them will be treated as the Initial Directors and which of those Initial Directors will hold Director positions, A1, A2, B1, B2, C1, C2 and C3.

**Election and appointment of Directors**

11.2 Without limiting the Members' rights under clause 11.18 or the Corporations Act, from the end of the First AGM, the Directors will either be:

11.2.1 elected by the Members in accordance with clause 11.13, with up to seven Directors occupying Elected Director positions 'A1', 'A2', 'B1', 'B2', 'C1', 'C2' and 'C3' as set out in the table in clause 11.3; or

11.2.2 appointed by the Board in accordance with clause 11.15 or clause 11.16, with up to four Directors occupying Appointed Director position 'D1', 'D2', 'D3' and 'D4' as set out in the table in clause 11.3,

and with the number of Directors to be elected or appointed, in any given year, to be determined in accordance with this clause 11.

**Director positions**

11.3 After the First AGM, the Board will consist of the following Director positions:

Director position	Details <sup>1</sup>	Initial term of office <sup>4</sup>	Subsequent term of office <sup>4</sup>
<b>A1</b>	<b>Elected</b> Director position.  Will be occupied by an Initial Director and subsequently by a Director elected by the Members in accordance with clause 11.13. <sup>2</sup>	Until the close of the First AGM.	Until the close of the Fourth AGM and each successive third AGM thereafter (as applicable).
<b>A2</b>	<b>Elected</b> Director position.  Will be occupied by an Initial Director and subsequently by a Director elected by the Members in accordance with clause 11.13. <sup>2</sup>	Until the close of the First AGM.	Until the close of the Fourth AGM and each successive third AGM thereafter (as applicable).
<b>B1</b>	<b>Elected</b> Director position.  Will be occupied by an Initial Director and subsequently by a Director elected by the Members in accordance with clause 11.13. <sup>2</sup>	Until the close of the Second AGM.	Until the close of the Fifth AGM and each successive third AGM thereafter.
<b>B2</b>	<b>Elected</b> Director position.  Will be occupied by an Initial Director and subsequently by a Director elected by the Members in accordance with clause 11.13. <sup>2</sup>	Until the close of the Second AGM.	Until the close of the Fifth AGM and each successive third AGM thereafter.

Director position	Details <sup>1</sup>	Initial term of office <sup>4</sup>	Subsequent term of office <sup>4</sup>
<b>C1</b>	<b>Elected</b> Director position.  Will be occupied by an Initial Director and subsequently by a Director elected by the Members in accordance with clause 11.13. <sup>2</sup>	Until the close of the Third AGM.	Until the close of the Sixth AGM and each successive third AGM thereafter.
<b>C2</b>	<b>Elected</b> Director position.  Will be occupied by an Initial Director and subsequently by a Director appointed by the Board in accordance with clause 11.15.	Until the close of the ThirdAGM.	Until the close of the Sixth AGM and each successive third AGM thereafter.
<b>C3</b>	<b>Elected</b> Director position.  Will be occupied by an Initial Director and subsequently by a Director appointed by the Board in accordance with clause 11.15.	Until the close of the Third AGM.	Until the close of the Sixth AGM and each successive third AGM thereafter.
<b>D1</b>	<b>Appointed</b> Director position.  Appointed by the Board in accordance with clause 11.15.	Until the close of the Third AGM.	Until the close of the Sixth AGM and each successive third AGM thereafter.
<b>D2</b>	<b>Appointed</b> Director position.  Appointed by the Board in accordance with clause 11.15.	Until the close of the Third AGM.	Until the close of the Sixth AGM and each successive third AGM thereafter.
<b>D3</b>	<b>Appointed</b> Director position.  Appointed by the Board in accordance with clause 11.15.	Until the close of the Third AGM.	Until the close of the SixthAGM and each successive third AGM thereafter.
<b>D4</b>	<b>Appointed</b> Director position.  Appointed by the Board in accordance with clause 11.15.	Until the close of the Third AGM.	Until the close of the Sixth AGM and each successive third AGM thereafter.

**Note 1:** All Elected Director positions are occupied by the Initial Directors until the end of their term as detailed in the table set out in clause 11.3, following which the positions will be filled in accordance with clause 11.2.

**Note 2:** The Board may appoint a Director to any of the Elected Director positions 'A1', 'A2', 'B1', 'B2', 'C1', 'C2' and 'C3' in the circumstances set out in clause 11.16.

**Note 3:** Appointed The initial term of office and the subsequent term of office are subject to the restrictions set out in clauses 11.7 to 11.12.



- 11.4 Each Initial Director and each subsequent Director upon election or appointment (as the case may be) must be elected to or assigned a Director position in accordance with the table set out in clause 11.3 and the other rules set out in this clause 11, for the purposes of determining each Director's indicative term of office and the manner in which Directors will retire by rotation.
- 11.5 For the avoidance of doubt, it is not necessary for the Directors to exercise their power under clause 11.15 within a particular timeframe, or at all.
- 11.6 Each subsequent Director who is elected or appointed (as the case may be) will be assigned the Director position that applies to the Director whom he or she is replacing. If such a subsequent Director is not replacing another Director, the Director position to be assigned to him or her will be determined by the Board with reference to the following principles:
- 11.6.1 To the extent that any of Director Elected positions are vacant at the time of the Director's election or appointment (as the case may be), the Director must be allocated the first vacant Elected or Appointed Director position (as applicable) in the descending alphabetical order set out in the table set out in clause 11.3.
- 11.6.2 If clause 11.6.1 applies to two or more newly-elected or appointed Directors (as the case may be), the applicable vacant Director positions must be assigned to them by lot unless those newly-elected or appointed Directors agree otherwise among themselves.
- 11.6.3 A Director position cannot be occupied by two or more Directors simultaneously.
- 11.6.4 Directors cannot change or re-assign Director positions while in office or when seeking re-election. However, this does not prevent:
- (a) a Director who has previously been assigned any of the Appointed Director positions from being elected to any of the Elected Director positions in accordance with clause 11.13 or appointed to any those Elected Director positions by the Board in accordance with clause 11.16; or
- (b) a Director who has previously been assigned any of the Elected Director positions from being appointed to any of the Appointed Director positions by the Board in accordance with clause 11.15 or clause 11.16 (as the case may be).
- 11.6.5 Subject to clause 11.6.4, a Director who is re-elected or re-appointed (as the case may be) will retain his or her existing Director position.

**Term of office**

- 11.7 Subject to the other terms of this constitution, a Director will hold office for a maximum period ending at the close of the relevant AGM of the Company determined in accordance with the table in clause 11.3 for the Director position assigned to him or her.
- 11.8 A retiring Director is eligible for re-election or re-appointment, save that a Director will be ineligible for re-election or re-appointment after holding office for three consecutive three-year terms. In addition:
- 11.8.1 Each Initial Director and any other Director whose initial term of office is less than three years is eligible to be re-elected (or re-appointed) for only two additional consecutive three-year terms as a Director immediately following the Director's initial term of office.
- 11.9 The Board may, in its absolute discretion, suspend the operation of clause 11.8 in relation to the Appointed Director positions.

**Retirement of Directors**

- 11.10 At the First AGM and at each subsequent AGM thereafter, the Directors who must retire from office are those assigned the applicable Director positions as set out in the table in clause 11.3 with respect to the relevant AGM.
- 11.11 A Director retiring at an AGM may act as a director until the conclusion of that meeting and is eligible for re-election or re-appointment to the extent permitted by law and this constitution.
- 11.12 A Director may also retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.

**Election of Directors**

- 11.13 At the First AGM and at each AGM thereafter, the process for electing Directors to any of Elected Director positions is as follows:
- 11.13.1 The Board may determine in its absolute discretion whether the election of Directors will be conducted by Ballot or by voting at that AGM.
- 11.13.2 Nominations for the position of Director, to be voted upon by Members by means of a Ballot or at an AGM (as determined by the Board in accordance with clause 8.1), may be submitted by any person including, for the avoidance of doubt, a Member or a retiring Director provided that a person may only submit one nomination. Any such nomination must:
- (a) be in writing and signed by the proposer and (if not the same as the proposer) the nominee for election;

- (b) be accompanied by a consent to act as a Director signed by the nominee for election, as required under the Corporations Act; and
  - (c) be submitted to the Nominations Committee and received by the Nominations Committee by no later than 40 business days prior to the Polling Date (if the election is to be conducted by Ballot in accordance with clause 8) or by no later than 40 business days prior to the date of the AGM (if the election to be conducted at the AGM).
- 11.13.3 For the avoidance of doubt, a nominee for election need not be an employee of or otherwise associated with a Member.
- 11.13.4 A nomination may be withdrawn by the relevant nominee for election or the relevant proposing Member at any time prior to the relevant AGM by giving written notice to the Secretary, with a copy to the Nominations Committee.
- 11.13.5 The following rules apply to Director elections, whether conducted by Ballot in accordance with clause 8 or conducted at the AGM:
- (a) The Nominations Committee must only consider nominations for the position of Director that satisfy all of the requirements set out in clause 11.13.2 (**Valid Nominations**). The Nominations Committee must reject all nominations that are not Valid Nominations. The Nominations Committee does not have to give reasons for determining that a particular nomination is or is not a Valid Nomination.
  - (b) The Nominations Committee may, in its absolute discretion, determine which of the Valid Nominations will be Approved Candidates, and which (if any) will be rejected and hence not submitted to Members. The Nominations Committee must promptly notify the Board in writing of the Approved Candidates after making that determination. The Nominations Committee does not have to give reasons for approving or rejecting any Valid Nominations, and its decision is final and cannot be overridden by the Board or any other person.
  - (c) The Board must provide notice of the Approved Candidates to all Members in accordance with this constitution by no later than 20 business days prior to the Polling Date (if the election is to be conducted by Ballot in accordance with clause 8) or by no later than 20 business days prior to the date of the AGM (if the election to be conducted at the AGM).
  - (d) Where the number of Approved Candidates for the position of Director is equal to or less than the number of positions to be filled by the Members (whether by means of a by Ballot in accordance with clause 8 or by voting at an AGM), no Approved Candidate will

be deemed to be elected and a vote must be conducted (as applicable) by means of a Ballot in accordance with clause 8 or by means of a show or hands or poll in accordance with the Corporations Act and this constitution (including clauses 11.13.6 and 11.13.7).

- 11.13.6 Where the election of Directors is to occur by means of a show of hands or poll at the relevant AGM, a list shall be prepared containing only the names of each of the Approved Candidates, in alphabetical order along with the number of vacancies to be filled. Each Member present and voting at the AGM shall be entitled to vote for any number of such Approved Candidates not exceeding the number of vacancies. In the event of an equal vote for two or more candidates, the returning officer will determine the respective rankings for the purposes of the election by lot.
- 11.13.7 Where there is not a sufficient number of Approved Candidates or the Members do not otherwise elect a sufficient number of Directors under that election process, the relevant Director position not filled shall remain vacant until that vacancy is filled in accordance with this clause 11.13 or clause 8.6 at the next AGM, or filled by the Directors in accordance with clause 11.16.
- 11.13.8 If at any time there is no Nominations Committee, all references to the 'Nominations Committee' in this clause 11.13 are taken to be references to the Board, with the Board having the specified functions and powers until such time as there is a Nominations Committee.
- 11.14 A Director elected in accordance with clause 11.13 must be assigned a Director position in accordance with clauses 11.4 and 11.6 and will hold office for a maximum period determined in accordance with the table in clause 11.3 with respect to the Director position he or she is assigned.

**Appointment of Directors including to fill vacancies and casual vacancies**

- 11.15 The Board, or if there is only one Director, that Director, may at any time after the First AGM appoint a person (or persons) to be a Director and who the Board will assign to an Appointed Director position and who will hold office for a maximum period determined in accordance with the table in clause 11.3.
- 11.16 The Board, or if there is only one Director, that Director, may at any time appoint a person to be a Director to fill an Elected or Appointed Director position provided that:
- 11.16.1 the relevant Director position has never previously been assigned to a Director;
- 11.16.2 the Director position has been left vacant following an AGM in accordance with clause 11.13.7; or
- 11.16.3 a casual vacancy has arisen in respect of that Director position.
- 11.17 A Director appointed by the Board under clause 11.16 will hold office for a maximum period determined in accordance with the table in clause 11.3.

**Removal from office**

- 11.18 The Members in general meeting may by ordinary resolution remove a Director from office before the expiration of his or her maximum term of office (as set out in the table in clause 11.3) by following the process set out in section 203D Corporations Act and may by ordinary resolution elect another person as a replacement. For the avoidance of doubt, the Members are not obliged to liaise with the Nominations Committee either before or after exercising powers of removal or election under this clause 11.18.

**Vacation of office**

- 11.19 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this constitution, the office of Director immediately becomes vacant if any of the following occurs:
- 11.19.1 The Director becomes an insolvent under administration.
  - 11.19.2 The Director 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.
  - 11.19.3 The Director is absent from at least three consecutive Board meetings, or at least four Board meetings over a consecutive period of 12 months, without the prior written consent of the Board.
  - 11.19.4 The Director becomes prohibited from being a director by reason of an order made under the Corporations Act (or any other Act) or the Director is removed from any office under the ACNC Act.

**No power to appoint alternate**

- 11.20 No Director has the power to appoint a person to be an alternate Director in his or her place, and a Director must not at any time purport to do so.

**12 DIRECTORS' REMUNERATION****Determination of fees**

- 12.1 The Directors' fees for their services (if any) will be determined from time to time by the Members in general meeting and, if so approved, must take the form of a stipend or sitting fee rather than an hourly rate. Directors' fees accrue from day to day.

**Additional services rendered**

- 12.2 Any Director may be paid a fee, salary or hourly rate in return for any services actually rendered to the Company in a professional or technical capacity (other than within his or her ordinary duties as a Director), provided that the Board has given its prior written approval to both the provision of the services and the proposed fee, salary or hourly rate.

**Payment for expenses**

- 12.3 Each Director may be reimbursed for out-of-pocket expenses reasonably and properly incurred by the Director in connection with Company business (including travel and accommodation expenses). Alternatively, the Company may pay such amounts on the Director's behalf.

**13 POWERS OF THE BOARD**

- 13.1 The Board may exercise all those powers of the Company as are not, by the Corporations Act or by this constitution, required to be exercised by the Members in general meeting or otherwise.

**14 PROCEEDINGS OF DIRECTORS****Convening of Board meetings**

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

**Notice of Board meetings**

- 14.2 The person convening a Board meeting must ensure that notice of the Board meeting is given to each Director at least 48 hours before the meeting or at another time determined by Board resolution, except:

14.2.1 All Directors may waive in writing the required period of notice for a particular meeting.

14.2.2 It is not necessary to give a notice of a meeting of Directors to a Director who is out of Australia or who has requested and been given leave of absence by the Board.

**Mode of meeting for Directors**

- 14.3 A Board meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one, provided that all Directors give or renew that consent promptly after a new Director joins the Board. A Director may only withdraw their consent within a reasonable period before the meeting. The Board may otherwise regulate its meetings as it considers fit.

**Quorum at Board meetings**

- 14.4 At a Board meeting, the number of Directors whose presence is necessary to constitute a quorum is one half of the number of Directors holding office at the time (rounded up to the next highest whole number).

14.5 If the number of Directors is reduced below the number necessary for a quorum of Directors or otherwise below the statutory minimum (as applicable), the continuing Director or Directors may act only to:

14.5.1 appoint additional Directors in accordance with clause 11 to the number necessary for a quorum in accordance with clause 14.4; or

14.5.2 convene a general meeting of the Company.

#### **Voting at Board meetings**

14.6 The Board must determine any questions arising at a Board meeting by a majority of votes of Directors present and voting.

#### **Appointment of Chair and Deputy Chair**

14.7 The Board may elect a Director as Chair to chair Board meetings, as follows:

14.7.1 The first Chair:

(a) must be elected as Chair by the Directors present and voting at the first Board meeting of the Company, or at a Board meeting held as soon as practicable thereafter; and

(b) will hold office as Chair until the commencement of the first Board meeting following the close of the First AGM.

14.7.2 Subsequently, the Board will by resolution elect a Director as Chair at the first Board meeting following the First AGM or the most recent AGM (whichever is applicable), to hold office for a maximum period until the commencement of the first Board meeting following the next AGM.

14.7.3 Despite the above, the Board may by resolution remove the Chair at any time and appoint another Director as Chair.

14.8 The Board may elect a Director as Deputy Chair as follows:

14.8.1 The first Deputy Chair:

(a) must be elected as Deputy Chair by the Directors present and voting at the first Board meeting of the Company, or at a Board meeting held as soon as practicable thereafter; and

(b) will hold office as Deputy Chair until the commencement of the first Board meeting following the close of the First AGM.

14.8.2 Subsequently, the Board will by resolution elect a Director as Deputy Chair at the first Board meeting following the First AGM or the most recent AGM (whichever is applicable), to hold office for a maximum period until the commencement of the first Board meeting following the next AGM.

14.8.3 Despite the above, the Board may by resolution remove the Deputy Chair at any time and appoint another Director as Deputy Chair.

14.9 If no Chair is elected, or if at any meeting the Chair is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chair may act as chair of that meeting.

14.10 If no Chair or Deputy Chair is elected, or if at any meeting the Chair and the Deputy Chair are not present within 10 minutes after the time appointed for holding the meeting or are unwilling to act, the Directors present must choose one of their number to chair that meeting.

#### **Term of office for Chair and Deputy Chair**

14.11 Provided that he or she remains a Director, a retiring Chair or Deputy Chair is eligible for re-election to that office and there is no limit to the number of consecutive terms that he or she may serve. However, and without limiting the Board's discretion, there will be a non-binding preference that no Director serves as Chair for more than six consecutive years.

#### **Chairperson's vote at Board meetings**

14.12 In the case of an equality of votes at a Board meeting, the Chair (or other Director chairing the meeting in accordance with clause 14.9 or 14.10) does not have a second or casting vote in addition to his or her deliberative vote as a Director.

#### **Participation where Directors interested**

14.13 A Director may be present and may vote on a matter before the Board if and to the extent that they are permitted to do so under the Corporations Act.

14.14 If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting then one or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

14.15 Subject to compliance with the Corporations Act, a Director may execute or participate in the execution of a document by or on behalf of the Company.

#### **No disqualification**

14.16 Subject to compliance with the law and clause 12.2, a Director or any entity in which the Director has a direct or indirect interest (as applicable) may:

14.16.1 Enter into a contract or arrangement with an Associated Party.

14.16.2 Hold any office or place of profit (other than auditor) in an Associated Party.

14.16.3 Act in a professional capacity (or be a member of a firm that so acts) other than as auditor of an Associated Party.

14.17 Despite the fiduciary nature of a Director's office and the Director's fiduciary obligations:



14.17.1 Any contract or arrangement entered into in accordance with clause 14.16.1 by the Director or any entity in which the Director has a direct or indirect interest is not invalid or voidable

14.17.2 A Director may do any of the things specified in clause 14.16 without any liability to account to the Company or any other person for any direct or indirect benefit accruing to the Director or any entity in which the Director has a direct or indirect interest.

#### **Exercise of rights**

14.18 If the Company holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board may exercise any and all voting rights conferred by the membership, shares or interests in any manner that the Board in its absolute discretion considers fit.

#### **Delegation of powers**

14.19 The Board may delegate any of its powers to any person, as the Board in its absolute discretion sees fit. This includes delegating any of the Board's powers to committees consisting of Directors or other persons. The Board may at any time revoke any delegation of power.

14.20 A delegate must conform to the directions of the Board in the exercise of any powers delegated to the delegate. The delegate's exercise of a power in accordance with this constitution is to be treated as the exercise of that power by the Board.

#### **Nominations Committee**

14.21 The Board must establish a Nominations Committee (by whatever name called) as a committee of the Board, to provide advice and recommendations to the Board and/or the Members on specified matters, among any other functions and/or powers set out in this constitution or otherwise as determined by the Board from time to time (any such determination not being inconsistent with this constitution). The Board must do so within any timeframe specified in writing by the Initial Directors.

14.22 The Nominations Committee must consist of the following persons:

14.22.1 The Chair, or another Director who is an Eligible Director if the Chair is not an Eligible Director, in either case selected by the Board from time to time.

14.22.2 Such Eligible Directors selected by the Board from time to time who (in the Board's opinion) possesses the requisite skills, competencies and experience.

14.23 The Nominations Committee will have the discretion to appoint consultants (such as executive search firms) to assist the Nominations Committee in identifying and screening potential candidates for election to the Board under clause 11.13, and the Board must ensure that the Nominations Committee is provided with a reasonable amount of funds to perform its functions.

- 14.24 Subject to clauses 14.21 to 14.24, the Board may:
- 14.24.1 Specify in writing from time to time the terms of reference of the Nominations Committee, including its role and functions, and amend, revoke or replace the terms of reference from time to time.
  - 14.24.2 Without limiting clauses 6 or 12, specify the remuneration (if any) of any person who may serve on the Nominations Committee from time to time.
  - 14.24.3 Remove and/or replace any or all of the then current members of the Nominations Committee from time to time in accordance with clause 14.22.
  - 14.24.4 Dissolve the Nominations Committee at any time.
- 14.25 All references to the Nominations Committee in this constitution (other than in this clause 14 and clause 22.1) will be of no force or effect unless the Board has established the Nominations Committee and the Nominations Committee remains in existence at the relevant time.

#### **Board committees**

- 14.26 The Board may in its absolute discretion establish one or more committees to provide advice and recommendations to the Board on specified matters (among any other functions determined by the Board, which may but need not include the exercise of power delegated by the Board in accordance with clause 14.19).
- 14.27 The Board may, with respect to a committee:
- 14.27.1 Specify in writing from time to time the terms of reference and functions of the committee.
  - 14.27.2 Appoint such persons as the Board considers appropriate to the committee (including, if thought fit, one or more Directors), and remove any such person from the committee at any time by written notice or otherwise in accordance with the terms of reference of that committee.
  - 14.27.3 Specify the period and conditions (including as to remuneration, if any) from time to time of any such appointment to the committee.
  - 14.27.4 Dissolve the committee at any time.

#### **Proceedings of committees**

- 14.28 Except as provided in this constitution or in a direction of the Board (including if applicable the terms of reference of the relevant committee), the meetings and proceedings of a committee formed by the Directors and/or other persons must be governed by the provisions of this constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Board.

**Validity of acts of Directors etc**

- 14.29 All acts done by a Board meeting or of a committee of (or including) Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

**Minutes**

- 14.30 The Board must cause minutes of all proceedings of general meetings, of Board meetings and of subcommittees formed by the Directors to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- 14.31 The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

**Resolution in writing**

- 14.32 A resolution in writing signed by all Directors entitled to vote on the resolution (excluding Directors who have requested and been given leave of absence by the Board) is to be treated as a determination of the Board passed at a Board meeting duly convened and held.
- 14.32.1 A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- 14.32.2 A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director and is deemed to be signed when received in legible form.
- 14.32.3 In relation to a resolution in writing, a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

**15 SECRETARY**

- 15.1 The Board may appoint one or more Secretaries and may at any time terminate the appointment or appointments.
- 15.2 The Board may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this constitution, the Corporations Act or by any other statute to be carried out by the secretary of the Company.

## **16 INDEMNITY AND INSURANCE**

### **Indemnity**

- 16.1 Every officer and past officer of the Company may be indemnified by the Company, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Company or a subsidiary of the Company, including legal costs and expenses incurred in defending an action. For the avoidance of doubt, the ways in which the Company may do so include by entering into an 'Indemnity, Insurance and Access Deed' (or similar contract) from time to time with one or more officers or past officers of the Company.

### **Insurance premiums**

- 16.2 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company to the fullest extent permitted by law. For the avoidance of doubt, the ways in which the Company may do so include by entering into an 'Indemnity, Insurance and Access Deed' (or similar contract) from time to time with one or more officers or past officers of the Company.

## **17 EXECUTION OF DOCUMENTS**

- 17.1 The Company may execute a document in any manner permitted by the Corporations Act or at general law.

## **18 GIFT FUND REQUIREMENTS**

### **Company to maintain a Gift Fund**

- 18.1 To the extent required by law, in order to obtain deductible gift recipient status, the Company must maintain a Gift Fund in accordance with this clause 18.

### **Rules applying to the Gift Fund**

- 18.2 The following rules apply to any Gift Fund established and maintained by the Company:

18.2.1 The Gift Fund must have a name.

18.2.2 The Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.

18.2.3 The Company must maintain a separate bank account for the Gift Fund.

18.2.4 The following must be credited to the Gift Fund:

- (a) All gifts of money or property to the Company for the Principal Purpose.

- (b) All money or property received by the Company because of those gifts.

18.2.5 No other money or property may be credited to the Gift Fund.

18.2.6 The Company must use any gifts, money or property of the kind referred to in clause 18.2.4 only for the Principal Purpose.

### **Winding up the Gift Fund**

18.3 Despite clause 19, if the Company wishes to wind up a Gift Fund or the Company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus Gift Fund must be transferred to one or more charities determined by the Board:

18.3.1 with charitable purpose(s) similar to, or inclusive of, the object in clause 2;

18.3.2 which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and

18.3.3 that is or are deductible gift recipients within the meaning of the ITAA97.

18.4 For the avoidance of doubt, if a Gift Fund operated by the Company is wound up but the Company remains endorsed as a deductible gift recipient and operates any other gift fund in accordance with this clause 18, any surplus Gift Fund that is being wound up may be transferred to any other charitable gift fund operated by the Company.

### **Definitions**

18.5 In this clause 18 the following definitions apply:

**Gift Fund** means a fund that is maintained for the Principal Purpose.

**Principal Purpose** means the purposes of the Company as reflected in the object of the Company specified in clause 2, or any of those purposes.

## **19 SURPLUS ASSETS ON WINDING UP OR DISSOLUTION**

19.1 If the Company is wound up, any surplus property must not be distributed to a Member or a former Member it is a charity described in clause 19.2.

19.2 Subject always to clause 18.3, any court order and the Corporations Act and any other applicable law, upon the winding up or dissolution of the Company any surplus property that remains after satisfaction of all debts and liabilities must be distributed to one or more charities:

19.2.1 with charitable purposes similar to, or inclusive of, the object in clause 2;

19.2.2 which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and

19.2.3 that is or are "deductible gift recipients" within the meaning of ITAA 97.

19.3 This is to be determined by ordinary resolution of the Members in general meeting at or before the time of winding up or dissolution of the Company and, in default of any such determination, by the Supreme Court of the State or Territory in which the Office is located.

## **20 ACCOUNTS, AUDIT AND RECORDS**

### **Accounts**

20.1 The Board must cause proper accounting and other records to be kept in accordance with the ACNC Act or as otherwise required by law.

### **Reports**

20.2 To the extent required by the ACNC Act or otherwise required by law, the Board must cause the company to:

20.2.1 prepare financial reports;

20.2.2 prepare directors' reports;

20.2.3 notify each Member of the Member's right to receive reports from the Company; and

20.2.4 provide members with reports, in a form and within such timeframe,

as required by the ACNC Act or otherwise required by law.

### **Audit**

20.3 A registered company auditor must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the ACNC Act or as otherwise required by law.

### **Rights of inspection**

20.4 Subject to the law:

20.4.1 The Board may determine whether and to what extent, and at what times and places and under what conditions, the records and other documents of the Company or any of them are open to the inspection of Members, and a Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in general meeting.

20.4.2 Despite clause 20.4.1, the Board may refuse access to a document where the Board (acting reasonably) considers that such access would or would be likely

to cause the Company to lose the benefit of any form of evidentiary privilege, including legal professional privilege.

## **21 NOTICES**

### **Persons authorised to give notices**

- 21.1 A notice by either the Company or a Member in connection with this constitution may be given on behalf of the Company or Member by a solicitor, director, company secretary or other authorised officer of the Company or Member.
- 21.2 The signature of a person on a notice given by the Company may be written, printed or stamped.

### **Method of giving notices**

- 21.3 In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this constitution may be given to the addressee by any of the following means:
- 21.3.1 By delivering it to a street address of the addressee.
- 21.3.2 By sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee.
- 21.3.3 By sending it by facsimile or email to the facsimile number or email address of the addressee.

### **Addresses for giving notices to Members**

- 21.4 The street address or postal address of a Member is the street or postal address of the Member shown in the Register.
- 21.5 The facsimile number or email address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or email address to which notices may be sent to the Member.

### **Address for giving notices to the Company**

- 21.6 The street and postal address of the Company is the Office.
- 21.7 The facsimile number or email address of the Company is the number which the Company may specify by written notice to the Members as the facsimile number or email address to which notices may be sent to the Company.

### **Time notice of meeting is given**

- 21.8 A notice of meeting given in accordance with this constitution is to be taken as given, served and received at the following times:

- 21.8.1 If delivered in writing to the street address of the addressee, at the time of delivery.
- 21.8.2 If it is sent by post to the street or postal address of the addressee, on the business day after posting.
- 21.8.3 If sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

**Time other notices are given**

21.9 A notice given in accordance with this constitution is to be taken as given, served and received at the following times:

- 21.9.1 If delivered in writing to the street address of the addressee, at the time of delivery.
- 21.9.2 If it is sent by post to the street or postal address of the addressee, on the 2nd (5th if outside Australia) business day after posting.
- 21.9.3 If sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

**Proof of giving notices**

21.10 The sending of a notice by facsimile or email and the time of completion of transmission may be proved conclusively by production of the relevant one of the following:

- 21.10.1 A transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee.
- 21.10.2 A print out of an acknowledgment of receipt of the email or equivalent proof that the email was successfully transmitted.

**Persons entitled to notice of meeting**

21.11 Notice of every general meeting must be given by a method authorised by this constitution to all of the following persons:

- 21.11.1 Every Member.
- 21.11.2 Every Director.
- 21.11.3 The auditor for the time being of the Company, if any.

21.12 No other person is entitled to receive notices of general meetings.



## 22 DEFINITIONS AND INTERPRETATION

### Definitions

22.1 In this constitution the following definitions apply:

**ACNC** means the Australian Charities and Not-for-profits Commission.

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and for the avoidance of doubt includes any 'governance standards' prescribed under any related regulations.

**AGM** means an annual general meeting of the Company.

**Appointed Director** means a Director who holds or is to hold any of positions D1, D2, D3 or D4.

**Approved Candidate** means a person whose candidacy for election as a Director has been approved by the Nominations Committee in accordance with clause 11.13.5(b).

**Associated Party** means each of the following:

- (a) The Company.
- (b) Any Related Body Corporate of the Company.
- (c) Any other body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind.

**Ballot** means Members voting on a proposed resolution or other question by means of a ballot conducted in accordance with clause 8.

**Board** means Directors acting as the board of the Company.

**Chair** means the Director elected under clause 14.7 to preside as chairperson at Board meetings at the relevant time.

**Company** means Mental Health Victoria Limited ACN 624 895 549.

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

**Deputy Chair** means the Director elected under clause 14.8 to preside in the Chair's absence as chairperson at Board meetings at the relevant time.

**Director** means a person occupying the position of a director of the Company.

**Elected Director** means a Director who holds or is to hold any of positions A1, A2, B1, B2, C1, C2 or C3.

**Eligible Director** means a Director who, at the relevant time, is not due to retire from office in accordance with the table set out in clause 11.3 in the next 12 months.

**Fifth AGM** means the fifth annual general meeting of the Company, anticipated to be held during the 2022 calendar year.

**First AGM** means the first annual general meeting of the Company after the adoption of this Constitution, anticipated to be held during the 2018 calendar year.

**Fourth AGM** means the fourth annual general meeting of the Company, anticipated to be held during the 2021 calendar year.

**Initial Director** means a Director who is identified in the application to register the Company as having consented to become a Director upon its incorporation.

**Insolvency Event** means, in relation to a Member, anything that reasonably indicates that there is a significant risk that the Member is or will become unable to pay the Member's debts as they fall due. This includes any of the following (as applicable):

- (a) A meeting of the Member's creditors being called or held.
- (b) A step being taken to wind the Member up.
- (c) A step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the Member or any of its assets or such an appointment taking place.
- (d) The Member entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors.
- (e) The Member ceases or threatens to cease to carry on its main business.

**ITAA 97** means *Income Tax Assessment Act 1997* (Cth).

**Member** means a person whose name is entered in the Register as a member of the Company.

**Nominations Committee** means the committee to be established by the Board in accordance with clause 14.21.

**Non-Member Stakeholder** has the meaning given in clause 10.2.

**Office** means the registered office of the Company.

**Organisation** means a person (whether or not a legal person) that is not a natural person. For the avoidance of doubt, this includes a company registered under the Corporations Act and an incorporated association or other body corporate established or registered under another Act of Parliament, as well as a partnership, trust or unincorporated association, but excludes a sole trader or other individual human being.

**Polling Date** means the date by which completed Ballot papers must be received by the applicable returning officer under the terms of the relevant Ballot, as determined in accordance with clause 8.

**Register** means the register of Members kept by the Company under the Corporations Act.

**Registered Entity** means an entity that is registered under the ACNC Act.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Second AGM** means the second annual general meeting of the Company, anticipated to be held during the 2019 calendar year.

**Secretary** means a person appointed to perform the duties of a secretary of the Company.

**Sixth AGM** means the sixth annual general meeting of the Company, anticipated to be held during the 2022 calendar year.

**Termination Event** means:

- (a) An Insolvency Event occurs in respect of the Member.
- (b) The Member is deregistered or otherwise dissolved.
- (c) If the Member is not a legal person, anything occurs that reasonably indicates that the Member has been dissolved or otherwise has ceased to conduct any activities. For the avoidance of doubt, this includes where the Member's activities are taken over or substantially taken over by another person (whether or not a legal person) but does not include where the Member merely changes the name under which its activities are conducted or where the Member is restructured as a legal person.

**Third AGM** means the third annual general meeting of the Company, anticipated to be held during the 2020 calendar year.

**Valid Nomination** has the meaning set out in clause 11.13.5(a).

### **Interpretation**

22.2 In this constitution, unless the context otherwise requires:

22.2.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this constitution.

22.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

- 22.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution (however, a schedule or attachment does not form part of this constitution).
- 22.2.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 22.2.5 A word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender indicates the other genders.
- 22.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 22.2.7 A reference to 'dollars' or '\$' means Australian dollars.
- 22.2.8 References to the word 'include' or 'including', or to the word 'exclude' or 'excluding', are to be interpreted without limitation.
- 22.2.9 A reference to a time of day means that time of day in the place where the Office is located.
- 22.2.10 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.
- 22.2.11 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 22.2.12 A term of this constitution which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

#### **References to this constitution**

- 22.3 A reference to this constitution, where amended, means this constitution as so amended.

#### **Replaceable rules**

- 22.4 Each of the provisions of the Corporations Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to the Company.

#### **Application of Corporations Act**

- 22.5 Unless the context otherwise requires,
- 22.5.1 An expression used but not defined in this constitution has the same meaning given in the Corporations Act.

- 22.5.2 Where an expression referred to in clause 22.5.1 has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as the relevant clause of this constitution, the expression has the same meaning as in that provision.
- 22.6 Subject to clause 22.4, for so long as the Company is a Registered Entity the provisions in Part 2G.2 and Part 2G.3 of the Corporations Act are incorporated into this constitution by reference as if they are repeated in full. To the extent that the ACNC Act or any law or binding regulation of the ACNC applies to the Company and this conflicts with one or more provisions in Part 2G.2 and Part 2G.3 of the Corporations Act, the Company must comply with (as applicable) the ACNC Act or that law or binding regulation, save that it is expressly intended by the Members that the Company must hold an AGM within 18 months after its registration and thereafter at least once in each calendar year and within five months after the end of its financial year.