



**Constitution  
of  
Carers ACT Ltd**

**A company limited by guarantee**

**ACN 600 578 872**

**ABN 99 732 929 957**

## Document Control

This is a **controlled document**. The document is released for advice and guidance to the Carers ACT Board, members and all staff.

The **Document Controller** is the Company Secretary who will maintain the electronic master copy of the document and will implement changes as they are approved.

### References

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Corporations Act 2001 (Cth)

Australia Charities and Not-for-profits Commission Act 2012 (Cth)

### Review cycle

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This document is to be reviewed by the Board as necessary.

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**Constitution**  
**of**  
**Carers ACT Limited**  
**A Company limited by guarantee**

**1 Preliminary**

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**Definitions**

1.1 The following words have these meanings in this Constitution unless the contrary intention appears:

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

**ACNC Act** means the *Australia Charities and Not-for-profits Commission Act 2012 (Cth)*.

**ACNC Transitional Act** means the *Australia Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (Cth)*.

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

**Casual vacancy** means a vacancy caused by a Director who retires, or is removed or disqualified before the expiry of the term for which the Director was appointed.

**Charitable Collections Act** means the *Charitable Collections Act 2003 (ACT)*.

**Company** means Carers ACT Ltd.

**Constitution** means this Constitution.

**Corporation** includes associations or other bodies incorporated in Australia.

**Director** means a Director of the Company appointed under this Constitution.

**Governance standard** has the same meaning as in section 45-10 of the ACNC Act.

**Instantaneous communication device** means telephone, television, computer or any other electronic device that permits or facilitates instantaneous audio or audio visual communication.

**Officer** has the same meaning as in section 9 of the Act.

**Member** means a person or corporation who has been accepted for membership of the Company and whose name is entered in the Register as a member of the Company.

**Member representative** means a person nominated in writing by a corporation to be the representative of the corporation to the Company.

**Registered entity** means a charity registered with the ACNC.

**Responsible entity** means an individual who is responsible for running a charity, who is a member of the governing body (including directors or trustees).

**Secretary** means any person appointed to perform the duties of Secretary of the Company and includes any assistant secretary or any person appointed to act as such temporarily.

**Volunteer** means a person who performs work for the Company on an unpaid basis.

## Interpretation

- 1.2 In this Constitution unless the contrary intention appears:
- a. the singular includes the plural and vice versa;
  - b. where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
  - c. a reference to a law or a provision of a law includes regulations and instruments made under the law, amendments, re-enactments or replacements of that law, regulation or provision.

## Replaceable Rules not to apply

- 1.3 The replaceable rules in the Act do not apply to the Company.

## 2 Objects

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- 2.1 The Principal Objects of the Company are:
- (a) To work to ensure that Carers enjoy improved outcomes – in health, wellbeing, resilience and financial security; and
  - (b) the recognition of caring as a shared responsibility of family, community, business and government is promoted.
- 2.2 To achieve its Principal Objects the Company will be an organisation of and for carers and will:
- (a) provide services and support for Carers and the people they care for;
  - (b) encourage Carers to identify themselves as Carers and to recognise and be aware of their own individual needs;
  - (c) increase public awareness of Carers' needs, caring issues and promote community social responsibility towards caring;

- (d) advocate for and with Carers to provide evidence based advice to government, employers, potential partners and other key stakeholders on caring issues;
  - (e) participate in policy, research, planning, implementation and evaluation of activities relevant to Carers issues;
  - (f) maintain and account for a funding base sufficient to further these objects.
- 2.3 The Company may provide other services as the Board may determine from time to time provided that those services are ancillary to the Company's Principal Objects.

### **3 Income**

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- 3.1 The income and the property of the Company, however derived, must be applied solely towards the Principal Objects of the Company.
- 3.2 No part of the income or property of the Company may be paid or transferred, directly or indirectly to Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.
- 3.3 Any funds raised by means of a fundraising appeal within the Australian Capital Territory must be maintained in accordance with the *Charitable Collections Act 2003 (ACT)*. Any funds raised outside the ACT must be maintained in accordance with equivalent legislation in the jurisdiction in which the funds were raised.

### **4 Membership**

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#### **Eligibility and admission**

- 4.1 The Board may at its discretion create classes of membership using any criteria the Board alone may determine.
- 4.2 The Board may accept or decline an application for membership and is not bound to give reasons why an application is not accepted.
- 4.3 The minimum number of Members of the Company is 5.
- 4.4 The Board may at its discretion confer Honorary Life Membership on any person or corporation in recognition of outstanding and meritorious service to the Company. Such Honorary Life membership will be held at the discretion of the Board and will carry no rights other than the right to use the title "Honorary Life Member of Carers ACT" and be subject to no liabilities.

## **Register of Members**

- 4.5 The Secretary will maintain a Register of Members at the Company's address and:
- (a) when an application has been accepted for membership the Secretary will enter the Member's name in the Register of Members and notify the Member of acceptance; and
  - (b) the address of the Member in the Register will be the address of the Member for the purpose of service of any notices to Members.

## **Annual membership fee**

- 4.6 The annual membership fee payable by each Member or class of Member will be determined by the Board from time to time. The annual membership fee becomes due on 1 July in each year and is payable within one month of becoming due.

## **Rights of Members**

- 4.7 Members will be granted rights and benefits as determined by the Board from time to time. The Board may, in its absolute discretion, determine different rights and benefits for different classes of membership.
- 4.8 A Member who is a corporation must appoint a Member representative to the Company, by written notification to the Secretary. The Member may at any time terminate the appointment of its representative and appoint another person with such change to be advised in writing to the Secretary within one month of the change being made.
- 4.9 The rights, privileges and obligations that a Member has are not transferable and will terminate upon cessation of membership.
- 4.10 If a Member's annual subscription remains unpaid after it becomes due an overdue payment notice will be sent to the Member. If the payment has not been received by the date specified in the overdue payment notice, the Member will be excluded from membership. The Board may, at its absolute discretion, reinstate the Member on payment of all arrears.

## **Disciplining Members**

- 4.11 The Board may by resolution expel a Member from the Company if, in its absolute discretion, the Board determines that the Member's actions or conduct are detrimental to the interests of the Company. Alternatively, where the Member is a corporation the Board may, by resolution, determine that the Member is required to terminate the appointment of its representative and appoint a new representative to the Company.

- 4.12 Where the Board intends to consider a resolution under clause 4.11, the Board must give the Member at least 14 days written notice of the meeting of the Board at which a resolution is to be considered, with such notice:
- (a) stating the date, place and time of the meeting;
  - (b) setting out the intended resolution and the grounds on which it is based; and
  - (c) informing the Member that the Member or the Member's representative may attend the meeting and give an oral or written explanation or submission before the resolution is put to the vote.
- 4.13 If the Board expels a Member the Secretary must, within seven days after the action is taken, give the Member written notice of the action taken and of the Member's right of appeal under clause 4.14. An expulsion does not take effect until:
- (a) the expiry of the period within which the Member is entitled to appeal against the resolution concerned, or
  - (b) the Board confirms the resolution.
- 4.14 A Member may appeal against a decision of the Board to expel the Member within seven days after notice of the decision is served on the Member, by lodging with the Secretary a notice to that effect. The notice may, but need not, be accompanied by a statement of the grounds on which the Member intends to appeal.
- 4.15 On receipt of a notice from a Member under clause 4.14 the Secretary is to convene a meeting of the Board to be held within 28 days after the date on which the Secretary received the notice. At the meeting of the Board:
- (a) both the Board and the Member must have the opportunity to state their respective cases orally or in writing, or both;
  - (b) the Directors present are to vote by secret ballot on the question of whether the resolution to expel the Member should be confirmed or revoked; and
  - (c) if the Board passes a resolution in favour of expulsion, the decision is confirmed.
- 4.16 Clauses 4.13 to 4.16 inclusive do not apply to a resolution of the Board to terminate the appointment of a Member representative.

### **Resignation and cessation of membership**

- 4.17 A Member may at any time resign membership of the Company by giving notice in writing to the Secretary, but will continue to be liable for any annual subscription due and unpaid at the date of



resignation and for any other moneys due to the Company together with any sum for which the Member is liable under clause 4.20.

- 4.18 A Member ceases to be a Member on:
- (a) resignation; or
  - (b) in the case of a natural person:
    - (i) death;
    - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
    - (iii) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
    - (iv) the person's membership being terminated in accordance with this Constitution;
  - (c) in the case of a corporation being dissolved or otherwise ceasing to exist, or having a liquidator or provisional liquidator appointed, or being insolvent.
- 4.19 A Member who for any reason ceases to be a Member:
- (a) will be liable for all moneys due by the Member to the Company in addition to the liability under clause 4.20, and
  - (b) will no longer represent themselves in any manner as being a Member, and
  - (c) will not have any claim against the Company for damages or otherwise.

### **Liability of Members**

- 4.20 The liability of Members is limited to \$1. Each Member undertakes and will be liable to contribute an amount not exceeding \$1 to the Company's property if the Company is wound up while the Member is a Member, for payment of the Company's debts and liabilities and of the costs, charges and expenses of winding up.

### **Register of Members**

- 4.21 The secretary shall keep a register which contains the name, address, and telephone number of each Member with the date on which the person became a Member. Member details may only be released to another person with the written consent of the relevant Member.

## **5 Meetings of Members**

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### **Annual general meeting**

- 5.1 A general meeting of the Company to be called the Annual General Meeting is to be held at least once in every calendar year within five months after the end of the financial year, at such time and place as determined by the Board.
- 5.2 All meetings of the Company, other than Annual General Meetings, will be called general meetings.
- 5.3 The business of the Annual General Meeting may include any of the following even if not included in the notice of meeting:
  - (a) consideration of the Annual Financial Statements, Directors' Declaration and Director's Report, and the Auditor's Report;
  - (b) election of directors or declaration of the result of the election of Directors; and
  - (c) appointment of the auditor if necessary.
- 5.4 No business is to be transacted at an Annual General Meeting or a general meeting other than that specified in the notice convening it.

### **Convening of general meetings**

- 5.5 A meeting of the Company's Members must be held for a proper purpose.
- 5.6 The Board may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Act or the ACNC Act.
- 5.7 The Board will, on requisition in writing of not less than half of the Members, convene a general meeting of the Company. The request must:
  - (a) be in writing, and
  - (b) state any resolution to be proposed at the meeting, and
  - (c) be signed by the Members making the request, and
  - (d) be given to the Company at the registered office of the Company.
- 5.8 The Directors must call the meeting within 21 days after the request under clause 5.7 is given to the Company, and the meeting is to be held not later than two months after the request is given to the Company.

- 5.9 The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **Notice of general meetings**

- 5.10 A notice of a general meeting:
- (a) must set out the place, date and time of meeting; and
  - (b) must state the general nature of the business to be dealt with at the meeting; and
  - (c) must state that a Member who is entitled to attend and cast a vote at the meeting has a right to appoint a proxy; and
  - (d) must be sent to the Member at the postal address, fax number or electronic address nominated by the Member and recorded in the Register of Members; and
  - (e) if a special resolution or a resolution under clause 5.7 is to be proposed, the notice must set out an intention to propose the special resolution and state the resolution.
- 5.11 Subject to the provisions of the Act as to short notice, not less than 21 days notice of a general meeting must be given to each Member and Director. In computing the period of notice, both the day on which the notice is given and the day of the meeting convened by it are to be excluded.
- 5.12 The Company must give its auditor notice of a general meeting and any other communications relating to the general meeting that a Member is entitled to receive.
- 5.13 Notice of cancellation or postponement of a general meeting must:
- (a) be sent to each Member at the postal address, fax number or electronic address nominated by the Member and recorded in the Register of Members; and
  - (b) be sent to each other person entitled to be given notice of a general meeting under the Act or this Constitution; and
  - (c) specify the postponed date and time for the holding of the meeting, and a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting.
- 5.14 The accidental omission to give notice to, or the non-receipt of notice by, any Member or any other entitled person, will not invalidate the proceedings or any resolution at any Company meeting.

## **Quorum**

- 5.15 Five Members present in person (including by instantaneous communication device as per clause 6.3) or by proxy is a quorum at a general meeting provided there are not less than three members present in person.
- 5.16 No business may be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business. If a quorum is present at the beginning of a meeting it is to be deemed present throughout the meeting unless the chair of the meeting (on the chair's own motion or at the instance of a Member or proxy who is present) declares otherwise.

## **Adjournment of general meetings**

- 5.17 If within 30 minutes after the time appointed for a meeting a quorum is not present:
- (a) the meeting if convened by or at the request of Members, is dissolved; and
  - (b) in any other case:
    - (i) stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Board appoints by notice to the Members and others entitled to notice of the meeting; and
    - (ii) at the adjourned meeting not less than three Members present will constitute a quorum and if such quorum is not present within 15 minutes from the appointed time for the meeting, the meeting is dissolved.
- 5.18 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting will be given as in the case of the original meeting.
- 5.19 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **Conduct of general meetings**

- 5.20 The Board Chair is entitled to preside at general meetings, but if the Board Chair is not present within 15 minutes after the time appointed for the holding of a meeting or is unable or unwilling to act, in order of priority the Deputy Chair, the Chair of the Finance and Risk Committee, or a Member chosen by a majority of the Members present in person or by proxy, may preside.
- 5.21 The chair of a general meeting has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting, and may require the adoption of any procedure which is

in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting. A decision by the chair under this clause is final.

### **Voting at general meetings**

- 5.22 Every resolution submitted to a general meeting is to be decided on a show of hands and:
- (a) in the case of an ordinary resolution, by a simple majority of the votes cast by Members entitled to vote and attending in person or by proxy are in favour of it; or
  - (b) in the case of a special resolution, by 75% of votes cast by Members entitled to vote and attending in person or by proxy are in favour of the resolution;

unless a poll is demanded before the vote is taken or immediately after the voting results on the show of hands are declared by the chair of the meeting by at least two thirds of the Members present in person or by proxy.

- 5.23 The chair of the meeting has a deliberative vote but does not have a casting vote.
- 5.24 Unless a poll is demanded, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, 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. Neither the chair nor the minutes need state the number or proportion of the votes recorded in favour of or against the resolution.

### **Poll**

- 5.25 If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chair of the meeting and the result of the poll is the resolution of the meeting at which the poll was demanded.
- 5.26 A poll demanded on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- 5.27 A demand for a poll, which may be withdrawn, does not prevent the continuance of the meeting for the transaction of any business other than the question of which the poll has been demanded.
- 5.28 Subject to any other rights or restrictions under this Constitution, on a show of hands and on a poll each Member present in person or by proxy has one vote.

### **Objection to vote**

- 5.29 An objection to the right of a person to attend or vote at the meeting may not be raised except at that meeting and must be referred to the chair of the meeting, whose decision is final. A vote not disallowed under the objection is valid for all purposes. If there is a dispute as to the admission or rejection of a vote, the chair of the meeting must decide it and the chair's decision made in good faith is final and conclusive.

## **Proxies**

- 5.30 A Member may appoint the "meeting chair" or any other person to attend and vote as their proxy at the meeting. If the proxy is the "meeting chair" then the appointment may direct how the proxy is to vote on particular resolutions, and if it does, the proxy:
- (a) need not vote on a show of hands but if the proxy does vote the proxy must vote as directed, and
  - (b) must vote on a poll and must vote as directed.
- 5.31 Other than the "meeting chair", no person may hold more than two proxies.
- 5.32 An appointment of a proxy is valid if:
- (a) it is signed by the Member making the appointment, or in the case of a corporation the form is signed under seal or executed in accordance with the Act or under the hand of an officer, and
  - (b) the instrument is received by the Company at the registered office or at any other place specified for that purpose in the notice convening the meeting, not less than two hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or in the case of a poll, not less than two hours before the time appointed for the taking of the poll.
- 5.33 An undated appointment is to be taken to have been dated on the day it is given to the Company. A later appointment revokes an earlier one. A proxy will, unless stated to the contrary, be valid for any adjournment of the meeting as for the meeting to which it relates, and need not be witnessed.
- 5.34 A vote given in accordance with the terms of a proxy will be valid despite the legal incapacity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of the legal incapacity, or revocation has been received by the Company at the registered office of the Company before the commencement of the meeting or adjourned meeting at which the proxy is to be used.
- 5.35 A proxy will not be revoked by the principal attending and taking part in the meeting unless the principal actually votes on the poll

at the meeting on the resolution for which the proxy is proposed to be used.

## **6 The Board**

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### **Composition of the Board**

- 6.1 The Board will consist of Directors who have the knowledge, skills and experience the Board determines from time to time are necessary for the effective governance of the Company.
- 6.2 The number of Directors is to be not less than 5 and not more than 9. The Company may, by special resolution in general meeting, reduce or increase the number of Directors.
- 6.3 An employee of the Company is not eligible to be a Director of the Company.
- 6.4 Each Director will hold office for a two-year rotating term expiring at the conclusion of the Annual General Meeting.

### **Director obligations**

- 6.5 A Director must, in addition to their obligations and responsibilities under this Constitution, the Act, and the ACNC Act:
  - (a) prior to appointment complete and submit to the Secretary a Consent to Act and Declaration of Interests in the form approved by the Board;
  - (b) become and remain a Member of the Company during his / her term as a Director; and
  - (c) adhere to relevant Company and governance policies as approved by the Board from time to time.

### **Vacancy**

- 6.6 In the event of a vacancy in the office of Director:
  - (a) the remaining Directors may act but if their number is reduced below the minimum fixed by clause 6.2 the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies sufficient to constitute a quorum or to convene a general meeting of Members for that purpose;
  - (b) the Board may at any time appoint a new Director or fill any casual vacancy provided the total number of Directors does not exceed the number specified in clause 6.2; and
  - (c) any Director appointed by the Board to a vacancy or casual vacancy will be eligible for election at the next Annual General Meeting.
- 6.7 The office of a Director is automatically vacated if the Director:

- (a) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of an order made under the Act or the ACNC Act;
- (b) becomes bankrupt or insolvent under administration;
- (c) 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;
- (d) resigns office by notice in writing to the Company;
- (e) refuses to act as a Director;
- (f) is absent without the consent of the Board from three consecutive meetings of the Board or four meetings over 12 months;
- (g) is removed from office by the Company in general meeting;
- (h) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of such interest;
- (i) ceases to be a Member; or
- (j) dies.

## **Election and removal of Directors**

6.8 Directors will be elected as follows:

- (a) at least 60 days before the date of the Annual General Meeting the Board will:
  - (i) determine the Directors both by name and number that are due to retire on rotation and are eligible for re-appointment, and those Directors retiring and not seeking re-appointment;
  - (ii) review the skills of the remaining Directors and determine the skills required of new Directors;
- (b) the Secretary will call for nominations for new Directors addressing the Board approved criteria;
- (c) the Board will consider applications from candidates and determine which, if any, candidates to recommend to Members for appointment; and
- (d) the term of elected Directors will commence from the close of the Annual General Meeting.

6.9 Subject to the Act, the Members may by ordinary resolution in general meeting remove any Director before the expiration of his or her term of office.



### **Defects in appointment of Directors**

- 6.10 All acts done by any meeting of the Directors or a committee of Directors are, notwithstanding that it is afterwards discovered that there was a defect in the appointment of a person to be a Director or a Member of the committee, as valid as if the person had been duly appointed and was qualified to be a Director or to be a Member of the committee.

### **Term of Office of Directors**

- 6.11 The term of office of each of the Board members is two (2) years.
- 6.12 One half of the Board must retire at each Annual General Meeting with the half to be selected based on their date of appointment (earliest first), by consensus or failing that by lot.

### **Powers of the Board**

- 6.13 The business of the Company is to be governed by the Board, which may exercise all such powers of the Company as are not, by the Act, ACNC Act or by this Constitution, required to be exercised by the Company in general meeting.

### **Board delegations**

- 6.14 The Board may, by instrument in writing, delegate any of its powers, other than powers required by law to be dealt with by the Board, to a committee or committees of Directors consisting of at least one Director and any other persons as it thinks fit, or to the Chief Executive Officer or Secretary of the Company. A committee or delegate exercising delegated powers must exercise the powers in accordance with the written directions of the Board. A power so exercised is deemed to have been exercised by the Board. The Board may revoke wholly or in part any delegation under this clause.

### **Election of Chair, Deputy Chair and Chairs of Committees**

- 6.15 At the first meeting of the Board after the adoption of this Constitution, and each Annual General Meeting or whenever a vacancy occurs, the Directors must elect from among their number a Chair, a Deputy Chair, and Chairs of Board committees, to hold office until the close of the next Annual General Meeting.
- 6.16 The Board may by resolution passed by not less than two-thirds of the Directors present, remove or suspend any Director holding a position under clause 6.15 provided that not less than 21 days notice in writing of an intention to move for such removal or suspension is given to the Secretary by those persons intending to move and second the motion.

### **Remuneration of Directors**

- 6.17 Directors may not be paid Directors fees for serving as a Director but may receive:

- (a) reimbursement of out-of-pocket expenses incurred in carrying out the duties of a Director where the payments do not exceed an amount previously approved by the Board; or
- (b) payment for any services rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

### **Directors' conflicts of interests**

- 6.18 A Director may not hold an office of profit under the Company but may be appointed to or contract to act in a professional capacity for the Company on such terms as the Board may determine.
- 6.19 Directors must disclose the nature of any interest of the Director in a contract or proposed contract or arrangement, in accordance with the Act and ACNC Act, at the meeting of the Directors at which the matter is first taken into consideration if his or her interest then exists or in any other case at the next meeting of the Directors held after he or she became interested.
- 6.20 Subject to the Act and ACNC Act, a Director may not as a Director be present at a meeting of Directors or vote on a contract or arrangement in which he or she is interested, or be counted in a quorum for that purpose. However, a Director may be present and vote if Directors who do not have a material personal interest in the matter have passed a resolution that:
  - (a) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - (b) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- 6.21 If there are not enough Directors to form a quorum for a Directors' meeting under clause 6.19 one or more of the Directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.
- 6.22 A general notice given to the Board by a Director to the effect that he or she is a member of a specified firm or company and is to be regarded as interested in any contract or arrangement which may after the date of that notice be made with that firm or company will be a sufficient declaration of interest in any contract so made, under this clause.

## **Meetings of Directors**

- 6.23 The Board may meet for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit.
- 6.24 A Director may, and the Secretary must on the request of a Director convene a meeting of the Board.
- 6.25 The quorum necessary for the transaction of the business of the Board is a majority of the Directors.
- 6.26 The Chair is entitled to preside at meetings of the Board. If the Chair is not present within 15 minutes after the time appointed for the holding of a meeting or is unable or unwilling to act, the Deputy Chair, the Chair of the Finance and Risk Committee or a Director chosen by a majority of the Directors present may preside at a meeting.
- 6.27 A Director may attend and vote by proxy at a meeting of the Board if the proxy is another Director, and has been appointed in writing signed by the appointer. The appointment may be for one or more particular meetings.

## **Voting at Directors meetings**

- 6.28 A question arising at a meeting of the Board is to be decided by a majority of votes of Directors present and entitled to vote.
- 6.29 The Chair of the meeting has a deliberative vote but does not have a casting vote.

## **Use of technology**

- 6.30 A Board meeting may be called or held using any technology consented to by each Director. A Director may only withdraw consent within a reasonable period before the meeting.
- 6.31 The contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum, without regard to the physical location of one or more of the Directors, will be deemed to constitute a meeting of Directors in accordance with this Constitution provided that:
- (a) all Directors as may be entitled to, receive notice of such meeting; and
  - (b) each of the Directors taking part in the meeting are able to hear each of the other Directors taking part at the commencement of the meeting.
- 6.32 A Director may not leave a meeting held by an instantaneous communication device by disconnecting his or her device unless he or she has previously expressly notified the chair of the meeting of his or her intention to leave the meeting. A Director will be conclusively presumed to have been present and to have formed

part of the quorum at all times during such meeting until such notified time of his or her leaving the meeting.

- 6.33 A minute of the proceedings at meetings held by an instantaneous communication device will be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chair of the meeting.

### **Circulating resolutions**

- 6.34 A resolution in writing signed by all Directors or a resolution in writing of which notice has been given to all Directors and which is signed by a majority of Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) is a valid resolution of the Board and is effective when signed by the last of all the Directors to sign the resolution or the last of the Directors constituting the majority, as required.
- 6.35 For the purpose of clause 6.34, a facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director and is deemed to be signed when received in legible form by the Secretary.

## **7 Chief Executive Officer**

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- 7.1 The Board may appoint and employ a Chief Executive Officer on such terms and conditions as it determines, and to delegate such powers to the Chief Executive Officer as the Board determines provided such delegated powers exclude the powers of the Directors.
- 7.2 The Chief Executive Officer must keep such books, accounts and records as are required by the Act, the ACNC Act, and the Charitable Collections Act, or as the Board may require from time to time, and at least once in every calendar year must present such reports and accounts as are required by the Act to be presented at the Annual General Meeting or at other times as the Board may require.

## **8 Secretary**

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- 8.1 The Board must appoint a Secretary and may suspend or remove a Secretary from that office
- 8.2 A Secretary holds office on the terms and conditions including as to remuneration, and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

**Minutes**

- 9.1 The Directors will cause minutes to be kept of:
- (a) all proceedings and resolutions of meetings of Members;
  - (b) all proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors;
  - (c) resolutions passed by Directors without a meeting; and
- be duly entered into the books kept for that purpose in accordance with the Act.
- 9.2 A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.
- 9.3 Books containing the minutes of general meetings of Members will, subject to reasonable notice in writing, be open for inspection by any Member free of charge.

**Accounts**

- 9.4 The Directors will cause to be kept proper books of accounts in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.
- 9.5 The financial year will begin on the first day of July and end on the 30<sup>th</sup> day of June of each year.
- 9.6 The accounts will be kept at the registered office of the Company or at any other place as the Directors think fit.
- 9.7 The accounts will always be open to inspection by the Directors.
- 9.8 The Directors will arrange for the financial report, the Directors' report and the Auditor's report as required by the Act to be made and laid before the Annual General Meeting.

**Audit**

- 9.9 The Company must appoint a registered company auditor under such terms and conditions as it may determine.
- 9.10 The Board will ensure that an external audit of the Company's financial accounts is conducted annually in accordance with the Act.

**Execution of documents**

- 9.11 Any two directors of the Company may sign, draw, accept, endorse or otherwise execute a negotiable instrument. Notwithstanding, the Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **Inspection of books and records by Members**

- 9.12 A Member other than a Director shall 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. The Board will determine whether and to what extent, and at what time and place and under what conditions, the books or other records of the Company, or any of them but excluding client and employee records, will be open to the inspection of Members other than Directors.

## **By-laws**

- 9.13 The Board may from time to time make, amend and repeal By-Laws concerning membership classes, eligibility for membership, application for membership, and rights and privileges of membership of the Company, and any other matter as in its opinion is necessary for the proper control, administration and management of the Company's affairs. A By-Law must be subject to and not inconsistent with this Constitution and when in force is binding on all Members.

## **Common seal**

- 9.14 The Company may have a Seal on which its name, its Australian Company Number and the words "Common Seal" are engraved and the Board must provide for its safe custody and use.

## **Service of documents**

- 9.15 The Company may give a document to a Member personally, by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member, or by sending it to a facsimile number or email address nominated by the Member and recorded in the Register of Members. A document:
- (a) sent by post if sent to an address in Australia, may be sent by ordinary post, and is taken to be effective by properly addressing, prepaying and posting a letter containing the document, and to have been served on the day after the date of its posting; or
  - (b) sent by facsimile, service of the document is to be taken to be effected on receipt by the Company of a transmission report confirming successful transmission.
- 9.16 Where a notice is sent by email, service of the notice will be deemed to be effected 24 hours after transmission of the email unless the person transmitting the email is notified at any time that the email was undelivered or undeliverable.

## **Indemnity and insurance of Officers**

- 9.17 To the extent permitted by the Act, the Company indemnifies every person who is or has been an Officer of the Company or a related body corporate against any liability incurred by the person:
- (a) in defending any proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with the application in relation to any proceedings in which the Court grants relief to the person under the Law; and
  - (b) as an Officer of the Company or a related body corporate, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a wilful breach of duty in relation to the Company or related body corporate.
- 9.18 The Company may pay a premium for a contract insuring a person who is or has been an Officer of the Company or a related body corporate, against a liability:
- (a) incurred by the person in his or her capacity as an Officer of the Company or related body corporate, or in the course of acting in connection with the affairs of the Company or related body corporate, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or related body corporate; or
  - (b) for the costs and expenses incurred by that person in defending proceedings, whatever their outcome.

## **Amendment of Constitution**

- 9.19 This Constitution may be amended, or revoked and a new Constitution adopted by special resolution at a general meeting of Members.

## **Winding up**

- 9.20 The Company may be dissolved by a special resolution of Members in general meeting.
- 9.21 In the event of the Company being wound up or having its endorsement as a deductible gift recipient revoked (whichever occurs first):
- (a) any surplus assets remaining after the payment of the Company's liabilities shall not be paid or distributed among the members of the Company but shall be transferred to an organisation or organisations having similar objects of the Company and whose constitution prohibits the distribution of its income and property

among its Members, and which is a public benevolent institution for the purpose of any Commonwealth Taxation Act; and

- (b) if any Gift Fund established by the Company is wound up or if the endorsement of the Company as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

## **10 Transitional provisions**

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- 10.1 For the purpose of clause 6.1, 6.2 and 6.8, a person holding office as a Director of Carers ACT Incorporated immediately before the date of adoption of this Constitution continues to hold office as a Director of the Company as if elected or appointed under this Constitution until the Annual General Meeting following the first 12 or 24 months of operations of the Company, depending on that Director's grouping pursuant to clause 6.12.
- 10.2 For the purpose of clause 6.4 the term of office of directors does not include any term served as a director of Carers ACT Incorporated before the adoption of this Constitution.
- 10.3 A person or corporation who was a voting Member of Carers ACT Incorporated at the date of adoption of this Constitution continues to be a Member of the Company in accordance with this Constitution.
- 10.4 Where, at the date of adoption of this Constitution, the minutes of a meeting of Directors of Carers ACT Incorporated had not been confirmed, the minutes may be confirmed at the next appropriate meeting of the Company held in accordance with this Constitution as if the meeting to which the minutes relate had been held in accordance with this Constitution.