



DLA Piper Australia  
140 William Street  
Melbourne VIC 3000  
PO Box 4301  
Melbourne VIC 3001  
Australia  
DX 147 Melbourne  
T +61 3 9274 5000  
F +61 3 9274 5111  
W [www.dlapiper.com](http://www.dlapiper.com)

# **CONSTITUTION**

## **AGED CARE WORKFORCE INDUSTRY COUNCIL LIMITED**

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***Corporations Act 2001 (Cth)***

**Public company limited by guarantee**

**Aged Care Workforce Industry Council Limited**

**ACN 633 541 581**

**1 NATURE OF COMPANY AND LIABILITY**

**Nature of Company**

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

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

- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$1.00 to the assets of the Company if it is wound up while he or she is a Member, or within one year after the person ceases to be a Member, for:

1.2.1 payment of the Company's debts and liabilities contracted before he or she ceased to be a Member; and

1.2.2 costs and expenses of winding up.

**2 OBJECT AND GUIDING PRINCIPLES**

**Object**

- 2.1 The object of the Company is to improve aged care in Australia by improving the Workforce to ensure that:

2.1.1 the Workforce provides aged care services that can meet the care needs of older Australians now and into the future; and

2.1.2 older Australians have equitable access to aged care and the dignity to age well, irrespective of setting.

- 2.2 Without limitation, the Company may seek to achieve its object by:

2.2.1 raising money to further the object of the Company and to secure sufficient funds for the pursuit of the object of the Company;

2.2.2 receiving any funds and to distribute these funds in a manner that best attains the object of the Company; and

- 2.2.3 doing all such things as are incidental, convenient or conducive to the attainment of the object of the Company, including establishing or acquiring subsidiaries and participating in joint ventures.

### **Guiding Principles**

- 2.3 In fulfilling its object the Company may have reference to any "guiding principles" relevant to the vision and mission of the Company that the Board may endorse from time to time (**Guiding Principles**).

## **3 MEMBERSHIP**

### **Membership**

- 3.1 The Members of the Company are the Initial Members and such other persons as may be admitted to membership in accordance with this constitution, in each case until such time as the relevant person ceases to be a Member under clause 5.
- 3.2 A person is eligible to become a Member if:
  - 3.2.1 he or she is a natural person of not less than 18 years of age;
  - 3.2.2 he or she is not an employee of the Company; and
  - 3.2.3 at the time of the application, he or she is serving as the chief executive officer (by whatever name called) or equivalent senior leadership position of an entity associated with the Aged Care Sector or otherwise has a demonstrated commitment to the purpose of transforming the Workforce in accordance with the Company's object.
- 3.3 Each Initial Member is deemed to satisfy the membership eligibility requirements set out in clause 3.2.
- 3.4 To avoid doubt, a Member's membership will not automatically cease if:
  - 3.4.1 the Member is a Director and ceases to be a Director for any reason; or
  - 3.4.2 the Member occupied a leadership position within an entity associated with the Aged Care Sector at the time he or she became a Member, and then ceases to occupy any such position.

### **Maximum number of Members**

- 3.5 Unless otherwise determined by the Members in general meeting, the number of Members is limited to five.

### **Rights of Members**

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

### **Membership not transferable**

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

### **Trust and related arrangements**

- 3.8 Except as required by law:
- 3.8.1 No person is to be recognised by the Company as holding its membership on trust or otherwise holding the membership as a representative of another person.
- 3.8.2 Regardless of it having notice of any other interest or right, the Company is not bound by, or compelled in any way to recognise, any equitable, contingent, future, partial or other right or interest in a Member's membership of the Company.

### **Members**

- 3.9 A person that is a Member must comply with the provisions of this constitution.
- 3.10 A Member has the right to receive notices of any general meeting, attend and be heard at any general meeting and vote at any general meeting.

### **Form of application**

- 3.11 An application for membership that is submitted after the date the Company is registered must comply with the following requirements:
- 3.11.1 it must be signed by or on behalf of the applicant; and
- 3.11.2 it must be accompanied by such documents or evidence as to qualification for membership as the Members may, in the Members' absolute discretion, determine from time to time.

### **Admission to membership**

- 3.12 If the Members consider that a person satisfies the membership eligibility criteria set out in clause 3.2, the Members may, by resolution, invite the person to apply for membership of the Company in accordance with clause 3.11. To avoid doubt, no person is entitled to apply for membership of the Company unless invited to do so by the Members in accordance with this clause 3.12.
- 3.13 In order for a person to be admitted to membership of the Company, the person's application for membership must be:
- 3.13.1 submitted in response to an invitation issued by resolution of the Members in accordance with clause 3.12; and
- 3.13.2 subsequently approved by the Members in accordance with clause 3.14.

- 3.14 Upon receipt of an application for membership that is submitted in accordance with clause 3.12, the Members must, as soon as practicable after its receipt and in any case within 12 months of the date of receipt, determine by resolution whether the application is accepted or rejected.
- 3.15 The Members do not have to give reasons for inviting a person to apply for membership, or admitting or rejecting an applicant for membership.
- 3.16 If an applicant is accepted for membership, the Secretary must notify the applicant of admission in such form as the Members may determine from time to time, and the name and details of the applicant must be entered in the Register. An applicant that is accepted for membership becomes a Member when the applicant's name is entered in the Register.
- 3.17 If an application for membership is rejected, the Secretary must notify the applicant in writing of that fact within a reasonable period.

### **Register of Members**

- 3.18 A register of the Members of the Company must be kept in accordance with the Corporations Act.
- 3.19 The following details must be entered in the Register in respect of each Member:
- 3.19.1 The full name of the Member.
  - 3.19.2 The address of the Member.
  - 3.19.3 The date on which the entry of the Member's name in the Register is made.
- 3.20 The Register must also show the following information, which may be kept separately from the rest of the Register:
- 3.20.1 The name and details of each person who stopped being a Member within the last 7 years.
  - 3.20.2 The date on which each such person stopped being a Member.
- 3.21 The Company may also keep further registers recording other information about Members that is not required to be kept under the Corporations Act, for example:
- 3.21.1 The telephone number and email address (as applicable) of the Member.
  - 3.21.2 Such other information as the Board may require.
- 3.22 Each Member must notify the Secretary in writing of any change in that Member's name, address, telephone number or email address within one month after the change.



### **Members' Charter**

- 3.23 The Initial Members may agree to adopt a "Members' Charter" (by whatever name called) at the time they become Members that specifies the role and responsibilities of Members (**Members' Charter**).
- 3.24 The terms of the Members' Charter must not be inconsistent with the terms of this constitution or the requirements of the law.
- 3.25 The Members may amend the terms of the Members' Charter from time to time with the unanimous approval of Members.

## **4 ANNUAL SUBSCRIPTIONS AND OTHER FEES PROHIBITED**

- 4.1 No Member will be required to pay an annual subscription or equivalent fee in respect of their membership of the Company, and the Board must not seek to impose any such subscription or fee without the prior unanimous consent of the Members.

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

### **Resignation**

- 5.1 A Member may resign from membership of the Company by giving written notice to the Secretary.
- 5.2 Without limiting clause 5.11, the resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

### **Other cessation of membership**

- 5.3 Without limiting clause 5.11, a Member ceases to be a Member immediately upon any Termination Event occurring in respect of the Member.

### **Removal from membership**

- 5.4 The Board may convene a meeting of Members to consider the removal of a Member from the Register if the Board in its absolute discretion resolves that the Member is no longer considered suitable for membership of the Company including where (in the Board's opinion):
- 5.4.1 the Member no longer satisfies the eligibility criteria set out in clause 3.2;
  - 5.4.2 the Member has committed or suffered any act or omission which is inconsistent with any part of the Members' Charter (if any) or is inconsistent with any of the Guiding Principles (if any); or
  - 5.4.3 the Member has committed or suffered any act or omission which is unbecoming of a Member or which has adversely affected the Company's interests or has the potential to do so.

- 5.5 The Board does not have to give reasons for recommending the removal of any Member from the Register.
- 5.6 The Board must provide at least 40 business days' written notice to any Member of any intention to remove the Member from the Register, so as to enable the Member to provide any written representations to the Company not less than 30 business days prior to the date of the proposed meeting.
- 5.7 Where a Member referred to in clause 5.6 makes any written representations and the Member requests that the representations be notified to the Members, the Company must do both of the following:
- 5.7.1 state that the representations have been made in any notice of the resolution given to the Members, provided that the written representations are received within the timeframe specified in clause 5.6; and.
- 5.7.2 send a copy of the representations to every Member to whom the notice of the meeting has been or is sent.
- 5.8 The requirements in clause 5.7 do not apply to the Company if the Company receives the representations too late for it to satisfy those requirements.
- 5.8.1 If a copy of the representations is not so sent because they were received too late or because of the Company's default, the Member referred to in clause 5.6 may, without affecting any right to be heard orally, require the representations be read out at the meeting.
- 5.9 Despite clauses 5.7 and 5.8, copies of the representations need not be sent out and the representations need not be read out at the meeting if the Board is satisfied on reasonable grounds that the rights conferred by clause 5.7 are being abused, including to secure publicity for a defamatory matter.
- 5.10 An ordinary resolution of Members is required to pass the necessary resolution to remove the Member referred to in clause 5.6 under clause 5.4.

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

- 5.11 Resignation from membership in accordance with clause 5.1, or a Member's membership ceasing in accordance with clause 5.3 or clause 5.10, does not limit the Member's liability under this constitution, and despite that cessation of membership the former Member continues to be liable for all money owing to the Company as at the date of the cessation of its membership of the Company and for any amount payable in accordance with clause 1.2.

## **6 NO PROFITS FOR MEMBERS**

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

6.1 Subject to clauses 6.2 and 18, the Company may not pay or transfer any income or property, directly or indirectly, to any Member.

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

6.2 Nothing in this clause 6 prevents the Company from:

6.2.1 making a payment in good faith to a Member in carrying out the Company's charitable purposes;

6.2.2 making a payment in good faith of any of the following:

- (a) remuneration to any officers or employees of the Company for services actually rendered to the Company (including payment of directors' fees in accordance with clause 10.1);
- (b) an amount to any Member in return for any services actually rendered to the Company or for goods supplied to the Company by the Member on commercial arm's-length terms or terms more favourable to the Company;
- (c) reasonable and proper interest on money borrowed from any Member;
- (d) reasonable and proper rent for premises let by any Member to the Company;
- (e) reimbursement of expenses reasonably and properly incurred by any Member on the Company's behalf with the consent of the Board; or
- (f) indemnification of a current or former officer of the Company who is or was a Member, or payment of premiums on contract of insurance for any current or former officer of the Company that is or was a Member, to the extent permitted by law and this constitution; or

6.2.3 providing services or information to the Members on terms which are different from the terms on which services or information are provided to persons who are not Members, or from providing services or information to Members on different terms from time to time.

## **7 GENERAL MEETINGS**

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

7.1 Without limiting clause 12.5.2, any four Directors may convene a general meeting.

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

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

### **Notice of general meeting**

- 7.3 The Board may give notice of a general meeting by any form of communication permitted by the Corporations Act.

7.3.1 The notice of a general meeting must specify the place, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.

7.3.2 The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

### **Cancellation of general meetings**

- 7.4 The Board may cancel a general meeting, other than a general meeting which the Board is required to convene and hold under the Corporations Act.

- 7.5 The Board may cancel a general meeting if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in notice of meeting.

### **Quorum at general meetings**

- 7.6 The Members in general meeting may not transact any business unless a quorum of Members is present at the time when the meeting proceeds to business.

- 7.7 Except as otherwise set out in this constitution, a quorum for the purposes of a general meeting is the lesser of:

7.7.1 two Members entitled to vote at the meeting (whether present in person or by proxy or attorney); and

7.7.2 the number equal to two thirds of the total number of Members entitled to vote at the meeting (whether present in person or by proxy or attorney), rounded up to the next highest whole number.

- 7.8 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:

7.8.1 If the meeting was convened by or on the requisition of Members, it must be dissolved.

7.8.2 Otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.

- 7.9 If a meeting has been adjourned to another time and place determined by the Board, not less than five business days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

**Quorum at adjourned general meetings**

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

**Appointment of chairperson**

- 7.11 Every general meeting must be chaired by a chairperson. The chairperson will be determined as follows:
- 7.11.1 If the Board has elected a Director as Chair in accordance with clause 12.7, that person is entitled to chair every general meeting.
  - 7.11.2 Secondly, if the Board has elected a Director as Deputy Chair in accordance with clause 12.8, that person is entitled to chair that meeting if either of the following applies:
    - (a) No Chair has been elected in accordance with clause 12.7.
    - (b) The Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.
  - 7.11.3 Thirdly, the Directors present at the meeting must elect one of their number to chair that meeting if either of the following applies:
    - (a) No Chair has been elected in accordance with clause 12.7, and no Deputy Chair has been elected in accordance with clause 12.8.
    - (b) Neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting, or if present is not willing to act.
  - 7.11.4 Fourthly, the Members entitled to vote at the meeting present in person or by proxy or attorney at the meeting must elect one of those Members to chair that meeting if either of the following applies:
    - (a) There are no Directors present within 15 minutes after the time appointed for the holding of the meeting.
    - (b) All Directors present decline to chair the meeting.

**Chairperson's powers**

- 7.12 The chairperson may temporarily vacate the chair at a general meeting in favour of another person present at any time and for any reason he or she sees fit, and must do so if

the Members are voting on the chairperson's election or re-election as a Director (if applicable).

7.13 Subject to the terms of this constitution regarding adjournment of meetings, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

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

7.14.1 the use of offensive or abusive language which is directed to any person, object or thing;

7.14.2 attendance at the meeting while under the influence of any kind of drug, or using or consuming any drug at the meeting, including any alcoholic substance; and

7.14.3 possession of any article, including a recording device or other electronic device or a sign or banner, which the chairperson considers is dangerous, offensive or disruptive or likely to become so.

#### **Adjournment of meetings**

7.15 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.

7.15.1 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

7.15.2 When a meeting is adjourned for 20 business days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

7.15.3 Except when a meeting is adjourned for 20 business days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

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

7.16 At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.

7.17 If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the

Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **Demand for a poll**

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

### **Voting rights of Members**

- 7.23 On a show of hands, every Member present in person or by proxy or attorney has one vote.
- 7.24 On a poll, every Member present in person or by proxy or attorney has one vote.

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

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

### **Objections to voter qualification**

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

### **Mode of meeting for Members**

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

### **Resolution in writing**

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

### **Form of resolution in writing**

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

## **8 PROXIES AND ATTORNEYS**

### **Proxies and attorneys of Members**

- 8.1 At meetings of Members each Member entitled to vote may vote in person or by proxy or by attorney in accordance with clauses 7.23 and 7.24.
- 8.2 Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Member, has all the powers of a Member at a meeting of Members, except where expressly stated to the contrary.

### **Appointment of attorneys**

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



### **Appointment of proxies**

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

### **Verification of proxies**

- 8.5 Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company:
- 8.5.1 the document appointing the proxy; and
- 8.5.2 if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority (even if previously provided to the Company in accordance with clause 8.3).
- 8.6 Those documents must be received at the Office or at another place or electronic address specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting.
- 8.7 If a general meeting has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

### **Validity of proxies**

- 8.8 A proxy document is invalid if it is not deposited prior to a meeting as required by this constitution.

### **Revocation of appointment of proxy**

- 8.9 A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no notice in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:
- 8.9.1 the previous death or unsoundness of mind of the principal; or
- 8.9.2 the revocation of the instrument or of the authority under which the instrument was executed.

## **9 APPOINTMENT AND RETIREMENT OF DIRECTORS**

### **Number of Directors**

9.1 The number of Directors must be not less than three nor more than twelve.

### **Structure of the Board**

9.2 It is intended that the Board will be a skills-based board that is capable of providing:

9.2.1 a holistic view of the Aged Care Sector; and

9.2.2 leadership and stewardship that draws on relevant functional and technical expertise and experience.

9.3 If there are twelve Directors holding office, it is intended that the Board will be composed as follows:

9.3.1 an Independent Chair;

9.3.2 one Director who possesses Consumer Skills;

9.3.3 one Director who possesses Workforce Skills; and

9.3.4 nine Directors, each of whom possesses Provider Skills.

9.4 If there are less than twelve Directors holding office, it is intended that the Board will be composed of:

9.4.1 an Independent Chair;

9.4.2 where feasible, one Director who possesses Consumer Skills;

9.4.3 where feasible, one Director who possesses Workforce Skills; and

9.4.4 the remainder each possessing Provider Skills.

### **Directors are not nominees or representatives**

9.5 To avoid doubt:

9.5.1 a Director is not the nominee or representative of any person (including any peak body or Provider) and must, like all other Directors, act in the best interests of the Company as a whole, exercise active discretions and only provide information, records or other documents to third parties if authorised to do so by the Board under clause 19.4 or otherwise by law; and

9.5.2 subject to the law, a Director cannot in any circumstances be removed from office or replaced as a Director by any person other than the Members or otherwise be required to vacate his or her office by any person other than the Members.

**Election and appointment of Directors**

9.6 Without limiting the Members' rights under clause 9.20 and the Corporations Act, Directors will either be:

- 9.6.1 elected by the Members in accordance with clause 9.15, with up to six Directors occupying 'elected' Director positions 'A2', 'A3', 'B3', 'B4', 'C3' and 'C4' as set out in the table in clause 9.7; or
- 9.6.2 appointed by the Board (or the sole Director, if applicable) in accordance with clause 9.17 or clause 9.18, with up to six Directors occupying 'appointed' Director positions 'A1', 'A4', 'B1', 'B2', 'C1' and 'C2' as set out in the table in clause 9.7,

and with the retirement by rotation and election and appointment of Directors in any given year to be determined in accordance with this clause 9.

**Director positions**

9.7 The Board will consist of the following Director positions:

Director position	Details <sup>1</sup>	Initial term of office <sup>4</sup>	Subsequent term of office <sup>4</sup>
<p><b>A1</b></p>	<p><b>Appointed</b> Director position.</p> <p>Will be occupied by an Initial Director (John McCallum) and subsequently by a Director appointed by the Board in accordance with clause 9.17. <sup>3</sup> A person will not be eligible to occupy Director position 'A1' unless he or she possess Consumer Skills and is not the chief executive officer (by whatever name called) of a Provider at the time he or she is appointed or elected to Director position 'A1'.</p>	<p>For each of Director positions 'A1', 'A2', 'A3' and 'A4': until the close of the Third AGM.</p>	<p>For each of Director positions 'A1', 'A2', 'A3' and 'A4': until the close of the Sixth AGM and each successive third AGM thereafter (as applicable).</p> <p><b>Example: If the First AGM is held in 2020, the term of office for a Director who is assigned Director position 'A1', 'A2', 'A3' or 'A4' will end at the close of the Third AGM and thereafter at the close of the AGM held in 2025, 2028, 2031 and so on (as applicable).</b></p>
<p><b>A2</b></p>	<p><b>Elected</b> Director position.</p> <p>Will be occupied by an Initial Director (Graeme Prior) and subsequently by a Director elected by the Members in accordance with clause 9.15. <sup>2</sup> A person will not be eligible to occupy Director position 'A2' unless he or she possesses Provider Skills.</p>		

Director position	Details <sup>1</sup>	Initial term of office <sup>4</sup>	Subsequent term of office <sup>4</sup>
<b>A3</b>	<p><b>Elected</b> Director position.</p> <p>Will be occupied by an Initial Director (Ian Thorley) and subsequently by a Director elected by the Members in accordance with clause 9.15. <sup>2</sup> A person will not be eligible to occupy Director position 'A3' unless he or she possesses Provider Skills.</p>		
<b>A4</b>	<p><b>Appointed</b> Director position.</p> <p>Will be occupied by a Director appointed by the Board in accordance with clause 9.17. <sup>3</sup> A person will not be eligible to occupy Director position 'A4' unless he or she possesses Provider Skills.</p>		
<b>B1</b>	<p><b>Appointed</b> Director position.</p> <p>Will be occupied by an Initial Director (Melissa Coad) and subsequently by a Director appointed by the Board in accordance with clause 9.17. <sup>3</sup> A person will not be eligible to occupy Director position 'B1' unless he or she possesses Workforce Skills and is not the chief executive officer (by whatever name called) of a Provider at the time he or she is appointed or elected to Director position 'B1'.</p>	For each of Director positions 'B1', 'B2', 'B3' and 'B4': until the close of the Fourth AGM.	For each of Director positions 'B1', 'B2', 'B3' and 'B4': until the close of the Seventh AGM and each successive third AGM thereafter (as applicable).
<b>B2</b>	<p><b>Appointed</b> Director position.</p> <p>Will be occupied by an Initial Director (David Maher) and subsequently by a Director appointed by the Board in accordance with clause 9.17. <sup>3</sup> A person will not be eligible to occupy Director position 'B2' unless he or she possesses Provider Skills.</p>		<p><b>Example: If the First AGM is held in 2020, the term of office for a Director who is assigned Director position 'B1', 'B2' or 'B3' will end at the close of the Fourth AGM and thereafter at the close of the AGM held in 2026, 2029, 2032 and so on (as applicable).</b></p>

Director position	Details <sup>1</sup>	Initial term of office <sup>4</sup>	Subsequent term of office <sup>4</sup>
<b>B3</b>	<p><b>Elected</b> Director position.</p> <p>Will be occupied by an Initial Director (Sandra Hills) and subsequently by a Director elected by the Members in accordance with clause 9.15. <sup>2</sup> A person will not be eligible to occupy Director position 'B3' unless he or she possesses Provider Skills.</p>		
<b>B4</b>	<p><b>Elected</b> Director position.</p> <p>Will be occupied by an Initial Director (Lucy O'Flaherty) and subsequently by a Director elected by the Members in accordance with clause 9.15. <sup>2</sup> A person will not be eligible to occupy Director position 'B4' unless he or she possesses Provider Skills.</p>		
<b>C1</b>	<p><b>Appointed</b> Director position.</p> <p>Will be occupied by an Initial Director (Ian Hardy) and subsequently by a Director appointed by the Board in accordance with clause 9.17. <sup>3</sup> After Ian Hardy ceases to occupy Director position 'C1', a person will not be eligible to occupy Director position 'C1' unless he or she is Independent and is willing to be appointed as Chair in accordance with clause 12.7.</p>	For each of Director positions 'C1', 'C2', 'C3' and 'C4': until the close of the Fifth AGM.	For each of Director positions 'C1', 'C2', 'C3' and 'C4': until the close of the Eighth AGM and each successive third AGM thereafter (as applicable).
<b>C2</b>	<p><b>Appointed</b> Director position.</p> <p>Will be occupied by an Initial Director (Ross Johnston) and subsequently by a Director appointed by the Board in accordance with clause 9.17. <sup>3</sup> A person will not be eligible to occupy Director position 'C2' unless he or she possesses</p>		<p><b>Example: If the First AGM is held in 2020, the term of office for a Director who is assigned Director position 'C1', 'C2' or 'C3' will end at the close of the Fifth AGM and thereafter at the close of the AGM held in 2027, 2030, 2033 and so on (as applicable).</b></p>

Director position	Details <sup>1</sup>	Initial term of office <sup>4</sup>	Subsequent term of office <sup>4</sup>
	Provider Skills.		
<b>C3</b>	<p><b>Elected</b> Director position.</p> <p>Will be occupied by an Initial Director (Kevin McCoy) and subsequently by a Director elected by the Members in accordance with clause 9.15. <sup>2</sup> A person will not be eligible to occupy Director position 'C3' unless he or she possesses Provider Skills.</p>		
<b>C4</b>	<p><b>Elected</b> Director position.</p> <p>Will be occupied by an Initial Director (Graham Dangerfield) and subsequently by a Director elected by the Members in accordance with clause 9.15. <sup>2</sup> A person will not be eligible to occupy Director position 'C4' unless he or she possesses Provider Skills.</p>		

**Note 1:** The eleven Initial Directors are assigned Director positions 'A1' to 'A3' and 'B1' to 'C4' as per the above table. Director position 'A4' was created by an amendment to this constitution after the Company was incorporated.

**Note 2:** The Board may appoint a Director to any of the 'elected' Director positions 'A2', 'A3', 'B3', 'B4', 'C3' and 'C4' in the circumstances set out in clause 9.18.

**Note 3:** The Members in general meeting may replace a Director occupying any of the 'appointed' Director positions 'A1', 'A4', 'B1', 'B2', 'C1' and 'C2' in the circumstances set out in clause 9.20.

**Note 4:** The maximum terms of office in columns three and four above are indicative only and are subject to the other provisions of this clause 9.

- 9.8 Each Initial Director and each subsequent Director upon election or appointment (as the case may be) must be assigned a Director position in accordance with the table set out in clause 9.7 and the other rules set out in this clause 9, for the purposes of determining each Director's indicative term of office and the manner in which Directors will retire by rotation.
- 9.9 Each subsequent Director who is elected or appointed (as the case may be) will be assigned the Director position that applies to the Director whom he or she is replacing. If such a subsequent Director is not replacing another Director, the Director position to be assigned to him or her will be determined by the Board with reference to the following principles:

- 9.9.1 To the extent that any of Director positions 'A1' to 'C4' are vacant at the time of the Director's election or appointment (as the case may be), the Director must be allocated the first vacant 'elected' or 'appointed' Director position (as applicable) in the descending alphabetical order set out in the table set out in clause 9.7.
- 9.9.2 If clause 9.9.1 applies to two or more newly-elected or appointed Directors (as the case may be), the applicable vacant Director positions must be assigned to them by lot unless those newly-elected or appointed Directors agree otherwise among themselves.
- 9.9.3 A Director position cannot be occupied by two or more Directors simultaneously.
- 9.9.4 Directors cannot change or re-assign Director positions while in office or when seeking re-election. However, this does not prevent:
- (a) a Director who has previously been assigned any of the 'appointed' Director positions 'A1', 'A4', 'B1', 'B2', 'C1' and 'C2' from being elected to any of the 'elected' Director positions 'A2', 'A3', 'B3', 'B4', 'C3' and 'C4' in accordance with clause 9.15 or appointed to any those 'elected' Director positions by the Board in accordance with clause 9.18; or
  - (b) a Director who has previously been assigned any of the 'elected' Director positions 'A2', 'A3', 'B3', 'B4', 'C3' and 'C4' from being appointed to any of the 'appointed' Director positions 'A1', 'A4', 'B1', 'B2', 'C1' and 'C2' by the Board in accordance with clause 9.17 or clause 9.18 (as the case may be).
- (c) Subject to clause 9.9.4, a Director who is re-elected or re-appointed (as the case may be) will retain his or her existing Director position.

### **Term of office**

- 9.10 Subject to the other terms of this constitution, a Director will hold office for a maximum period ending at the close of the relevant AGM of the Company determined in accordance with the table in clause 9.7 for the Director position assigned to him or her.
- 9.11 A retiring Director is eligible for re-election or re-appointment, save that a Director will be ineligible for re-election or re-appointment after holding office for two consecutive terms of approximately three years each in accordance with the table set out in clause 9.7. However, the following additional rules apply:
- 9.11.1 Each Initial Director and any other Director whose initial term of office is greater than three years in accordance with the table in clause 9.7 is eligible to be re-elected (or re-appointed) as a Director for a maximum of one additional consecutive term of approximately three years immediately following the Director's initial term of office after the date that this constitution was adopted.

- 9.11.2 This clause 9.11 does not prevent a former Director from subsequently being elected or appointed as a Director in accordance with this constitution, provided that a period of at least 24 consecutive calendar months has passed since he or she last held the office of Director.

### **Retirement of Directors**

- 9.12 At the Third AGM and at each subsequent AGM thereafter, the Directors who must retire from office are those assigned the applicable Director positions as set out in the table in clause 9.7 with respect to the relevant AGM.
- 9.13 A Director retiring at an AGM may act as a director until the conclusion of that meeting and is eligible for re-election or re-appointment to the extent permitted by law and this constitution.
- 9.14 A Director may also retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.

### **Election of Directors**

- 9.15 At the Third AGM and at each subsequent AGM thereafter, the process for electing Directors to any of Director positions 'A2', 'A3', 'B3', 'B4', 'C3' and 'C4' is as follows:
- 9.15.1 Nominations for the position of Director, to be voted upon by Members at an AGM, may only be submitted by a Member or a retiring Director. Any such nomination must:
- (a) be in writing and signed by the proposer and (if not the same as the proposer) the nominee for election;
  - (b) be accompanied by a consent to act as a Director signed by the nominee for election, as required under the Corporations Act;
  - (c) be accompanied by such documents or evidence as to the nominee for election's qualification to occupy the relevant type of Director position (as set out in the table in clause 9.18) as the Board may specify in writing; and
  - (d) be submitted to the Secretary and received by the Secretary by no later than 40 business days prior to the date of the AGM.
- 9.15.2 A nomination may be withdrawn by the relevant nominee for election or the relevant proposer at any time prior to the relevant AGM by giving written notice to the Secretary.
- 9.15.3 The following rules apply to Director elections:
- (a) The Board must only consider nominations for the position of Director that satisfy all of the requirements set out in clause 9.15.1



**(Valid Nominations).** The Board must reject all nominations that are not Valid Nominations. The Board does not have to give reasons for determining that a particular nomination is or is not a Valid Nomination.

- (b) The Board must provide notice of the Valid Nominations to all Members in accordance with this constitution by no later than 20 business days prior to the date of the AGM (if the election to be conducted at the AGM).
- (c) Where the number of Valid Nominations for the position of Director is equal to or less than the number of positions to be filled by the Members, each of those Valid Nominations is deemed to be elected and will be declared so accordingly at the relevant AGM, and a vote shall not be conducted. Otherwise, a vote must be conducted by means of a show of hands or poll in accordance with the Corporations Act and this constitution (including clauses 9.15.4 and 9.15.5).

9.15.4 Where the election of Directors is to occur by means of a show of hands or poll at the relevant AGM, a list shall be prepared containing only the names of each of the Valid Nominations, in alphabetical order along with the number of vacancies to be filled. Each Member present and voting at the AGM shall be entitled to vote for any number of such Valid Nominations not exceeding the number of vacancies. In the event of an equal vote for two or more candidates (other than where no votes are cast in favour of the election of any of those candidates), the returning officer will determine the respective rankings for the purposes of the election by lot.

9.15.5 Where there is not a sufficient number of Valid Nominations or the Members do not otherwise elect a sufficient number of Directors under that election process, the relevant Director position not filled shall remain vacant until that vacancy is filled in accordance with this clause 9.15 at the next AGM, or filled by the Directors in accordance with clause 9.18.

9.16 A Director elected in accordance with clause 9.15 must be assigned a Director position in accordance with clauses 9.8 and 9.9 and will hold office for a maximum period determined in accordance with the table in clause 9.7 with respect to the Director position he or she is assigned.

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

9.17 The Board, or if there is only one Director, that Director, may at any time appoint a person to be a Director who is assigned Director position 'A1', 'A4', 'B1', 'B2', 'C1' or 'C2' (as applicable) and who will hold office for a maximum period determined in accordance with the table in clause 9.7. To avoid doubt, any such appointment will take effect on and from the date of the relevant Board resolution or such later date as may be specified in the relevant Board resolution (being a date that is sooner than the next-to-occur AGM).

9.18 The Board, or if there is only one Director, that Director, may at any time appoint a person to be a Director who is assigned any of Director positions 'A2', 'A3', 'B3', 'B4', 'C3' or 'C4' provided that:

9.18.1 the relevant Director position has never previously been assigned to a Director;

9.18.2 the Director position has been left vacant following an AGM in accordance with clause 9.15.5; or

9.18.3 a casual vacancy has arisen in respect of that Director position.

9.19 A Director appointed by the Board under clause 9.18 will commence in office on and from the date of the relevant Board resolution or such later date as may be specified in the relevant Board resolution (being a date that is sooner than the next-to-occur AGM), and will hold office for a maximum period determined in accordance with the table in clause 9.7.

#### **Removal from office**

9.20 The Members in general meeting may by ordinary resolution remove a Director from office before the expiration of his or her maximum term of office (as set out in the table in clause 9.7) by following the process set out in section 203D Corporations Act and may by ordinary resolution elect another person as a replacement.

#### **Vacation of office**

9.21 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this constitution, the office of Director immediately becomes vacant if any of the following occurs:

9.21.1 The Director becomes an employee of the Company (other than where he or she is an employee solely because he or she is a Director).

9.21.2 The Director dies or becomes an insolvent under administration.

9.21.3 The Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

9.21.4 The Director is absent from three consecutive Board meetings without the prior written consent of the Board.

9.21.5 The Director becomes prohibited from being a director by reason of an order made under the Corporations Act or the Director is removed from any office under the ACNC Act.

9.22 To avoid doubt, if a Director who is assigned any of Director positions 'A2', 'A3', 'A4', 'B2', 'B3', 'B4', 'C2', 'C3' or 'C4' ceases to be the chief executive officer (by whatever name called) of a Provider;

9.22.1 that Director's office will not thereby become vacant; and

- 9.22.2 there will be a non-binding expectation that the Director will consult with the Board and, if the Board considers appropriate, with the Members, to explore how the Director will transition from office as a Director over a mutually agreed timeframe. However, this does not limit any of clauses 9.12, 9.14, 9.20 or 9.21.

**No power to appoint alternate**

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

**10 DIRECTORS' REMUNERATION**

**Determination of fees**

- 10.1 If the Chair is an Independent Director, the Chair is entitled to remuneration for their service of an amount (if any) to be determined from time to time by the Members in general meeting. Such fees will accrue from day to day.
- 10.2 Subject to clause 10.1, Directors are not entitled to remuneration for their service.

**Additional services rendered**

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

**Payment for expenses**

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

**11 POWERS OF THE BOARD**

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

**12 PROCEEDINGS OF DIRECTORS**

**Convening of Board meetings**

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

### **Notice of Board meetings**

- 12.2 The person convening a Board meeting must ensure that notice of the Board meeting is given to each Director at least 48 hours before the meeting or at another time determined by Board resolution, with a non-binding preference for at least 5 business days' notice of a Board meeting being given to each Director, except:
- 12.2.1 all Directors (excluding a Director who has requested and been given leave of absence by the Board) may waive in writing the required period of notice for a particular meeting; and
- 12.2.2 it is not necessary to give a notice of a meeting of Directors to a Director who has requested and been given leave of absence by the Board.

### **Mode of meeting for Directors**

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

### **Quorum at Board meetings**

- 12.4 At a Board meeting, the number of Directors whose presence is necessary to constitute a quorum is one half of the number of Directors holding office at the time (rounded up to the next highest whole number).
- 12.5 If the number of Directors is reduced below the number necessary for a quorum of Directors or otherwise below the statutory minimum (as applicable), the continuing Director or Directors may act only to:
- 12.5.1 appoint additional Directors in accordance with clause 9 to the number necessary for a quorum in accordance with clause 12.4; or
- 12.5.2 convene a general meeting of the Company.

### **Voting at Board meetings**

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

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

- 12.7 The Board may elect a Director as Chair to chair Board meetings, as follows:
- 12.7.1 Prior to the Third AGM, the Board will by resolution elect as Chair a Director who is Independent, to hold office until the sooner of the following:
- (a) that person ceases to be a Director;
- (b) that person resigns as Chair but continues to be a Director; or

- (c) the close of the first Board meeting following the Third AGM.
- 12.7.2 On and from the Third AGM, the Board will by resolution elect as Chair a Director who is Independent at the first Board meeting following most recent AGM, to hold office until the sooner of the following:
- (a) that person ceases to be a Director;
  - (b) that person resigns as Chair but continues to be a Director; or
  - (c) the close of the first Board meeting following the third-next to occur AGM since that person was last elected as Chair by the Board (such that the person has served as Chair for approximately three years since last being elected as Chair).
- 12.8 The Board may elect a Director as Deputy Chair as follows:
- 12.8.1 Prior to the Third AGM, the Board will by resolution elect a Director as Deputy Chair, to hold office until the sooner of the following:
- (a) that person ceases to be a Director;
  - (b) that person resigns as Deputy Chair but continues to be a Director; or
  - (c) the close of the first Board meeting following the Third AGM.
- 12.8.2 On and from the Third AGM, the Board will by resolution elect a Director as Deputy Chair at the first Board meeting following most recent AGM, to hold office until the sooner of the following:
- (a) that person ceases to be a Director;
  - (b) that person resigns as Chair but continues to be a Director; or
  - (c) the close of the first Board meeting following the third-next to occur AGM since that person was last elected as Deputy Chair by the Board (such that the person has served as Deputy Chair for approximately three years since last being elected as Deputy Chair).
- 12.8.3 Despite the above, the Board may by resolution remove the Deputy Chair at any time and appoint another Director as Deputy Chair.
- 12.9 If no Chair is elected, or if at any meeting the Chair is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chair may act as chair of that meeting.
- 12.10 If no Chair or Deputy Chair is elected, or if at any meeting the Chair and the Deputy Chair are not present within 10 minutes after the time appointed for holding the meeting or are unwilling to act, the Directors present must choose one of their number to chair that meeting.

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

- 12.11 Provided that he or she remains a Director, a retiring Chair or Deputy Chair is eligible for re-election to that office in accordance with clause 12.7 or 12.8 (as applicable).

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

- 12.12 In the case of an equality of votes at a Board meeting, the Chair (or other Director chairing the meeting in accordance with clause 12.9 or 12.10) does not have a second or casting vote in addition to his or her deliberative vote as a Director.

### **Participation where Directors interested**

- 12.13 A Director may be present and may vote on a matter before the Board if and to the extent that he or she is permitted to do so under the Corporations Act.
- 12.14 If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting then one or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.
- 12.15 Subject to compliance with the Corporations Act, a Director may execute or participate in the execution of a document by or on behalf of the Company.

### **No disqualification**

- 12.16 Subject to compliance with the law and clause 10.3, a Director or any entity in which the Director has a direct or indirect interest (as applicable) may:
- 12.16.1 Enter into a contract or arrangement with an Associated Party.
  - 12.16.2 Hold any office or place of profit (other than auditor) in an Associated Party.
  - 12.16.3 Act in a professional capacity (or be a member of a firm that so acts) other than as auditor of an Associated Party.
- 12.17 Despite the fiduciary nature of a Director's office and the Director's fiduciary obligations:
- 12.17.1 Any contract or arrangement entered into in accordance with clause 12.16.1 by the Director or any entity in which the Director has a direct or indirect interest is not invalid or voidable.
  - 12.17.2 A Director may do any of the things specified in clause 12.16 without any liability to account to the Company or any other person for any direct or indirect benefit accruing to the Director or any entity in which the Director has a direct or indirect interest.

### **Exercise of rights**

- 12.18 If the Company holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board may exercise any and all voting rights conferred

by the membership, shares or interests in any manner that the Board in its absolute discretion considers fit.

### **Delegation of powers**

- 12.19 The Board may delegate any of its powers to any person, as the Board in its absolute discretion sees fit. This includes delegating any of the Board's powers to committees consisting of Directors or other persons. The Board may at any time revoke any delegation of power.
- 12.20 A delegate must conform to the directions of the Board in the exercise of any powers delegated to the delegate. The delegate's exercise of a power in accordance with this constitution is to be treated as the exercise of that power by the Board.

### **Board committees**

- 12.21 The Board may in its absolute discretion establish one or more committees to provide advice and recommendations to the Board on specified matters (among any other functions determined by the Board, which may but need not include the exercise of power delegated by the Board in accordance with clause 12.19).
- 12.22 The Board may, with respect to a committee:
- 12.22.1 Specify in writing from time to time the terms of reference and functions of the committee.
  - 12.22.2 Appoint such persons as the Board considers appropriate to the committee (including, if thought fit, one or more Directors), and remove any such person from the committee at any time by written notice or otherwise in accordance with the terms of reference of that committee.
  - 12.22.3 Specify the period and conditions (including as to remuneration, if any) from time to time of any such appointment to the committee.
  - 12.22.4 Dissolve the committee at any time.

### **Proceedings of committees**

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

### **Validity of acts of Directors etc**

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

## **Minutes**

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

## **Resolution without meeting**

- 12.27 A resolution in writing sent to all Directors (excluding Directors who have requested and been given leave of absence by the Board) and approved by all Directors entitled to vote on the resolution (excluding Directors who have requested and been given leave of absence by the Board), is to be treated as a determination of the Board passed at a Board meeting duly convened and held.
- 12.27.1 A resolution referred to in clause 12.27 may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents, or alternatively may consist each Director affirming by electronic means that he or she supports the proposed resolution, and a 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 readable form.
- 12.27.2 In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

## **13 SECRETARY**

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

## **14 CHIEF EXECUTIVE OFFICER**

### **Appointment**

- 14.1 The Board may from time to time appoint a person to the position of Chief Executive Officer for the period and on the terms (including as to remuneration and whether the position will be full-time or part-time) as the Board sees fit.



14.2 The Board may from time to time appoint another person to act temporarily as Chief Executive Officer if:

14.2.1 the Chief Executive Officer is absent from duty or from Australia or is (in the Board's determination) incapable of acting as the Chief Executive Officer; or

14.2.2 the position of Chief Executive Officer is vacant.

### **Termination**

14.3 Subject to the law, the Board may terminate the appointment of the Chief Executive Officer. For the avoidance of doubt, the Company in general meeting has no power to terminate the appointment of the Chief Executive Officer or appoint a person to the position of Chief Executive Officer.

14.4 A person's appointment as Chief Executive Officer automatically terminates if he or she is appointed as a Director.

## **15 INDEMNITY AND INSURANCE**

### **Indemnity**

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

### **Insurance premiums**

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

## **16 EXECUTION OF DOCUMENTS**

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

## **17 GIFT FUND REQUIREMENTS**

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

17.1 To the extent required by law, the Company must maintain at least one Gift Fund in accordance with this clause 17.

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

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

17.2.1 The Gift Fund must have a name.

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

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

17.2.4 The following must be credited to the Gift Fund:

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

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

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

17.2.6 The Company must use any gifts, money or property of the kind referred to in clause 17.2.4 only for the Principal Purpose.

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

17.3 Despite clause 18, if the Company wishes to wind up a Gift Fund or the Company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus Gift Fund must be transferred to one or more charities determined by the Board:

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

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

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

17.4 For the avoidance of doubt, if a Gift Fund operated by the Company is wound up but the Company remains endorsed as a deductible gift recipient and operates any other gift fund in accordance with this clause 17, any surplus Gift Fund that is being wound up may be transferred to any other charitable gift fund operated by the Company.

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

18.1 If the Company is wound up, any surplus property must not be distributed to a Member or a former Member unless it is a charity described in clause 18.2.

18.2 Subject always to clause 17.3, any court order, the Corporations Act and any other applicable law, upon the winding up or dissolution of the Company any surplus property

that remains after satisfaction of all debts and liabilities must be distributed to one or more charities:

- 18.2.1 with charitable purposes similar to, or inclusive of, the object in clause 2;
- 18.2.2 which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company;
- 18.2.3 that is or are "deductible gift recipients" within the meaning of ITAA 97 (but only if this is required by law); and
- 18.2.4 as determined by ordinary resolution of the Members in general meeting at or before the time of winding up or dissolution of the Company and, in default of any such determination, by the Supreme Court of the State or Territory in which the Office is located.

## **19 ACCOUNTS, AUDIT AND RECORDS**

### **Accounts**

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

### **Reports**

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

- 19.2.1 prepare financial reports;
- 19.2.2 prepare directors' reports;
- 19.2.3 notify each Member of the Member's right to receive reports from the Company; and
- 19.2.4 provide members with reports, in a form and within such timeframe,

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

### **Audit**

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

### **Rights of inspection**

- 19.4 Subject to the law:
  - 19.4.1 The Board may determine whether and to what extent, and at what times and places and under what conditions, the records and other documents of the

Company or any of them are open to the inspection of Members, and a Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in general meeting.

19.4.2 Despite clause 19.4.1, the Board may refuse access to a document where the Board (acting reasonably) considers that such access would or would be likely to cause the Company to lose the benefit of any form of evidentiary privilege, including legal professional privilege.

## **20 NOTICES**

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

20.1 A notice by either the Company or a Member in connection with this constitution may be given on behalf of the Company or Member by a solicitor, director, company secretary or other authorised officer of the Company or Member.

20.2 The signature of a person on a notice given by the Company may be written, printed or stamped.

### **Method of giving notices**

20.3 In addition to the method for giving notices permitted by statute, a notice by the Company to a Member in connection with this constitution may be given to the Member by any of the following means:

20.3.1 By delivering it to a street address of the Member.

20.3.2 By sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the Member.

20.3.3 By sending it by email to the email address of the Member.

20.4 In addition to the method for giving notices permitted by statute, a notice by a Member to the Company in connection with this constitution may be given to the Company by any of the following means:

20.4.1 By delivering it to the street address of the Company.

20.4.2 By sending it by prepaid ordinary post (airmail if outside Australia) to the street or postal address of the Company.

20.4.3 By sending it by email to the email address of the Company.

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

20.5 The street address or postal address of a Member is the street or postal address of the Member shown in the Register.

- 20.6 The email address of a Member is the address which the Member may specify by written notice to the Company as the email address to which notices may be sent to the Member.

**Address for giving notices to the Company**

- 20.7 The street and postal address of the Company is the Office.
- 20.8 The email address of the Company is the email address which the Company may specify by written notice to the Members as the email address to which notices may be sent to the Company.

**Time notice of meeting is given**

- 20.9 A notice of meeting given in accordance with this constitution is to be taken as given, served and received at the following times:
- 20.9.1 If delivered in writing to the street address of the addressee, at the time of delivery.
  - 20.9.2 If it is sent by post to the street or postal address of the addressee, on the second business day after posting.
  - 20.9.3 If sent by email to the email address of the addressee, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent..

**Time other notices are given**

- 20.10 A notice given in accordance with this constitution is to be taken as given, served and received at the following times:
- 20.10.1 If delivered in writing to the street address of the addressee, at the time of delivery.
  - 20.10.2 If it is sent by post to the street or postal address of the addressee, on the third (ninth if outside Australia) business day after posting.
  - 20.10.3 If sent by email to the email address of the addressee, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent.

**Persons entitled to notice of meeting**

- 20.11 Notice of every general meeting must be given by a method authorised by this constitution to all of the following persons:
- 20.11.1 Every Member.

20.11.2 Every Director.

20.11.3 The auditor for the time being of the Company, if any.

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

## 21 DEFINITIONS AND INTERPRETATION

### Definitions

21.1 In this constitution the following definitions apply:

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

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

**Aged Care Sector** means the Australian home care and residential aged care sector.

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

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

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

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

**Chair** means the Director elected under clause 12.7 to preside as chairperson at Board meetings at the relevant time.

**Chief Executive Officer** has the meaning given in clause 14.

**Company** means Aged Care Workforce Industry Council Limited ACN 633 541 581.

**Consumer Skills** means skills, experience and/or competency associated with the needs and issues associated with consumers of home care and residential aged care services in Australia or their relatives.

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

**Deputy Chair** means the Director (if any) elected under clause 12.8 to preside in the Chair's absence as chairperson at Board meetings at the relevant time.

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

**Eighth AGM** means the eighth AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2027 calendar year.

**Fifth AGM** means the fifth AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2024 calendar year.

**First AGM** means the first AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2020 calendar year.

**Fourth AGM** means the fourth AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2023 calendar year.

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

**Guiding Principles** has the meaning given in clause 2.3.

**Independent** means a person who does not occupy, and has not recently occupied, a senior position in any organisation operating in the Aged Care Sector, and in particular is not a current officer, employee or senior representative of, or consultant to, any of the following:

- (a) one or more Providers;
- (b) one or more bodies (whether or not any such body is a legal person) that represents consumers of home care and residential aged care services in Australia or their relatives; or
- (c) one or more bodies (whether or not any such body is a legal person) that represents members of the Workforce.

**Initial Director** means a person who is named in the table in clause 9.7 and who consents to become a Director and is identified as a director in the application for incorporation of the Company that is submitted to the Australian Securities and Investments Commission.

**Initial Member** means a person identified as a member of the Company upon its incorporation in the application for incorporation of the Company that is submitted to the Australian Securities and Investments Commission.

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

- (a) A meeting of the Member's creditors being called or held.
- (b) A step been taken to make the Member bankrupt.
- (c) An application is presented or an order is made for the sequestration of the Member's estate.

- (d) The Member entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors.

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

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

**Members' Charter** has the meaning given in clause 3.23.

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

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

**Provider** means a person that is a provider of home and/or residential aged care services in the Aged Care Sector, whether operated on a for-profit or not-for-profit basis.

**Provider Skills** means skills, experience and/or competency associated with being the chief executive officer (by whatever name called) of a Provider at the time of the person's most recent election or appointment to the Board, and otherwise having deep familiarity with the needs and issues associated with Providers and their for-profit or not-for-profit operations.

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

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

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

**Second AGM** means the second AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2021 calendar year.

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

**Seventh AGM** means the seventh AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2026 calendar year.

**Sixth AGM** means the sixth AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2025 calendar year.

**Termination Event** means:

- (a) An Insolvency Event occurs in respect of the Member.
- (b) The Member dies.
- (c) The Member becomes an employee of the Company (other than where the Member is an employee solely because he or she is a Director).



**Third AGM** means the third AGM of the Company to be held after the date of the Company's registration, anticipated to be held during the 2022 calendar year.

**Valid Nominations** has the meaning given in clause 9.15.3(a).

**Workforce** means individuals who are employed or engaged in the Aged Care Sector.

**Workforce Skills** means skills, experience and/or competency associated with the needs and issues associated with members of the Workforce (including employees of Providers) in respect of their employment or engagement in the Aged Care Sector.

### **Interpretation**

21.2 In this constitution, unless the context otherwise requires:

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

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

21.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution (however, a schedule or attachment does not form part of this constitution unless the schedule or attachment expressly states that it is part of this constitution).

21.2.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

21.2.5 A word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender indicates the other genders.

21.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.

21.2.7 A reference to 'dollars' or '\$' means Australian dollars.

21.2.8 References to the word 'include' or 'including', or to the word 'exclude' or 'excluding', are to be interpreted without limitation.

21.2.9 A reference to a time of day means that time of day in the place where the Office is located.

21.2.10 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.

21.2.11 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.

21.2.12 A term of this constitution which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

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

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

#### **Replaceable rules**

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

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

21.5 Unless the context otherwise requires,

21.5.1 An expression used but not defined in this constitution has the same meaning given in the Corporations Act.

21.5.2 Where an expression referred to in clause 21.5.1 has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as the relevant clause of this constitution, the expression has the same meaning as in that provision.

21.6 Subject to clause 21.4, for so long as the Company is a Registered Entity the provisions in Part 2G.2 and Part 2G.3 of the Corporations Act are incorporated into this constitution by reference as if they are repeated in full. To the extent that the ACNC Act or any law or binding regulation of the ACNC applies to the Company and this conflicts with one or more provisions in Part 2G.2 and Part 2G.3 of the Corporations Act, the Company must comply with (as applicable) the ACNC Act or that law or binding regulation, save that it is expressly intended by the Members that the Company must hold an AGM at least once in each calendar year and within five months after the end of its financial year.