

Constitution

Para Payne
CHAIR

30.11.21.

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Constitution

1. The Company

1.1 Name

The name of the Company is 360 Health and Community Limited (ACN 147 531 673) (**Company**).

1.2 Type of company and liability of Members

- (a) The Company is a public company limited by guarantee.
- (b) The liability of Members is limited to the guarantee amount.
- (c) Each Member undertakes to contribute an amount of not more than \$10.00 (**guarantee amount**) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they cease being a Member, if at the time of winding up the debts and liabilities of the Company exceed its assets, and this contribution is towards the payment of:
 - (i) debts and liabilities of the Company incurred before the Member ceased being a Member; and
 - (ii) costs of winding up of the Company.

2. Purpose

2.1 Objects of the Company

The Company is established as a Registered Health Promotion Charity to support people by providing integrated health, mental health and disability services to:

- (a) provide personalised services that are accessible and contribute to the coordinated care for each individual;
- (b) facilitate choice and control for people living with disability to engage in their own care and achieve improved outcomes;
- (c) integrate initiatives that provide for early intervention, peer supports and community engagement to improve the delivery and outcomes of general health, mental health and disability services;
- (d) ensure the principles of inclusion in all services provided;
- (e) respond to the particular needs of diverse and 'at risk' groups including, but not limited to, people with psychosocial needs, people from low socio-economic backgrounds, people from marginalised or disadvantaged communities, people from Aboriginal and Torres Strait Islander backgrounds and people with chronic health conditions;
- (f) promote primary health care and health education to assist the community with health literacy and illness prevention activities; and

- (g) undertake any other activities which are incidental or ancillary to the attainment of these objects.

2.2 Not for profit status and limitations on payments to members and directors

- (a) The income and property of the Company must be applied solely towards the promotion of the Objects of the Company and no part of that income or property may be paid, transferred or distributed, directly or indirectly, to any Director or Member except in good faith in the promotion of the Objects.
- (b) Rule 2.2(a) does not prohibit making a payment approved or ratified by the Board:
 - (i) for any reasonable remuneration of a Director determined under rule 2.3;
 - (ii) for reasonable expenses incurred by a Director attending meetings of the Company or while engaged on the business of the Company;
 - (iii) for indemnification of or payment of premiums on contracts of insurance for any Director to the fullest extent permitted by law and this Constitution;
 - (iv) subject to prior approval of the Board, compliance with rule 5.9 of the Constitution, the Corporations Act and the amount payable being a commercially reasonable amount:
 - (A) for a good or service supplied in good faith to the Company by a Director (other than in the capacity as a Director of the Company) or Member; or
 - (B) of reasonable and proper interest on money borrowed from a Member or Director by the Company; or
 - (C) of reasonable and proper rent for premises let by any Member or any Director to the Company.

2.3 Remuneration of Directors

- (a) As remuneration for services, each Director is to be paid out of the funds of the Company, a sum determined by the Board payable at the time and in the manner determined by the Board, but the aggregate remuneration paid to all of the Directors in any Financial Year for their services may not exceed an amount fixed by the Members in a general meeting.
- (b) The expression 'remuneration' in this rule does not include any amount which may be paid by the Company under rules 2.2(b)(ii) and 2.2(b)(iv).

3. Membership

3.1 Categories of Members

The categories of Membership are:

- (a) Director members:

Director Membership is automatic under rule 3.2.

(b) Organisational members:

The Company will have a maximum of ten Organisational Members.

Organisational Membership is open by invitation, at the discretion of the Directors, to organisations (companies, bodies corporate, incorporated bodies and associations) with operations within Western Australia and demonstrated aligned interests with the Objects of the Company.

3.2 Eligibility and admission of Members

- (a) Directors are automatically Members of the Company, effective from the date of their appointment as a Director and cease to be a Member on the date that they cease to be a Director for any reason.
- (b) If a person wishes to become an Organisational Member, that person must:
 - (i) be an organisation of the type under rule 3.1(b) invited to apply for Membership by the Directors in their sole discretion in the manner the Directors decide;
 - (ii) satisfy the Membership criteria determined by the Directors, including but not limited to:
 - (A) alignment with the Company's purpose and values;
 - (B) capacity and willingness to support the Company's achievement of its Objects and strategic goals;
 - (C) demonstrated sound corporate governance practices;
 - (D) reputation, scope of operations and breadth of capability;
 - (E) any other Membership criteria considered appropriate by the Directors from time to time;
 - (iii) appoint an individual to act as its representative to exercise all of the powers the body corporate may exercise at general meetings or relating to resolutions to be passed (**representative**);
 - (iv) confirm agreement to comply with the Constitution of the Company;
 - (v) complete and lodge a Membership application form;
 - (vi) pay any annual fee as determined by the Directors under rule 3.5; and
 - (vii) ensure that all information provided when applying for Membership is true and accurate and is not misleading or deceptive.
- (c) The Board must consider an application for Membership at the next meeting of the Directors after its receipt and determine, in its absolute discretion, the admission or rejection of the applicant.

- (d) When a person is admitted as a new Member of the Company, the Secretary must ensure that:
 - (i) the new Member is given notice of admission as a Member of the Company;
 - (ii) the name and details of the new Member are entered in the register of Members under rule 3.6;
 - (iii) existing Members are notified of the admission of the new Member.
- (e) The Secretary must ensure that each organisation not admitted as a Member of the Company is informed of this decision and any annual fees paid are refunded to the applicant. Neither the Directors or the Secretary are required to give reasons for the decision not to admit a person or an organisation as a Member of the Company.

3.3 Rights of Members

Members are entitled to receive notices of, attend, be heard at and vote at any general meeting.

3.4 Membership not transferable

Membership and the associated rights are personal to the Member and cannot be transferred.

3.5 Membership fees

- (a) The Board may determine the amount of the annual Membership fee (if any) payable by an Organisational Member.
- (b) Each Organisational Member must pay the Membership fee annually on or before 30 June, or any other date the Board determines.
- (c) A Organisational Member whose Membership fee is not paid within three months after the relevant date fixed by or under rule 3.5(b) ceases on the expiry of that period to be a Member, unless the Board decides otherwise.
- (d) The Board may waive the payment of all or any part of the Membership fee, in respect of a particular Member or all Members.

3.6 Register of Members

- (a) The Company must update the register of Members to reflect the appointment, suspension or removal of a person as a Member, as soon as practicable after the appointment, suspension or removal occurs.
- (b) The register of Members must contain the information required by the Corporations Act including full name, address, email address and telephone contact number of the Member and, for an Organisational Member, its appointed representative;
- (c) A Member must notify the Secretary in writing of any change in the Member's information contained in the register of Members within one month after the change.

- (d) The register of Members shall be available for inspection by written application to the Company at its registered address consistent with the Corporations Act. Only the information required to be maintained in the register of Members under the Corporations Act shall be available for inspection.

3.7 Organisational Member representative

- (a) An individual can only be the representative for one Member at any time.
- (b) An Organisational Member may at any time replace their representative by written notice to the Board.
- (c) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or its voting on a resolution.

3.8 Ending Membership

A Member immediately stops being a Member of the Company if the Member:

- (a) resigns as a Member by giving written notice to the Company;
- (b) ceases being a Director and is not reappointed as a Director within seven days;
- (c) is expelled under rule 3.10;
- (d) being an individual:
 - (i) dies;
 - (ii) is or becomes Bankrupt;
 - (iii) or is or becomes a person whose property is liable to be dealt with in any way under a law relating to mental health.
- (e) being an Organisational Member:
 - (i) is wound up or is or becomes insolvent, or a receiver, receiver manager, liquidator or administrator is appointed to it, or any step is taken by it to enter into an arrangement or composition with one or more of its creditors;
 - (ii) no longer complies with the Membership eligibility criteria set out in rule 3.2;
 - (iii) amalgamates, merges or undergoes a significant re-structure of the organisation (as determined by the Directors acting reasonably);
 - (iv) fails to pay their Membership fee within the time period specified in rule 3.5(c) (unless waived by the Board under rule 3.5(d)).

3.9 Consequences of cessation of Membership

- (a) If a person ceases to be a Member under rule 3.8, the Member:

- (i) loses any rights (including voting rights) arising as a result of Membership; and
- (ii) is not entitled to a refund or credit of their Membership fee.
- (b) When a person's Membership ceases, the Secretary must remove the person's name from the register of Members as soon as practicable.

3.10 Expulsion of, suspension of or warning Members

- (a) Under this rule, the Board may resolve to warn, suspend or expel a Member from the Company if the Board considers, in its absolute discretion, that it is not in the interests of the Company for the person to remain a Member.
- (b) Factors that the Board may consider include, but are not limited to, the following:
 - (i) the Member has breached this Constitution; or
 - (ii) the Member's behaviour is causing, has caused, or is likely to cause harm to the interests or reputation of the Company.
- (c) At least 21 days before the Board meeting at which a resolution under rule 3.10(a) will be considered, the Secretary must notify the Member in writing:
 - (i) that the Board is considering a resolution to warn, suspend or expel the Member;
 - (ii) this resolution will be considered at a Board meeting and the date, place and time of that meeting;
 - (iii) the grounds for the resolution;
 - (iv) the nature of the resolution proposed; and
 - (v) that the Member may provide an explanation to the Board, and details of how to do so.
- (d) Before the Board passes any resolution under rule 3.10(a), the Member must be given a chance to explain their position by:
 - (i) sending the Board a written explanation before that Board meeting; and/or
 - (ii) speaking at the meeting.
- (e) After considering any explanation under rule 3.10(d), the Board may resolve to:
 - (i) take no further action;
 - (ii) issue a warning to the Member;
 - (iii) suspend the Member's rights as a Member for a period of no more than 12 months; or
 - (iv) expel the Member.

- (f) The Secretary must give written notice to the Member of the decision under rule 3.10(e) as soon as possible.
- (g) The Secretary will give written notice to all Members with 14 days of a Board resolution to expel a Member.
- (h) There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this rule.

4. Meetings of Members

4.1 Annual General Meeting

- (a) The Company must hold an annual general meeting each year within 5 months after the end of its Financial Year on a day as fixed by the Board, for these purposes:
 - (i) to have available for inspection the minutes of the previous annual general meeting and any other general meeting, if any;
 - (ii) to lay before the meeting the financial report, the Directors' report and the auditor's report for the year to the 30 June, preceding, consistent with the Corporations Act and ACNC Act;
 - (iii) to appoint Directors;
 - (iv) to re-appoint Directors who are retiring;
 - (v) to appoint an auditor or auditors; and
 - (vi) other business as required.

4.2 Convening general meetings by Directors

- (a) The Board may convene a general meeting of the Members at any time.
- (b) The Board must convene a general meeting if Members with at least 20% of the votes that may be cast at a general meeting, or at least 3 Members, (whichever is greater), make a written request to the Company for a general meeting to be held.

4.3 Notice of Member general meetings

- (a) Notice of a general meeting must be given to the Members in writing at least 21 days before the meeting.
- (b) Notice of a general meeting must include:
 - (i) the place, date and time for meeting (and if the meeting is to be held in two or more places, the technology used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a Special Resolution is proposed and the words of the proposed resolution; and

- (iv) a statement that Members may appoint proxies.

4.4 Waiving notice

- (a) A person may waive notice of a general meeting by written notice to the Company or by attendance at the general meeting.
- (b) The non-receipt of notice of a general meeting, or an accidental omission to give notice of a general meeting to any person entitled to receive notice of a general meeting, does not invalidate any act, matter or thing done or resolution passed at the general meeting.

4.5 Postponing or cancelling a meeting

- (a) The Board may change the venue for, postpone or cancel a general meeting at its own discretion by providing such notice to Members as the Board determines is reasonably practicable and appropriate in the circumstances.
- (b) If a general meeting is called at the request of the Members under rule 4.2(b), the Board may not cancel it without the consent of the Members.

4.6 Technology

- (a) The Company may hold a meeting of Members at two or more venues using any technology that gives the Members entitled to be heard at a general meeting of Members, a reasonable opportunity to participate.
- (b) For these Rules, the contemporaneous linking together by an instantaneous communication device of a number of Members not less than the quorum, shall be deemed to constitute a general meeting and all the provisions of this Constitution regarding general meetings shall apply to any such meeting held by an instantaneous communication device if each of the participating Members are able to hear each other at the commencement of the meeting.
- (c) A Member may not leave a general meeting held by an instantaneous communication device by disconnecting his or her instantaneous communication device unless he or she has previously notified the chairperson of the meeting of his or her intention to leave the meeting and a Member shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his or her leaving the meeting.
- (d) A minute of the proceedings of a general meeting held by an instantaneous communication device shall be enough evidence of such proceeding and of observing any necessary formalities if certified as a correct minute by the chairperson of the meeting.
- (e) For this rule “instantaneous communication device” shall include any device which permits instantaneous communication.

4.7 General Meetings – quorum and Chair to preside

- (a) For a general meeting to be held, a Simple Majority of Members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting.

- (b) No business may be conducted at a general meeting if a quorum is not present.
- (c) If within 30 minutes after the appointed time for the commencement of a general meeting, a quorum is not present, the general meeting, if convened by the Members is dissolved, or, in any other case, stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the chairperson may determine (being a day which is not more than 30 days after the originally scheduled date).
- (d) If at the adjourned general meeting the quorum is not present within 30 minutes after the time appointed, the general meeting is dissolved.
- (e) The Chair shall chair each general meeting, but if at any meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting or the Chair is unable or unwilling to act, the Members present shall choose a Board member to act as chairperson of the general meeting.
- (f) The chairperson may temporarily vacate the chair at a general meeting in favour of another Director present at any time nominated by the chairperson and for any reason the chairperson sees fit, and must do so if the Members are voting on the chairperson's election as a Director.
- (g) The chairperson may, in their 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:
 - (i) the use of offensive or abusive language;
 - (ii) attendance while under the influence of alcoholic substances or any illicit drug, or using or consuming such substances at the meeting;
 - (iii) possession of any article, including a recording device or other electronic device or a sign or banner, or other behaviour which the chairperson considers is dangerous, offensive or disruptive or likely to become so.
- (h) The chairperson may, in their absolute discretion, refuse a person (who is not a Member, proxy or representative of a Member) admission to a general meeting or require the person to leave the general meeting.
- (i) The chairperson may, with the consent of any meeting at which a quorum is present, and must do so if directed by the meeting, adjourn the meeting to another time and to another place as the chairperson may determine (being a day which is not more than 30 days after the date of the meeting). The only business that may be transacted at any such adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (j) Where a meeting is adjourned, the Directors may change the venue for, postpone or cancel the adjourned meeting, unless the meeting was called and arranged to be held under the Corporations Act.
- (k) Any resolutions passed at the adjourned meeting take effect on the date of the adjourned meeting.
- (l) Subject to the terms of this Constitution regarding the 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.

4.8 General Meetings– voting

- (a) At a general meeting each Member has one vote, whether in person, by their representative or by proxy.
- (b) Subject to a Special Resolution, a question arising at a general meeting is decided by a Simple Majority of votes cast by the Members present.
- (c) In the case of an equality of votes upon any proposed resolution (other than a Special Resolution), the chairperson of the meeting has a second or casting vote.
- (d) Subject to rule 4.8(e), a resolution put to the vote of a general meeting must be decided on a show of hands.
- (e) Either the chairperson or a Member who is present and can vote on the resolution, may demand a poll:
 - (i) before the vote is taken; or
 - (ii) before or immediately after the declaration of the result of the show of hands.
- (f) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll was demanded.
- (g) Unless a poll is duly demanded:
 - (i) the chairperson's declaration and an entry to that effect in the minute book is conclusive evidence of the result; and
 - (ii) further proof of the number or proportion of the votes recorded in favour or against the resolution is not required.
- (h) If a poll is duly demanded at a general meeting, the meeting must conduct the poll as the chairperson directs.
- (i) Subject to rule 4.8(j), the chairperson may direct that the poll be taken in any manner and either at once or after an interval or adjournment.
- (j) A poll demanded at a general meeting on the election of a chairperson or on a question of adjournment must be taken immediately.
- (k) The result of the poll is a resolution of the meeting at which the poll was demanded.
- (l) The demand for a poll may be withdrawn.

4.9 General Meetings – voting by proxy

- (a) Subject to this Constitution, each Member entitled to vote may appoint a proxy:

- (i) the proxy need not be a Member of the Company;
 - (ii) 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
 - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- (b) Unless otherwise stated, an instrument appointing a proxy is taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
 - (ii) to speak to any proposed resolution on which the proxy may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy may vote;
 - (iv) if the proxy has voting rights, to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put, or any procedural motion, including any motion to adjourn the meeting;
 - (v) to act generally at the meeting; and
 - (vi) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (c) Unless otherwise instructed, a proxy may vote as it thinks fit.
- (d) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding:
 - (i) the death or unsoundness of mind of the principal;
 - (ii) revocation of the instrument; or
 - (iii) revocation of the authority under which the instrument was executed,

unless an indication in writing of such death, unsoundness of mind or revocation has been received at the registered office of the Company before the commencement of the general meeting at which the instrument is used.
- (e) Subject to any other clause in this Constitution, a proxy is entitled to a separate vote for each Member the person represents.
- (f) The appointment of a proxy is not revoked by the appointing Member attending and taking part in the general meeting but, if the appointing Member votes on a resolution, the proxy is not entitled to vote, and must not vote, as the appointing Member's proxy on the resolution.

5. The Board

5.1 Role and powers

- (a) The Board is responsible for managing and directing the activities of the Company to achieve the Objects.
- (b) The Board may exercise all the powers of the Company as are not, by the Corporations Act or this Constitution, required to be exercised by the Members in general meeting or otherwise.
- (c) The Board may delegate any of their powers and functions to a Committee, a Director, an employee of the Company (such as a Chief Executive Officer) or any other person, as they consider appropriate and on terms, conditions and restrictions they see fit and may revoke, withdraw, alter or vary the delegation of any of those powers.
- (d) The delegation and any changes must be recorded in the Company's minutes.

5.2 Size of the Board

Subject to the Corporations Act, the Board will comprise a minimum of 3 and a maximum of up to 8 or such maximum as set by the Members in general meeting.

5.3 Qualifications of Directors

- (a) The Company will be governed by a skills-based board comprised of Directors who are independent of any Organisational Member. The Board will determine the particular expertise, qualifications and experience a person must hold in order to be appointed as a Director and ensure that, collectively, it has the appropriate skills and experience to properly fulfill its responsibilities.
- (b) In assessing whether a person satisfies the criteria determined by the Board under rule 5.3(a) (if any), regard may be had to any information supplied by that person and any information obtained from other sources.
- (c) A person is prohibited from being a Director if that person is disqualified from being a director under the Corporations Act or has been disqualified from being a responsible person by the ACNC Commissioner under the ACNC Act.

5.4 Appointment of Directors and term of office

- (a) The Members may appoint a Director by resolution passed in a general meeting.
- (b) The Directors may appoint a person to fill a casual vacancy in the office of a Director, and any Director so appointed holds office until the next general meeting following their appointment, at which they are eligible to be re-appointed subject to the provisions of this Constitution. The period the person is appointed as a Director to fill the casual vacancy does not count towards the maximum number of terms that they may serve as a Director under rule 5.4(g).
- (c) Each of the Directors must be appointed by a separate resolution, unless:
 - (i) the Directors, or Members present have first passed a resolution that the appointments may be voted on together; and

- (ii) no votes were cast against that resolution.
- (d) Subject to rule 5.4(h), a Director appointed under this Constitution by Members in general meeting holds office until the third annual general meeting following the Director's appointment.
- (e) A Director due to retire at an annual general meeting retains office until the conclusion of the meeting.
- (f) Subject to rules 5.3 and 5.4(g), a retiring Director is eligible for re-appointment.
- (g) Subject to rule 5.4(h), a Director must not hold office for a continuous period of more than three terms from the date of their first appointment as a Director.
- (h) The Members may approve an extension to the maximum tenure a Director may hold office if it is in the best interests of the Company, as recommended by the Directors, and permit a Director to hold office until the conclusion of the second annual general meeting held after the expiry of the Director's third continuous term held in office, at which meeting the Director must retire and is not eligible for re-appointment.
- (i) The Company may, at an annual general meeting at which a Director retires, by resolution fill the vacated office by appointing a person to that office.
- (j) Subject to these rules, a person is eligible for appointment as a Director at an annual general meeting of the Company only if:
 - (i) the person is in office as a Director immediately before that meeting; or
 - (ii) the person has been nominated by the Directors for appointment at that meeting.

5.5 Chair

The Board will select a Director as the Company's elected Chair and may determine the period for which they will hold office.

5.6 Removal of Directors

The Members may, by resolution at a general meeting, remove any Director from office for any reason and appoint a replacement to hold office for the remainder of the term of the Director that has been removed from office.

5.7 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act or rule 5.6, the office of Director becomes vacant if a Director:

- (a) resigns or retires from office by written notice to the Company;
- (b) is no longer eligible to be a Director under rule 5.3;
- (c) dies;
- (d) is or becomes Bankrupt;

- (e) becomes of unsound mind or a person whose property is liable to be dealt with in any way under a law relating to mental health;
- (f) is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of 3 months and the Directors resolve that the office of that Director be vacated;
- (g) becomes disqualified from being a Director under the Corporations Act; or
- (h) becomes prohibited or disqualified from being a responsible entity by the ACNC Commissioner under the ACNC Act.

5.8 Duties of officers

The Directors, Secretary and other officers of the Company must at all times comply with the duties imposed on them by the Corporations Act, the ACNC Act and any other applicable law, which include:

- (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 of the Company;
- (b) to act in good faith in the best interests of the Company and to further the Objects;
- (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 5.9;
- (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.

5.9 Director – Conflict of Interest

- (a) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter being considered at a meeting of Directors (or that is proposed in a circular resolution) to the other Directors.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter being considered at a meeting of Directors (or that is proposed in a circular resolution) must not:
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter,

unless the remaining Directors who do not have a material personal interest in the matter have passed a resolution that:

- (iii) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
- (iv) states that those Directors are satisfied that the interest should not disqualify the Director from being present, however the Director cannot vote on the matter.

5.10 Defects in Appointment of Director

All acts done by any meeting of the Board or of a Committee of the Board or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a Member of a Committee, or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a Member of the Committee.

6. Company Secretary

A Secretary of the Company shall hold office on such terms and conditions, as to remuneration and otherwise, as the Directors determine. There must be at least one Secretary of the Company at all times.

7. Meetings of the Board

7.1 Notice of Board meetings

- (a) The Board shall meet at least eight times per year at such time and at such place as the Board may from time to time determine.
- (b) The Secretary must, on the request of a Director, convene a meeting of the Board.
- (c) Written notice of each Board meeting shall be served on each Director by giving reasonable notice individually to each Director. All directors may waive in writing the required period of notice for a particular meeting.
- (d) The non-receipt of notice of a Board meeting by, or a failure to give notice of a Board meeting to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error; or
 - (ii) before or after the meeting, the Director:
 - (A) has waived or waives notice of that meeting; or
 - (B) has notified or notifies the Company of his or her agreement to that act, matter, thing or resolution; or
 - (C) the Director attended the meeting.

7.2 Quorum for Board meetings

- (a) The quorum for a Board meeting is a Simple Majority.

- (b) The quorum must be present at all times during the meeting.
- (c) If the number of Directors in office at any time is less than the minimum number of Directors fixed under this Constitution, the remaining Directors may only act to the extent that there is an emergency requiring them to act or to appoint an additional Director to the Board or to convene a general meeting of the Company.
- (d) If a quorum is not present with 30 minutes after the time appointed for holding the meeting of the Board, or if during the meeting a quorum is no longer present, the meeting stands adjourned to the date, time and place that the Chair may determine.

7.3 Chairing of Board meetings

The Chair shall preside at all meetings of the Board, but if at any meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting, or the Chair is unwilling or unable to chair the meeting for any reason including due to a conflict of interest, the Board Members shall choose one of their number to be the chairperson for the whole of or that part of the meeting.

7.4 Voting at Board meetings

The Directors must decide questions arising at a meeting of Directors by a Simple Majority of votes cast by the Directors present.

7.5 Electronic Board meetings

- (a) A Board meeting may be held using any technology consented to by all the members of the Board. A consent of a Director for this Rule may be a standing one. A Director may only withdraw his or her consent within a reasonable time before the Board meeting.
- (b) For these Rules, the contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum, shall be deemed to constitute a Board meeting and all the provisions of this Constitution regarding Board meetings shall apply to any such meeting held by an instantaneous communication device if each of the participating Directors are able to hear each other at the commencement of the meeting.
- (c) A Board Member may not leave a meeting held by an instantaneous communication device by disconnecting his or her instantaneous communication device unless he or she has previously notified the chairperson of the meeting of his or her intention to leave the meeting and a Board Member shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his or her leaving the meeting.
- (d) A minute of the proceedings of a meetings held by an instantaneous communication device shall be enough evidence of such proceeding and of observing any necessary formalities if certified as a correct minute by the chairperson of the meeting.
- (e) For this rule "instantaneous communication device" shall include any device which permits instantaneous communication.

7.6 Circular resolutions – without holding a Board meeting

- (a) The Directors may pass a circular resolution without a Board meeting being held.
- (b) A circular resolution is passed if the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in this rule.
- (c) Each Director may sign:
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Company may send a circular resolution via electronic transmission to all Directors and the Directors may agree to the resolution by electronic signature.
- (e) A circular resolution is passed when the last Director required to create a Simple Majority, or other majority as agreed by Directors from time to time, signs or otherwise agrees to the resolution in the manner set out in this rule.

7.7 Directors' access to documents

A Director has a right of access to the financial records of the Company at all reasonable times.

8. Board Committees

- (a) The Board may appoint any Committee and shall prescribe the functions of any such Committee.
- (b) The Board shall have power to co-opt persons to serve on a Committee in an advisory capacity, and at the sole discretion of the Board that person can be appointed a full voting member of a Committee or as an observer.
- (c) The Chair can be a member of any Committee, subject to Board appointment, but shall not Chair an Audit Committee.
- (d) The quorum for meetings of Committees shall be a Simple Majority of voting members of the Committee.
- (e) Except as provided in a direction of the Board, the meetings and proceedings of a Board Committee 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.

9. Chief Executive Officer

The Directors may appoint and remove any person to the position of Chief Executive Officer for a period and on the terms (including remuneration) that the Directors see fit.

10. Minutes and Records

- (a) The Company must, within one month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of general meetings;
 - (ii) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees);
 - (iii) minutes of circular resolutions; and
 - (iv) a copy of a notice of each general meeting.
- (b) The Board must ensure that minutes of a general meeting or a Board meeting are signed within a reasonable time after the meeting by:
 - (i) the chairperson of the meeting; or
 - (ii) the chairperson of the next meeting.
- (c) When minutes have been entered and signed as correct under this rule, they are, until the contrary is proved, evidence that:
 - (i) the meeting to which they relate was duly convened and held;
 - (ii) all proceedings recorded as having taken place at the meeting did in fact take place at the meeting; and
 - (iii) all appointments or elections purporting to have been made at the meeting have been validly made.

11. Financial and related records, Auditor

- (a) The Company must make and keep written financial records as required by law and that:
 - (i) correctly record and explain its transactions and financial position and performance; and
 - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The Company must also keep written records that correctly record its operations.
- (c) The Company must retain its records for at least the minimum period prescribed by the relevant laws.
- (d) The Directors must take reasonable steps to ensure that the Company's records are kept safe.
- (e) To the extent required by the Corporations Act and the ACNC Act (and in accordance with those acts), the Board must cause the Company to prepare financial reports and directors' reports

- (f) Unless otherwise determined by the Board, the Members are entitled to inspect only those documents of the Company required to be available for inspection under the Corporations Act or the ACNC Act.
- (g) The Board may determine at what time and place a Member is entitled to inspect Company documents and under what conditions.
- (h) 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 Corporations Act and the ACNC Act.

12. Alteration of Rules – Special Resolution

- (a) A Special Resolution is required to be passed at a general meeting to alter the Company's Constitution and to distribute Surplus Assets under rule 13.
- (b) A Special Resolution is not passed unless not less than seventy-five percent (75%) of those Members present and voting vote in favour.
- (c) The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a Registered Charity.

13. Winding Up

- (a) If the Company is wound up, any Surplus Assets must not be distributed to a Member or a former Member of the Company, unless the Member or former Member is a charity described in rule 13(b).
- (b) Subject to the Corporations Act and any other applicable law and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more Registered Charities that is a Deductible Gift Recipient:
 - (i) with charitable purpose(s) similar to, or inclusive of, the Objects; and
 - (ii) which also prohibit the distribution of any Surplus Assets to its Members to at least the same extent as the Company.
- (c) The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court of Western Australia to make this decision.
- (d) If, upon the revocation of the Company's endorsement as a Deductible Gift Recipient, there remains, after satisfaction of all its debts and liabilities, any gifts, Contributions or money received because of such gifts or Contributions, the same must not be paid to, or distributed among, the Members or Directors of the Company, but must be transferred to one or more institutions, funds or authorities which:
 - (i) have objects similar to the Objects;
 - (ii) is a Registered Charity;
 - (iii) is a Deductible Gift Recipient; and

- (iv) prohibits distribution of its income and property among its members and directors (if any) to an extent at least as great as is imposed on the Company by rule 2.2.
- (e) Where gifts to an institution, fund or authority are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the ITAA97 are satisfied, a transfer under this rule must be made in accordance with those conditions.

14. Indemnities and Insurances

- (a) The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- (b) In this Rule, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- (c) In this Rule, 'to the relevant extent' means:
 - (i) to the extent that the Company is not precluded by the law (including the Corporations Act) from doing so; and
 - (ii) for the amount that the officer is not otherwise entitled to be indemnified by another person (including an insurer under the insurance policy).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

15. Notices

- (a) Subject to this rule, a notice is anything written to or from the Company under any rule in this Constitution.
- (b) Written notice or any communication under this Constitution may be given to the Company, the Directors, Members or the Secretary by:
 - (i) delivering it to the Company's registered office;
 - (ii) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided; or
 - (iii) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address.
- (c) Written notice or any communication under this Constitution may be given to a Member, Director or the Secretary (person):
 - (i) in person;

- (ii) by posting it to, or leaving it at the address of the Member in the register of Members or an alternative address (if any) nominated by the Member, or person, for service of notices;
 - (iii) sending it to an email address assigned to the person by the Company or an alternative address (if any) nominated by the person for service of notices; or
 - (iv) if agreed by a person, by notifying the person at an email or other electronic address nominated by the person, that the notice is available at a specified place or address (including an electronic address).
- (d) A notice is taken to be given when:
- (i) delivered in person, or left at the recipient's address, on the day it is delivered;
 - (ii) sent by post, on the third day after it is posted with the correct payment of postage costs;
 - (iii) sent by email, on the business day after it was sent; and
 - (iv) given under rule 15(c)(iv) is taken to be given on the business day after the notification that the notice is available to be sent.

16. Creation of Gift Fund

- (a) The Company shall establish one or more Gift Funds for the purpose of receiving donations in order to carry out and administer the objects of the Company as described in this Constitution.
- (b) All gifts of money made to the Company and all income received by the Company as gifts or donations from any member of the public or from any other source are to be deposited into one or more separate bank accounts operated by the Company and, in the books of account of the Company, credited to one or more separate accounts. For the purposes of this Constitution, any such bank account will be referred to as "The Gift Fund Bank Account" and such accounts in the books of account of the Company will be referred to as "the Gift Fund Account".
- (c) All gifts or donations of a non-monetary nature or type must be specifically identified on a gift register and all such items must in the books of account of the Company be credited to the Gift Fund Account.
- (d) A receipt must be given by the Company to the donor of all gifts or donations whether of a monetary or non-monetary nature. The receipt must show the following items:
 - (i) Name of the Company; and
 - (ii) the ACN or ABN of the Company;
 - (iii) if the gift or donation is of a monetary nature, the quantum of money received; or if the gift is of a non-monetary nature, a full and accurate description of the item or items the subject of the gift or donation; and

- (iv) a statement that the receipt is for a gift.
- (e) The funds standing to the credit of the Gift Fund Account must be used solely in pursuance of the purposes of the Gift Fund. Detailed records are to be maintained of all amounts debited to the Gift Fund Account.
- (f) All income and property received by the Company from all sources other than from gifts or donations from the public or from any other source such as government grants, funds from sponsors, proceeds of raffles, fundraising activities and the like are to be credited to such other accounts in the books of account of the Company and under no circumstances shall any such income be credited to the Gift Fund Account.

17. Dictionary

17.1 Definitions

Unless inconsistent with the context, the following words and phrases shall mean or be interpreted:

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

ACNC Commissioner means the Commissioner of the Australian Charities and Not-for-profits Commission for the purposes of the ACNC Act.

Bankrupt means, in relation to a person, the state of being “insolvent under administration” as defined in the Corporations Act or having signed an authority under section 188 of the *Bankruptcy Act 1966* (Cth).

Board means the board of Directors of the Company.

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Perth, Western Australia.

Chair means the Director appointed under rule 5.5.

Commissioner means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA97.

Company has the meaning given to it in rule 1.1.

Constitution means this constitution and any amendments to or substitutions for it.

Contribution means:

- (a) a contribution of money or property as described in item 7 of the table contained in section 30-15 of the ITAA97 in relation to a fundraising event; or
- (b) a contribution of money as described in item 8 of the table contained in section 30-15 of the ITAA97 in relation to a successful bidder at an auction that was a fundraising event,

held for the Objects.

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

Deductible Gift Recipient means an institution, fund, authority or any other entity that is endorsed as a deductible gift recipient by the Commissioner under Division 30 of the ITAA97 or is a specific listed deductible gift recipient under Division 30 of the ITAA97.

Director means a person appointed as a director of the Company under rule 5.4.

Financial Year means the year ending on 30 June.

ITAA97 means the *Income Tax Assessment Act 1997* (Cth).

Member means any person who is a member of the Company under rule 3, and the term **Membership** has a corresponding meaning.

Objects has the meaning given to it in rule 2.1.

Registered Charity means an entity registered by the ACNC Commissioner as a charity in accordance with the ACNC Act.

Secretary means a person appointed as a Company Secretary under rule 6.

Simple Majority means more than 50%.

Special Resolution means a resolution of the Company passed at a general meeting by not less than 75% of the votes cast by Members who are present at the meeting and are entitled to vote on a resolution of which written notice has been provided.

Surplus Assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

17.2 Interpretation

- (a) Words or expressions in this Constitution shall be interpreted under relevant laws and the *Acts Interpretation Act 1901* (Cth).
- (b) The replaceable rules in the Corporations Act do not apply to the Company, except those which operate as mandatory rules for public companies limited by guarantee under the Corporations Act.
- (c) Except as otherwise provided in this Constitution, whilst the Company is a Registered Charity, the provisions of the Corporations Act which do not apply to a body corporate registered under the ACNC Act by virtue of section 111L of the Corporations Act, do not apply to the Company.
- (d) A reference to **resolve**, **resolution** or **ordinary resolution** means a resolution (other than a Special Resolution) which is passed, as applicable:
 - (i) at a general meeting by the majority of the Members who are present and entitled to vote;
 - (ii) at a Board meeting by the majority of Directors who are present and entitled to vote; or
 - (iii) in writing.

- (e) The word *includes* and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this Constitution.
- (f) A reference to a document includes a variation or replacement of it.
- (g) A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
- (h) A reference to a person includes a reference to an individual, company, body corporate, or incorporated association.
- (i) A reference to a Member present at a general meeting is a reference to a Member present in person, by technology, by representative or by proxy.
- (j) A reference to a Director present at a Board meeting is a reference to a Director present in person or by technology.
- (k) A reference to notices includes formal notices of meetings and all documents and other communications from the Company to Members.
- (l) A reference to writing and written includes printing, electronic documents and other ways of representing or reproducing words in a visible form.
- (m) If the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- (n) If a period of time runs from or before a given date, act or event, then the time is calculated exclusive of the date, act or event.
- (o) Headings are used for convenience only and do not affect the interpretation of this Constitution.