

CORPORATIONS ACT 2001
PUBLIC COMPANY LIMITED BY GUARANTEE

CONSTITUTION OF
COMMUNITY RESTORATIVE CENTRE LIMITED

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GOVERNANCE AND CAPACITY

1. Founding, and Name

- 1.1 The Company was founded in 1951 as an unincorporated association. It subsequently incorporated under the *Associations Incorporation Act 1984* (NSW). From small beginnings, it has become the leading community provider of support services to people affected by the criminal justice system in New South Wales. All services and programs run by the Company aim to reduce crime and break entrenched cycles of disadvantage, offending and imprisonment. These services and programs focus on addressing the social disadvantage that defines the majority of people who are imprisoned, and acknowledges the systemic and social causes of crime and offending including poverty. The Company adopts a human rights framework which recognises the inherent value of all people. It aims to create genuine opportunities for people affected negatively by the criminal justice system to build sustainable pathways out of the criminal justice system into the community and have control over their lives.
- 1.2 The name of the Company is Community Restorative Centre Limited.

2. Liability of Members

- 2.1 The liability of Members is limited.

3. Constitution

- 3.1 This is the Company's Constitution and describes the way in which the Company is to be internally managed.
- 3.2 The Company may modify or repeal this Constitution or any provision of it by Special Resolution from time to time. Such modification, repeal or adoption takes effect on the date on which the resolution is passed or, if the resolution specifies a date which is later than the date on which the resolution is passed, on that date.

4. Objects

Charitable Purpose

- 4.1 The charitable purpose of the Company is to provide community leadership in supporting people adversely engaged with the criminal justice system to pursue life pathways away from entrenched cycles of offending and imprisonment and in so doing promoting the protection of human rights by operating services, supports and programs to individuals, families and communities to improve social welfare, social connectedness and social well-being.

Ancillary Activities in Support of the Charitable Purpose

- 4.2 In furtherance of the Company's charitable purpose, the Company may undertake the following activities:

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- (a) to promote and undertake the recruitment, training and placement of staff and volunteers with a view to supporting and attaining the charitable purpose of the Company;
 - (b) to provide a range of targeted services and programs for people involved with, and at risk of involvement with the criminal justice system. This includes direct service provision for people leaving prison via throughcare and reintegration programs and programs for family members of incarcerated individuals, court support and community development activities;
 - (c) to conduct research, and develop and implement policy relating to the charitable purpose of the Company; including investigating research and policy areas that have the potential to address social disadvantage;
 - (d) to develop and contribute to informed public opinion on matters relating to the intersection of criminal justice and social welfare, via involvement with conferences, educational institutions, and ongoing dissemination of research and position papers to key stakeholders in community and government to further the charitable purpose of the Company;
 - (e) to co-operate and work in partnership with those state, national or international organisations concerned with crime prevention, criminology, victims of crime, corrections, throughcare, reintegration and incarceration;
 - (f) to respond to existing and emerging needs of people involved with, and at risk of involvement with the criminal justice system through service delivery, asset building, consultation, research and professional partnerships with other providers and local communities;
 - (g) to promote the effective administration of justice;
 - (h) to seek funding and raise money to achieve the charitable purpose of the Company;
 - (i) to advocate for a legislative framework that supports the charitable purpose of the Company.
 - (j) to undertake activities which are necessary, incidental or conducive to the advancement of the charitable purpose of the Company.

4.3 The objects of the Company must be consistent with its requirements to maintain its tax concession charity and deductible gift recipient status and the Company is prohibited from doing anything to jeopardise this status or including an object or purpose which is inconsistent with either of the following:

- (a) its not for profit status; or
- (b) its tax concession charity and deductible gift recipient status.

5. Limitation

- 5.1 Even though the Corporations Act may prescribe additional purposes and powers, the Company may only act in furtherance of the charitable purpose and activities described in clause 4.

6. Powers of Board

- 6.1 Subject to the ACNC Act and the Corporations Act and to any provision of this Constitution, the business of the Company is to be under the direction of the Board.
- 6.2 The Board may exercise all of the powers of the Company except any powers that the ACNC Act and the Corporations Act or this Constitution requires the Company to exercise in general meeting.

7. Public Company

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

8. Guarantee of Members

- 8.1 If the Company is wound up and its debts and liabilities exceed its assets, every person who is a Member at the date of winding up or who ceased being a Member within one year of the date of winding up must contribute a maximum of twenty dollars (\$20) towards the debts and liabilities of the Company, including the cost of winding up.

9. Prohibited Acts

- 9.1 Subject to Clause 10, the Company does not have the power to:
- (a) issue shares of any kind; or
 - (b) pay, transfer, apply, directly or indirectly, any portion of the income and property of the Company, by way of dividend, bonus or otherwise howsoever by way of profit, to or for the benefit of a Member.
- 9.2 The Company must not be operated for the purpose of the profit or gain of any Member.
- 9.3 Nothing in this Constitution authorises the Company to do an act that is prohibited by law of a State or a Territory of Australia or gives the Company a right that the law of a State or Territory of Australia denies to the Company.
- 9.4 The Company must comply with all requirements of the ACNC Act, or any other Authority which might succeed to or replace the powers, functions or duties of the ACNC.
- 9.5 The Directors note and will observe the Governance Standards in the ACNC Act and Regulations or any other standards which may be prescribed by any other Authority

from time to time having the power to prescribe governance standards for charitable institutions such as the Company.

10. Income and Property

- 10.1 The income and property of the Company shall be applied solely towards the promotion of the purpose of the Company as described in clause 4 and shall not be applied in any manner which is prohibited by this Constitution.
- 10.2 Nothing in this clause 10 or this Constitution prevents the Company from paying for:
- (a) professional or technical services actually rendered by a Member to the Company;
 - (b) goods supplied to the Company by a Member in the ordinary and usual course of business;
 - (c) interest (at a rate not exceeding the lowest rate paid for the time being by the Company's bankers on term deposits) on money borrowed from any Member; or
 - (d) reasonable and proper rent for premises demised or let by any Member.
- 10.3 No Director who is a Member, beneficiary, controller or owner may be paid out of the profits or financial surplus of the Company, nor may he or she receive any gift of property from the Company.
- 10.4 The Company may pay a Director for:
- (a) out of pocket expenses reasonably incurred by the Director in the performance of any duty as Director where the amount payable does not exceed an amount approved by the Board; and
 - (b) any service rendered by him or her to the Company in a professional or technical capacity where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service.

11. Gift Fund

- 11.1 This clause 11 applies only if the Company operates a Gift Fund pursuant to the Tax Act.
- 11.2 The Company will establish and maintain a public fund (**Gift Fund**).
- 11.3 The Gift Fund must be managed by responsible persons within the definition of the relevant Taxation Ruling.
- 11.4 The Company must maintain, for its principal purpose, the Gift Fund:

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- (a) to which gifts of money or property for that purpose are to be made;
 - (b) to which any money received (including interest accruing on money received) by the Company because of those gifts is to be credited; and
 - (c) that does not receive any other money or property.

11.5 The Company must use the following only for its principal purpose:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of those gifts.

11.6 At the first occurrence of:

- (a) the winding up of the Gift Fund; or
- (b) the Company ceasing to be endorsed as a deductible gift recipient or equivalent,

clauses 75 and 76 of this Constitution apply as if the Company was being wound up.

11.7 Where gifts to the Company are deductible only if, amongst other things, the conditions set out in the Tax Act are satisfied, a transfer under this clause 11 must be made in accordance with those conditions.

11.8 If required by the Tax Act, the Company must maintain a separate bank account for the Gift Fund and for so long as it operates a Gift Fund in all other respects the Company must comply with the provisions of the Tax Act in respect of such a Gift Fund.

11.9 Receipts issued for gifts must state:

- (a) the name of the Company;
- (b) the Australian Business Number applicable to the Company;
- (c) the fact that the receipt is for a gift; and
- (d) any other matter required to be included on the receipt pursuant to the requirements of the Tax Act.

MEMBERS

12. Members

12.1 There must be at least four (4) Members.

12.2 The initial members of the Company are the persons named in the application for registration of the Company, with their consent, as a proposed member of the Company.

12.3 The rights and privileges of every Member are personal to that Member and may not be transferred by any act of that Member or by operation of law.

13. Admission to Membership

13.1 The following provisions apply to applications for admission as a Member:

- (a) membership is open to organisations and individuals over the age of eighteen (18) years that are supportive of the objects of the Company and which are accepted to membership by the Board following the application procedure set out in this Constitution;
- (b) an application for membership must be supported by an existing Member;
- (c) an application for membership must be made by completing and signing the form approved for the purpose by the Board from time to time, and lodging it with the Secretary;
- (d) the applicant must pay the application fee (if any is prescribed) within two (2) weeks of approval of the application. Membership commences once the application fee is paid.

13.2 In respect of each application for membership duly made in accordance with this Constitution:

- (a) the Secretary shall provide the application to the Board at the next meeting after receipt of the application;
- (b) the Board shall consider the application promptly and may, after considering it, determine in the Board's sole and absolute discretion to accept or reject the application;
- (c) if the application is accepted, the applicant shall be advised, and on payment of the application fee (if any) the applicant shall be admitted as a Member and shall be notified in accordance with clause 13.3;
- (d) the Board does not have to give reasons for rejecting an application.

13.3 Following admission of a new Member, the Secretary must promptly:

- (a) notify the Member in writing of the admission to membership and if applicable, issue a receipt for the entrance fee paid by the Member; and
- (b) cause the required details to be entered in the Register of Members.

13.4 Despite any other provisions in this clause 13, the Board must, at its first meeting immediately after incorporation of the Company, admit organisations and individuals who, have given written consent, to be a Member of the Company.

14. Rights of Membership

- 14.1 Membership is in two (2) categories: **Voting Members** and **Non-Voting Members**.
- 14.2 Anyone employed by the Company may be admitted to membership only as a Non-Voting Member. A Voting Member who becomes an employee of the Company automatically becomes a Non-Voting Member.
- 14.3 All Members are entitled to:
- (a) receive notices of, attend and speak at a general meeting of the Company; and
 - (b) receive such membership benefits as are determined from time to time by the Board to apply to Members.
- 14.4 In addition to the rights in clause 14.3, at a general meeting Voting Members are entitled to:
- (a) one (1) vote on a show of hands; and
 - (b) one (1) vote on a written vote demanded in accordance with this Constitution.
- 14.5 Employees of the Company admitted to membership retain membership only so long as they remain employees. Subject to clause 13, a former employee may apply for membership as a Voting Member.

15. Term and Renewal of Membership

- 15.1 Subject to clause 15.6 membership for Voting Members expires on 30 June in each year.
- 15.2 On 1 July in each year the Company must forward to each Voting Member a renewal of membership form (**Renewal Form**).
- 15.3 Voting Members who wish to renew their membership to 30 June in the following year must sign and return the Renewal Form to the Company.
- 15.4 Voting Members who fail to return a signed Renewal Form by 31 July in the relevant year are deemed to have resigned their membership as at 30 June in the relevant year.
- 15.5 Despite clause 15.4 the Board may resolve to reinstate a membership upon recipient of a signed Renewal Form from the former voting member at any time up to 31 December in the relevant year.
- 15.6 Clauses 15.1 to 15.5 (inclusive) do not apply to a Voting Member who is a director or secretary of the Company so long as they hold office. A director or secretary retains membership until 30 June after ceasing to hold office and may apply for renewal of membership.

16. Subscription of Members

- 16.1 Unless the Board otherwise declares, Members are not liable to pay a fee or other monies for the privilege of being a Member. If the Board prescribes a Subscription or other fee payable for the privilege of Membership, it shall set the amount, the frequency and provide any exemption or concessions in its discretion.

17. Register of Members

- 17.1 The Secretary shall keep a Register of Members, containing the name of each Member, the date of entry on the Register of Members, the date of expiry in accordance with the provisions of the Constitution of such membership and such other particulars as the Board from time to time may determine.
- 17.2 Each Member shall notify the Secretary of an address in Australia where the Company can send notices and notify the Secretary of any change in such address from time to time.
- 17.3 If a Member fails to provide an address in accordance with clause 17.2, clause 82.7 applies.

18. Conduct of Members

- 18.1 Members shall conduct themselves in accordance with:
- (a) this Constitution;
 - (b) the Code of Conduct;
 - (c) any rules, regulations or by-laws prescribed by the Board; and
 - (d) any Governance Standards applicable from time to time,
- as amended from time to time.
- 18.2 Members shall indicate their membership of the Company only in such form and manner and subject to the Code of Conduct and any conditions in any rules, regulations or by-laws prescribed by the Board from time to time.
- 18.3 Each Member shall notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership or class of membership.

19. End and Suspension of Membership

- 19.1 A Member ceases to be a Member if they:
- (a) resign in writing by providing the Secretary with no less than one (1) month written notice;

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- (b) are subject to an Insolvency Event;
 - (c) die;
 - (d) become of unsound mind or become liable to be dealt with in any way under a law relating to mental health;
 - (e) fail to renew their membership in accordance with clause 15; or
 - (f) have their membership cancelled in accordance with clause 21.

20. Resolution of Disputes

- 20.1 A dispute between a Member and another Member (in their capacity as Members) of the Company, or a dispute between a Member or Members and the Company, are to be referred to a community justice centre for mediation under the *Community Justice Centres Act 1983* (NSW).
- 20.2 If a dispute is not resolved by mediation within three (3) months of the referral to a community justice centre, the dispute is to be referred to arbitration.
- 20.3 The *Commercial Arbitration Act 2010* (NSW) applies to any such dispute referred to arbitration.

21. Disciplining of Members

- 21.1 The Board on its own motion, or following a complaint by any person, may investigate whether a Member of the Company:
 - (a) has persistently refused or neglected to comply with a provision/or provisions of this Constitution;
 - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the Company;
 - (c) has acted in a manner prejudicial to or not in the best interests of the Company;
 - (d) has brought discredit on the Company;
 - (e) is in breach of the Code of Conduct; or
 - (f) no longer meets the criteria for membership of the Company or category of membership of the Company.
- 21.2 Where the Board is of the opinion that a Member of the Company has contravened clause 21.1, the Board may, by resolution:
 - (a) expel the Member from the Company; or
 - (b) suspend the Member from membership of the Company for a specific period.

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- 21.3 The Board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- 21.4 A Board resolution to suspend or expel a Member does not take effect until clause 21.5 is complied with and the resolution is confirmed by the Board.
- 21.5 If the Board resolves to suspend or expel a Member, the Secretary shall, as soon as practicable, cause a notice in writing to be served on the Member:
- (a) setting out the resolution of the Board and the grounds on which it is based;
 - (b) stating that the Member may address the Board at a meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
 - (c) stating the date, place and time of that meeting; and
 - (d) informing the Member that the Member may do either or both of the following:
 - (i) attend and speak at that meeting;
 - (ii) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.
- 21.6 At a meeting of the Board held as referred to in clause 21.5, the Board shall:
- (a) give to the Member an opportunity to table a submission or speak about the complaint or both;
 - (b) give due consideration to any oral or written representations submitted to the Board by the Member at or prior to the meeting; and
 - (c) by resolution determine whether to confirm or to revoke the resolution if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.
- Legal advisors are not permitted to attend the Board meeting.
- 21.7 Where the Board confirms a resolution under clause 21.6, the Secretary shall, within seven (7) days after that confirmation, by notice in writing inform the Member of the action taken, of the reasons given by the Board for having taken that action and of the Member's right of appeal under clause 22.
- 21.8 A resolution confirmed by the Board under clause 21.6 does not take effect:
- (a) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; or

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- (b) where within that period the Member exercises the right of appeal, until the Company confirms the resolution pursuant to clause 21.7.

22. Right of Appeal of Disciplined Member

- 22.1 If a Member receives notice that their expulsion or suspension has been confirmed, the Member has seven (7) days to lodge an appeal with the Secretary.
- 22.2 The notice may, but need not, be accompanied by a statement of the grounds on which the Member intends to rely for the purposes of the appeal.
- 22.3 Upon receipt of a notice from a Member under clause 22.1, the Secretary shall notify the Board which then has twenty-eight (28) days to convene a general meeting.
- 22.4 At a general meeting of the Company convened under clause 22.3:
 - (a) no business other than the question of the appeal shall be transacted;
 - (b) the Board and the Member shall be given the opportunity to state their respective cases orally or in writing, or both; and
 - (c) the Members present shall vote by secret ballot on the question of whether the resolution of the Board should be revoked.
- 22.5 Unless the Company passes a Special Resolution in favour of revoking the Board's resolution, the expulsion or suspension is confirmed.
- 22.6 Any Member whose membership has been suspended or cancelled by expulsion is not entitled to enjoy any of the privileges of membership including receiving notice of, attendance and voting at, any meeting of Members.
- 22.7 Any Member whose membership has been suspended or cancelled by expulsion continues to remain liable for:
 - (a) all money owing by the Member to the Company as at the date of suspension of cancellation including any Subscription; and
 - (b) the Guarantee.
- 22.8 The Board may reinstate a Member whose membership has been suspended on the satisfaction of such terms and conditions as the Board thinks fit to apply from time to time.
- 22.9 Whenever any person ceases to be a Member, the Board shall direct that his or her name to be removed from the Register of Members.

GENERAL MEETINGS

23. General meetings called by Directors

- 23.1 The Directors may call a general meeting and must call a general meeting if clause 23.2 applies.
- 23.2 If Voting Members with at least five percent (5%) of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the Directors must:
- (a) within twenty-one (21) days of the Voting Members' request, give all Members notice of a general meeting; and
 - (b) hold the general meeting within two (2) months of the Voting Members' request.
- 23.3 The percentage of votes that Voting Members have (in clause 23.2) is to be worked out as at midnight before the Voting Members request the meeting.
- 23.4 The Voting Members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the Company.
- 23.5 Separate copies of a document setting out the request may be signed by Voting Members if the wording of the request is the same in each copy.

24. General meetings called by Voting Members

- 24.1 If the Directors do not call the meeting within twenty-one (21) days of being requested under clause 23.2, fifty percent (50%) or more of the Voting Members who made the request may call and arrange to hold a general meeting.
- 24.2 To call and hold a meeting under clause 24.1 the Voting Members must:
- (a) as far as possible, follow the procedures for general meetings set out in this Constitution;
 - (b) call the meeting using the list of Members on the Register of Members, which the Company must provide to the Voting Members making the request at no cost; and
 - (c) hold the general meeting within three (3) months after the request was given to the Company.

24.3 The Company must pay the Voting Members who request the general meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

25. Annual general meeting

25.1 A general meeting, called the annual general meeting, must be held:

- (a) within eighteen (18) months after registration of the Company; and
- (b) after the first annual general meeting, at least once in every calendar year.

25.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:

- (a) a review of the Company's activities;
- (b) a review of the Company's finances;
- (c) any Auditor's report;
- (d) the election of directors; and
- (e) the appointment and payment of Auditors, if any.

25.3 Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.

25.4 The Chair of the annual general meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

26. Amount of notice of meetings

26.1 At least twenty-one (21) days' notice must be given of a meeting of Members.

27. Notice of meetings

27.1 Written notice of the meeting of Members must be given to each Member at the meeting and to each Director and any Auditor. No other person shall be entitled to receive notices of meetings of Members.

27.2 The Company shall give notice of meeting of Members in accordance with clause 82.

27.3 Except for meetings called by Voting Members, the Company may call:

- (a) an annual general meeting on shorter notice if all Voting Members agree beforehand; and

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- (b) any other meeting of Members on shorter notice if Voting Members with at least ninety-five percent (95%) of the votes that may be cast at the meeting agree beforehand.

27.4 Notice of a general meeting must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution;
- (d) a statement that Voting Members have the right to appoint proxies and that, if a Voting Member appoints a proxy:
 - (i) the proxy does not need to 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 forty-eight (48) hours before the meeting.

27.5 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any Member shall not invalidate the proceedings at any meeting.

27.6 A meeting of Members called by the Board may be cancelled or postponed by the Board.

27.7 Notice of a meeting cannot be provided less than twenty-one (21) days before the meeting if a resolution will be moved to:

- (a) remove a director;
- (b) appoint a director in order to replace a director who was removed; or
- (c) remove an Auditor.

28. Auditor entitled to notice and other communication

28.1 The Company must give the Auditor:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the general meeting that a Member is entitled to receive.

29. Voting Members' resolutions

- 29.1 The Voting Members may propose a resolution to be moved at a general meeting. Notice of such proposal must be given to the Secretary.

30. Time and place for meetings of Members

- 30.1 A meeting of Members must be held at a reasonable time and place.

31. Members' Meetings - Technology

- 31.1 The Company may hold a meeting of its Members at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 31.2 Without limiting clause 31.1, a meeting of Members may be called or held using any technology which allows all of the Members participating in the meeting to hear each other at the same time.

32. Quorum

- 32.1 The quorum for a meeting of Members is the greater of:

- (a) four (4) Voting Members; and
- (b) ten percent (10%) of Voting Members calculated as at 5pm on the day prior to the meeting.

The quorum must be present at all times during the meeting.

- 32.2 In determining whether a quorum is present:

- (a) individuals who attend as proxies are to be counted;
- (b) a Representative is to be counted;
- (c) if a Voting Member has appointed more than one (1) proxy, only one (1) of them is to be counted; and
- (d) if an individual is attending both as a Voting Member and as a proxy or Representative, they are to be counted only once.

- 32.3 Subject to clause 32.4 if there is no quorum present within thirty (30) minutes after the time for the meeting set out in the notice of meeting, the meeting is adjourned to the date (not being more than fourteen (14) days after such meeting), time and place the Chair of the meeting (or in default of the Chair a majority of Voting Members) specifies. If the Chair of the meeting (or in default of the Chair a majority of Voting Members) does not specify one or more of those requirements, the meeting is adjourned to:

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- (a) if the date is not specified, the same day in the next week;
 - (b) if the time is not specified, the same time; or
 - (c) if the place is not specified, the same place.

32.4 Subject to clause 32.5, if no quorum is present at the resumed meeting of the Company's Members within thirty (30) minutes after the time for the meeting, the Voting Members present (being not less than four (4)) shall be a quorum.

32.5 If a meeting of the Company's Members called pursuant to clause 23.2 or 24.1 does not have a quorum present within thirty (30) minutes after the time set for the meeting, the meeting shall be dissolved.

33. Chairing meetings of Members

33.1 The Chair shall be entitled to preside over every meeting. If the Chair:

- (a) is not present at the time appointed for holding the meeting; or
- (b) declines to chair the meeting,

the Directors present (or if there are no Directors present, the Voting Members) shall elect one of their number to be Chair of that meeting.

33.2 If the Chair is not a Voting Member of the Company, clause 33.1 applies however the Chair is not entitled to any vote at that meeting.

34. Adjourned meetings

34.1 Any person appointed to chair a meeting of Members may adjourn the meeting if the Voting Members present with a majority of votes at the meeting agree or direct that the Chair may do so.

34.2 No business may be transacted at an adjourned meeting other than the business left unfinished from the earlier meeting from which the adjournment took place.

34.3 If a meeting is adjourned for more than fourteen (14) days, a new notice of the adjourned meeting must be given.

35. Auditor's right to be heard at meetings of Members

35.1 The Auditor is entitled to attend and be heard at any general meetings of Members.

36. Proxies

36.1 A Voting Member may appoint a proxy to attend and vote at a general meeting on their behalf.

36.2 A proxy does not need to be a Member.

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- 36.3 A proxy appointed to attend and vote for a Voting Member has the same rights as the Voting Member to:
- (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 40.1.
- 36.4 An appointment of proxy (proxy form) must be in a form prescribed by the Board from time to time signed by the Voting Member appointing the proxy and must contain:
- (a) the Voting Member's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the Company at the address stated in the notice under clause 27 or at the Company's registered address at least forty-eight (48) hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a Voting Member at a meeting while the Voting Member is at the meeting.
- 36.8 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Voting Member:
- (a) dies;
 - (b) is mentally incapacitated;
 - (c) revokes the proxy's appointment; or
 - (d) revokes the authority of a Representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

37. Member's Representatives

- 37.1 Any Member that is an organisation shall appoint an individual (Representative) as a representative to exercise all or any of the powers of the Member under this Constitution or the Act or otherwise at law.

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- 37.2 The appointment may be a standing one.
- 37.3 The appointment may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 37.4 A Member may appoint more than one (1) Representative but only one Representative may exercise the body's powers at any one time.
- 37.5 Unless otherwise specified in the appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.
- 37.6 The nomination of a Representative must be in writing and provided to the Secretary. Where a Member that is an incorporated or unincorporated organisation has not named a Representative, the Representative shall be deemed to be that Member's secretary.
- 37.7 A Representative will cease to hold their appointment:
- (a) on the date of receipt by the Secretary of a written notice from the Member that it has withdrawn its nomination of the Representative; or
 - (b) on the date of receipt by the Secretary of a written notice from the Representative resigning, refusing or remitting nomination.

38. Voting at meetings of Members

- 38.1 Only Voting Members who have no outstanding monies due to the Company are entitled to vote at meetings of Members, either personally, by proxy, or be reckoned in a quorum. Each Voting Member has one vote.
- 38.2 A Voting Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote whether on a show of hands or on a written vote by his or her trustee or by such other person that has or is responsible for the management of his or her estate and any such trustee or other person may vote by proxy or attorney.

39. Objections to right to vote

- 39.1 A challenge to a right to vote at a meeting of Members:
- (a) may only be made at the meeting; and
 - (b) must be determined by the Chair whose decision is final.

40. How voting is carried out

- 40.1 A resolution put to the vote at a meeting of Members must be decided on the voices or a show of hands unless a written vote is demanded by the Chair or by at least three (3) Voting Members present in person or by proxy and entitled to vote.
- 40.2 On the voices or a show of hands, a declaration by the Chair is conclusive evidence of the result. The minutes do not have to record the number and proportions of votes for or against.
- 40.3 If a Voting Member participates in a meeting remotely pursuant to clause 31.2, the Voting Member's vote will be treated as if the Voting Member was present at the meeting. If a written vote is demanded a Voting Member participating in the meeting remotely may give his or her vote by voice or electronically and in either case the Voting Member's vote will be counted in the written vote. If the vote is given electronically it must:
- (a) be directed to the Chair or such other person as the Chair directs for the purpose of collating votes; and
 - (b) be given in such a manner to allow a permanent record of the vote to be created.
- 40.4 Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.
- 40.5 Before a vote is taken, the Chair must state whether proxy votes have been recorded, and if so, how the proxy votes will be cast.
- 40.6 A demand for a written vote may be withdrawn.
- 40.7 A demand for a written vote shall not prevent the continuance of a meeting or the transaction of any business at the meeting other than the question on which the written vote has been demanded.

41. When and how a written vote must be taken

- 41.1 Subject to clause 41.2, a written vote must be taken when and in the manner the Chair directs.
- 41.2 A written vote on the election of a Chair or on the question of an adjournment must be taken immediately.

BOARD OF DIRECTORS

42. Directors

- 42.1 The Initial Directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company.

42.2 Subject to clauses 42.3 and 46.1, the Board shall consist of not less than three (3) and not more than ten (10) Directors.

42.3 The Company may from time to time in a general meeting increase or reduce the number of Directors.

43. Election of Directors

43.1 Subject to clauses 42 and 44.1, nominations of candidates for election as Directors must be made in writing, signed by two (2) Members of the Company and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and shall be delivered to the Secretary twenty-one (21) days before the date fixed for holding the annual general meeting.

43.2 If insufficient nominations are received to fill all vacancies on the Board, the candidates nominated shall be deemed to be elected and further nominations are to be received at the annual general meeting.

43.3 If insufficient further nominations are received, any vacant positions remaining on the Board shall be deemed to be casual vacancies.

43.4 If the number of nominations received exceeds the number of vacancies to be filled, a ballot shall be held.

43.5 The ballot for the election of members of the Board shall be conducted at the annual general meeting in such manner as the Board chooses.

44. Transition of Initial Directors

44.1 At the first annual general meeting, one half of the Initial Directors (other than the Chair) shall retire from office and shall be eligible to be elected as an Elected Director. The Initial Directors to retire at the first annual general meeting are those who have held the position of office-bearers of Community Restorative Services Incorporated for the longest consecutive term. If two or more such directors have held the office of the same length of time those to retire must be determined by lot unless they agree among themselves.

44.2 At the second annual general meeting the remaining Initial Directors, including the Chair, shall retire from office and are eligible for re-election.

45. Rotation and retirement of elected directors

45.1 There shall be a rotational system of elections of Elected Directors so that at each annual general meeting, one half of the Elected Directors (rounded up to the nearest whole number if necessary) must retire.

45.2 The Elected Directors to retire at each AGM are those who have been the longest in office since their last election. If two or more persons became Elected Directors on the same day those to retire must be determined by lot unless they otherwise agree among themselves.

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- 45.3 An Elected Director retiring at an annual general meeting, and who is not disqualified by law or by this Constitution from being reappointed, is eligible for re-election.
- 45.4 A retiring Director shall hold office until the dissolution of the meeting at which his or her successor is appointed. Newly elected Directors shall take office at the conclusion of the meeting at which they were elected (or where results of the election were declared).
- 45.5 A Director who has held office for a continuous period of eight (8) years may only be reappointed or re-elected by a special resolution.

46. Removal and Vacation of Office

- 46.1 A Director may at any time resign from the Board by giving thirty (30) days prior written notice of resignation to the Secretary at the Registered Office.
- 46.2 Subject to the Corporations Act:
- (a) the Voting Members may resolve by Ordinary Resolution to remove any Director before the expiration of his or her period of office and may by an Ordinary Resolution appoint another person in his or her stead; and
 - (b) a person appointed to replace a Director removed under this clause 46 shall hold office until the annual general meeting next following his or her appointment and shall be eligible to stand for election.
- 46.3 The office of Director shall be vacated if he or she:
- (a) resigns or is removed from office pursuant to clause 46.1 or 46.2;
 - (b) ceases to be a Member;
 - (c) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (e) ceases to be a Director by virtue of the Corporations Act or the ACNC Act or becomes prohibited from being a Director by reason of any order made under the Corporations Act or the ACNC Act;
 - (f) is absent from three (3) consecutive meetings of the Board without permission of the Board.

47. No Payment of Fees

- 47.1 The Company must not pay fees to a Director for acting as a Director.
- 47.2 The Company may:

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- (a) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.

47.3 Any payment made under clause 47.2 must be approved by the Directors.

47.4 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this Constitution.

48. Casual Vacancies and Additional Directors

48.1 Subject to clause 41.2, the Board may at any time appoint a person who would be eligible to be a Director pursuant to the ACNC Act and regulations and this Constitution, to be a Director to fill a casual vacancy on the Board.

48.2 If the number of Directors becomes less than four (4) as a result of vacancies on the Board, the Board must not act, except for the purposes of filling vacancies or convening a general meeting, while there are less than four (4) Directors.

48.3 The Company must confirm the appointment of a Director to fill a casual vacancy pursuant to this clause 48 by resolution at the Company's next annual general meeting. If the appointment is not confirmed the person ceases to be a Director of the Company at the end of that annual general meeting.

49. Material personal interest

49.1 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of the interest.

49.2 The notice required by clause 49.1 must:

- (a) include details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
- (b) be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter, the details of which must be recorded in the minutes of the meeting.

49.3 A Director who has a material personal interest in a matter that is being considered at a Board meeting shall not be present while the matter is being considered at the meeting or vote on the matter unless:

- (a) their interest arises because they are a Member of the Company, and the other Members have the same interest;

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- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 77);
 - (c) their interest relates to a payment by the Company under clause 78 or 79, or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
 - (e) the other Directors on the Board who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature of his or her interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that the Board is satisfied that the interest should not disqualify the Director from voting or being present.

A Director who votes when not otherwise authorised to do so under this clause 49 shall have his or her vote discounted.

50. Standing notice about an interest

50.1 A Director with an interest in a matter may give the Board standing (ongoing) notice of the nature and extent of this interest in accordance with the Corporations Act.

51. Negotiable instruments and Electronic Payments

51.1 The Board shall determine the mechanism for signing, drawing, accepting, endorsing or otherwise executing a negotiable instrument or authorising electronic payments.

51.2 Receipts for money payable to or receivable by the Company may be signed by a Director or the Secretary or by any other person authorised by the Board to receive money either generally or any particular sum of money on behalf of the Company.

52. Powers and Role

52.1 The Board shall control and supervise the business and affairs and have custody and control of the funds and property of the Company.

52.2 Without limiting clause 52.1, the role of the Board is to:

- (a) direct and guide the Company's strategic direction;
- (b) ensure that the Company's activities remain consistent with its primary purpose; and
- (c) monitor and maintain the financial integrity and viability of the Company,

in all cases having regard to clause 52.3.

52.3 Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 4;
- (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 clause 49;
- (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.

52.4 The activities of the Board are subject to any regulation from time to time made pursuant to the ACNC Act and regulations.

53. Board meetings

53.1 The Board shall meet at least six (6) times each year.

53.2 A Board meeting may be called at any time by a Director or the Secretary at the written request of a Director on not less than fourteen (14) days' notice.

53.3 Notice of Board meetings shall specify the place, date and time of the meeting and the business to be conducted at the meeting.

53.4 The Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.

54. Use of Technology

54.1 Unless a Director notifies the Secretary within a reasonable time before the meeting, otherwise, a Board meeting may be called or held using any technology which allows all of the Directors participating in the meeting to hear each other at the same time.

55. Chair and Deputy Chair

- 55.1 The Initial Chair is the Initial Director who held the office of president of Community Restorative Services Incorporated at the general meeting at which this constitution was adopted. The Initial Chair must retire as Chair and Director at the second annual general meeting and is eligible for re-election as a Director. If elected as a Director, the Initial Chair is eligible for reappointment as Chair for a second consecutive term – maximum of two (2) consecutive terms.
- 55.2 Subject to 55.1, an Elected Chair is appointed by the Board for a two (2) year term and is eligible for reappointment for a second consecutive term – maximum of two (2) consecutive terms.
- 55.3 A Chair who has completed two (2) consecutive terms is eligible for re-election as a Director and, for the purpose of clause 45.5, in calculating time as a Director the time as Chair will be included.
- 55.4 The Board may designate one of the Directors to be the Deputy Chair. The Deputy Chair may preside over meetings when the Chair is not present and, as requested by the Chair, fulfil other tasks normally undertaken by the Chair to represent the Company. The Deputy Chair holds this position at the discretion of the Chair.
- 55.5 The Chair shall be entitled to preside as Chair at every meeting of the Board. If the Chair is not present at the time appointed for holding the meeting or if the Chair declines to chair the meeting, the Deputy Chair shall chair such meeting. If the Chair and the Deputy Chair are not present, or decline to chair the meeting, the Directors present shall elect one of their number to be Chair of that meeting.
- 55.6 In the event of equality of votes the Chair of a meeting shall not have a second or casting vote of the meeting and the meeting shall be dissolved.

56. Quorum at Board meetings

- 56.1 The quorum for a Board meeting shall be four (4) Directors and the quorum must be present at all times during the meeting.
- 56.2 A meeting of the Board at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Board under the Constitution.
- 56.3 No business shall be transacted by the Board unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting may be adjourned to such time and place notified by the Chair, provided such notification is issued within 21 days.
- 56.4 If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting shall be dissolved.

57. Passing of Board resolutions

57.1 A Board resolution must be passed as an Ordinary Resolution.

58. Circulating resolutions of Board

58.1 The Board may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

58.2 Separate copies of a document (which may be issued electronically) may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

58.3 The resolution is passed when a last Director to make up the majority of the Directors entitled to vote on the resolution sign.

58.4 The requirement for a signature or for signing a document is taken to have been met in relation to an electronic communication if:

- (a) a method is used to identify the person and to indicate the person's approval of the information communicated; and
- (b) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated.

59. Delegation

59.1 The Board may delegate any of its powers to any Committee, Director(s), employee of the Company or any other person.

59.2 The delegate must exercise the delegated powers in accordance with any directions of the Board.

59.3 The effect of the delegate exercising a delegated power is the same as if the Board exercised it.

59.4 The Board may withdraw any delegated power at any time.

60. Committees

60.1 The Board may from time to time establish committees to advise it on matters affecting the operations of the Company ("Committees"). Terms of reference of all Committees shall be determined by the Board. Committees other than a committee delegated with reviewing candidates for board membership may co-opt non-Members to the Committee.

60.2 Clause 58 shall apply to the passing of resolutions of a Committee as if it was a resolution of the Board and Members of the Committee were Directors.

61. Validity of Actions

61.1 A defect (including disqualification) in the appointment of a director or committee member does not invalidate any decision or action made at a meeting of the Board or a Committee attended by that director or directors.

62. Company's attorney

62.1 The Board may appoint a Company, firm, person or body of persons to be the Company's attorney under a power of attorney for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

SECRETARY

63. Appointment of Secretary

63.1 The Company must have a Secretary or Secretaries. At least one (1) of them must ordinarily reside in Australia.

63.2 The Secretary shall be appointed by the Board (after giving their signed consent) on such terms and conditions (including as to remuneration) as the Board thinks fit.

63.3 A person ceases to be a Secretary of the Company if the person becomes disqualified from managing corporations under the Corporations Act, or the ACNC Act unless ASIC, the ACNC or the Court allows them to take part in the management of the Company.

63.4 The role of the Secretary includes:

- (a) maintaining a Register of Members; and
- (b) maintaining the minutes and other records of general meetings (including notices of meetings), Directors' meetings and circular resolutions.

RULES, REGULATIONS OR BY-LAWS

64. Rules, Regulations or By-Laws

64.1 The Board may from time to time prescribe rules, regulations or by-laws of the Company on such matters considered necessary or expedient to carry out the purposes of the Company or for the regulation, management and control of the Company's affairs including in respect of its Members, Directors and Committees.

64.2 In the event of any inconsistency between this Constitution and any rules, regulations or by-laws, this Constitution prevails.

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- 64.3 The Board must publish rules, regulations and by-laws adopted or amended pursuant to this clause 64 as soon as practicable.

MINUTES

65. Minutes

- 65.1 The Company must keep minute books in which it records within one (1) month:
- (a) proceedings and resolutions of Members' meetings;
 - (b) proceedings and resolutions of Board meetings, including meetings of Committees;
 - (c) resolutions passed by the Members without a meeting; and
 - (d) resolutions passed by the Board without a meeting.
- 65.2 The Company must ensure that minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.
- 65.3 The Company must ensure that resolutions passed without a meeting are signed by a Director within a reasonable time after the resolution is passed.

66. Members' access to minutes

- 66.1 To allow Members to inspect the Company's records:
- (a) the Company must give a Member access to the records set out in clauses 65.1(a) and 65.1(c); and
 - (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in clauses 65.1(b), 65.1(d) and 67.1.

FINANCIAL RECORDS

67. Obligation to Keep Financial Records

- 67.1 The Company must keep written financial records that:
- (a) meet the requirements of the ACNC Act and regulations;
 - (b) correctly record and explain the transactions and financial position and performance of the Company;
 - (c) enable true and fair financial statements to be prepared and audited; and
 - (d) permit preparation of any other documents required by the Corporations Act or this Constitution.

68. Location of Financial Records

- 68.1 The financial records of the Company shall be kept:
- (a) in such manner as to enable them to be conveniently and properly audited;
 - (b) for seven (7) years after the completion of the transactions or operations to which they relate; and
 - (c) at the Registered Office or at such other place as the Board thinks fit.

69. Access

- 69.1 The financial records of the Company shall at all reasonable times be open to inspection by a Director.
- 69.2 The Board shall from time to time determine at what times and places and under what conditions and regulations the financial records of the Company may be open to inspection by Members.

70. Financial Reporting Obligations

- 70.1 A financial report in respect of the Company and a Board report must be prepared for each Financial Year.
- 70.2 The financial report for a Financial Year shall consist of:
- (a) the Company's financial statements for the year;
 - (b) the notes to the financial statements; and
 - (c) the Board's declaration about the statements and notes.
- 70.3 The financial statements for the year are the financial statements that are required by and made up in accordance with the Accounting Standards, including those showing the Company's:
- (a) profit and loss for the previous Financial Year of the Company;
 - (b) balance sheet at the date to which the profit and loss account is made up; and
 - (c) cash flows for the year,
- and such other reports required in addition to or in substitute for such reports under the ACNC Act and regulations.
- 70.4 The notes to the financial statements are:
- (a) disclosures required by the Corporations Act and its regulations;

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- (b) notes required by the Accounting Standards; and
 - (c) any other information necessary to give a true and fair view of the financial position and performance of the Company.
- 70.5 The Board's declaration is a declaration by the Board that, in its opinion:
- (a) there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
 - (b) the financial statement and notes are in accordance with the Corporations Act.
- 70.6 The financial report in respect of the Company and the Board report for the Financial Year must be made available to anyone entitled to receive notice of general meetings of the Company not less than seven (7) days before the meeting at which they are to be considered.

AUDIT

71. Appointment

- 71.1 If the ACNC Act or Regulations require it, a properly qualified auditor or auditors shall be appointed the Auditor and his, or her or their remuneration shall be fixed and duties regulated in accordance with the Corporations Act or other legislation.
- 71.2 The Auditor may be:
- (a) an individual;
 - (b) a firm; or
 - (c) a company.
- 71.3 A person shall not be appointed or act as the Auditor if the person is:
- (a) an Officer of the Company;
 - (b) a partner, an employer or employee of an Officer of the Company; or
 - (c) a partner or employee of an employee of an Officer of the Company.
- 71.4 The Company may have more than one Auditor.
- 71.5 The Company must appoint an Auditor at an annual general meeting and appoint an Auditor to fill any vacancy in the office of auditor at each subsequent annual general meeting.
- 71.6 Except where the Auditor is removed from office at the annual general meeting, the Company may appoint an Auditor at an annual general meeting only if a Member

gives the Company written notice of the nomination of the individual, firm or company for appointment as the Auditor:

- (a) before the meeting was convened; or
- (b) not less than twenty-one (21) days before the meeting.

72. Term of appointment

- 72.1 An Auditor holds office until the Auditor dies, is removed or resigns from office or ceases to be capable of acting as Auditor in accordance with the Corporations Act.
- 72.2 The Company may resolve in general meeting to remove the Auditor in accordance with the Corporations Act.
- 72.3 Except where a vacancy has been caused by the removal of the Auditor from office by the Company, the Board must appoint an Auditor to fill a vacancy in the office of Auditor within one (1) month after the vacancy occurs if:
 - (a) there is no surviving or continuing Auditor (where the Auditor is a company); and
 - (b) the Company has not appointed an Auditor to fill the vacancy at a general meeting.

73. Auditor's report

- 73.1 At least once each year, the Auditor shall provide its report to the Company.

LOGO AND MARKS

74. Logo and Marks of Company

- 74.1 The Board may permit or restrict the use of the Company's trademarks, devices, official logo and other intellectual property in such manner as prescribed by it from time to time.

WINDING UP

75. Surplus assets not to be distributed to members

- 75.1 If the Company is wound up, any Surplus Assets (including 'gift funds' defined in clause 76.4) must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in clause 76.1.

76. Distribution of Surplus Assets

- 76.1 Subject to the Corporations Act and any other applicable legislation, and any court order, any Surplus Assets (including 'gift funds' defined in clause 76.4 that remain after the Company is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 4;
 - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company; and
 - (c) that is or are deductible gift recipients within the meaning of the Tax Act.
- 76.2 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 to make this decision.
- 76.3 If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of clauses 76.1(a), 76.1(b) and 76.1(c), as decided by the directors.
- 76.4 For the purpose of this clause 76:
- (a) 'gift funds' means:
 - (i) gifts of money or property for the principal purpose of the Company;
 - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the Company; and
 - (iii) money received by the Company because of such gifts and contributions,including any Gift Fund established by the Company under clause 11.
 - (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Tax Act.

INDEMNITY AND INSURANCE

77. Indemnity of Directors

- 77.1 Every Director shall be indemnified by the Company against a liability incurred as a Director other than:
- (a) a liability owed to the Company or a related body corporate;

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- (b) a liability for a pecuniary penalty order under the Corporations Act or a compensation order under the Corporations Act; or
 - (c) a liability that is owed to a person other than the Company or a related body corporate and did not arise out of conduct in good faith.

78. Indemnity of Auditors and Officers

78.1 Every Auditor and other Officer of the Company including the Secretary may by resolution of the Board be indemnified by the Company against a liability incurred as an Auditor or an Officer of the Company other than:

- (a) a liability owed to the Company or a related body corporate;
- (b) a liability for a pecuniary penalty order under the Corporations Act or a compensation order under the Corporations Act; or
- (c) a liability that is owed to a person other than the Company or a related body corporate and did not arise out of conduct in good faith.

79. Indemnity for legal costs

79.1 Every Director, Auditor and other Officer of the Company including the Secretary may by resolution of the Board be indemnified out of the assets of the Company against a liability for legal costs incurred by that person as a Director, Auditor or other Officer of the Company in defending an action for liability incurred in that capacity unless the costs arise:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 77 or 78;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by an Authority under the Corporations Act or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by an Authority under the Corporations Act or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

79.2 For the purposes of this clause 79, "proceedings" includes the outcome of the proceedings and any appeal in relation to the proceedings.

80. Limit of indemnity

80.1 Subject to the provisions of the Corporations Act, a Director, Auditor and other Officer of the Company including the Secretary shall not be liable for:

- (a) the acts, receipts, neglect or defaults of any other Director, Auditor and other Officer of the Company;
- (b) joining in any receipt or other act of conformity or for any loss happening to the Company through:
 - (i) an insufficiency or deficiency of title to any property acquired by order of the Directors, Auditor or other Officer of the Company for or on behalf of the Company; or
 - (ii) an insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited;
- (d) any loss occasioned by any error of judgment or oversight on the part of a Director, Auditor and other Officer or employee of the Company; or
- (e) any other loss, damage or misfortune which occurs in the execution of the duties of the office of Director, Auditor or other Officer of the Company,

unless the liability was incurred against the Company or through the dishonesty of the Director, Auditor or other Officer of the Company.

81. Payment of insurance premiums

81.1 The Company may by resolution of the Board pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Auditor or other Officer of the Company including the Secretary against:

- (a) a liability for legal costs; and
- (b) any other liability except a liability incurred by the person as such a Director, Auditor or other Officer and arising out of conduct involving:
 - (i) conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of the Corporations Act.

NOTICES

82. Notices

- 82.1 Any notice required to be given under this Constitution or any rule or regulation of the Company must be:
- (a) in writing; and
 - (b) given to the recipient:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member, and otherwise to the recipient's last known place of residence or business; or
 - (iii) by sending it to the electronic address (if any) nominated by the recipient from time to time.
- 82.2 The non-receipt of a notice of meeting of Members shall not invalidate any meeting of Members held pursuant to such notice.
- 82.3 Members who have no place of address in Australia registered with the Company shall notify the Company of an alternative address in Australia for the purposes of this clause 82.1 otherwise clause 80.7 applies.
- 82.4 Any notice sent by:
- (a) post is taken to be given on the next business day after it is posted (if to an address within Australia) or seven (7) business days after it is posted (if to an address outside Australia); and
 - (b) fax or electronic message is taken to be given on the same day if it is transmitted on a business day by 5:00pm in Sydney and otherwise on the next business day.
- 82.5 Unless it is otherwise provided, a given number of days' notice or notice extending over any period includes the day of service but does not include the day on which such notice is to expire. Where at least, or not less than, a given period is prescribed, then both the day of service and the day on which the period expires are excluded.
- 82.6 Subject to the Corporations Act, the signature to any notice given by the Company may be written, printed or typed.
- 82.7 If a Member fails to provide an address for notices a notice published electronically (including on the Company's website) or in print shall be sufficient notice to such Member.

83. Replaceable Rules

83.1 The Replaceable Rules do not apply to this Constitution.

DEFINITIONS AND INTERPRETATION

84. Definitions

In this Constitution, unless the context otherwise requires:

Accounting Standards has the meaning ascribed to it in the Corporations Act;

ACNC means the Australian Charities and Not-for-Profits Commission;

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*;

Corporations Act means the *Corporations Act 2001 (Cth)* and where any provision of the Corporations Act is referred to the reference is to such provision as amended, modified or re-enacted from time to time, provided always that to the extent that the provisions of the ACNC Act replace the Corporations Act pursuant to Section 111L of the Corporations Act, a reference to the Corporations Act will include such provisions under the ACNC Act;

ASIC means the Australian Securities and Investments Commission;

Auditor means who meets the requirements and s60-30 of the ACNC Act;

Authority means any local, state or federal government, government department, commission or authority (however described) with legislation powers to govern the activities of the Company;

Board means the Board of Directors of the Company;

Board Charter means the charter approved by the Board setting out among other things, the formation, functions and responsibilities of the Board;

Chair has the meaning given in clause 55 including the Initial Chair or Elected Chair, as the context requires;

Code of Conduct means the Code of Conduct of the Company as amended and approved by the Directors from time to time;

Company means the company named in clause 1.2;

Constitution means this Constitution as amended from time to time;

Director means a member of the Board;

Elected Chair means the Chair appointed by the Board, in accordance with this Constitution (see clause 55).

Elected Directors means the Directors elected by and from amongst the Members, in accordance with this Constitution (see clause 43);

Financial Year means the period of twelve (12) months commencing from 1 July and ending on 30 June;

Guarantee means the maximum amount each Member agrees to pay to the Company in accordance with clause 8;

Initial Chair has the meaning given in clause 55.1.

Initial Directors has the meaning given in clause 42.1.

Insolvency Event occurs where:

- (a) a Member is or becomes:
 - (i) an externally-administered body corporate;
 - (ii) subject to control by a Controller; or
 - (iii) an insolvent company under administration,as those terms are defined in the Corporations Act;
- (b) a resolution is passed or a court order made or analogous proceedings are taken for the winding up of the Member other than for the purposes of solvent amalgamation or reconstruction;
- (c) the Member, being a natural person, dies, commits an act of bankruptcy or is declared bankrupt or insolvent or the Member's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency or becomes incapable of managing the Member's own affairs by reason of any medical or mental condition;
- (d) the Member, being a partnership, is dissolved or threatens or resolves or is in jeopardy of dissolving;
- (e) the Member ceases or threatens to cease conducting business in the normal manner;
- (f) the Member has received a deregistration notice or applied for deregistration;
- (g) the Member has been issued with a writ of execution; or
- (h) the Member files a voluntary petition in bankruptcy, a petition seeking any re-organisation, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of the Member's creditors;

Member means any person admitted as a Member of the Company, whether a Voting Member or Non-Voting Member; in accordance with this Constitution.

Month means calendar month;

Non-Voting Member means a Member of the Company who is not a Voting Member;

Officer means an Officer of the Company as defined in the Corporations Act;

Ordinary Resolution means any resolution passed by a simple majority of persons entitled to vote;

Register of Members means the Register of Members to be kept as required under the Corporations Act;

Registered Office means the registered office for the time being of the Company;

Replaceable Rules means the Replaceable Rules contained in the Corporations Act;

Representative means, in relation to a Member, the representative of the Member appointed under clause 37.

Schedule means a schedule to this Constitution;

Secretary means any person appointed in accordance with this Constitution and the Corporations Act as a Secretary of the Company and includes an honorary, assistant or acting Secretary or any substitute for the time being for the Secretary;

Special Resolution means a resolution of which notice as set out in the Corporations Act has been given and has been passed by at least seventy-five percent (75%) of the votes cast by Voting Members entitled to vote on the resolution;

Subscription means the membership application fees, annual subscriptions and other membership levies payable by a Member, a class of Members or the Members as a whole as determined by the Board from time to time pursuant to clause 16;

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.

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

Taxation Ruling means a Taxation Ruling made by the Australian Taxation Office in relation or with reference to or in respect of responsible persons so far as they relate to the management of a public gift fund and deductible gift recipient status.

Voting Member means a Member of the Company who is entitled to the rights under clause 14.4.

85. Interpretation

- (a) Reference to “Constitution” includes its Schedule.
- (b) Words and phrases which are given a special meaning by the Corporations Act and the ACNC have the same meaning in this Constitution, unless the contrary intention appears.
- (c) Words in the singular include the plural and vice versa and words importing a gender include all other genders.
- (d) Persons include companies and corporations and vice versa.
- (e) A reference to the Corporations Act and the ACNC or any other statute or regulation is to be read as though the words “as modified or substituted or re-enacted from time to time” were added to the reference.
- (f) Headings are inserted for convenience and do not affect the interpretation of this Constitution.
- (g) “Including” and other similar words are not words of limitation.
- (h) General words following words describing a particular class or category are not restricted to that class or category.
- (i) A duty, obligation, covenant or agreement on the part of two or more persons benefits and binds them jointly and severally.
- (j) If there is any inconsistency between a clause of this Constitution and the Corporations Act and the ACNC, the Corporations Act and the ACNC prevail to the extent of such inconsistency.