

**CONSTITUTION**  
**CoastAbility Limited**



**CoastAbility**  
Enhancing young lives

ABN: 36 620 647 421

Registered office:

11 Wallace Street, MacMasters Beach NSW 2251

CoastAbility Limited Constitution

Drawn up in consultation with Allens<>Linklaters  
and approved by members August 2017.

Allens is an independent partnership operating in alliance with Linklaters LLP.

Consultation amended with final approval by members at general meeting on  
28<sup>th</sup> August 2019. Refer Schedule on Page 23 of this document.

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Constitution of CoastAbility, a public company limited by guarantee.

## General

### 1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

**ACNC Act** means the *Australian Charities and Not-for-Profits Commission 2013* (Cth) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).

**Board** means all or some of the Directors for the time being acting as a board.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Sydney, New South Wales, Australia.

**Chief Executive Officer** means the chief executive appointed by the Board under rule 47.

**Children and Young People with a Disability** means persons who are less than 25 years of age who have an existing primary physical disability and/or multiple disabilities.

**Company** means CoastAbility Ltd.

**Constitution** means this constitution.

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

**Deductible Contribution** means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act.

**Deductible Gift Recipient** has the meaning given in the Tax Act.

**Director** means a person appointed or elected to the office of director of the company in accordance with this Constitution and, where appropriate, includes an alternate Director.

**Gift** means a donation, contribution, gift, settlement, benefaction or other voluntary transfer or disposition of money, money's worth, property or benefits and whether inter vivos or by will and including any amounts for which the giver can claim an income tax deduction.

**Member** means a person admitted to the membership of the company in accordance with the provisions of this Constitution.

**Member Present** means, in connection with a general meeting, a Member present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by representative.

**Registered Charity** means a charity registered under the ACNC Act.

**Secretary** means a person appointed as, or to perform duties of, secretary of the company.

**Special Person** means a person who the Board considers can provide specialist or professional assistance to the Board and the company.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

### 2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.

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- (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (iii) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (iv) A reference to a rule is a reference to a rule of this Constitution.
- (v) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (vi) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.
- (vii) If the company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any rule that is inconsistent with the Corporations Act.

### 3 Replaceable Rules

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

## Objects

### 4 Objects of the Company

- (a) The objects of the company are:
  - (i) to improve the quality of life for Children and Young people with a Disability in the Central Coast local government area, by providing support for unmet substantiated mobility and disability related needs;
  - (ii) to promote equity, access and participation for Children and Young people with a Disability in the Central Coast local government area in all areas of their life; and
  - (iii) to undertake other such measures for the enhancement of the lives of Children and Young People with a Disability in the NSW Central Coast as the Directors from time to time may determine, provided that families who are able to contribute towards expenses incurred are encouraged to do so.
- (b) Without limiting rule 4(a), the ways in which the company may pursue those objects include:
  - (i) collecting funds for the purposes of enabling the objects expressed in rule 4(a) to be carried out;
  - (ii) receiving Gifts and accepting Deductible Contributions whether monetary or otherwise;
  - (iii) promoting the objects set out in rule 4(a) through subscribing, liaising, or donating to, or becoming a member of, and co-operating with, any other organisation whose objects are similar to those of the company; and
  - (iv) doing all such things as are necessary, incidental or conducive to the attainment of the objects set out in rule 4(a).
- (c) The company must pursue the objects set out in rule 4(a) only.

### 5 Application of Income and Property to Objects

- (a) Subject to rule 5(b), the income and property of the company must only be used to further the objects of the company set out in rule 4 and no part of that income or property may be

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paid or transferred, directly or indirectly, to any Member by way of dividend, bonus or otherwise.

- (b) Rule 5(a) does not prevent the company from making a payment in good faith to a Member:
  - (i) of reasonable and proper remuneration for services provided to the company;
  - (ii) for goods supplied in the ordinary course of business; or
  - (iii) of reasonable and proper rent for premises let by a Member.

## Membership

### 6 Members of the Company

- (a) The Members are those persons admitted to the membership of the company whose names are entered into the company's register of Members.
- (b) On registration of the company the Members will be those persons set out in the schedule.
- (c) Two or more persons cannot be registered as holding a single membership interest, whether as joint tenants or as tenants in common.

### 7 Limited Liability of Members

The liability of the Members is limited.

### 8 Members' Liability on Winding Up

Each Member undertakes to contribute to the assets of the company in the event of it 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 and of the costs, charges and expenses of winding up, such amount as may be required not exceeding \$10.00.

### 9 Admission as a Member

- (a) Except for the initial Members set out in the schedule, applicants for membership must be nominated by two Members.
- (b) A person who wants to apply for membership must submit a written application to the Secretary signed by the applicant and the two Members making the nomination and in the form determined by the Board.
- (c) At the next Board meeting after the receipt of an application for membership, the Board will consider the application and decide whether or not to admit the applicant in their absolute discretion.
- (d) If the Board decides not to admit an applicant to the membership, it does not have to give any reasons for its decision.
- (e) When an applicant is to be admitted, the Secretary must notify the applicant and request payment of the first annual membership fee, if any.
- (f) If the applicant does not pay the first annual membership fee, if any, within 28 days after the date on which the applicant is notified that the subscription is payable, the Board may, in its absolute discretion, cancel the acceptance of the applicant's application for membership.

- (g) When the company receives payment from the applicant of the first annual membership fee or, if there is no membership fee, when the Board decides to admit the applicant as a Member, the applicant will be registered in the company's register of Members and will immediately become a Member.

## **10 Classes of Membership**

The Board may:

- (a) establish different classes of membership; and
- (b) prescribe the qualifications, rights and privileges of persons to become a Member of a class.

## **11 Further Classes of Membership**

The Board may at any time:

- (a) establish a new class of membership;
- (b) determine or change the existing classes of membership; and
- (c) set and amend the membership fee for each class of membership.

## **12 Membership Fee**

The Board may from time to time determine a membership fee for various classes of membership and the terms of payment of the membership fee.

## **13 Variation of Rights of Members**

If membership is divided into different classes, the rights attached to any specific class of Members (unless otherwise determined by the terms of application for membership of that class) may, whether or not the company is being wound up, be varied only by a resolution of the relevant membership class.

## **14 Resignation of a Member**

A Member may resign from the company by giving notice in writing to the Secretary. The resignation will be effective from the date it is received by the Secretary.

## **15 Non-payment of Membership Fee**

- (a) If any membership fee of a Member remains unpaid for a period of 28 days after it becomes due, the Secretary will give notice to the Member of that fact.
- (b) If any membership fee remains unpaid more than 14 days after the date of the notice given under rule 15(a), the Board may cancel the membership of the Member and remove the Member's name from the register of Members.

## **16 Misconduct of a Member**

- (a) The Board may expel from the company any Member:
  - (i) who does not comply with the provisions of this Constitution; or
  - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the company;and remove the Member's name from the register.



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- (b) At least 21 days before the Board meets to expel a Member the Board must send a notice to the Member that states:
  - (i) all relevant information, including any allegations against the Member;
  - (ii) the proposed resolution for the Member's expulsion;
  - (iii) that the Member has an opportunity to address the meeting, before the passing of the resolution, either orally or in writing and provide any explanation or defence the Member thinks fit.

### **17 Ceasing to be a Member**

A Member's membership of the company will automatically cease:

- (a) in the case of a Member who is a natural person, on the date that:
  - (i) the Member dies;
  - (ii) the Member resigns in accordance with rule 14; or
  - (iii) if the Member does not respond to a written request from the company Secretary to confirm that the Member wishes to remain a Member, is three months after the date of the Secretary's written request.
- (b) in the case of a Member that is a body corporate, on the date that:
  - (i) a liquidator is appointed in connection with the winding up of the Member; or
  - (ii) an order is made by a court for the winding up or deregistration of the Member.

### **18 Liability after a Person Ceases to be a Member**

A person who ceases to be a Member must pay to the company:

- (a) all membership fees or other amounts owing to the company that are due and unpaid at the date that the person ceases to be a Member; and
- (b) amounts that the Member is liable to pay under rule 8.

### **19 Register of Members**

The register of Members must be kept by the Secretary and must contain the full name and address of each Member and any other information required by the Board.

### **20 Address of Members**

If a Member informs the Secretary in writing of any change in their address, the Secretary will enter any such change of address in the register of Members. The latest address in the register of Members is deemed to be the Member's registered address.

## **General Meetings**

### **21 General Meetings**

- (a) A Director may convene a general meeting of the company whenever the Director thinks fit, but the Directors must convene a general meeting:
  - (i) within 18 months after the registration of the company; and
  - (ii) after the first general meeting, at least once in every calendar year

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- (b) Any Director may cancel or postpone any meeting convened by that Director by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act.
- (c) If Members with at least five percent (5%) of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the Directors must:
  - (i) within 21 days of the Members' request, give all Members notice of the general meeting; and
  - (ii) hold the general meeting within 2 months of the Members' request.
- (d) The percentage of votes that Members have is to be counted as at midnight before the Members request the meeting.
- (e) The Members who make a request under rule 21(c) must:
  - (i) state in the request any resolution to be proposed at the meeting;
  - (ii) sign the request; and
  - (iii) give the request to the company.
- (f) If the Directors do not call the meeting within 21 days of being request under rule 21(c), fifty percent (50%) or more of the Members who made the request may call and arrange to hold the general meeting as request, as far as possible in accordance with the rules of this Constitution.
- (g) Any Director may cancel or postpone any meeting convened by notice in writing to all persons who were entitled to receive notice of that meeting, if:
  - (i) the general meeting has become unnecessary;
  - (ii) the postponement of general meeting is in the interests of Members;
  - (iii) it is no longer appropriate, convenient or practice to hold the general meeting at the venue where it was planned that the general meeting be held; or
  - (iv) a change is necessary to conduct the general meeting efficiently;except where the cancellation or postponement would be contrary to the Corporations Act.
- (h) Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed general meeting

## **22 Notice of General Meetings**

- (a) Where a general meeting has been called, notice of the meeting may be given in the form and manner in which the Board determines, subject to this Constitution, the Corporations Act and the ACNC Act.
- (b) Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- (c) Notwithstanding rule 22(a), where a general meeting has been called at which a special resolution is to be proposed, notice of the meeting must set out an intention to propose the special resolution at the meeting and state the resolution.
- (d) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any ordinary resolution passed at the meeting.

### **23 Business of Annual and Other General Meetings**

- (a) The business of an annual general meeting of the company includes:
  - (i) to receive and consider the accounts and reports required by the Corporations Act to be laid before each annual general meeting;
  - (ii) to elect Directors;
  - (iii) when relevant to appoint an auditor and to fix the auditor's remuneration; and
  - (iv) to transact any other business that, under this Constitution or the Corporations Act, is required to be transacted at any annual general meeting.

The business of an annual general meeting may also include any other business that may be transacted at a general meeting.

- (b) No person may move at any general meeting either any resolution (except in the form set out in the notice of meeting) or any amendment of any resolution, except with the approval of the Board, with the permission of the chair of the meeting or under the Corporations Act.

### **24 Right of Others to Attend General Meeting**

- (a) A Secretary, Chief Executive Officer or Director who is not a Member is entitled to be present and, at the request of the chair of the meeting, to speak at any general meeting.
- (b) Any other person (whether a Member or not) requested by the Board to attend any general meeting is entitled to be present and, at the request of the chair of the meeting, to speak at that general meeting.

### **25 Quorum for General Meetings**

- (a) No business may be transacted at any general meeting except, subject to rule 26, the election of a chair of the meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, 6 Members Present constitutes a quorum.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the chair of the meeting or the Board adjourns the meeting to a date, time and place determined by that chair or the Board. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

### **26 Conduct of General Meetings**

- (a) Subject to rule 26(b), the chair of the Board is entitled to preside as chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no chair of the Board; or
  - (ii) the chair of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to act as chair of the meeting,

the deputy chair of the Board is entitled to chair the meeting or, if the circumstances in rule 26(b)(i) or 26(b)(ii) apply to the deputy chair of the Board, the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors

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present wish to act, the Members Present may elect one of their number to be chair of the meeting.

- (c) The general conduct of each general meeting of the company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.
- (d) The chair of a general meeting of the company may make rulings without putting the question (or any question) to a vote if that chair considers action is required to ensure the orderly conduct of the meeting.
- (e) If at any time the chair of a general meeting of the company considers it necessary or desirable for the proper and orderly conduct of the meeting, that chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (f) Any determination by the chair of a general meeting in relation to matters of procedure (including any procedural motions moved at, or put to, the meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, the meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard a vote may only be made at the meeting and may be determined by the chair of the meeting whose decision is final.
- (g) If a person purports to cast a vote at a general meeting in contravention of the Corporations Act, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast.
- (h) Nothing contained in this rule limits the powers conferred on a chair of a general meeting by law.

## 27 Acting Chair

- (a) If during any general meeting the chair of the meeting acting under rule 26 is unwilling to chair any part of the proceedings, that chair may withdraw during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting chair of the meeting during the relevant part of the proceedings. On the conclusion of the relevant part of the proceedings the acting chair of the meeting is to withdraw and the chair of the meeting acting under rule 26 is to resume to chair the meeting.
- (b) Where an instrument of proxy appoints the chair of a general meeting as proxy for the part of the proceedings for which an acting chair of the meeting has been nominated, the instrument of proxy is taken to be in favour of that acting chair for the relevant part of the proceedings.

## 28 Adjournment of General Meetings

- (a) During the course of a general meeting the chair of the meeting may, and if so directed by the meeting must, adjourn the meeting or any business, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by that chair.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (c) 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. Otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **29 Voting at General Meetings**

- (a) Subject to any rights or restrictions attached to any class of Member, and subject to the requirements of the Corporations Act, any question submitted to a general meeting is to be decided by a simple majority of votes validly cast on the question at the meeting.
- (b) Subject to any rights or restrictions attached to any class of Member, and subject to the requirements of the Corporations Act, any question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members Present and entitled to vote, unless a poll is demanded.
- (c) Unless a poll is demanded, a declaration by the chair of a general meeting following a vote on a show of hands at the meeting that a resolution has been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (d) At any general meeting, a poll may be demanded by a Member in accordance with the Corporations Act (and not otherwise) or by the chair of the meeting. No poll may be demanded on the election of a chair of the meeting or, unless that chair otherwise determines, the adjournment of the meeting. A demand for a poll may be withdrawn.

## **30 Special Meetings**

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Members that may be held under the operation of this Constitution or the Corporations Act.

## **31 Chair Does Not Have Casting Vote**

In the case of an equality of votes on a show of hands or on a poll at a general meeting of the company, the chair of the meeting does not have a casting vote in addition to any vote to which that chair may be entitled as a Member or as a proxy, attorney or properly appointed representative of a Member.

## **32 Representation and Voting of Members**

Subject to this Constitution and any rights or restrictions for the time being placed on any Member or class or classes of Members:

- (a) at meetings of Members or a class of Members, each Member entitled to attend and vote may:
  - (i) attend and vote in person; or
  - (ii) be represented and vote by proxy, by attorney or (where the Member is a body corporate) by representative,
- (b) a Member may only vote by one of the permitted methods in rule 32(a) although, without limiting rule 35(b), a Member may attend and participate in a meeting even though the Member has previously appointed a proxy or attorney in respect of that meeting; and
- (c) each Member has one vote both on a show of hands and a poll.

### **33 Restriction on Voting Rights**

A Member is not entitled to attend or vote at a general meeting or to be counted for the purpose of constituting a quorum unless all sums presently payable by the Member in respect of membership of the company have been paid.

### **34 Form of Proxy**

- (a) A Member who is entitled to attend and vote at a meeting of the company may appoint a person as a proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (b) A Member may appoint one proxy. A proxy need not be a Member.
- (c) An appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) that the Board may prescribe or accept.
- (d) If a proxy appointment is not properly executed or validated, incomplete or unclear, the following provisions apply. Nothing obliges the Board or the company to do anything referred to in those provisions.
  - (i) If the name of the proxy is not included, the name of any Director or Secretary may be inserted by the Secretary on the authority of the Board (which may occur later than the time specified in the relevant notice of meeting for the receipt of proxy appointments).
  - (ii) If the appointment has not been duly signed or validated, the company may:
    - (A) return the appointment to the appointing Member;
    - (B) request that the Member sign or validate the appointment and return it to the company within a period decided by the Board (which may be later than the time specified in the relevant notice of meeting for the receipt of proxy appointments).
  - (iii) If the appointment is otherwise incomplete or unclear, the company may, by written or oral communication, clarify with a Member any instruction on the appointment and complete or amend the contents of any appointment to reflect any clarification in instruction received from the Member (which completion or amendment may occur later than the time specified in the relevant notice of meeting for the receipt of proxy appointments). For this purpose, the Member appoints the company as its attorney.
- (e) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment lodged at the electronic address or by the electronic means specified in the notice is taken to have been received at the registered office of the company and validated by the Member if there is compliance with the requirements set out in the notice.

### **35 Validity of Proxies, Attorneys and Representatives**

- (a) A vote exercised in accordance with the terms of a proxy appointment, a power of attorney or other relevant instrument of appointment is valid despite:
  - (i) the previous death or unsoundness of mind of the principal; or
  - (ii) the revocation of the appointment, power or instrument (or of the authority under which it was made or given),

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if no notice in writing of the death, unsoundness of mind or revocation (as the case may be) has been received by the company at its registered office at least 48 hours (or any shorter period as the Board may permit or specified by the Corporations Act) before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy appointment or power of attorney (subject to its terms) is not revoked by the principal attending and taking part in the relevant meeting unless the principal actually votes at the meeting on a resolution for which the proxy appointment or power of attorney is proposed to be used.
- (c) Voting instructions given by a Member to a Director or employee of the company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy. If a Member wishes to give a Company Proxy appointed by the Member new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the registered office of the company at least 48 hours before the meeting or adjourned meeting by a notice in writing signed by the Member or they are otherwise validated by the Member in a manner acceptable to the Board in its discretion prior to the commencement of the meeting.

### 36 Circular Resolution of Members

- (a) Subject to rule 36(a) the Directors may put a resolution to the Members to pass a resolution within holding a general meeting (a **Circular Resolution**).
- (b) The Directors must notify the auditor (if any) as soon as possible that a Circular Resolution has or will be put to the Members and the notice must set out the wording of the resolution.
- (c) Circular Resolutions cannot be used:
  - (i) for a resolution to remove an auditor, appoint a director or remove a director;
  - (ii) for passing a special resolution; or
  - (iii) where the Corporations Act or this Constitution requires that a meeting is to be held.
- (d) A Circular Resolution is passed if all Members entitled to vote on the resolution sign or agree to the Circular Resolution in the manner set out in rule 36(e)
- (e) Members may sign:
  - (i) a single document, setting out the Circular Resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of a document setting out the setting out the Circular Resolution and containing a statement that they agree to the resolution, as long as the wording is the same in each copy of that document.
- (f) The company may send a Circular Resolution by email to Members.
- (g) Members may agree to the Circular Resolution by sending a reply email to that effect, including the text of the Circular Resolution in their reply.

## Appointment, Removal and Remuneration of Directors

### 37 Number of Directors

- (a) All Directors are to be natural persons.

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- (b) The number of Directors (not including alternate Directors) must not be less than three nor more than 9 (or, subject to rule 38(c), such lower number that the Board may determine from time to time in accordance with the Corporations Act, provided that the Board may not reduce the number below the number of Directors in office at the time of the reduction).

### **38 Appointment and Removal of Directors**

- (a) The Members Present at a general meeting may by resolution:
  - (i) appoint any person as a Director either to fill a casual vacancy or as an addition to the Board, provided that the number of Directors (not including alternate Directors) does not exceed the maximum number determined under rule 37(b); and
  - (ii) remove any Director from office.
- (b) No person other than a Director vacating office under rule 38(c) is eligible to be elected a Director at any general meeting unless a notice of the person's candidature (signed by the person) is given to the company at its registered office at least 35 Business Days before the meeting (or, in the case of a meeting that Members have requested the Board to call, 30 Business Days).
- (c) The Board may at any time appoint any person as a Director either to fill a casual vacancy or as an addition to the Board, provided that the number of Directors (not including alternate Directors) does not exceed 9. Any Director appointed under this rule 38(c) other than a Chief Executive Officer appointed under rule 47 may hold office only until the end of the next annual general meeting of the company and is then eligible for election at that meeting without needing to give any prior notice of an intention to submit for election.

### **39 Appointment of Special Persons to the Board**

- (a) The Board may from time to time appoint Special Persons as additional Board members.
- (b) Special Persons may not be appointed to the office of Chair, Deputy Chair or Secretary.
- (c) Special Persons may retire, resign or be removed from the office by a resolution of the Board or an ordinary resolution of the Members Present. Special Persons are not required to retire at each annual general meeting of the company.
- (d) The number of Special Persons appointed to the Board is limited to two. Special Persons are to have the same rights in respect of voting at meetings as Members.

### **40 Qualification for Directors**

Each Director must be a paid up Member.

### **41 Term of Directorship**

- (a) A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution Retirement by Rotation

### **42 Retirement by Rotation**

- (a) Subject to rule 41, at each annual general meeting:
  - (i) any Director appointed by the Directors to fill a casual vacancy or as an additional Director must retire; and



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- (ii) at least one-third of the remaining Directors must retire.
- (b) The Directors who must retire at each general meeting under rule 41(a)(a)(ii) will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.
- (c) A retiring Director will be eligible for re-election without needing to give any prior notice of an intention to submit for re-election and will hold office as a Director (subject to re-election) until the end of the meeting at which the Director retires.

### **43 Remuneration of Directors**

- (a) No Director is entitled to be paid a fee for their service as a Director.
- (b) The Directors are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Board or of a committee of the Board or any general meeting of the company, or otherwise in connection with the business or affairs of the company, where the amount payable has been approved by the Board.
- (c) Subject to the Corporations Act, 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 may be determined by the Board.

### **44 Vacation of Office of Director**

- (a) In addition to the circumstances in which the office of a Director becomes vacant:
  - (i) under the Corporations Act and the ACNC Act; and
  - (ii) under rule 38(a)(ii),the office of a Director becomes vacant if the Director:
  - (iii) 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;
  - (iv) ceases to be a Member;
  - (v) resigns by notice in writing to the company;
  - (vi) is absent without the consent of the Board from three consecutive meetings of the Board; or
  - (vii) dies.
- (b) The office of a Director who is an employee of the company is terminated on the Director ceasing to be employed but the person concerned is eligible for reappointment or re-election as a Director.

#### **45 Alternate Directors**

Subject to this Constitution, each Director may appoint any person 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 of the company or to a meeting of the Board. The appointment takes effect on approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of the alternate Director is terminated or suspended on receipt at the registered office of the company of notice in writing signed by the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) 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;
- (d) the alternate Director is entitled to be reimbursed under rule 43(b) as if the alternate Director were a Director;
- (e) unless previously terminated, 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;
- (f) the alternate Director is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (g) 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.

#### **46 Duties of directors**

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
- (b) to act in good faith in the best interests of the company and to further the charitable objects of the company set out in rule 4;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest;
- (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.

## **CEO and Powers of the Board**

### **47 Appointment of Chief Executive Officer**

- (a) The Board may appoint a person to the office of Chief Executive Officer of the company for the period and on the terms as it determines.
- (b) Subject to the terms of any agreement entered into in a particular case, the Board may at any time revoke any such appointment, with or without cause.

### **48 Powers of the Board and Chief Executive Officer**

- (a) The business of the company is managed by the Board, which may exercise all powers of the company that are not, by the law or this Constitution, required to be exercised by the company in general meeting.
- (b) The Board may, on the terms and conditions and with any restrictions as it determines, delegate to the Chief Executive Officer any of the powers exercisable by it and may at any time withdraw, suspend or vary any of those powers conferred on the Chief Executive Officer. Giving powers to the Chief Executive Officer does not prevent the exercise of those powers by the Board.

## **Proceedings of the Board**

### **49 Proceedings of the Board**

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it determines.
- (b) Until otherwise determined by the Board, the quorum for a Director's meeting is a majority (more than 50%) of Directors.
- (c) A Director may at any time, and a Secretary upon the request of a Director must, convene a meeting of the Board. A meeting of the Board may also be convened in any other manner determined by the Board from time to time.
- (d) Reasonable notice must be given to every Director of the place, date and time of every Board meeting. Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission or other electronic means to the usual place of business or residence of the Director or at any other address given to a Secretary by the Director or by any technology agreed by all the Directors.

### **50 Meetings of the Board by Technology**

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) any other technology that permits each Director to communicate with every other Director; or
  - (iv) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

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- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
  - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of the Board conducted in that manner are as valid and effective as if conducted at a meeting at which all of the participating Directors were physically present in the one location.

### **51 Chair of the Board**

- (a) The Board may elect one of their number as chair of the Board and another as deputy chair of the Board and may decide the period for which that chair and that deputy chair are to hold office as chair and deputy chair, respectively.
- (b) Where a meeting of the Board is held and:
  - (i) a chair of the Board has not been elected as provided by rule 51(a); or
  - (ii) the chair of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to chair the meeting,

the deputy chair of the Board is entitled to chair the meeting or, if the circumstances in rule 51(b)(i) or 51(b)(ii) apply to the deputy chair of the Board, the Directors present may elect one of their number to chair the meeting.

### **52 Directors' Voting Rights and Exercise of Powers**

- (a) Without limiting rule 55, a meeting of the Board of which notice has been given to all Directors and at which a quorum is present, is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board. Nothing in this rule 52(a) limits the exercise of any authority, power or discretion of the Board which has been delegated by the Board in accordance with law or this Constitution.
- (b) Subject to this Constitution, questions arising at a meeting of the Board are decided by a majority of votes of Directors present and voting.
- (c) In the case of an equality of votes at a meeting of the Board, the chair of the meeting does not have a casting vote in addition to that chair's deliberative vote. .

### **53 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 under rule 53(d):

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- (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 in accordance with rule 64(c).
  - (iii) their interest relates to a payment by the company under rule 64(a), or any contract relating to an indemnity that is allowed under the Corporations Act
  - (iv) the Australian Securities and Investments Commission 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:
    - (A) 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
    - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## 54 Committees of the Board

- (a) The Board may delegate any of its powers to committees consisting of any one or more Directors or any other person or persons as the Board thinks fit and may revoke that delegation. In the exercise of delegated powers, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not in conflict with or superseded by any regulations made by the Board under rule 53.
- (c) Nothing in this rule 53 limits the power of the Board to delegate.

## 55 Written Resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if all Directors, or a majority of the Directors (where notice of the resolution has been given to all Directors), who are entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A Director may signify assent to a document under this rule 55 by signing the document or by notifying a Secretary of the assent of the Director by any technology including fax or email. The resolution is passed when the last Director, or the last of the Directors constituting a majority (as applicable), has assented to the document.
- (c) Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.

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- (d) For the purpose of this rule 55, the references to Directors include any alternative Director who has been appointed by a Director because:
  - (i) the Director is not available to assent to the document; or
  - (ii) the Director is otherwise unable to assent to the document within a reasonable time,but do not include any alternate Director who has been appointed by a Director for reasons other than those listed in rule 55(d)(i) or (ii).

## 56 Defects in Appointments of Directors

- (a) All actions at any meeting of the Board or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the company but for no other purpose.

## Secretaries and Other Officers

### 57 Secretaries

- (a) Each Secretary must be a Member.
- (b) A Secretary holds office on the terms and conditions as to remuneration, and otherwise, as the Board decides.
- (c) The Board may at any time terminate the appointment of a Secretary.

### 58 Other Officers

- (a) The Board may from time to time:
  - (i) create any other position or positions in the company with the powers and responsibilities as the Board may from time to time confer; and
  - (ii) appoint any person, whether or not a Director, to any position or positions created under rule 58(a)(i).
- (b) The Board may at any time terminate the appointment of a person holding a position created under rule 58(a)(i) and may abolish the position.

## Records

### 59 Minutes

- (a) The company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of general meetings;
  - (ii) minutes of Circular Resolutions of members;
  - (iii) a copy of a notice of each general meeting; and
  - (iv) a copy of a members' request distributed to members under rule 21(c).

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- (b) The company must, within one month, make and keep the following records:
  - (i) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (ii) minutes of Circular resolutions of directors.
- (c) To allow members to inspect the company's records:
  - (i) the company must give a member access to the records set out in rule 59(a); and
  - (ii) the directors may authorise a member to inspect other records of the company, including the records referred to in rule 59(b).
- (d) The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
  - (i) the chairperson of the meeting; or
  - (ii) the chairperson of the next meeting.
- (e) The directors must ensure that minutes of the passing of a Circular Resolution are signed by a director within a reasonable time after the resolution is passed.

## Seals

### 60 Seals and Their Use

The company may have a common seal and a duplicate common seal. If the company has any such seal:

- (a) it may only be used with the authority of the Board; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

## Service of Documents

### 61 Service of Documents

In this rule 61, a reference to a document includes a notice. Subject to the Corporations Act:

- (a) Any Member who has not left at or sent to the registered office, a place of address or an electronic address (for registration in the register) at or to which all documents of the company may be served or sent is not entitled to receive any document.
- (b) A document may be given by the company to any Member by, in the company's discretion:
  - (i) serving it on the Member personally;
  - (ii) sending it by post to the Member or leaving it at the Member's address as shown in the register of Members or the address nominated by the Member to the company for the giving of documents;
  - (iii) sending it to the fax number nominated by the Member to the company for the giving of documents;
  - (iv) sending it to the electronic address nominated by the Member to the company for the giving of documents or by other electronic means nominated by the Member;

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- (v) if a Member nominates any electronic means by which the Member may be notified that documents are available and may access documents, sending a notification that the document is available for access, in each case by the relevant electronic means; or
  - (vi) serving it in any manner contemplated in this rule 61(b) on a Member's attorney as specified by the Member in a notice given under rule 61(c).
- (c) By written notice to the Secretary left at or sent to the registered office of the company or, a Member may request that all documents to be given by the company or the Board be served on the Member's attorney at an address, or by electronic means, nominated in the notice and the company may do so in its discretion.
- (d) A document may be sent to a Member whose address for documents is outside Australia by airmail, air courier or fax or otherwise be sent or made available electronically (including as contemplated by rule 61(b)(v)).
- (e) Any document sent by post is conclusively considered to have been served at the expiration of 72 hours after the envelope containing the document is posted and, in proving service, it is sufficient to prove that the envelope containing the document was properly addressed and posted. Any document served on a Member personally or left at the Member's address is conclusively considered to have been served when delivered. Any document sent to a Member by fax or other electronic means is conclusively considered to have been served when the fax or other electronic transmission is sent. Any document made available to a Member by electronic means as contemplated by rule 61(b)(v) is conclusively considered to have been served when notification that the document is available for access by that means is sent.
- (f) A document served in accordance with this Constitution is (despite the fact that the Member is then dead and whether or not the company has notice of the Member's death) conclusively considered to have been properly served. The service is sufficient service of the document on the Member's personal representative.

## Winding Up or Revocation of Endorsement of the Company

### 62 Winding Up or Revocation of Endorsement

On the earlier of:

- (a) the winding up or dissolution of the company; and
- (b) if the company is endorsed as a Deductible Gift Recipient, the revocation of that endorsement,

any property whatsoever (including any gifts of money or property for the objects of the company, any Deductible Contributions and any money received by the organisation because of such gifts and contributions), that remains, after satisfaction of all debts and liabilities, must not be paid to or distributed among the Members but must be given or transferred to one or more charitable organisations selected by the Members at or before the time of dissolution or revocation of endorsement having objects similar to the objects of the company set out in rule 4 and that is a Deductible Gift Recipient.

### 63 Amalgamation

Where it furthers the objects of the company to amalgamate with any one or more other charitable organisations having similar objects to the objects of the company, the other



organisation or organisations must have rules prohibiting the distribution of its income and property to Members.

## Indemnity

### 64 Indemnity of Officers, Insurance and Access

- (a) The company indemnifies each officer of the company out of the assets of the company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer.
- (b) Where the Board considers it appropriate, the company may execute a documentary indemnity in any form in favour of any officer of the company, provided that such terms are not inconsistent with this rule 64.
- (c) Where the Board considers it appropriate, the company may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the company against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the company to make the payments.
- (d) A director of the company has the right to access the financial records of the company at all times.
- (e) Where the Board considers it appropriate, the company may:
  - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
  - (ii) bind itself in any contract with a Director or former Director to give the access.
- (f) In this rule 64:
  - (i) **officer** means:
    - (A) a director, or secretary; or
    - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the company,and includes a former officer.
  - (ii) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the company or, where applicable, a subsidiary of the company to any other corporation.
  - (iii) **to the relevant extent** means:
    - (A) to the extent the company is not precluded by law from doing so;
    - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
    - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the

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officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

- (iv) **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 other body

## Schedule

### Consent to Terms of this Constitution

#### Initial Members

Each of the people named below as a Member consented to becoming a Member and agreed to the terms of this Constitution.



Name	Address
Helen Walker	31 Grants Road Somersby NSW 2250
Allison Blinco	4 Carolyn Close Kariong NSW 2250
Christine Garratt	11 Wallace Street MacMasters Beach NSW 2251

#### Updated 28<sup>th</sup> August 2019

Each of the people named below as a Member agrees to the terms of this Constitution as amended 28<sup>th</sup> August 2019 to state:

#### Definitions

**“Children and Young People with a Disability** means persons who are less than 25 years of age who have an existing primary physical disability and/or multiple disabilities”.

Name	Address	Signature
Helen Walker	31 Grants Road Somersby NSW 2250	
Christine Garratt	11 Wallace Street MacMasters Beach NSW 2251	
Gwendalyn Williamson	38 Uratta Street West Gosford NSW 2250	