

CONSTITUTION OF CARERS VICTORIA

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A company limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is Carers Victoria Limited (**company**).

2. Definitions

In this constitution, words and phrases have the meaning set out in Clause 69.

3. Type of company

The **company** is a not-for-profit public **company** limited by guarantee which is established to be, and to continue as, a charity.

4. Limited liability of Members

The liability of Members is limited to the amount of the guarantee in Clause 5.

5. The guarantee

If the **company** is wound up while the Member is a Member, or within 12 months after they stop being a Member, each Member must contribute an amount not more than \$1.00 (the guarantee) to the property of the **company**. This contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the Member stopped being a Member, or
- (b) costs of winding up.

Objects and Purposes

6. Objects and Purposes

6.1 The **company's** objects and purposes are:

- (a) To enhance the health and wellbeing of carers, and those they care for predominantly in Victoria; and
- (b) To design and deliver individualised or customised supports or services for carers and those they care for across Australia,

6.2 The company will achieve these objects through:

- (a) consulting with, and acting as a voice for **carers**;
- (b) supporting **carers**, in the context of the family/caring relationship, to assist them in optimising their health, well-being, capacity and resilience;
- (c) providing services to **carers** and those they care for in the context of the family/caring relationship;
- (d) encouraging **carers** to identify themselves as carers and to recognise and be aware of their own needs;
- (e) promoting the recognition of **carers** in the community and that care is a social responsibility for all;

- (f) facilitating improvement in the response from the community to the needs of **carers** for:
 - (i) the maintenance of dignity, health and well-being;
 - (ii) the exercise of rights;
 - (iii) access to services and support; and
 - (iv) the provision of adequate financial support.
- (g) identifying gaps in service provision and highlight unmet needs of **carers**;
- (h) acting in an advisory capacity to service providers and government on issues and needs as expressed by **carers**, and influence policy makers to achieve change for the benefit of **carers**;
- (i) participating in policy, research, planning, implementation and evaluation of activities relevant to **carers**;
- (j) promoting and providing education, training, coaching, counselling, information, support and referral services; and
- (k) facilitating and promoting research on **carer** issues and, where appropriate, to promote the need for research generally.

7. Powers

7.1 General Powers

Subject to Clause 8, the **company** has the following powers, which may only be used to carry out its objects and purposes set out in Clause 6:

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

7.2 Specific Powers

To achieve its charitable purposes, the **company** may:

- (a) Receive gifts, donations and bequests;
- (b) Enter into agreements with other organisations;
- (c) Apply for and accept funding and resources and other services from government agencies, organisations, businesses and individuals; and
- (d) Sell services and operate commercial activities.

8. Not-for-profit

- 8.1 The income and property of the **company** will be applied solely in meeting the objects and purposes of the **company**.
- 8.2 The **company** must not distribute any income or assets directly or indirectly to its Members, except as provided in Clauses 8.3 and 68.
- 8.3 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
 - (a) providing information, services and support to a Member in their capacity as a **carer** or as a person receiving care and support;

- (b) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
- (c) making a payment to a Member in carrying out the **company's** charitable purpose(s); or
- (d) reimbursement of reasonable expenses properly incurred by a Director in carrying out their duties as a Director.

9. Amending the constitution

The **Members** who may cast a vote at a general meeting may amend this constitution by passing a **special resolution**.

Membership

10. Membership and register of Members

10.1 The Members of the **company** are:

- (a) The initial Members of the company who agreed to be named as the proposed Members and are named in the application to register the **company**;
- (b) the Directors of the company from time to time; and
- (c) any other person that the Directors allow to be a Member, in accordance with this constitution.

10.2 The company has the following Categories of Membership

(a) Category 1 Membership

Any person or organisation that is interested in the objects and purposes of the company and who the Directors resolve to admit as a Category 1 Member will be a Category 1 Member of the company.

(b) Category 2 Membership

The Directors of the company are eligible to be Category 2 Members.

(c) Other

The Directors may establish other Categories of Membership by resolution.

10.3 The **company** must establish and maintain a register of Members. The register of Members must be kept by the Secretary and must contain:

(a) for each current Member:

- i. name
- ii. the Member's electronic address contact details, and if the Member is a Category 2 Member, the Member's postal address; and
- iii. dates the Member's Membership started and ended.

(b) for each person who stopped being a Member in the last 7 years:

- i. name
- ii. electronic address contact details nominated by the Member for the service of notices, and
- iii. dates the Membership started and ended.

- 10.4 The **company** must give current Category 2 Members access to the register of Members.
- 10.5 Information that is accessed from the register of Members must only be used in a manner relevant to the interests or rights of Members and in accordance with applicable privacy law.
- 10.6 Category 2 Members must promptly advise the Secretary of any change in their address or electronic address contact details.

11. Who can be a Member?

- (a) Any individual or organisation approved by the Board as a Category 1 Member in accordance with rules the Directors determine from time to time; and
- (b) An individual who is a current Director of the **company** is a Category 2 Member.
- (c) An individual who wishes to become a Category 2 Member must consent to becoming a Category 2 Member in accordance with Clause 34.2(a).

12. Category 2 Member rights

- 12.1 Each Category 2 Member of the **company** has the following rights:
 - (a) To receive notice of, attend and vote at general meetings of the **company**; and
 - (b) To receive information about and the opportunity to participate in the **company's** activities.
- 12.2 No category of Members other than Category 2 Members have a right to attend and vote at general meetings of the **company**.

13. How to apply to become a Category 1 Member

- 13.1 A person (including an **organisation**) who wishes to become a Category 1 Member of the **company**, must apply in a manner approved by the Directors.
- 13.2 If the applicant is an organisation, the application must specify the applicant's objects and activities and whether it is a:
 - (a) For profit or not for profit organisation; or
 - (b) Government organisation.

14. When a person becomes a Member

Other than **initial Members**, an applicant will become a Member when they are entered on the register of Members.

15. When a person stops being a Member

- 15.1 A person immediately stops being a Category 2 Member if they cease to be a Director of the **company** for any reason.
- 15.2 All other Members immediately stop being a Member if:
 - (a) the Member is a body corporate – the Member is wound up or otherwise dissolved or deregistered;
 - (b) the Member, being an individual, dies;
 - (c) the Board determines on reasonable grounds that their Membership should be terminated;

- (d) the Member fails to pay (where required to do so) a Membership fee within three months of the due date; or
- (e) the Member resigns.

16. Membership fees

- 16.1 There will be no Membership fees for Category 2 Members.
- 16.2 The **Board** may set fees for other Categories of Members.

General meetings of Members

17. General meetings called by Directors

The Directors may call a **general meeting**.

18. Annual general meeting

- 18.1 A **general meeting**, called the annual **general meeting**, must be held:
 - (a) within 18 months after registration of the **company**, and
 - (b) after the first annual **general meeting**, at least once in every calendar year.
- 18.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
 - (a) a review of the **company's** activities
 - (b) a review of the **company's** finances
 - (c) any auditor's report
 - (d) the appointment of Directors, and
 - (e) the appointment and payment of auditors, if any.
- 18.3 Before or at the annual **general meeting**, the Directors must give information to the Category 2 Members on the **company's** activities and finances during the period since the last annual **general meeting**.
- 18.4 The chairperson of the annual **general meeting** must give Category 2 Members a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

19. Notice of general meetings

- 19.1 Notice of a **general meeting** must be given to:
 - (a) each Category 2 Member, and
 - (b) the auditor (if any).
- 19.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 19.3 Notice of a **general meeting** must include:
 - (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business

- (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - (d) a statement that a Category 2 Member has the right to appoint a proxy and that, if a Category 2 Member appoints a proxy:
 - i. the proxy must be a Category 2 Member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 19.4 If a **general meeting** is adjourned (put off) for one month or more, the Category 2 Members must be given new notice of the resumed meeting.

20. Quorum at general meetings

- 20.1 For a **general meeting** to be held, at least 50% of the Category 2 Members entitled to vote at the general meeting (a quorum) must be present (in person or by proxy) for the whole meeting.
- 20.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 20.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
 - (b) if the time is not specified – the same time, and
 - (c) if the place is not specified – the same place.
- 20.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

21. Auditor's right to attend meetings

- 21.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the Category 2 Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 21.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a Member of the **company** is entitled to receive.

22. Using technology to hold meetings

- 22.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 22.2 Anyone using this technology is taken to be present in person at the meeting.

23. Chairperson for general meetings

- 23.1 The Chair, or if absent the Vice-Chair, is to act as chairperson at each **general meeting**.

- 23.2 If neither the Chair or the Vice Chair is present at the general meeting within 30 minutes of the starting time for the general meetings, the Members present must, before conducting any further business, elect by resolution a **chairperson** to chair the **general meeting**.

24. Role of the chairperson

- 24.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 24.2 The chairperson must decide on matters of order at the meeting.
- 24.3 In the case of an equality of votes at a general meeting, the chairperson will not have a second or casting vote, and the vote will not be carried.

25. Adjournment of meetings

- 25.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **Members present** direct the chairperson to adjourn it.
- 25.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

26. Members' resolutions and statements

- 26.1 A Category 2 Member may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (Members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all of its Category 2 Members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (Members' statement).
- 26.2 A notice of a Members' resolution must set out the wording of the proposed resolution and be signed by the Category 2 Members proposing the resolution.
- 26.3 A request to distribute a Members' statement must set out the statement to be distributed and be signed by the Members making the request.
- 26.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 26.5 If notice of a Members' resolution has been given to the **company**, the resolution must be considered at the next **general meeting** held no more than two months after the notice is given.
- 26.6 This Clause does not limit any other right that a Category 2 Member has to propose a resolution at a **general meeting**.

27. Company must give notice of proposed resolution or distribute statement

- 27.1 If the **company** has been given a notice or request under Clause 26:
- (a) in time to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting it must send the

- Members' resolution or Members' statement to the Category 2 Members with the notice of meeting; or
- (b) too late to send the notice of proposed Members' resolution or a copy of the Members' statement to Members with a notice of meeting, then the company must send the Members' resolution or Members' statement to the Category 2 Members as soon as possible after receiving it.
- 27.2 The **company** does not need to send the notice of proposed Members' resolution or a copy of the Members' statement to Category 2 Members if:
- (a) it is more than 1,000 words long;
 - (b) the Directors consider it may be defamatory; or
 - (c) in the case of a proposed Members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the Members.

Voting at general meetings

28. How many votes a Member has

- 29.1 Each Category 2 Member has one vote.

29. How voting is carried out

- 29.1 Voting must be conducted and decided by:
- (a) a show of hands;
 - (b) a vote in writing; or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 29.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 29.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 29.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

30. When and how a vote in writing must be held

- 30.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least 5 **Members present**
 - (b) **Members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
 - (c) the chairperson.
- 30.2 A vote in writing must be taken when and how the chairperson directs, unless Clause 30.3 applies.
- 30.3 A vote in writing must be held immediately if it is demanded under Clause 30.1:

- (a) for the election of a chairperson under Clause 23.2, or
- (b) to decide whether to adjourn the meeting.

30.4 A demand for a vote in writing may be withdrawn.

31. Appointment of proxy

- 31.1 A Category 2 Member may appoint another Category 2 Member as proxy to attend and vote at a **general meeting** on their behalf.
- 31.2 A proxy must be a Category 2 Member.
- 31.3 A proxy appointed to attend and vote for a Category 2 Member has the same rights as the Member to:
- (a) speak at the meeting;
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment).
- 31.4 An appointment of proxy (proxy form) must be signed by the Category 2 Member appointing the proxy and must contain:
- (a) the Category 2 Member's name and address;
 - (b) if the Chairperson of the general meeting is not appointed as proxy, the proxy's name (and if applicable the office held by the proxy);
 - (c) the meeting(s) at which the appointment may be used.
- 31.5 Proxy forms must be received by the **company** at the address stated in the notice under Clause 19.3(d) or at the **company's** registered address at least 48 hours before a meeting.
- 31.6 A proxy does not have the authority to speak and vote for a Category 2 Member at a meeting while the appointing Category 2 Member is at the meeting.
- 31.7 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Category 2 Member:
- (a) Dies;
 - (b) has lost decision making capacity; or
 - (c) revokes the proxy's appointment.
- 31.8 A proxy appointment may specify the way the proxy must vote on a particular resolution.

32. Voting by proxy

- 32.1 A Category 2 Member's vote on a show of hands is counted once. A proxy is not entitled to vote on the appointing Category 2 Member's behalf on a show of hands (but this does not prevent a Category 2 Member appointed as a proxy from voting on his or her own behalf on a show of hands).
- 32.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and

- (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.

Board composition and appointment of Directors

33. Number of Directors

- 33.1 The **company** must have at least six and no more than nine Directors.
- 33.2 Where practicable, a majority of Directors will be **carers** or persons who have previously experienced the role of carer.

34. Appointment of Directors

- 34.1 The initial Directors are the people who have agreed to act as Directors and who are named as proposed Directors in the application for registration of the **company**. At the first meeting of the Directors, the Board must nominate two Directors whose terms of office will expire at the next annual general meeting and nominate two Directors whose terms of office will end at the following annual general meeting.
- 34.2 A person is eligible for appointment as a **Member** appointed Director of the **company** if they:
 - (a) are a Category 2 Member of the **company** or have consented in writing to becoming a Category 2 Member on appointment as a Director;
 - (b) give the **company** their signed consent to act as a Director of the **company**, and;
 - (c) are not ineligible to be a Director under the **Corporations Act** or the **ACNC Act**.
- 34.3 The Directors may appoint a person as a Director to fill a casual vacancy or as an additional Director if that person:
 - (a) agrees in writing to become a Category 2 Member of the **company**;
 - (b) gives the **company** their signed consent to act as a Director of the **company**, and
 - (c) is not ineligible to be a Director under the **Corporations Act** or the **ACNC Act**.
- 34.4 If the number of Directors is reduced to fewer than six or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to six (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.
- 34.5 Additional Directors appointed under Clause 35.2 or 37 hold office until the end of the next **general meeting**.

35. Term of office

35.1 Member appointed Directors

- (a) Subject to Clause 35.2, the term of office of a **Member** appointed Director ends at the third annual general meeting after the person's appointment as a **Member** appointed Director.

- (b) Unless otherwise disqualified from being re-appointed by the Members or being appointed as a **Board** appointed Director under this constitution, the Corporations Act or the ACNC Act, a **Member** appointed Director whose term of office ends under Clause 35.1(a) is eligible to be reappointed as a **Member** appointed Director or appointed by the **Board** as a **Board** appointed Director.
- (c) Other than a Director appointed under Clause 34.3, a Director's term of office starts at the end of the **general meeting** at which they are appointed and ends at the end of the general meeting at which they retire.

35.2 **Board appointed Directors**

- (a) The term of office of a **Board** appointed Director commences at the end of the **Board** meeting appointing them and ceases at the end of the **Board** meeting following the next annual **general meeting** after the person's appointment as a **Board** appointed Director.
- (b) Unless otherwise disqualified from being reappointed as a Director under this constitution, the Corporations Act or the ACNC Act, a **Board** appointed Director whose term of office ends under Clause 35.2(a) is eligible to reappointment as either a **Member** or a **Board** appointed Director.

35.3 Subject to this Constitution, unless otherwise determined by the **Board**, a person appointed to a casual vacancy holds office for the balance of the term of the vacant Director position.

35.4 General provisions

- (a) Each Director must retire at least once every three years.
- (b) A Director who has held office for a continuous period of nine years or more may only be re-appointed by a **special resolution**.

36. When a Director stops being a Director

36.1 A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the **company**;
- (b) die;
- (c) are removed as a Director by a resolution of the Members;
- (d) stop being a Category 2 Member of the **company**;
- (e) are absent for 3 consecutive Directors' meetings without approval from the Directors, or
- (f) Lose their decision-making capacity and an independent medical practitioner certifies that this incapacity will continue for a period of at least three months;
- (g) become ineligible to be a Director of the **company** under this constitution, the **Corporations Act** or the **ACNC Act**.
- (h) Become bankrupt or suspends or compounds with his or her creditors

36.2 When requested by the Secretary, a former Director must, within 14 days of receiving the request:

- (a) return to the Secretary all confidential documents of the company, and all other materials and property of the company specified by the Secretary, in their possession or control; and

- (b) confirm in writing to the Secretary that all copies (including electronic copies) of the items listed in Clause 36.2(a) have been destroyed (or in the case of electronic copies, deleted) by the former Director.

37. Alternate Directors

- 37.1 With the approval of the majority of the other Directors, a Director may appoint an Alternate Director to exercise some or all the Director's powers for a specified period not exceeding three (3) months.
- 37.2 The appointor may terminate the appointment at any time. The appointment ends automatically when the appointor ceases to be a Director.
- 37.3 An appointment or its termination must be in writing and given to the **company**.
- 37.4 The **company** must give the Alternate Director notice of Directors' meetings.
- 37.5 When an Alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- 37.6 Subject to the terms of the appointment, the Alternate Director may attend, be counted in a quorum, speak and vote at Directors' meetings unless the appointor is present. An Alternate Director may do these things even if the appointor is prohibited from doing them by the Corporations Act.
- 37.7 The Alternate Director is an officer of the company and not the agent of the appointor.
- 37.8 The rules about Directors apply to Alternate Directors.
- 37.9 A person is eligible for appointment as an Alternate Director of the **company** if they:
 - (a) give the **company** their signed consent to act as a Director of the **company**, and;
 - (b) are not ineligible to be a Director under the **Corporations Act** or the **ACNC Act**.

38. Payments to Directors

- 38.1 The **Directors** may resolve that the **company** pay fees to a Director for acting as a Director, provided that the fees payable are reasonable in the circumstances.
- 38.2 The **company** may:
 - (a) pay a Director for work they do for the **company**, other than as a Director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the **company**.
- 38.3 Any payment made under Clause 38.2 must be approved by the Directors
- 38.4 The **company** may pay premiums for insurance indemnifying Directors, as allowed for by law (including the **Corporations Act**) and this constitution.

The Board

39. Board Governance

- 39.1 The **Board** is responsible for attaining the charitable purposes of the **Company**, the formulation and determination of **Board** policies, general organisation and direction of the **Company** and the appointment of a chief executive officer to assume delegated authority for the day-to-day management of the **Company**.
- 39.2 Subject to this constitution, the **Corporations Act** and the **ACNC Act**, the **Board** has the power to perform all such acts and do all such things as appear to the **Board** to be necessary or desirable for the proper management of the affairs of the **Company** and the furtherance of its charitable purposes, including the power to:
- (a) determine **company** policies;
 - (b) approve the **company's** annual financial budget;
 - (c) receive, consider and act upon reports relevant to the **company**;
 - (d) enter into partnerships, arrangements or agreements with individuals or organisations (government or non-government), corporates and other businesses;
 - (e) invest or otherwise deal with or commit **Company** funds;
 - (f) appoint, remove or suspend the chief executive officer and to determine the powers, duties, delegations and remuneration associated with the position;
 - (g) establish **Standing Committees** and **Board** working groups from time to time; and
 - (h) to fill casual vacancies on the **Board** between annual **general meetings**.
- 39.3 The duties of the **Board** include the duty to:
- (a) adopt a **Board** code of conduct at the first meeting of the **Board** after each annual **general meeting**;
 - (b) appoint an auditor;
 - (c) sign off on end of year financial statements;
 - (d) determine strategic directions for the **Company**; and
 - (e) monitor risks of the **Company**.
- 39.4 The **Board** must act in accordance with any resolution passed by a **general meeting** of the **Company**.
- 39.5 The acts of the **Board** are valid despite any defect that may afterwards be discovered in the appointment or qualifications of a Director.

40. Office Bearers

- 40.1 Three office bearers, being the Chair, Deputy-Chair and Treasurer shall be elected annually by and from the Directors at a **Board** meeting convened immediately following the annual **general meeting**.

- 40.2 The procedure to elect the office bearers shall be:
- (a) at the commencement of the meeting of the **Board** to elect the office bearers, all office bearer positions on the **Board** become vacant;
 - (b) nominations for each office bearer position are called from elected Directors. A Director may nominate for two office bearer positions, other than both the Chair and Vice-Chair;
 - (c) nominations may be made in absentia subject to the candidate's written approval;
 - (d) in the event of only one candidate for any office bearer position having been nominated, the candidate is elected to the position;
 - (e) in the event of more than one candidate for any office bearer position having been nominated, each candidate will be invited to address the **Board** in person or by written material and subsequently a secret ballot will be conducted among Directors present;
 - (f) in the event of an equality of votes arising from the election for a particular office bearer position, the matter shall be determined by lot;
 - (g) in the event of no nomination for a particular office bearer position, the position shall remain vacant until filled by election at a subsequent meeting of the **Board**; and
 - (h) at the conclusion of the secret ballot, the Chair must ensure that all ballot papers are destroyed unless otherwise directed by the **Board**.

41. Duties of office bearers

41.1 Chair

- (a) The Chair, or if absent the Deputy Chair, is to act as chairperson at each **general meeting** and **Board** meeting.
- (b) The Chair will act as spokesperson unless an alternative spokesperson has been appointed by the Board. Such spokesperson must make statements in accordance with previously agreed Board policy or, in an emergency, following consultation with at least two other Directors.

41.2 Deputy Chair

- (a) The Deputy Chair's role is to support the Chair and to become acting Chair in the absence of the Chair.

41.3 Treasurer

- (a) The Treasurer, together with the **Board**, must ensure that the **Company** engages people with suitable qualifications and experience to manage **Company** finances so that:
 - i. proper accounting records are kept which correctly record and explain the transactions of the **Company** and its financial position;
 - ii. all money received by the **Company** is deposited intact at the earliest possible date to the credit of the appropriate **Company** bank account;
 - iii. bank authorities require that all payments from the **Company** bank accounts are authorised, and if by cheque signed by two signatories authorised by the **Board**, or made through the petty cash system;

- iv. any major or unusual expenditures are authorised in advance by the **Board** or a **general meeting**;
 - v. receipts for all money received are promptly issued on request;
 - vi. all funds are invested with a body that is approved by the **Board**;
 - vii. each **Board** meeting and the annual **general meeting** receive a report on the financial position of the **Company**; and
 - viii. the books and accounts of the **Company** are audited annually.
- (b) **Company** accounting records are to be held in the custody of the person primarily engaged to maintain them and under the control of the Treasurer and the **Board**. These records must be made available for inspection at the registered office by any Director, free of charge, upon giving reasonable written notice to the Treasurer or other office holding Director.

42. Powers of Directors

The Directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by Members.

43. Delegation of Directors' powers

- 43.1 The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 43.2 The delegation must be recorded in the **company's** minute book.

44. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the **company**;
- (b) a Director and the Secretary; or
- (c) by persons appointed by the Board as authorised signatories for this purpose, who execute the document within the scope of their authorisation by the **Board**.

Secretary

45. Appointment and role of Secretary

- 45.1 The **company** must have at least one Secretary, who may also be a Director.
- 45.2 A Secretary must be appointed by the Directors (after giving the **company** their signed consent to act as Secretary of the **company**) and may be removed by the Directors.
- 45.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 45.4 The role of the Secretary includes:
- (a) maintaining a register of the **company's** Members, and

- (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), Directors' meetings and circular resolutions.

Duties of Directors

46. Duties of Directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the **Company**;
- (b) to act in good faith in the best interests of the **Company** and to further the charitable purpose(s) of the **Company** set out in Clause 6;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in Clause 47;
- (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.

47. Conflicts of interest

47.1 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):

- (a) to the other Directors; or
- (b) 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.

47.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

47.3 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 Clause 47.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

47.4 A Director may still be present and vote if:

- (a) their interest arises because they are a Member of the **Company**, and the other Members have the same interest;
- (b) 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** (see Clause 61);

- (c) their interest relates to a payment by the **Company** under Clause 64 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
- (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - i. identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the **Company**; and
 - ii. says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

Meetings of the Board

48. When the Directors meet

48.1 The Directors may decide how often, where and when they meet. At least six meetings will be held per annum.

49. Calling Directors' meetings

49.1 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.

49.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

50. Chairperson for Directors' meetings

50.1 The **elected chairperson** is entitled to chair Directors' meetings.

50.2 The Directors at a Directors' meeting may choose a Director to be the chairperson for that meeting if the **elected chairperson** is:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) present but does not want to act as chairperson of the meeting.

51. Quorum at Directors' meetings

51.1 Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority (more than 50%) of Directors

51.2 A quorum must be present for the whole Directors' meeting.

51.3 If no quorum is present within 30 minutes after the time of the meeting, the meeting is dissolved

52. Using technology to hold Directors' meetings

52.1 The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.

52.2 The Directors' agreement may be a standing (ongoing) one.

52.3 A Director may only withdraw their consent within a reasonable period before the meeting.

53. Passing Directors' resolutions

- 53.1 Questions arising from the meeting are to be decided by consensus. If a consensus cannot be reached, a vote must be taken.
- 53.2 A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.
- 53.3 Each Director present has one vote (including the person presiding at the meeting). The chairperson will not have a casting vote.

54. Circular resolutions of Directors

- 54.1 The Directors may pass a circular resolution without a Directors' meeting being held.
- 54.2 A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in Clause 54.3 or Clause 54.4
- 54.3 Each Director may sign:
 - (a) A single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 54.4 The **company** may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 54.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in Clause 54.3 or Clause 54.4.
- 54.6 A circular resolution passed is to be recorded in the minutes of the **Board**.

Complaints

55. Complaints procedure

- 55.1 The **Board** must appoint a person to be responsible for the investigation and resolution of all complaints made to the **Board** by Members of the public and staff.
- 55.2 The person appointed by the **Board** must maintain a complaints register and submit a report to each meeting of the **Board** summarising details of all complaints received.
- 55.3 In the event that the person appointed to be responsible for the investigation of the complaint is the subject of a complaint, that person shall stand aside, and the **Board** shall appoint an interim complaints officer to deal with the matter.

Minutes and records

56. Minutes and records

- 56.1 The **company** must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of **general meetings**
 - (b) a copy of a notice of each **general meeting**, and

- (c) a copy of a Members' statement distributed to Members under Clause 26.3.
- 56.2 The **company** must, within one month, make and keep the following records:
 - (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of Directors.
- 56.3 To allow Category 2 Members to inspect the **company's** records:
 - (a) the **company** must give a Category 2 Member access to the records set out in Clause 56.1, and
 - (b) the Directors may authorise a Category 2 Member to inspect other records of the **company**, including records referred to in Clause 56.2 and Clause 57.1.
- 56.4 The Directors must ensure that minutes of a **general meeting** or a Directors' meeting are signed within a reasonable time after the meeting by:
 - (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 56.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.

57. Financial and related records

- 57.1 The **company** must make and keep written financial records that:
 - (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 57.2 The **company** must also keep written records that correctly record its operations.
- 57.3 The **company** must retain its records for at least 7 years.
- 57.4 The Directors must take reasonable steps to ensure that the **company's** records are kept safe.

Notice

58. What is notice

- 58.1 Anything written to or from the **company** under any Clause in this constitution is written notice and is subject to Clauses 59 to 61, unless specified otherwise.
- 58.2 Clauses 60 to 61 do not apply to a notice of proxy under Clause 31.5.

59. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the Directors or the Secretary by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided

- (c) sending it to an email address or other electronic address notified by the **company** to the Members as the **company's** email address or other electronic address, or
- (d) sending it to the fax number notified by the **company** to the Members as the **company's** fax number.

60. Notice to Members

- 60.1 Written notice or any communication under this constitution may be given to a Member:
- (a) in person;
 - (b) sending it to the email or other electronic address nominated by the Member as an alternative address for service of notices (if any);
 - (c) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any); or
 - (d) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).
- 60.2 If the **company** does not have an address for the Member, the **company** is not required to give notice in person.

61. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under Clause 60.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year and audit

62. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

63. Auditor

The **company** must appoint and maintain an external auditor in accordance with the requirements of the **Corporations Act** and the **ACNC Act**.

Indemnity, insurance and access

64. Indemnity

- 64.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 64.2 In this Clause, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- 64.3 In this Clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 64.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

65. Insurance

- 65.1 The **company** must effect and maintain insurance as required by law and other insurance determined by the **Board**.
- 65.2 To the extent permitted by law (including the **Corporations Act**), and if the Directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

66. Directors' access to documents

- 66.1 A Director has a right of access to the financial records of the **company** at all reasonable times.
- 66.2 If the Directors agree, the **company** must give a Director or former Director access to:
- (a) certain documents, including documents provided for or available to the Directors, and
 - (b) any other documents referred to in those documents.

Winding up

67. Surplus assets not to be distributed to Members

If the **company** is wound up, any **surplus assets** must not be distributed to a Member or a former Member of the **company**, unless that Member or former Member is a charity described in Clause 68.1.

68. Distribution of surplus assets

- 68.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** (including 'gift funds' defined in Clause 68.4) that remain after the **company** is wound up must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in Clause 6,
 - (b) which also prohibit the distribution of any **surplus assets** to its Members to at least the same extent as the **company**, and
 - (c) that is or are deductible gift recipients within the meaning of the Income Tax Assessment Act 1997 (Cth).
- 68.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of Members at or before the time of winding up. If the Members do not make this decision, the **company** may apply to the Supreme Court to make this decision.
- 68.3 If the **company's** deductible gift recipient endorsement is revoked (whether or not the **company** is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of 68.1(a) and (b), as decided by the Directors.
- 68.4 For the purposes of this Clause:
- (a) 'gift funds' means:
 - (i) Gifts of money or property for the principal purpose of the company
 - (ii) Contributions made in relation to a fund-raising event held for the principal purpose of the **company**, and
 - (iii) Money received by the **company** because of such gifts and contributions.
 - (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

Definitions and interpretation

69. Definitions

In this constitution:

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

Board means the Directors of the **company** acting as the Board of the **company**

Carer means a person who is providing or who has provided unpaid care and support to family Members or friends who have a disability, mental illness, chronic condition, addiction, terminal illness or who are aged

Caring has a corresponding meaning to the above

Company means the **company** referred to in Clause 1

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

elected chairperson means the Chair, or a person appointed to chair a meeting in accordance with this constitution

general meeting means a meeting of Members and includes the annual **general meeting**, under Clause 18

initial Member means the nominees of Carers Victoria Inc. who are nominated as Directors of the company immediately before the Effective Date

Member present means, in connection with a **general meeting**, a Member present in person, by delegate (if an **organisation** Member) or by proxy at the venue or venues for the meeting

organisation means a group of persons who with an agreed leadership structure including incorporated and unincorporated, profit or not for profit, carers support groups, government, community service and corporate organisations that as a group have applied for and have been accepted as a Member of the **company**

an individual or incorporated body

registered charity means a charity that is registered under the **ACNC Act**

special resolution means a resolution:

- i. of which notice has been given under Clause 19.3(c), and
- ii. that has been passed by at least 75% of the votes cast by **Members present** and entitled to vote on the resolution, and

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up

70. Reading this constitution with the Corporations Act

- 70.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 70.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any Clauses in this constitution which are inconsistent with those Acts.
- 70.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any Clause in this constitution which is inconsistent with that Act.
- 70.4 A word or expression that is defined in the **Corporations Act** or used in that Act and covering the same subject, has the same meaning as in this constitution.

71. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).