

Constitution of

Child and Youth Services Mutual Limited

ACN 624 308 783

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1 Definitions and interpretation

1.1 Replaceable Rules

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this constitution.

1.2 Definitions

The following definitions apply in this constitution.

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

Board means the board of Directors of the Company.

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

Chief Executive Officer means the Chief Executive Officer of the Company from time to time appointed by the Board.

Commencement Date means 1 September 2018 or such other date determined by the Board.

Company means Child and Youth Services Mutual Limited.

Director means a person appointed to the Board.

Employee means a person that has been employed by the Company in any capacity.

Guarantor Member means Denise Ann Picton and such other person(s) that undertake to contribute to the assets of the Company.

Insolvency Event means an event by which a person:

- (a) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (b) is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (c) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (d) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
- (e) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of the relevant person or his or her estate under any laws relating to insolvency;
- (f) is or applies to be protected from any of its creditors under any applicable legislation, or
- (g) has anything similar to any of the events in paragraphs (a) to (f) happen to it under the law of any applicable jurisdiction.

MAC Member means a Member who is appointed to the MAC.

Material Personal Interest means a material personal interest for the purposes of the Act.

Members means the members of the Company, from time to time.

Members Advisory Council or **MAC** means the Members Advisory Council of the Company.

Secretary means any person appointed to perform the duties of a Secretary of the Company;

Special Resolution means as defined in the Corporations Act 2001 (Cth).

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

1.3 Interpretation of this document

The following rules apply in interpreting this constitution.

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.
- (c) Words or expressions defined in the Act or the Charity Legislation, have those meanings.
- (d) Except so far as the contrary intention appears in this constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) A reference to:
 - (i) a party includes its administrators, successors, substitutes by novation and assigns;
 - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
 - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity, and
 - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

2 Name and structure

2.1 Name of the Company

The name of the Company is Child and Youth Services Mutual Limited.

2.2 Company limited by Guarantee

The Company is limited by guarantee and the liability of the Guarantor Member is limited as provided in this document. The Company is bound to comply with its objects and character as a not-for-profit company limited by guarantee that is a registered entity under the Act and Charity Legislation.

2.3 Constitution of Company

This is the constitution of the Company and comprises its governing document for the purposes of the Charity Legislation.

3 Objects and powers

3.1 Objects

The Company has the following objects:

- (a) To prevent and relieve sickness, disease, suffering, poverty, distress and disadvantage of children, youths and adults who are in need due to their circumstances.
- (b) To provide relief to those people in need through the provision of care, education and support services.
- (c) To provide relief to youth and children with a developmental delay or disability, and their families and carers, through the provision of care, therapy, support, assistance, early childhood early invention and related services.
- (d) To operate and manage the provision of care, therapeutic, support, early childhood early invention and related services in the community.
- (e) To develop, promote and implement associated services beneficial to youth and children with a developmental delay or disability, their families and carers.
- (f) To provide assistance to children, youths and adults with a disability, and their families and carers, to live meaningful and fulfilling lives within a safe and supportive community.
- (g) To empower families, children, youths and adults and community to realise their potential, by providing quality therapy and diverse support services.
- (h) To be an industry leader in delivering high quality, best practice therapy and support services to children, youths and adults with a disability, their families and carers.

3.2 Powers

The Company has the following powers:

- (a) To raise funds by sponsorship, grant, donation or other method approved by the Board from time to time, in addition to membership fees, for the operation of the Company.
 - (b) To acquire shares, units or other interests in entities which have objects that are consistent with the Company's objects for the purpose of collaborating with those entities to achieve the objects of the Company.
 - (c) To purchase, hire, lease or otherwise acquire for the purposes of the Company any real or personal property and any rights and privileges which the Company may think necessary or convenient for the carrying out of its objects or any of them.
 - (d) To give, sell, mortgage, exchange, hire, lease or otherwise dispose of the property of the Company or any part or parts thereof.
 - (e) To invest and deal with any of the monies of the Company not immediately required for the purposes thereof upon such securities and in such manner as may be deemed fit and from time to time to vary and realise such investments.
 - (f) To make, draw, accept, endorse, discount, execute and issue promissory notes bills of exchange bills of lading warrants debentures and other negotiable or transferable instruments.
 - (g) To enter into arrangements with other entities and organisations which have objects that are consistent with the Company's objects.
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- (h) To borrow money from time to time for such purposes to give debentures liens mortgages charges or other security over the whole or any part of the property real or personal of the Company.
- (i) To take or reject any gift of property money or goods whether subject to any special trust or not.
- (j) To erect, maintain, improve or alter any building or buildings for the purposes of the Company.
- (k) To indemnify any person or persons whether Members or the Guarantor Member of the Company or not who may incur or have incurred any personal liability for the benefit of the Company and for that purpose to give such person or persons mortgages charges or other security over the whole or any part of the real or personal property present or future of the Company.
- (l) To carry on all such activities as may be necessary or convenient for the purposes of the Company or any of them.
- (m) To do all such acts deeds matters and things and enter into and make such agreements as are incidental or conducive to the attainment of the objects of the Company or any of them.
- (n) To do all such things as are incidental or conducive to the attainment of the above objects or any of them.

4 Income and property

- (a) The Company must apply its income and property solely towards promoting the objects of the Company as stated in rule 3.
- (b) No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to any of the Members or the Guarantor Member.
- (c) Nothing in this document prevents the payment in good faith of remuneration to any officers or Employees of the Company or to any Member or the Guarantor Member in return for:
 - (i) any services actually rendered by the Company;
 - (ii) goods supplied in the ordinary course and usual way of business;
 - (iii) interest on money lent to the Company at reasonable rates; or
 - (iv) reasonable rent for premises leased to the Company.

5 Deductible gift recipient status

5.1 General

If at any time the Company has the status of a company to which gifts can be deducted under the Tax Act, any provisions which from time to time are required in order to maintain the status of the Company as a Company to which gifts can be deducted under the Tax Act are deemed to form part of this constitution.

5.2 Winding up or revocation of deductible gift recipient status

On the earlier of the winding up of the Company or the revocation of the Company's deductible gift recipient endorsement under Sub-division 30-BA of the Tax Act, the Company must transfer the following to an institution which is charitable at law and to which gifts can be deducted under Division 30 of the Tax Act, as approved by the Members:

- (a) any surplus gifts of money or property for the principal purpose of the Company; and
- (b) any surplus contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for that purposes; and
- (c) any surplus money received by the Company because of such gifts or contributions.

6 Winding up

6.1 Limited liability of Guarantor Member

- (a) If the Company is wound up, the Guarantor Member undertakes to contribute to the assets of the Company an amount not exceeding \$10 for payment of the debts and liabilities of the Company including the costs of the winding up.
- (b) The undertaking in rule 6.1(a) continues for one year after the Guarantor Member ceases to be a member of the Company.

6.2 Distribution of Property

If the Company is wound up or dissolved, any property remaining after the satisfaction of the debts and liabilities of the Company will not be paid to or distributed among the Members but will be given or transferred to an organisation nominated by the Members which:

- (a) has similar objects to the Company;
- (b) is charitable at law;
- (c) meets the requirements of rule 5 if the Company has deductible gift recipient status at the time of winding up; and
- (d) is exempt from income tax under the Tax Act.

7 Membership

7.1 Guarantor Member

- (a) The Guarantor Member is the sole Member of the Company at the time of adoption of this constitution.
- (b) Notwithstanding any other rule, for so long as there are no other Members, the Guarantor Member shall not be deemed to cease membership under rule 7.4(a)(i).

7.2 Becoming a Member

An Employee is entitled to become a Member by making a written request to the Company Secretary if the Employee:

- (a) either has been employed by the Company:
 - (i) for a term greater than one year under a contract of employment; or
 - (ii) has been continuously employed by the Company for at least 12 months; and

- (b) has satisfied any probationary period specified in his or her employment contract.

7.3 Voting rights

- (a) A Member is entitled to one vote.
- (b) The Guarantor Member has no voting rights, subject to rule 7.1(b).
- (c) Members who have taken extended leave for a period of six months or more (other than approved parental leave whether paid or unpaid) from their employment with the Company are suspended from exercising voting rights until such time that they return to continuous employment with the Company.

7.4 Cessation of Membership

- (a) Any person will automatically cease to be a Member if they:
 - (i) cease to be an Employee of the Company;
 - (ii) resign as a Member by notice in writing to the Company and that resignation is accepted by the Board (which, for the avoidance of doubt, may be rejected at the Board's absolute discretion);
 - (iii) become the subject of an Insolvency Event or subject to any form of insolvent administration;
 - (iv) become of unsound mind or physically or mentally incapable of performing the functions of that office; or
 - (v) die.
- (b) If an Employee ceases employment with the Company and is later re-employed, that Employee will not retain her or his original Member status.

7.5 Resolutions if the Company has one Member

- (a) If at any time there is only one Member, all resolutions and decisions required by the Act, the Charity Legislation or by this constitution to be made by the Member will be passed and made by the Member recording the resolution or decision and signing the record, without holding any annual general meeting or other general meetings.
- (b) An annual general meeting of the Company will be held in accordance with the Act provided however that where there is only one Member, the Member may elect not to hold an annual general meeting in accordance with section 250N(4) of the Act.

8 Meetings of Members

8.1 Use and technology

Meetings of Members may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

8.2 Circular resolution

A resolution may be passed by the Company circulating a resolution if a simple majority of the Members votes in favour of the resolution by signing a copy of a document containing the resolution.

Separate copies of the document may be used for signing. The resolution is passed when the last Member signs.

8.3 Convening of general meetings

- (a) The Directors may convene a general meeting whenever they think fit.

- (b) The Directors will convene a general meeting on a requisition of 30% of Members.

8.4 Annual general meetings

The Company will hold annual general meetings within five months of the end of each financial year.

8.5 Business of annual general meeting

The business of an annual general meeting is:

- (a) to receive and consider the reports and financial statements as are required to be laid before the meeting by the Act;
- (b) to appoint Directors in the place of those retiring;
- (c) to appoint an auditor; and
- (d) to transact any other business which ought to be or may be transacted at an annual general meeting.

8.6 Notice period

Unless the Members agree to a shorter period, the Company will give the Members not less than 21 days' notice of a general meeting.

8.7 Contents of notice

A notice of a general meeting will specify:

- (a) the place, day and time of the meeting;
- (b) in the case of special business, the general nature of that business;
- (c) in the case of an appointment of Directors, the names of the candidates for election; and
- (d) the day and time before (but not more than 48 hours before) the meeting at which attendance and voting rights for the meeting (and any adjournment thereof for less than 21 days) will be fixed.

8.8 Failure to give notice

Subject to the Act, the accidental omission to give notice of any general meeting to or the non-receipt of that notice by any of the Members will not invalidate any resolution passed at that meeting.

8.9 Notice of adjourned meeting in certain circumstances only

Whenever a general meeting is adjourned for 21 days or more, the Company will give the Members at least three days' notice of the time and place the adjourned meeting.

8.10 Persons entitled to attend general meetings

All Members and their proxies are entitled to attend general meetings of the Company as well as any other persons entitled to attend under the Act.

8.11 Chair

- (a) The Chair of the Board or in the Chair's absence the Deputy Chair, if any, will preside as Chair at every general meeting of the Company.
- (b) If there is no such Chair or Deputy Chair, or if at any general meeting neither the Chair nor the Deputy Chair are present within 15 minutes of the time appointed for holding the meeting or willing to act, the Director or Directors present may choose another Director as Chair.
- (c) If no Director is present or if all Directors present decline to take the chair, the Members present may choose one of their number to be Chair.

8.12 Quorum

- (a) A quorum for a general meeting is 30% of Members.
- (b) No business can be transacted at any general meeting unless the requisite quorum is present at the commencement of the meeting.
- (c) If a quorum is present at the beginning of a general meeting it is deemed present throughout the meeting unless the Chair otherwise declares on the Chair's own motion or at the instance of a Member.

8.13 If quorum absent

If half an hour after the time appointed for a general meeting a quorum is not present, a meeting convened by the Directors on a requisition of Members or by such requisitions as is provided by the Act will be dissolved, but in any other case the meeting will be adjourned to such other day, time and place as the Directors may by notice to the Members appoint, but failing such appointment, then to the same day in the next week at the same time and place as the meeting adjourned.

8.14 Voting

At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is demanded, but no poll will be demanded on the election of a Chair or the adjournment of any meeting.

8.15 Conduct of a poll

- (a) If a poll has been demanded, it will be taken in such manner and at such time and place as the Chair directs, and either at once or after an interval or adjournment or otherwise.
- (b) The result of the poll will be deemed to be the resolution of the general meeting at which the poll was demanded.
- (c) The demand for a poll may be withdrawn.

8.16 Questions decided by majority

Subject to the requirements of the Act in relation to special resolutions, a resolution will be taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half, unless otherwise required by this constitution.

8.17 Declaration by Chair that resolution carried

A declaration by the Chair that a resolution has on a show of hands been carried or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book of proceedings of the Company will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

8.18 Adjournment of general meetings

If so directed by the general meeting, the Chair will adjourn the meeting from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

8.19 Number of votes

On a show of hands or on a poll at a general meeting:

- (a) every Member present in person or by proxy or attorneys has one vote at all times.

8.20 Proxy not to vote if member is present

If a Member is present at a meeting of the Company and a proxy or attorney for such Member is also present, the proxy or attorney is not entitled to vote on a show of hands or on a poll.

8.21 Right to appoint proxy/attorney

A Member may appoint a person to attend and vote for that Member at the general meeting. A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular response.

8.22 Proxy or attorney will be written

An instrument appointing a proxy or attorney:

- (a) will be in writing executed by the appointer or the appointer's attorney; and
- (b) may contain directions as to the manner in which the proxy or attorney, as the case may be, is to vote in respect of any particular resolution or resolutions.

A facsimile of a written appointment of a proxy or a power of attorney is valid.

8.23 Directors of Chair decided validity

The Directors' or Chair's decision as to the validity of a proxy or power of attorney or a facsimile thereof will be final and binding.

8.24 Authority conferred on proxy or attorney

Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney will be taken to confer authority:

- (a) to agree to a meeting being convened by shorter notice than is required by the Act;
- (b) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given;
- (c) even though the instrument may refer to specific resolutions and may direct the proxy or attorney how to vote on those resolutions:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (ii) to vote on any procedural motion, including any motion to elect the Chair, to vacate the chair or the adjourn the meeting;
- (d) to speak on any proposed resolution on which the proxy or attorney may vote; and

- (e) to demand or join in demanding a poll on any resolution on which the proxy or attorney may vote.

8.25 Power of attorney and proxy form to be deposited before meeting

An instrument appointing an attorney or a proxy must be received by the Company's registered office or the address specified in the notice of meeting, not less than 48 hours before the meeting is scheduled to begin, at which the person named in the instrument intends to vote.

8.26 Member may indicate whether proxy is to vote for or against resolution

- (a) Any form of proxy sent out by the Company to Members for a proposed general meeting of Members will make provision for the Member to indicate whether the Member wishes to vote for or against each resolution.
- (b) The Member may but need not give an indication or direction as to the manner in which a proxy is to vote in respect of a particular resolution.
- (c) Where an indication is given, the proxy is not entitled to vote on the resolution on behalf of that Member except in accordance with that indication or direction.

8.27 Form of proxy/attorney

Every instrument appointing a proxy or attorney whether for a specified meeting or otherwise will be in such form as the Directors may prescribe or accept.

8.28 Failure to name appointee

Any instrument or proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the Chair or such other person as is nominated by the Directors giving the notice of convening the relevant general meeting.

8.29 Appointment of representative by body corporate

- (a) Any body corporate which is a Member of the Company by a resolution of its Directors may authorise any person (whether a Member or not) it thinks fit to act as its Representative at all meetings or any particular meeting or meetings held during continuance of the authority, whether the meeting is of the Company or of any class of Members of the Company.
- (b) That person, acting in accordance with his or her authority until it is revoked by the body corporate, is entitled to exercise the same powers on behalf of that body corporate as that body corporate could exercise if it were a natural person who was a Member of the Company.

8.30 Proof of appointment or revocation of appointment or representative

A certificate under the seal of the body corporate or such other document as the Chair of the meeting in his or her sole discretion considers sufficient will be prima facie evidence of the appointment or of the revocation of the appointment (as the case may be) of a Representative.

9 Board of Directors

9.1 Management

The management of the Company will be vested in the Board.

9.2 Composition of the Board

- (a) Subject to rule 9.5, the Board shall consist of:

- (i) a minimum of three Directors, at least two of whom must ordinarily reside in Australia; and
- (ii) a maximum of nine Directors.
- (b) All Directors must demonstrate a commitment to upholding the objects of the Company.
- (c) The Board shall include at least one director with appropriate experience in the delivery of health, disability or other or allied health services.
- (d) Otherwise, the Members shall seek to appoint a Board comprised of Directors severally having a mix of allied health, business, financial, governance, legal or other skills or experience.
- (e) The Board shall not include the Chief Executive Officer.
- (f) The Directors will not automatically become Members of the Company.

9.3 Term of appointment

Subject to rule 9.5, the Directors appointed by the Members, shall be appointed for a term not exceeding three years and subject to the Act will be eligible for reappointment provided that a Director shall retire after holding office for six consecutive years.

9.4 Chair

The Board will appoint the Chair and a Deputy Chair at its first meeting following each Annual General Meeting. In the absence of the Chair or the Deputy Chair at any meeting of the Board, another director elected by the Directors present will preside as acting Chair.

9.5 Method of appointment and removal of Directors

- (a) The Members will make appointments and re-appointments of Directors, and nominate their terms of office, and subject to the Act and Charity Legislation, may remove Directors by notice in writing addressed to the Board.
- (b) The Members will appoint the Chair of the Board and will nominate the term of office. The Board may appoint one of its number to be Deputy Chair and nominate the term of his or her office.
- (c) If a casual vacancy occurs in the office of Chair, Deputy Chair or Director, the Directors may appoint a person to fill the vacancy until the next Annual General Meeting.
- (d) Any appointments, re-appointments or other decisions relating to Directors shall require a resolution passed by a simple majority of Members (eligible to vote at the relevant time).

9.6 Cessation of Director's appointment

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) becomes an insolvent under administration;
- (b) is absent without the consent of the Board from three successive meetings of the Board and the Members resolve that his or her office be vacated;
- (c) resigns by notice in writing to the Members.
- (d) becomes of unsound mind or physically or mentally incapable of performing the duties

of that office as resolved by the Board;

- (e) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the interest as required by the Act;
- (f) is removed from office by a resolution of the Members; or
- (g) ceases to meet the conditions under the Charity Legislation for being a responsible entity of the Company.

10 Proceedings of the Board

10.1 Board Meetings

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as the Board thinks fit provided that the Board meets at least every two months.
- (b) The Chair or any two Directors may at any time and the Secretary must on the requisition of two Directors convene a meeting of the Board.
- (c) A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if equal numbers of Directors are located in each of two or more places, at the place where the Chair of the meeting is located.
- (d) In the absence of the Chair, the Deputy Chair will chair Board meetings. In the absence of both the Chair and Deputy Chair, the Directors present must elect one of their number to chair the Board meeting.

10.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give as much notice as is reasonably possible of the meeting individually to each Director and, if it is adjourned, of its resumption;
- (b) must give that notice in writing directed to the address each Director furnishes to the Secretary from time to time; and
- (c) must include as much information as is reasonably possible concerning the business to be dealt with by the meeting,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

10.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by the Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

10.4 Chairing Board meetings

The Chair must preside at all meetings of the Board, except that if at any meeting the Chair (or another Director nominated by the Chair to chair a particular meeting) is not present within 15 minutes after the time appointed to hold the meeting, the Directors may choose one of their number to be the Chair of the meeting.

10.5 Voting

Subject to this constitution, questions arising at a meeting of the Board will be decided by a majority of votes of Directors present and voting and any such decision will be deemed a decision of the Board. In the case of an equality of votes the Chair of the meeting will have a second or casting vote and if a majority decision cannot be reached a resolution will not be passed.

10.6 Quorum

- (a) Business must not be transacted at any meeting of the Board unless a quorum is present at the time the meeting proceeds to business. The quorum for a Board meeting is half the total number of Directors plus one Director and a quorum must be present for the whole meeting.
- (b) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by the law, the Board must resolve the basis on which Directors are treated as present.

10.7 Continuing Directors

The continuing Directors may act despite any vacancy in the Board except where the total number of members of the Board is less than three, where the continuing Directors may only act for the purpose of requesting the Members to appoint additional directors.

10.8 Written resolution

- (a) If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.
- (b) For the purposes of this rule, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors, are together deemed to constitute one document containing a statement in those terms signed by the Directors on the respective days on which they signed the separate documents.
- (c) A telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

10.9 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or Member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, from voting on the resolution or from doing the thing in question.

11 Powers of the Board

11.1 Powers and duties of the Board generally

Except as otherwise required by the Act, any other applicable law or this constitution, the Board:

- (a) has the power to manage the business of the Company;
 - (b) has the power to appoint and remove a Chief Executive Officer; and
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- (c) may exercise every right, power or capacity of the Company as are not otherwise required by the Act or by this constitution to be exercised by the Company in a general meeting.

11.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 10; or
- (b) in accordance with a delegation of the Board's power under rule 12.

11.3 Executing negotiable instruments

All negotiable instruments must be executed, accepted or endorsed by the Company by the signature of any two Directors or any other manner as the Board determines.

12 Delegation of Board Powers

12.1 Delegation to committee or attorney

- (a) The Board may delegate any of its powers:
 - (i) to a committee consisting of at least one Director, which may also include people who are not Directors; or
 - (ii) to an attorney,

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to the Act. Powers delegated must be exercised in accordance with direction of the Board.
- (b) The Board may at any time dissolve any committee or may terminate the appointment of any Member of a committee.

12.2 Terms of delegation

- (a) A delegation of powers under rule 12.1 may be:
 - (i) made for a specified period or without specifying a period; and
 - (ii) made on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

12.3 Powers of attorney

A power of attorney under rule 12.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

13 Directors' duties and interests

13.1 Holding offices or entering into agreements

A person is not disqualified by reason only of being a Director of the Company from:

- (a) holding any office or place of profit or employment, other than that of the Company's
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auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor, or

- (b) entering into any agreement with the Company.

13.2 Duty to disclose Material Personal Interests

- (a) For the purposes of this rule 13, a Director has a Material Personal Interest in a matter that relates to the affairs of the Company if that Director would be considered to have a Material Personal Interest under the Act.
- (b) Unless the Act says otherwise, a Director who has a Material Personal Interest in a matter that relates to the affairs of the Company must, at a Directors' meeting as soon as practicable after the Director's appointment or after the Director becomes aware of their interest in the matter (whichever is later), give the other Directors notice of the interest which must include details-of:
 - (i) the nature and extent of the interest;
 - (ii) the relation of the interest to the affairs of the Company; and
 - (iii) any other information the Director is required to disclose under the Act.
- (c) A Director does not need to give notice of an interest under rule 13.2(b) if he or she is not required to do so under the Act.
- (d) A Director who is required to disclose a Material Personal Interest to the Company under this constitution or the Act must ensure that the nature and extent of the interest is tabled at a Directors' meeting and recorded in the minutes of that meeting.

13.3 Effect of Director having a material personal interest

Each Director must comply with the Act in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a Material Personal Interest.

13.4 Duty to disclose a conflict of interest

- (a) Unless the Charity Legislation says otherwise, a Director who has a perceived or actual material conflict of interest in accordance with the Charity Legislation must, subject to 13.4(b) below, at a Directors' meeting as soon as practicable after the Director's appointment or after the Director becomes aware of their interest in the matter (whichever is later), give the other Directors notice of the interest which must include details of:
 - (i) the nature and extent of the interest;
 - (ii) the relation of the interest to the affairs of the Company; and
 - (iii) any other information the Director is required to disclose under the Charity Legislation.
- (b) A Director may disclose a material conflict of interest (within the meaning of Charity Legislation) that is not a Material Personal Interest in the form of a standing notice to the other Directors with ongoing effect.

14 Directors' remuneration

14.1 Directors' remuneration

- (a) The Directors may be paid as remuneration for their services up to the aggregate maximum sum from time to time determined by the Members by ordinary resolution.
 - (b) The remuneration will be divided between the Directors in such proportion and
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manner as the Board agrees and, in default of agreement, equally. The Board must have regard to the recommendations made by the Company's Nomination and Remuneration Committee (if any) in determining the proportion and manner of division of remuneration.

- (c) Directors may be reimbursed for reasonable expenses (including travel) incurred in connection with performing their duties as a Director subject to approval by the Board.

14.2 Remuneration for other services rendered

Nothing in this document prevents the payment in good faith of remuneration to any officers or Employees of the Company or to any Member of the Company in return for:

- (a) any services actually rendered to the Company;
- (b) goods supplied in the ordinary and usual way of business;
- (c) interest on money lent to the Company at reasonable rates; or
- (d) reasonable rent for premises leased to the Company.

15 Officers' indemnity and insurance

15.1 Indemnity

Subject to the Act, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer (as defined in the Act) of the Company, against a liability:

- (a) incurred in their respective capacities to the Company to a person other than the Company or a related body corporate (including a liability incurred as a result of appointment or nomination of the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith or is for a pecuniary penalty order or compensation under the Act; and
- (b) for costs and expenses incurred by the officer in defending civil or criminal proceedings in which judgment is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person under the Act.

15.2 Insurance

Subject to the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person, to the fullest extent permitted by the Act.

15.3 Former officers

The indemnity in favour of officers under rule 15.1 is a continuing indemnity, it applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer at the time the claim is made.

16 By-laws

The Board shall have power to make, vary and repeal by-laws from time to time for the proper conduct and management of the Company.

17 Secretary

17.1 Appointment and removal of Secretary

The Board may appoint one or more individuals to be a Secretary of the Company either for a specified term or without specifying a term.

17.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

17.3 Removal from office

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

18 Minutes

18.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Member;
- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 12.1, and signed by the Chair of the meeting at which the proceedings were held or the Chair of the succeeding meeting); and
- (d) resolutions passed by Directors without a meeting,

to be kept in accordance with the Act.

18.2 Minutes as evidence

A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

18.3 Inspection of minute books

The Company must allow the Member to inspect and provide copies of the minute books for the meetings of the Member in accordance with the Act.

19 Company seals

19.1 Common seal

The Company will not have a common seal unless the Board resolves to adopt one.

19.2 Use of seals

Any common seal and duplicate seal which are adopted may only be used with the authority of the Board.

19.3 Fixing seals to documents

If seals are adopted, the fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by two Directors;

- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

20 Accounts and audit

20.1 Company must keep accounts

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the auditor to inspect those records at all reasonable times.

20.2 Board responsibilities

The Board must do all things reasonably open to it to:

- (a) ensure that all money payable to the Company is properly collected;
- (b) ensure that all money expended by the Company is properly expended and properly authorised;
- (c) ensure that adequate control is maintained over assets owned by or in the custody of the Company;
- (d) ensure that all liabilities incurred by the Company are properly authorised;
- (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate internal audit system.

20.3 Financial reporting

The Board must cause the Company to prepare a financial report and a Director's report that comply with the Act and must report to the Members in accordance with the Act no later than any deadline set by the Act.

20.4 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, removal, remuneration, rights and duties of the auditor are regulated by the Act.

20.5 Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within three months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report, and the report as corrected is then conclusive.

20.6 Inspection of financial records and books

The books of account of the Company must be kept at the registered office of the Company or at such other place as the Board thinks fit and will be open to inspection by the Member of the Company on such conditions as the Board determines.

21 Notices

21.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

21.2 When notice is given

- (a) A notice to a person by the Company is regarded as given and received:
 - (i) if it is delivered personally or sent by fax or electronic message:
 - (A) by 5.00 p.m. (local time in the place of receipt) on a business day - on that day; or
 - (B) after 5.00 p.m. (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
 - (ii) it is sent by mail:
 - (A) within Australia – three business days after posting; or
 - (B) to a place outside Australia – seven business days after posting.
- (b) A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

21.3 Business days

For the purposes of rule 21.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

21.4 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

22 Amendment of Constitution

This constitution may be varied or amended from time to time by a Special Resolution of the Members.

23 Members Advisory Council

23.1 Nature

In recognition of the fundamental principle of mutuality and the foundation of the Company as an employee mutual, the Members Advisory Council (MAC) is intended to be a representative council of the Members functioning as the “voice” of the Members to ensure:

- (a) that the ideas, advice, opinions, issues, concerns, problems, issues, risks about the Company and its operations, management, corporate or business strategy, policies, culture, direction or any other matter are able to be systematically considered by the Members; and
- (b) that the Members are enabled to provide non-binding advice, their collective considered views and other relevant information to the Board and to executive management.

23.2 Primary functions and purposes

The primary functions of the MAC shall be to act:

- (a) as a representative body of the Members to consider and formulate non-binding advice; and
- (b) as an advisory body providing non-binding advice or information to the Board or senior management

concerning any matter referred to in clause 23.1 or any other matter relating to or affecting the Company or the Members as of right but also upon the request of the Board or executive management.

The purposes of the MAC include the following:

- (c) encouraging and supporting innovation and the exploration of new ideas;
- (d) challenging the Board and executive management to consider options for innovation; and
- (e) monitoring and communicating the performance of the Company to Members.

23.3 Composition of the MAC

- (a) The MAC shall consist of:
 - (i) a minimum of five Members; and
 - (ii) a maximum of nine Members.
- (b) The MAC should be representative of the various types of the Company’s employees. Consequently, the MAC should be constituted by a combination of therapists, “Early Childhood Early Intervention” staff, administrative staff, a member of the Company’s senior management team from time to time and any other type of employee.
- (c) The MAC shall not include the Chief Executive Officer or a Director.

23.4 Term of appointment

A MAC Member shall be appointed by a simple resolution of the Members in a general meeting for the term specified in the appointing resolution.

Terms of one or two years are preferable to enable the turnover of MAC Members and to thereby increase the opportunities for a Member to be appointed.

A MAC Member may be appointed for a term of up to three years.

23.5 Chairperson

The MAC Members may appoint a chairperson of the MAC who will hold office for the term, and on the basis, specified in the appointing resolution.

If the chairperson is absent at a meeting, then the MAC Members present at a meeting may appoint a chairperson for that meeting.

23.6 Cessation of MAC Member's appointment

The office of a MAC Member automatically becomes vacant in the same way as for a Director pursuant to clause 9.6.

If a casual vacancy occurs in the MAC, then the remaining MAC Members may appoint a replacement until the next general meeting convened to appoint MAC Members or for such shorter period as the remaining MAC Members may decide.

23.7 MAC Meetings

The MAC may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as MAC thinks fit provided that MAC meets at least four times in a calendar year.

Any three MAC Members may at any time convene a meeting of MAC.

A MAC meeting held solely or partly by technology is treated as held at the place at which the greatest number of MAC Members are present in person at the meeting is located or, if equal numbers of MAC Members are located in each of two or more places, at the place where the chairperson of the meeting is located.

23.8 Notice of MAC Meeting

The convenor of a MAC meeting:

- (a) must give as much notice as is reasonably possible of the meeting individually to each MAC Members and, if it is adjourned, of its resumption;
- (b) must give that notice in writing directed to the address each MAC Members furnishes to the Secretary from time to time; and
- (c) must include as much information as is reasonably possible concerning the business to be dealt with by the meeting,

but failure to give notice to, or non-receipt of notice by, a MAC Members does not result in a MAC meeting being invalid.

23.9 Use of technology

A MAC meeting may be held using any means of audio or audio-visual communication by which each MAC Members participating can hear and be heard by each other Director participating or in any other way permitted by the Act.

A MAC meeting held solely or partly by technology is treated as held at the place at which the greatest number of the MAC Members present at the meeting is located or, if an equal number of MAC Members is located in each of two or more places, at the place where the chairman of the meeting is located.

23.10 Chairing MAC Meetings

The chairperson must preside at all meetings of the MAC.

If the chairperson is not present at a MAC meeting within 15 minutes after the time appointed to hold the meeting, the MAC Members present may choose one of their number to be the chairperson for that meeting.

23.11 Voting

Questions arising at a meeting of the MAC will be decided by a majority of votes of MAC Members present and voting. Any such decision will be deemed a decision of the MAC.

If there is an equality of votes the chairperson of the meeting will have a second or casting vote, and if a majority decision cannot be reached a resolution will not be passed.

23.12 Quorum

Business must not be transacted at any meeting of the MAC unless a quorum is present at the time the meeting proceeds to business. The quorum for a MAC meeting is half the total number of MAC Members plus one MAC Member and a quorum must be present for the whole meeting. A MAC Member is treated as present at a meeting held by audio or audio-visual communication if the MAC Member is able to hear and be heard by all others attending. If a meeting is held in another way permitted by the law, the MAC must resolve the basis on which MAC Members are treated as present.

23.13 Remaining MAC Members

The continuing MAC Members may act despite any vacancy in the MAC except where the total number of MAC Members is less than three, where the remaining MAC Members may only act for the purpose of requesting the Members to appoint additional MAC Members.

23.14 Written resolution

If all the MAC Members entitled to receive notice of a MAC meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a MAC resolution in those terms is passed at the time when the last MAC Member signs.

For the purposes of this rule, two or more separate documents containing statements in identical terms each of which is signed by one or more MAC Members, are together deemed to constitute one document containing a statement in those terms signed by the MAC Members on the respective days on which they signed the separate documents.

A facsimile or electronic message containing the text of the document expressed to have been signed by a MAC Members that is sent to the Company is a document signed by that MAC Members at the time of its receipt by the MAC.

23.15 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a MAC Member is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, from voting on the resolution or from doing the thing in question.