

CONSTITUTION OF BAYLEY HOUSE

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Australian Company Number (ACN) [insert ACN]

Australian Business Number (ABN) [insert ABN]

A company limited by guarantee

INTRODUCTION

Bayley House has a proud history. Initially established in 1951 as the Brighton and Districts Branch of the Helping Hand Association for the Intellectually Disabled, Bayley House has grown from a small organisation which provided education to school aged children with a disability into a large not-for-profit organisation which offers a diverse range of services and programs to adults with an intellectual disability.

At the time of adoption of this Constitution (in 2016) Bayley House is located within the southern Melbourne suburb of Brighton and offers day programs, ongoing supported accommodation and short term respite. Services are delivered from more than 10 locations within the greater Bayside area and are tailored to the needs and wishes of each person so that they can live their lives as they choose and reach their goals. We describe our mission as follows:

All Participants will be supported through skills development to maximise their opportunities and to live the life they choose in an inclusive community.

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PRELIMINARY

1. Name of the company

The name of the **company** is Bayley House (the **company**).

2. 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.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount of not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and 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.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 74 and 76.

CHARITABLE PURPOSES AND POWERS

6. Object

The **company's** object is to pursue the following charitable purpose(s):

To relieve the effects of, and to improve the quality of life of people with, intellectual disabilities.

Without limiting the foregoing, in pursuing this object, the activities of the **company** may include:

- (a) establishing, managing and maintaining educational facilities for people with an intellectual disability;
- (b) establishing, managing and maintaining pre-vocational training facilities for the purposes of training people over the age of 18 years with an intellectual disability;
- (c) establishing, managing and maintaining permanent and respite residential accommodation services for the care and training of people with an intellectual disability;
- (d) establishing, managing and maintaining welfare facilities for people with an intellectual disability, their relatives and advocates. This service could include:
 - i. acquisition and maintenance of living skills;
 - ii. leisure and recreation training and participation;
 - iii. training and participation in community activities;
 - iv. further education courses, in conjunction with technical and further education colleges; and
 - v. counselling and practical living assistance,
- (e) establishing, managing and maintaining services for people with an intellectual disability to help train them for, place them in and maintain them in, open or supported employment and integrated living in the community;

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- (f) assisting families of people with an intellectual disability, when requested, to overcome problems relating to accommodation, transport, psychiatric or medical treatment or other problems associated with the effects upon, or quality of life of, a person with an intellectual disability;
- (g) assisting, in all appropriate ways, in the greater understanding by the general community, local residents and all sections of the local business community, of the special needs and the abilities of people with an intellectual disability; and
- (h) to do all other things that are incidental or conducive to the abovementioned object.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) 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**.

8. Not-for-profit

- 8.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:
 - (a) 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
 - (b) making a payment to a member in carrying out the **company**'s charitable purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

MEMBERS

10. Membership and register of members

- 10.1 The members of the **company** are:
 - (a) the **initial members**; and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 10.2 The directors may by resolution decide to create classes of membership with the same or differing rights or privileges.
- 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. address;
 - iii. any alternative address nominated by the member for the service of notices;
 - iv. date the member was entered on to the register; and
 - v. if different classes or categories of membership exist, the class or category of membership;

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- (b) for each person who stopped being a member in the last 7 years:
 - i. name;
 - ii. address;
 - iii. any alternative address nominated by the member for the service of notices;
and
 - iv. dates the membership started and ended.

10.4 The **company** must give current 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.

11. Who can be a member

11.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 12.

11.2 In this clause, 'person' means an individual natural person.

12. How to apply to become a member

A person (as defined in clause 11.2) may apply to become a member of the **company** by writing to the secretary stating that they:

- (a) want to become a member;
- (b) support the purpose(s) of the **company**; and
- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

13. Directors decide whether to approve membership

13.1 The directors, or a delegate approved by the directors, must consider an application for membership within a reasonable time after the secretary receives the application.

13.2 If the directors, or their delegate, in their absolute discretion, approve an application, the secretary must as soon as possible write to the applicant:

- (a) to tell them that their application was approved; and
- (b) requesting payment of the annual membership fee pursuant to clause 15.6, including the date for payment and the amount payable.

13.3 Upon receipt of the payment of the annual membership fee requested pursuant to clause 13.2(b), the secretary must as soon as possible:

- (a) enter the new member on the register of members; and
- (b) write to the new member advising the date that their membership started (see clause 14).

13.4 If an applicant fails to pay the annual membership fee requested pursuant to clause 13.2(b) within 60 days of the request, the application will be deemed to have been rejected.

13.5 If the directors, or their delegate, reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

13.6 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters.

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. Membership Fee

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- 15.1 Save as provided in clause 16 (Life Membership), members must pay an annual membership fee.
- 15.2 The directors will determine the amount and due date for payment of the annual membership fee and may vary the amount or date for payment of the annual membership fee from time to time. Varying amounts may be applied to different classes of members (if any), or to members in categories determined by the directors, as decided by the directors and made available to the members in a membership policy.
- 15.3 The directors must notify all persons entered on the register of members annually of the amount and time for payment of the annual membership fee and of any alteration to the annual membership fee.
- 15.4 Where the annual membership fee is not received from a member:
- (a) after one month of the due date, the directors may issue a written reminder notice to the member; and
 - (b) after one month of the written reminder notice, the member's rights and privileges associated with that membership will be suspended.
- 15.5 If a member who is suspended pursuant to clause 15.4 has not paid an annual membership fee for more than two months after the written reminder notice, the person ceases to be a member.
- 15.6 An applicant for membership who is approved for membership must pay the full amount of the annual membership fee in respect of the year in which he or she is approved as a member.
- 15.7 The directors may decide to reduce or waive the annual membership fee in respect of any member or any class or category of members

16. Life Membership

- 16.1 The directors may in their discretion from time to time confer upon any member a life membership of the **company** in recognition of outstanding service or assistance given by that person to the **company**.
- 16.2 A person conferred a life membership by the directors shall thereafter be entitled to all the same rights and privileges of a member without having to pay any annual membership fee.
- 16.3 Any person who was appointed as a life member or honorary life member of the **Association** prior to registration of the **company** shall be deemed to be a life member appointed in accordance with this clause 16.

17. When a person stops being a member

A person immediately stops being a member if they:

- (a) die;
- (b) resign, by writing to the secretary;
- (c) become of unsound mind or a person who is, or whose estate is liable to be dealt with in any way under a law relating to mental health;
- (d) are insolvent or are bankrupt; or
- (e) ceases to be a member under clause 15.5; or
- (f) are expelled under clause 19.

DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

18. Dispute resolution

- 18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members;
 - (b) one or more directors; or
 - (c) the **company**.

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- 18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:
- (a) tell the directors about the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 18.5 The mediator must:
- (a) be chosen by agreement of those involved; or
 - (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors; or
 - for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission.
- 18.6 A mediator chosen by the directors under clause 18.5(b)(i):
- (a) may be a member or former member of the **company**;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the *dispute*.
- 18.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.
- 18.8 Those involved in the dispute and the mediator must use all reasonable endeavours to complete the mediation process within 30 days of the appointment of the mediator.
- 18.9 Unless otherwise determined by the mediator (in his or her absolute discretion) the costs of any mediation will be born by the **company**.

19. Disciplining members

- 19.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors, in their absolute discretion, consider that:
- (a) the member has breached this constitution;
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company**;
 - (c) the member fails to fulfil his or her responsibilities to the **company**; or
 - (d) it is not in the interests of the **company** for the person to remain a member.
- 19.2 At least 14 days before the directors' meeting at which a resolution under clause 19.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member;
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the member is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 19.3 Before the directors pass any resolution under clause 19.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting; and/or
 - (b) speaking at the meeting, unless:
 - i. the directors consider that there is a risk of physical harm to any director if the member attends the directors' meeting in person; and
 - ii. the directors have made reasonable means available to the member to speak at the meeting without attending in person and the member has chosen not to avail himself or herself of those means.
- 19.4 After considering any explanation under clause 19.3, the directors may:

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- (a) take no further action;
 - (b) warn the member;
 - (c) suspend the member's rights as a member for a period of no more than 12 months;
 - (d) expel the member;
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause); or
 - (f) require the matter to be determined at a **general meeting**.
- 19.5 The directors cannot fine a member.
- 19.6 The secretary must give written notice to the member of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

GENERAL MEETINGS OF MEMBERS

20. General meetings called by directors

- 20.1 The directors may call a **general meeting**.
- 20.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**;
 - and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 20.3 The percentage of votes that members have (in clause 20.2) is to be worked out as at midnight before the members request the meeting.
- 20.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting;
 - (b) sign the request; and
 - (c) give the request to the **company**.
- 20.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

21. General meetings called by members

- 21.1 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 21.2 To call and hold a meeting under clause 21.1 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
 - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost; and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 21.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

22. Annual general meeting

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- 22.1 A **general meeting**, called the annual **general meeting**, must be held at least once in every calendar year and within five months of the end of its financial year (see clause 66).
- 22.2 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 election of directors; and
 - (e) the appointment and payment of auditors, if any.
- 22.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.
- 22.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

23. Notice of general meetings

- 23.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting;
 - (b) each director; and
 - (c) the auditor (if any).
- 23.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand; or
 - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
 - (b) appoint a director in order to replace a director who was removed; or
 - (c) remove an auditor.
- 23.5 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 members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a 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.
- 23.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

24. Quorum at general meetings

- 24.1 For a **general meeting** to be held, at least 10 members (a quorum) must be present (in person or by proxy) for the whole meeting. When determining whether a quorum is present, a person

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may only be counted once (even if that person is a representative or proxy of more than one member).

- 24.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 24.3 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.
- 24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

25. Auditor's right to attend meetings

- 25.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 25.2 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.

26. Using technology to hold meetings

- 26.1 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.
- 26.2 Anyone using this technology is taken to be present in person at the meeting.

27. Chairperson for general meetings

- 27.1 The **elected chairperson** is entitled to chair **general meetings**.
- 27.2 The **members present** and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**; or
 - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting; or
 - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

28. Role of the chairperson

- 28.1 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)).
- 28.2 Any question arising at a **general meeting** relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- 28.3 The chairperson does not have a casting vote.

29. Adjournment of meetings

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

MEMBERS' RESOLUTIONS AND STATEMENTS

30. Members' resolutions and statements

- 30.1 Members with at least 5% of the votes that may be cast on a resolution 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 members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 30.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 30.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 30.4 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.
- 30.5 The percentage of votes that members have (as described in clause 30.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 30.6 If the **company** has been given notice of a members' resolution under clause 30.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 30.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

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

- 31.1 If the **company** has been given a notice or request under clause 30:
- (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 do so at the **company's** cost; 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 members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 31.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1,000 words long;
 - (b) the directors consider it may be defamatory;
 - (c) clause 31.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
 - (d) 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.

32. Circular resolutions of members

- 32.1 Subject to clause 32.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 32.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 32.3 Circular resolutions cannot be used:

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- (a) for a resolution to remove an auditor, appoint a director or remove a director
 - (b) for passing a **special resolution**; or
 - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 32.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 32.5 or clause 32.6.
- 32.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 32.6 The **company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

VOTING AT GENERAL MEETINGS

33. How many votes a member has

Each member has one vote.

34. Challenge to member's right to vote

- 34.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 34.2 If a challenge is made under clause 34.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

35. How voting is carried out

- 35.1 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.
- 35.2 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.
- 35.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 35.4 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.

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

- 36.1 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 two **members present**; or
 - (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.
- 36.2 A vote in writing must be taken when and how the chairperson directs, unless clause 36.3 applies.
- 36.3 A vote in writing must be held immediately if it is demanded under clause 36.1:
- (a) for the election of a chairperson under clause 27.2, or
 - (b) to decide whether to adjourn the meeting.

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

37. Appointment of proxy

37.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.

37.2 A proxy does not need to be a member.

37.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

- (a) speak at the meeting;
- (b) vote at the meeting (but only to the extent allowed by the appointment) including any vote in writing; and
- (c) join in to demand a vote in writing under clause 36.1.

37.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:

- (a) the member's name and address;
- (b) the **company's** name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meeting(s) at which the appointment may be used.

37.5 A proxy appointment may be standing (ongoing).

37.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 23.5(d) or at the **company's** registered address at least 48 hours before a meeting.

37.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

37.8 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 member:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of a representative or agent who appointed the proxy.

37.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

38. Voting by proxy

When a vote 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.

DIRECTORS

39. Number of directors

39.1 The **company** must have at least seven and no more than eleven directors.

39.2 Subject to compliance with clause 39.1, the Board may by resolution from time to time determine the number of directors the **company will** have, provided that, any such determination will not require any director to cease to be a director before the end of that director's term determined in accordance with clause 43.

40. Election and appointment of directors

40.1 The initial directors are the people who were the Committee members of the Association immediately prior to registration of the **company and** who have agreed to act as directors.

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- 40.2 Apart from the initial directors and directors appointed under clause 40.7, the members may elect a director by a resolution passed in a **general meeting**.
- 40.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the **members present** have first passed a resolution that the appointments may be voted on together; and
 - (b) no votes were cast against that resolution.
- 40.4 Nomination of candidates for election as directors will be called for at least eight weeks prior to the annual **general meeting** of the **company** at which elections will be held. The notice calling for nominations must include the date for the annual **general meeting** and list those directors ceasing to be directors and the number of vacant positions.
- 40.5 The nominations must be:
- (a) made in writing, signed by one member other than the candidate;
 - (b) accompanied by a short biographical statement and the written consent of the candidate (which may be endorsed on the form of the nomination); **and**
 - (c) delivered to the **company** not less than 30 days before date fixed for holding of the annual **general meeting**.
- 40.6 A person is eligible for election as a director of the **company** if they:
- (a) are a member of the **company**;
 - (b) are nominated in accordance with clause 40.5;
 - (c) give the **company** their signed consent to act as a director of the **company**; and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 40.7 The directors may appoint a person as a director to fill a casual vacancy if that person:
- (a) is a 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**.
- For clarity, a casual vacancy includes there being less than eleven directors.
- 40.8 If the number of directors is reduced to fewer than seven, the continuing directors may act for the purpose of increasing the number of directors to seven or calling a **general meeting**, but for no other purpose.

41. Election of chairperson

- 41.1 The directors must elect a director as the **company's elected chairperson**. At the time of such election the directors may decide the period for which the **elected chairperson** is to hold that position
- 41.2 The directors may remove and replace the **elected chairperson** by resolution.
- 41.3 If the position of **elected chairperson** is vacant and there is a deputy chairperson, the deputy chairperson will perform the duties of the **elected chairperson** until an **elected chairperson** is elected. If there is more than one deputy chairperson, those duties will be performed by:
- (a) the deputy chairperson that the deputy chairpersons agree will perform those duties; or
 - (b) if the deputy chairpersons cannot agree, the deputy chairperson determined by the directors by resolution.

42. Other officers

- 42.1 The directors may (but are not required to) appoint:
- (a) one or more deputy chairpersons; and/or
 - (b) a treasurer,
- and may decide the role and duties of each such position and the period for which that director is to hold that position.

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42.2 The directors may remove or replace a person appointed pursuant to clause 42.1 by resolution.

43. Term of office

43.1 At the commencement of each annual **general meeting** any director appointed by the directors to fill a casual vacancy must retire.

43.2 At each annual general meeting if the number of directors (excluding any directors appointed to fill a casual vacancy and who are standing for election):

- (a) is five or less, then two of the remaining directors must retire;
- (b) is more than five, at least one-third of the remaining directors must retire.

43.3 The directors who must retire at each annual **general meeting** under clause 43.2 will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

43.4 Other than a director appointed under clause 40.7, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.

43.5 Each director must retire at least once every three years.

43.6 A director who retires under clause 43.1 or 43.2 may nominate for election or re-election, subject to clause 43.7.

43.7 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected in exceptional circumstances and only with the approval of the Directors. The reappointment must be confirmed by a **special resolution**.

43.8 In calculating the period of service of a director for any purpose under this clause 43, the director's service (including dates of appointment) as a Committee member of the Association shall be treated as service as a director.

44. When a director stops being a director

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 member of the **company**;
- (e) are absent for three consecutive directors' meetings without approval from the directors;
- (f) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**;
- (g) become employed by the **company**;
- (h) become of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (i) are required by the directors to undergo a financial, police background or conviction check or enquiry and fail to undergo, consent to, or provide the results of, such check or enquiry; or
- (j) are, or becomes, a person whose membership of the **company** does or is reasonably likely to, constitute a breach of any law by that person or the **company**, or a breach of any agreement or binding arrangements to which the **company** is a party.

POWERS OF DIRECTORS

45. Powers of directors

45.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.

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- 45.2 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.
- 45.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 46; and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 45.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

46. Delegation of directors' powers

- 46.1 The directors may delegate any of their powers and functions to a director, a committee of directors, an employee of the **company** (such as a chief executive officer) or any other person, or group of persons (including an advisory council established by the directors), as they consider appropriate.
- 46.2 The delegate must exercise the powers delegated in accordance with any directions of the directors.
- 46.3 The exercise of the power by the delegate is as effective as if the directors had exercised it
- 46.4 The delegation must be recorded in the **company's** minute book.
- 46.5 The directors may, subject to any contract with the **company**, dismiss any employee or revoke any power or function delegated under clause 46.1.

47. Payments to directors

- 47.1 The **company** must not pay fees to a director for acting as a director.
- 47.2 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**.
- 47.3 Any payment made under clause 47.2 must be approved by the directors.
- 47.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

48. 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**; or
- (b) a director and the secretary.

DUTIES OF DIRECTORS

49. 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**;

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- (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, including in any way so as to gain a pecuniary benefit or material advantage for his or herself or cause detriment to the **company**;
- (d) not to misuse information they gain in their role as a director, including in any way so as to gain a pecuniary benefit or material advantage for his or herself or cause detriment to the **company**;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 50;
- (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.

50. Conflicts of interest

- 50.1 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.
- 50.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 50.3 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 clauses 50.4:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 50.4 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 68);
 - (c) their interest relates to a payment by the **company** under clause 67 (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.

DIRECTORS' MEETINGS

51. When the directors meet

The directors may decide how often, where and when they meet, but must meet no less than six times per calendar year.

52. Calling directors' meetings

- 52.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 52.2 The secretary must, at the request of any director, convene a meeting of directors by giving reasonable notice to all directors.
- 52.3 A notice of meeting of directors:
- (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting; and

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- (c) may be given immediately before the meeting if all directors are otherwise aware of the time and place of the meeting.
- 52.4 A director may waive the requirement of notice of a directors' meeting by notifying the **company** to that effect in person, or by post, telephone, fax or other electronic means.
- 52.5 The non-receipt of notice of a directors' meeting, or a failure to give notice of a directors' meeting to a director does not invalidate any thing done or resolution passed at the meeting if:
- (a) the non-receipt or failure occurred by accident or error;
 - (b) the director waives or waived notice of that meeting under clause 52.4 before or after the meeting;
 - (c) the director notified or notifies the company of his or agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
 - (d) the director attended the meeting.
- 52.6 Attendance by a person at a directors' meeting waives any objection which that person may have to a failure to give notice of the meeting.

53. Chairperson for directors' meetings

- 53.1 The **elected chairperson** is entitled to chair directors' meetings.
- 53.2 If the **elected chairperson** is:
- (a) not present within 10 minutes after the starting time set for the meeting; or
 - (b) present but does not want to act as chairperson of the meeting,
- a deputy chairperson (if any) is entitled to chair the meeting and if there is more than one deputy chairperson willing and able to chair the meeting or no deputy chairperson or all deputy chairpersons are unable or unwilling to do so, the directors at a directors' meeting may choose a director to be the chairperson for that meeting.

54. Quorum at directors' meetings

- 54.1 Unless the directors determine otherwise, provided that such determination will not result in a quorum of less than 2, the quorum for a directors' meeting is 50% of directors.
- 54.2 A quorum must be present for the whole directors' meeting.

55. Using technology to hold directors' meetings

- 55.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 55.2 The directors' agreement may be a standing (ongoing) one.
- 55.3 A director may only withdraw their consent within a reasonable period before the meeting.
- 55.4 A director who takes part in a meeting by using such technology is taken to be present in person at the meeting.

56. Passing directors' resolutions

- 56.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 56.2 Where the votes on a proposed resolution are equal the chairperson for that meeting does not have a second vote and the proposed resolution is taken as lost.

57. Circular resolutions of directors

- 57.1 The directors may pass a circular resolution without a directors' meeting being held.

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- 57.2 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 57.3 or clause 57.4.
- 57.3 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.
- 57.4 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.
- 57.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 57.3 or clause 57.4.

SECRETARY

58. Appointment and role of secretary

- 58.1 The **company** must have at least one secretary, who may also be a director but need not be a member.
- 58.2 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.
- 58.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 58.4 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.

MINUTES AND RECORDS

59. Minutes and records

- 59.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**;
 - (b) minutes of circular resolutions of members;
 - (c) a copy of a notice of each **general meeting**; and
 - (d) a copy of a members' statement distributed to members under clause 31.
- 59.2 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.
- 59.3 To allow members to inspect the **company's** records
- 59.4 the **company** must give a member access to the records set out in clause 59.1.
- 59.5 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.
- 59.6 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by the **chairperson** within a reasonable time after the resolution is passed.

60. Financial and related records

- 60.1 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.
- 60.2 The **company** must also keep written records that correctly record its operations.
- 60.3 The **company** must retain its records for at least 7 years.
- 60.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

BY-LAWS

61. By-laws

- 61.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 61.2 Members and directors must comply with by-laws as if they were part of this constitution.

NOTICE

62. What is notice

- 62.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 63 to 65, unless specified otherwise.
- 62.2 Clauses 63 to 65 do not apply to a notice of proxy under clause 37.6.

63. 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.

64. Notice to members

- 64.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person;
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
 - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
 - (e) 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).
- 64.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

65. When notice is taken to be given

A notice:

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- (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 fifth **business day** after it is posted with the correct payment of postage costs;
- (c) sent by fax is taken to be given on the **business day** after transmission provided that the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; and
- (d) sent by email, is taken to be given on the **business day** after sending unless the sender receives a message indicating that the delivery has failed;
- (e) given under clause 64.1(e) is taken to be given on the **business day** after the notification that the notice is available is sent unless the sender receives a message indicating that the delivery has failed.

FINANCIAL YEAR

66. 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.

INDEMNITY, INSURANCE AND ACCESS

67. Indemnity

67.1 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**.

67.2 In this clause, 'officer' means:

- (a) a director or secretary;
- (b) a chief executive officer or other executive officer appointed by the directors;
- (c) a member of an advisory council or committee established by the directors;
- (d) a delegate referred to in clause 46; and
- (e) a person determined by the directors to be an officer,

and includes each such person after they have ceased to hold that office.

67.3 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).

67.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

68. Insurance

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**.

69. Directors' access to documents

69.1 A director has a right of access to the financial records of the **company** at all reasonable times.

69.2 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.
- (c) Subject to any law to the contrary, the directors may agree or refuse to agree in their absolute discretion and need not give reasons for their decision.

COMMON SEAL

70. Common Seal

- 70.1 If the **company** has a common seal it shall be kept in the custody of the secretary.
- 70.2 The common seal shall not be affixed to any instrument except by the authority of the directors and the affixing of the common seal shall be attested by the signatures either of two (2) directors or one director and the secretary.
- 70.3 The secretary shall maintain a seal register and each time the common seal is used its usage shall be recorded in the seal register.

ESTABLISHMENT AND OPERATION OF A GIFT FUND

71. Gift Fund

- 71.1 While the **company** is endorsed as a deductible gift recipient under Sub-division 30-BA of the Income Tax Assessment Act 1997 (Cth) ("ITAA 97") it must maintain for its principal purpose a fund ("Gift Fund"):
- (a) to which gifts of money or property for that purpose are made;
 - (b) to which any money received by the **company** because of those gifts is to be credited; and
 - (c) that does not receive any other money or property.
- 71.2 The **company** must use the following only for its principal purpose:
- (a) gifts made to the Gift Fund; and
 - (b) any money received because of those gifts.
- 71.3 At the first occurrence of:
- (a) the winding up of the **company**;
 - (b) the winding up of the Gift Fund; or
 - (c) the Company ceasing to be endorsed as a deductible gift recipient under Sub-division 30-BA of the ITAA 97,
- any surplus assets of the Gift Fund must be transferred to a fund, authority or institution that is another deductible gift recipient fund, authority or institution in compliance with the terms of any requirement of the Australian Taxation Office and otherwise in the discretion of the directors.

WINDING UP

72. 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**.

73. Distribution of surplus assets

- 73.1 Subject to clause 71 and to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** 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; and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- 73.2 The decision as to the charity or charities to be given the **surplus assets** must be decided by the directors, or if the directors do not wish to or do not decide, it must be decided by the members by a **special resolution** of members at or before the time of winding up and if the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

DEFINITIONS AND INTERPRETATION

74. Definitions

In this constitution:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);
- (b) **Association** means Brighton and Districts Branch Helping Hand Association for Intellectually Disabled Inc [*unless name change prior*] the incorporated association registered under the *Associations Incorporation Reform Act 2012* (Vic) as registered association number A0025515D, the predecessor of the **company**;
- (c) **business day** means a day that is not a Saturday, Sunday or public holiday in Melbourne;
- (d) **company** means the **company** referred to in clause 1;
- (e) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (f) **elected chairperson** means a person elected by the directors to be the **company's** chairperson under clause 41;
- (g) **general meeting** means a meeting of members and includes the annual **general meeting**, under clause 22.1;
- (h) **initial member** means a person who was a member of the **Association** immediately prior to registration of the **company**;
- (i) **member present** means, in connection with a **general meeting**, a member present in person or by proxy at the venue or venues for that meeting;
- (j) **registered charity** means a charity that is registered under the **ACNC Act**
- (k) **special resolution** means a resolution:
 - i. of which notice has been given under clause 23.5(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
- (l) **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.

75. Reading this constitution with the Corporations Act

- 75.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 75.2 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.
- 75.3 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.
- 75.4 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.

76. Interpretation

In this constitution:

- (a) the Introduction is intended as an historical statement only and is not intended to have force or effect or to influence the interpretation of any provision of this constitution;
- (b) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (c) 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).