



Constitution

As amended by special resolution at AGM on 23 November 2018

Lifestyle Solutions (Aust) Ltd

ACN 097 999 347

A Public Company Limited by Guarantee
Corporations Act 2001

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The Constitution of **Lifestyle Solutions (Aust) Ltd**

1. Definitions and interpretation

1.1 In this constitution:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
- (b) **ACNC Regulation** means the *Australian Charities and Not-for-profits Commission Regulation 2013*;
- (c) **Chairperson** means the chairperson of the board elected in accordance with clause 15;
- (d) **Community Member** means a member of the Company appointed in accordance with clause 5.2(b);
- (e) **Company** means Lifestyle Solutions (Aust) Ltd;
- (f) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (g) **ITAA** means the *Income Tax Assessment Act 1997* (Cth) as amended from time to time;
- (h) **Object** means the object of the Company described in clause 2.2;
- (i) **Ordinary Member** means a member of the Company appointed in accordance with clause 5.2(a);
- (j) **Special Board Resolution** means a resolution passed by 75% or more of the directors present and entitled to vote on the resolution.

1.2 Except so far as the contrary intention appears in this constitution, an expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

1.3 A reference to any statute or any provision of any statute is to be read as though the words “or any statutory modification thereof or any statutory provision substituted therefore” were added to that reference.

2. Objects

2.1 The Company is established to be, and to continue as, a charity that is not carried on for the profit or gain of its owners or members, neither while it is operating nor upon winding up.

2.2 The object of the Company is to pursue the charitable purpose of providing services that support people with disability, young people at risk and other services to advance social and public welfare (**Object**).

2.3 In order for the Company to carry out its Object, the Company may:

- (a) seek to raise money to further the aims of the Company and secure sufficient funds for the purposes of the Company;
- (b) ensure effective utilisation of the funds;
- (c) buy, take on lease or exchange, hire or otherwise acquire any property and to maintain, equip and improve it for use;
- (d) acquire assets from any other person or organisation including a for-profit organisation;
- (e) sell, lease or otherwise dispose of all or any part of its property;
- (f) borrow money and charge the whole or any part of the property belonging to the Company as security for repayment of the money borrowed or as security for a grant or the discharge of an obligation and to guarantee, grant indemnities in respect of, support or secure the performance of the obligations of any third party;
- (g) co-operate with other not-for-profit organisations, voluntary bodies and statutory authorities or any other association or organisation, whether incorporated or not whose objects are similar to those of the Company, and exchange information and advice with them, provided that the Company shall not subscribe to or support with its funds or amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its members to at least the same extent as that imposed on the Company by this constitution;
- (h) enter into any arrangements with any Government or authority, that may seem conducive to the Company's Object and obtain from any such Government or authority any rights, privileges and concessions which the Company may consider it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (i) establish or support any charitable trusts, associations or institutions formed for the charitable purpose included in the Object, undertake and administer any trusteeship and act as a trust corporation;
- (j) establish or support associations, institutions, funds, trusts and conveniences calculated to benefit present or past employees of the Company or the dependents or connections of such persons and to grant pensions and allowances, make payments towards insurance and subscribe or guarantee money for charitable or benevolent objects, or for any public, general or useful object;
- (k) acquire, merge with or enter into any partnership or joint venture arrangement with any other not-for-profit organisation;
- (l) enter into any partnership or joint venture arrangement with a for-profit organisation on terms which will not place the Company in breach of the proviso in paragraph (g);

- (m) set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
- (n) appoint, employ, remunerate, remove or suspend such staff as the Company considers expedient for carrying out the work of the Company and make all reasonable provision for the payment of remuneration and statutory entitlements;
- (o) hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith, provided that no member of the Company shall receive any prize award or distinction of monetary value except as a successful competitor at any competition held or promoted by the Company; and
- (p) do all such things as are incidental, convenient or conducive to the attainment of all or any of the above.

2.4 Without limiting clause 2.5, the Company has the following powers, which may only be used to carry out its Object:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

2.5 Subject to clause 2.6, the members may amend this constitution by passing a special resolution.

2.6 The members must not pass a special resolution that amends this constitution if passing it causes the Company to no longer be a charity.

3. Limited Liability

3.1 The liability of the members is limited.

3.2 Every member undertakes to contribute to the property of the Company in the event of the Company being wound up while they are a member (or within one year after they cease to be a member), for payment of the debts and liabilities of the Company (contracted before they ceased to be a member) and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding \$50.00.

4. Accounts

4.1 Income

- (a) The profits and other income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the Object.
- (b) No part of those profits, income or property may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the members.

- (c) Nothing in this clause prevents the payment in good faith to a member, or to a business in which a member is involved of:
 - (i) a reasonable and proper remuneration for any services rendered or goods supplied by them to the Company in the ordinary course of business;
 - (ii) interest on money borrowed from any member for any of the purposes of the company (provided the interest rate does not exceed the rate charged by the Company's bank of similar borrowings); or
 - (iii) rent for premises let by any member to the Company.

4.2 **Financial Records**

- (a) Financial records must be kept by the company in accordance with Part 2M.2 of the Corporations Act.
- (b) True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place of the property credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with these terms for the time being in force shall be open to the inspection of the members.

4.3 **Auditor**

- (a) The Company must appoint and retain a properly qualified auditor in accordance with the Corporations Act.
- (b) A member cannot act as an auditor of the Company.

5. **Membership**

5.1 In this clause, 'person' means an individual or incorporated body, provided that only an individual is eligible to be an Ordinary Member.

5.2 The members of the Company shall consist of:

- (a) Ordinary Members, being the directors of the Company, who will:
 - (i) be entitled to receive information about the Company's activities, including all annual reports;
 - (ii) be entitled to receive notice of, attend and vote at all general meetings of the Company (including AGMs);
 - (iii) have all the voting and other rights as provided for by this constitution; and

- (b) Community Members, being such other persons who support the Object of the Company, who from time to time are admitted by the board at its sole discretion to be members of the Company, who will:
 - (i) be entitled to receive information about the Company's activities, including all annual reports;
 - (ii) be entitled to receive notice of, attend and speak and ask questions at (but not vote at) all general meetings of the Company (including AGMs).

For the avoidance of doubt, Community Members;

- (iii) will not have any voting rights at any general meeting (including AGMs) or otherwise; and
- (iv) will not be eligible for election or appointment to the board, unless otherwise resolved by the Board.

5.3 The rights and privileges of a member are personal, not transferable and cease at the time of the member's death or at the cessation of their membership.

5.4 The Company must maintain a register of members to be kept by the secretary and contain:

- (a) for each current member:
 - (i) name;
 - (ii) address;
 - (iii) any alternative address nominated by the member for the service of notices, and
 - (iv) date the member was entered on to the register.
- (b) for each person who ceased being a member in the last 7 years:
 - (i) name;
 - (ii) address;
 - (iii) any alternative address nominated by the member for the service of notices, and
 - (iv) dates the membership started and ended.

5.5 The Company must give current members access to the register of members.

5.6 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

5.7 Ordinary Members are not required to apply for membership. A person who is a director of the Company will be admitted as an Ordinary Member automatically upon becoming a director.

- 5.8 An application for membership as a Community Member must be in writing by the applicant and in such form as the board from time to time prescribes.
- 5.9 All applications for admission as a Community Member received by the Company will be considered by the board at its next meeting. The board may decide an application in its absolute discretion and is not required to give any reason for the acceptance or rejection of any application.
- 5.10 A decision by the board to admit a new Community Member must be made by Special Board Resolution,
- 5.11 A Community Member which is an incorporated body may nominate one person who is a director or employee of the body as its representative for the purposes of attending meetings of members, and will notify that person's details to the secretary.

6. Dispute resolution and disciplinary procedures

- 6.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members;
 - (b) one or more directors; or
 - (c) the Company.
- 6.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 6.8 until the disciplinary procedure is completed.
- 6.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 6.4 If those involved in the dispute do not resolve it under clause 6.3, they must within 10 days, tell the directors about the dispute in writing, agree or request that a mediator be appointed, and attempt in good faith to settle the dispute by mediation.
- 6.5 The mediator must be chosen by agreement of those involved, or where those involved do not agree:
- (a) for disputes between members, a person chosen by the directors; or
 - (b) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.

6.6 A mediator chosen by the directors under clause 6.5(a):

- (a) may be a member or former member of the Company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

6.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

6.8 **Disciplining members**

- (a) In accordance with this clause, the directors may by Special Board Resolution resolve to warn, suspend or expel a member from the Company if the directors consider that:
 - (i) the member has breached this constitution;
 - (ii) the member's behaviour is causing, has caused, or is likely to cause harm to the Company; or
 - (iii) it is otherwise in the best interests of the Company that that action be taken against the member.
- (b) At least 14 days before the directors' meeting at which a resolution under clause 6.8(a) will be considered, the secretary must notify the member in writing:
 - (i) that the directors are considering a resolution to warn, suspend or expel the member;
 - (ii) that this resolution will be considered at a directors' meeting and the date of that meeting;
 - (iii) what the member is said to have done or not done;
 - (iv) the nature of the resolution that has been proposed; and
 - (v) that the member may provide an explanation to the directors, and details of how to do so.

6.9 Before the directors pass any resolution under clause 6.8(a), the member must be given a chance to explain or defend themselves by sending the directors a written explanation before that directors' meeting, and/or speaking at the meeting.

6.10 After considering any explanation under clause 6.9, the directors may, without the obligation of giving their reasons:

- (a) take no further action;
- (b) warn the member;
- (c) suspend the member's rights as a member for a period of no more than 12 months;
- (d) expel the member;
- (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
- (f) require the matter to be determined at a general meeting.

6.11 The directors cannot fine a member.

6.12 The secretary must give written notice to the member of the decision under clause 6.10 as soon as possible.

6.13 Disciplinary procedures must be completed as soon as reasonably practical.

6.14 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

7. Cessation of Membership

7.1 Notwithstanding any other provision of this constitution, automatically upon the amendment of this constitution to include this clause, all members who are not directors of the Company will cease to be members. The eligibility of such persons to be readmitted as members is not affected by that cessation.

7.2 A member ceases to be a member on:

- (a) (if the member is a director of the Company), the termination of their directorship;
- (b) receipt by the secretary of a written notice from the member notifying their resignation as a member;
- (c) their becoming unable to satisfy the eligibility criteria for their class of membership, even if they previously did satisfy those criteria;
- (d) their failure to respond within three months to a written request from the secretary, sent to the last address notified by them to the secretary, that they confirm their wish to continue as a member.
- (e) death, unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;

- (f) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally or if the member is a corporation, being dissolved or otherwise ceasing to exist or having a liquidator appointed;
- (g) their expulsion by the board, having complied with the procedure in clause 6.8.

8. General Meetings

- 8.1 An annual general meeting of the company must be held in accordance with the provisions of the Corporations Act.
- 8.2 A general meeting may be convened by:
 - (a) any 2 directors; or
 - (b) any person entitled by the Corporations Act to requisition such a meeting.
- 8.3 Subject to the provisions of the Corporations Act relating to short notice, at least 21 days' notice (excluding the day on which the notice is served or taken to be served, and excluding the day for which notice is given) must be given to such persons as are entitled to receive such notices from the company.
- 8.4 A notice of general meeting must:
 - (a) set out the place, date and time for the meeting (and, if applicable, the technology that will be used to facilitate this);
 - (b) state the general nature of the business to be transacted at the meeting;
 - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (d) in the case of an election of directors, give the names of the candidates for election; and
 - (e) contain a statement that an Ordinary Member has the right to appoint a proxy and that a proxy does not need to be a member.
- 8.5 The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.
- 8.6 The auditor or an agent authorised by the auditor in writing for the purpose is entitled to attend any general meeting, to receive all notices of and other communications relating to any general

meeting which a member is entitled to receive and to be heard at any general meeting on any part of the business of the meeting which concerns the auditor in that capacity.

9. Cancellation or postponement of general meeting

- 9.1 The board may cancel or postpone a general meeting, other than a general meeting which the board is required to convene and hold under the Corporations Act.
- 9.2 Written notice of cancellation or postponement of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company at least 3 days before the date for which the meeting is convened and must specify the reason for cancellation or postponement.
- 9.3 The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting.

10. Quorum at general meetings

- 10.1 The members in general meeting may not transact any business unless a quorum of members is present at the time when the meeting proceeds to business.
- 10.2 Except as otherwise set out in this constitution, a quorum for the purposes of a general meeting is the number equal to 50% of the total number of Ordinary Members (whether present in person or by representative, proxy or attorney) rounded up to the next highest whole number.
- 10.3 If a member attending a general meeting is also a proxy for a member, he or she is to be counted twice in determining whether a quorum is present.
- 10.4 If a quorum is not present within 30 minutes from the time appointed for the meeting:
- (a) if the meeting was convened by or on the requisition of members, it must be dissolved; or
 - (b) otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the board.
- 10.5 At the adjourned meeting, the quorum requirements in clause 10.2 apply, but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

11. Appointment and powers of Chairperson

- 11.1 If the board has elected one of their numbers as Chairperson of their meetings, that person is entitled to preside as Chairperson at every general meeting.
- 11.2 The directors present at a general meeting must elect one of their number to chair a meeting if either of the following applies:
- (a) a director has not been elected as the Chairperson of directors' meetings; or

- (b) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or he is unwilling to act.

11.3 The Chairperson may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. In all other circumstances, it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

12. Voting

12.1 General

- (a) A member may vote in person or by proxy.
- (b) Subject to the rights and restrictions attached to members and this constitution, each member present in person or by proxy, attorney or representative has one vote.
- (c) No member shall be entitled to vote at any general meeting unless all moneys presently payable by them to the Company have been paid.
- (d) A 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 poll, by his or her committee or trustee or by such other person as properly has the management of his or her estate, and any such committee, trustee or other person may vote by proxy.
- (e) Although Community Members may not vote at a general meeting, they are entitled to make statements and ask questions subject to the Chairperson's power to control the meeting.

12.2 Polls

- (a) At any general meeting a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
 - (i) by the Chairperson; or
 - (ii) by at least 3 members present in person or by proxy.
- (b) Unless a poll is so demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, is final, and an entry to that effect in the book containing the minutes of the proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (c) If a poll is duly demanded, it will be taken in the manner and at the time that the Chairperson directs, and the result of the poll is the resolution of the meeting at which the poll was demanded. However, a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken immediately.

12.3 Casting vote

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson shall be entitled to a second or casting vote.

12.4 Proxies

- (a) This clause applies to Ordinary Members only. Community Members do not have the right to appoint a proxy.
- (b) An instrument appointing a proxy shall be in writing signed by the appointer or their attorney. An instrument appointing a proxy shall be deemed to confer authority to demand a poll. A member is entitled to instruct their proxy in favour of or against any proposed resolutions. Unless otherwise instructed, a proxy may vote as they think fit.
- (c) The instrument appointing a proxy must be in a form prescribed by the board or other substantially similar form or, in the absence of any such prescription, in common form.
- (d) An instrument appointing a proxy (and a power of attorney or other authority, if any, under which it is signed) shall be lodged at the Registered Office of the Company or at such other place as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote.
- (e) A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal, or revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of such death, unsoundness of mind or revocation has been received by the Company at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used.

13. Appointment, removal and remuneration of directors

13.1 Composition of board of directors

- (a) The directors for the time being are the current directors of the Company, subject to the succeeding provisions of this clause.
- (b) The number of directors from time to time (not including alternate directors) must not be less than 5 and must not be greater than 10.
- (c) The number of directors may be increased or reduced from time to time by ordinary resolution passed at a general meeting.
- (d) All directors shall be admitted as Ordinary Members of the Company.

- (e) Only directors are permitted to vote, move motions or second motions at any meeting of the directors.
- (f) The directors may at any time appoint a person to be a director to fill a casual vacancy.
- (g) Any director appointed under paragraph (f) may hold office only until the next annual general meeting of the company and is then eligible for election at that meeting.
- (h) Any current employee of the Company is not eligible to be nominated and must not be appointed as a director.

13.2 Powers

- (a) The directors are responsible for managing and directing the activities of the Company to achieve the Object of the Company.
- (b) The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- (c) The directors must decide on the responsible financial management of the Company including any suitable written delegations of power under clause 19, and how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (d) The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

13.3 Duties

The directors must comply with their duties as directors under legislation and common law, and with the duties described in governance standard 5 of the ACNC Regulation, 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 Object of the Company;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 13.10;
- (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.

13.4 Term

- (a) Each director will be appointed for a term of 3 years or such lesser period as the Ordinary Members stipulate when resolving to approve the appointment (**Term**), excluding any period which that director served by way of a casual appointment pursuant to clause 13.1(f).
- (b) On completion of each Term, a director will be eligible for re-election for a further Term, provided that:
 - (i) the maximum period any director may serve is 9 consecutive years, excluding any period which that director served by way of a casual appointment pursuant to clause 13.1(f);
 - (ii) that person will then be ineligible to be nominated as a director for the following 3 years; and
 - (iii) after 3 years, the person will again be eligible to be nominated and serve as a director subject to the same term limitations.
- (c) The application of any of the rules set out in this clause may be varied or overridden by a special resolution of the Ordinary Members.

13.5 Retirement

- (a) At every annual general meeting each director who has completed a Term must retire from office.
- (b) A director may voluntarily retire at any time.
- (c) A retiring director who is eligible for re-election is not required to give any prior notice of an intention to submit for re-election and will hold office as a director until the end of the meeting at which the director retires.

13.6 Election of directors

The election of directors will take place in the following manner:

- (a) a person is nominated by any two Ordinary Members to serve as a director of the board;
- (b) the nomination must be in writing and signed by the candidate and their proposers and must be lodged with the secretary at the registered office at least 21 days before the annual general meeting at which the election is to take place;
- (c) a list of the candidates' names is to be dispatched by the secretary to all members entitled to receive notice of the annual general meeting at which the election is to take place and is to include those directors who are retiring and, being eligible to do so, are offering themselves for re-election (without the requirement of nomination by a proposer);
- (d) ballot papers are to be prepared (if necessary) containing the names of the candidates who are nominated, and each Ordinary Member present at the annual general meeting

and holders of proxy votes shall be entitled to vote for a number of candidates not exceeding the number of vacancies available;

- (e) a returning officer must be appointed by the board to oversee the election of directors. The returning officer may be selected from representatives of the auditors or solicitors of the Company from time to time;
- (f) the results of the ballot must be announced at the annual general meeting by the returning officer and the results recorded in the minutes of that meeting; and
- (g) if two or more candidates for a vacancy obtain an equal number of votes, and there is not a vacancy available for all the candidates, the Chairperson of the annual general meeting is to decide which one is to be elected.

13.7 Remuneration

- (a) The directors may be paid a fee for their services as directors, the quantum of which must be approved by ordinary resolution at a general meeting.
- (b) The directors will be entitled to be paid or reimbursed for all out-of-pocket expenses incurred by them in the performance of their duties as directors where the amount payable does not exceed an amount previously approved by the directors.
- (c) A director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as is agreed by the directors.
- (d) Any payment made under this clause must be approved by the directors.

13.8 Vacation of office

In addition to the circumstances in which the office of a director becomes vacant under the Corporations Act, the office of a director becomes vacant if the director:

- (a) becomes insolvent under administration or makes any arrangement or composition with his creditors generally;
- (b) becomes prohibited from being a director of a Company by any reason of any order made under the Corporations Act or the ACNC Act;
- (c) ceases to be a member of the Company;
- (d) is directly or indirectly interested, within the meaning of the Corporations Act, in any undisclosed contract or proposed contract with the Company, provided that this does not affect the operation of clause 4.1;
- (e) fails to comply with governance standards 4 and 5 of the ACNC Regulation;
- (f) 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;

- (g) is removed from office by a resolution of the members at a general meeting of which notice of the resolution has been given;
- (h) resigns by notice in writing to the Company;
- (i) is absent without the consent of the directors from meetings of the directors held during a continuous period of 6 months; or
- (e) dies.

13.9 **Material personal interests**

Subject to compliance with the disclosure and voting requirements under the Corporations Act in relation to material personal interests, a director may:

- (a) hold any office in the Company;
- (b) act in a professional capacity for the Company (except as auditor);
- (c) hold any office or place of profit in any other entity in which the Company has an interest; and
- (d) contract with the Company.

13.10 **Conflicts of interest**

- (a) A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
 - (i) to the other directors; or
 - (ii) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- (c) Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided in this clause:
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (d) A director may still be present and vote if:
 - (i) their interest arises because they are a member of the company, and the other members have the same interest;

- (ii) 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;
- (iii) their interest relates to a payment by the company under clause 18 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- (iv) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
- (v) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company; and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

13.11 Alternate Director

- (a) Subject to this Constitution, each director may appoint any person (who, if there are other directors, is approved by a majority of the other directors) to act as an alternate director in the director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the director is unable to attend to duties as a director. The appointment must be in writing and signed by the director and a copy of the appointment must be given to the registered office or to a meeting of the directors. The appointment takes effect on (if there are other directors) approval by a majority of the other directors or, where the approval has been granted, at any later time specified in the appointment.
- (b) The following provisions apply to any alternate director:
 - (i) the appointment of the alternate director is terminated or suspended on receipt at the registered office of notice in writing from the director by whom the alternate director was appointed;
 - (ii) the alternate director is entitled to receive notice of meetings of the directors and to attend and vote at the meetings if the director by whom the alternate director was appointed is not present;
 - (iii) the alternate director is entitled to exercise all the powers (except the power to appoint an alternate director) and perform all the duties of a director, to the extent the director by whom the alternate director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate director;
 - (iv) the alternate director will be entitled to be reimbursed for expenses as if the alternate director were a director;

- (v) the office of the alternate director is terminated on the death of, or termination of office by, the director by whom the alternate director was appointed;
- (vi) the alternate director is not to be taken into account in determining the number of directors; and
- (vii) the alternate director is, while acting as a director, responsible to the Company for the alternate director's own acts and defaults and is not the agent of the director by whom the alternate director was appointed.

14. Meetings of directors

14.1 General

- (a) The board may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) The secretary on the written request of a director must convene a meeting of the board.
- (c) A board meeting may be called or held using any technology consented to by each director. The consent may be a standing one. A director may only withdraw consent a reasonable time before the meeting.
- (d) The board must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

14.2 Quorum

At a meeting of the board, at least 5 directors present in person or by proxy constitute a quorum.

14.3 Deciding questions

- (a) Subject to this constitution, questions arising at any meeting of the board shall be decided by a majority of votes and a determination by a majority of the directors shall for all purposes be deemed a determination of the board.
- (b) In case of an equality of votes, the Chairperson of the meeting shall have a casting vote.

14.4 Effect of vacancy

The continuing directors may act notwithstanding any vacancy in the board, but if and so long as their number is reduced below the minimum number of directors, the continuing director or directors may act only for the purpose of increasing the number of directors to the minimum number or of summoning a general meeting of the Company.

15. Chairperson

- 15.1 The board must elect a Chairperson and may elect a Deputy Chairperson and may determine the period during which each is to hold office.

- 15.2 The Chairperson or Deputy Chairperson may be removed by a resolution of the board of which not less than 14 days' notice has been given to all the directors for the time being in Australia.
- 15.3 The Chairperson is entitled to preside at meetings of the board. If the Chairperson or Deputy Chairperson is not present within 15 minutes after the time appointed for holding a meeting or if being present they are unwilling to act as Chairperson, the directors present shall choose one of their number to be chairman of the meeting.

16. Written resolutions

- 16.1 A resolution in writing signed by all directors or a resolution in writing of which notice has been given to all directors and which is signed by a majority of the directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the directors) is a valid resolution of the directors and is effective when signed by the last of all the directors or the last of the directors constituting the majority, as required.
- 16.2 For the purpose of this clause, the references to **directors** include any alternate director for the time being present in Australia who is appointed by a director for the time being not present in Australia but do not include any other alternate director.
- 16.3 The resolution may consist of several documents in the same form each signed by 1 or more of the directors. A facsimile transmission or other document produced by mechanical or electronic means under the name of a director with the director's authority is considered a document in writing signed by the director and is deemed to be signed when received in legible form.
- 16.4 The document or documents referred to in this clause shall be deemed to constitute a minute of that meeting and shall be entered in the books kept for that purpose.

17. Validity of acts of directors

All acts of the board, a committee or a person acting as a director, a committee or a member of a committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

18. Director's and Officer's Indemnity

- 18.1 In this clause:
- (a) **Officer** means a director, Secretary or executive officer of the Company; and
 - (b) **Liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.
- 18.2 The Company must not exempt a person (whether directly or through an interposed entity) from a Liability to the Company incurred as an Officer.

- 18.3 The Company must not indemnify an Officer out of the assets of the Company for any Liability incurred as an Officer (other than legal costs):
- (a) owed to the Company or a related body corporate;
 - (b) for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H or section 1317HA of the Corporations Act; or
 - (c) that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith.
- 18.4 The Company must not indemnify an Officer out of the assets of the Company for legal costs incurred in defending an action for a Liability incurred as an Officer of the Company if the costs are incurred:
- (a) in defending or resisting proceedings in which that Officer is found to have a liability for which they could not be indemnified under clause 18.3;
 - (b) in defending or resisting criminal proceedings in which that Officer is found guilty;
 - (c) in defending or resisting proceedings brought by ASIC 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 ASIC or a liquidator as part of an investigation before commencing court proceedings; or
 - (d) in connection with proceedings in which judgment is given in favour of the Officer or for relief to that Officer under this Act in which the Court denies the relief.
- 18.5 To the extent permitted by law, subject to clauses 18.3 and 18.4, and where the board considers it appropriate, the Company may indemnify an Officer out of the assets of the Company, on such terms as considered appropriate for the Company, against any liability incurred as an Officer of the Company.

To the extent permitted by law, and where the board considers it appropriate, the Company may pay, or agree to pay, a premium to arrange and maintain a contract insuring a person who is or has been an Officer of the Company against any liability on such terms as it considers appropriate for the Company. The Company must exclude insurance where the liability (other than legal costs) arises out of conduct involving a wilful breach of duty in relation to the Company.

19. Committees

- 19.1 The directors may delegate any of their powers to a committee consisting of such persons, including directors or employees of the Company, as they think fit and may revoke that delegation.
- 19.2 A committee in the exercise of the powers so delegated must conform to any regulations imposed by the directors.

19.3 Subject to clause 19.2, the meetings and proceedings of a committee consisting of two or more directors are governed by the provisions of this constitution so far as they are applicable.

20. Secretary

A secretary holds office on such terms and conditions, as to appointment, removal, remuneration and otherwise, as the directors determine.

21. Winding Up

21.1 If the Company is wound up, any surplus assets 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 21.2

21.2 On the winding up or dissolution of the Company or the revocation of the Company's endorsement under section 30-15 of the ITAA, after satisfaction of all its debts and liabilities, any property whatsoever must be given or transferred to one or more other funds, authorities or institutions which or each of which:

- (a) has objects similar to the objects of the Company;
- (b) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the company under this constitution; and
- (c) income tax deductible gifts can be made,

to be determined by the board at or before the time of dissolution and in default thereof by application to a court of competent jurisdiction.

21.3 Despite anything else contained in this clause, as long as the Company remains a Registered Community Housing Provider in accordance with the *Community Housing Providers (Adoption of National Law) Act 2012*, all remaining assets identified as Community Housing Assets in a participating jurisdiction on winding up will be transferred to another Registered Community Housing Provider or to a housing agency in the which the asset is located.

22. Notices

22.1 Any notice required by law or by or under this constitution to be given to any member shall be given:

- (a) personally to the member;
- (b) sent by post to the member at their registered address; or
- (c) by electronic means nominated by the member in accordance with the Corporations Act.

22.2 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected on the day after the date of its posting.

22.3 Where a notice is sent electronically, service of the notice shall be deemed to be effected by properly addressing and transmitting the notice, and to have been effected on the day after the date of its transmission.

23. Replaceable rules

The replaceable rules contained in the Corporations Act do not apply to the Company.