

# **Constitution**

## **RichmondPRA Limited**

**ACN 001 280 628**

**(Company)**

**A Company Limited by Guarantee**

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## Preamble

*Psychiatric Rehabilitation Australia (PRA) has a long history as a disability service organisation in New South Wales. It commenced in 1955 with the aim of providing social activity for patients in the hospital, and rehabilitation services that would support independent living in the community. PRA has been active since that time in establishing new services in New South Wales to meet the urgent need for more and better services to support those living with mental illness in New South Wales and beyond.*

*The Richmond Fellowship of NSW (RFNSW) was established in 1973 initially to provide half-way houses for people with a mental illness leaving hospital care, based on the model established in the United Kingdom in the 1950s. Over the last thirty-five years, RFNSW has maintained its commitment to the independence and quality of life of people with a mental illness, while growing and diversifying its services across New South Wales. RFNSW's mission is to support people with a mental health problem and related needs to resource their recovery journey and live a fulfilling life in the community. RFNSW's services and programs now extend into most parts of NSW, including many rural and remote communities.*

*In 2012, PRA and RFNSW identified that they could expand and enhance their range of services to current and future clients through a merger of their operations and services. The merged organisation will use all the assets and liabilities of both PRA and RFNSW to operate as a single body mandated to achieve the vision and carry on the mission of working in partnership with people living with a mental health problem and their families and carers to empower them in their recovery and independence. Their shared commitment to meaningful outcomes for people with a mental health problem has brought these two organisations to the point where they hold similar views on the future of mental health services in Australia, and how they might best play their part in substantially improving the lives of people living with a mental health problem, their families and their carers.*

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## 1 Definitions and Interpretation

### 1.1 Definitions

In this Constitution unless a contrary intention appears:

**Alternate Director** means a person appointed as an alternate Director under clause 22.1.

**Annual Remuneration** means in respect of a financial year, the remuneration paid to the Directors in accordance with clause 11(a) for that financial year.

**Auditor** means the auditor for the time being of the Company.

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

**Chairman** means the Chairman appointed under clause 21.1.

**Committee** means a committee of Directors constituted under clause 17.

**Community Housing Asset** has the same meaning set out in the Community Housing Providers National Law.

**Community Housing Providers National Law** means the law contained in Appendix 1 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) as amended from time to time.

**Company** means RichmondPRA Limited being an Australian Public Company Limited by Guarantee established under the *Corporations Act 2001* (Commonwealth) which bears the ACN 001 280 628.

**Constitution** means this Constitution as amended from time to time and a reference to a clause is a reference to a clause of this Constitution.

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

**Delegated Committee** means the **committee** referred to in clause 11(b).

**Director** means a person holding office as Director of the Company.

**Directors** means all or some of the persons holding office as Directors of the Company.

**Deputy Chairman** means the Deputy Chairman appointed under clause 21.1.

**Fundraising Act** means the Charitable Fundraising Act 1991 (NSW).

**Fundraising Authority** means an authority for the Company to fundraise under the Fundraising Act.

**Fundraising Minister** means the Minister responsible for the Fundraising Act.

**General Meeting** means a meeting of the Members of the Company.

**Housing Agency** means a body or officer declared to be a Housing Agency by the community housing legislation of a participating Jurisdiction for the purposes of the provision of this Community Housing Providers National Law.

**Member** means a person entered on the Register of the Company as a Member.

**Participating Jurisdiction** means an Australian jurisdiction in which:

- (a) This Community Housing Providers National Law applies as a law of the jurisdiction, or
- (b) A law that substantially corresponds to the provisions of that law has been enacted.

**Principles and Commitments** means the statement set out in Schedule 1.

**Register** means the register of Members under the Corporations Act and if appropriate includes a branch register.

**Registered Community Housing Provider** means an entity registered under this Community Housing Providers National Law as a community housing provider.

**Registered Office** means the registered office for the time being of the Company.

**Related Body Corporate** has the same meaning it has in the Corporations Act.

**Remuneration Approval** means an approval of the Fundraising Minister under the Fundraising Act for the Company to pay remuneration to the Directors in accordance with this Constitution.

**Representative** means a person appointed to represent a corporate Member at a General Meeting of the Company in accordance with the Corporations Act.

**Rule** means a rule made by the Board in accordance with clause 15.

**Schedule** means a schedule to this Constitution.

**Seal** means the common seal (if any) of the Company.

**Secretary** means a person appointed as a secretary of the Company and includes an honorary Secretary and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

## 1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a law includes regulations and instruments made under the law;
- (d) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;

- (e) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (f) a power, an authority or a discretion reposed in a Director, the Directors, the company in General Meeting or a Member may be exercised at any time and from time to time;
- (g) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (h) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.

### **1.3 Signing**

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

### **1.4 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

### **1.5 Headings**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

### **1.6 Replaceable rules do not apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

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## **2 Objects of the Company**

RichmondPRA Limited is committed to the wellbeing of people affected by mental health problems, their rights, recovery and integration into the community, consistent with the Principles and Commitments as set out in Schedule 1, and has been established for the following objects:

- (a) the direct relief of sickness, suffering, disability, helplessness or homelessness for people in Australia affected by mental health problems, their families and their carers by:
  - (i) providing rehabilitation services and support;
  - (ii) supporting housing, employment and engagement in the community according to their needs and interests; and
  - (iii) promoting a better understanding of people affected by a mental health problem and their related needs.
- (b) to act as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects; and
- (c) to do such other things as are incidental or conducive to the attainment of these objects.

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## **3 Powers**

The Company has the legal capacity and powers of an individual and also has all the powers of a Body Corporate under the Corporations Act.

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## **4 Application of income for Objects only**

### **4.1 Profits**

The profits (if any) or other income and the property of the Company, however derived:

- (a) must be applied solely towards the promotion of the purposes of the Company as set out in clause 2; and
- (b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

## **4.2 Payment in good faith**

The above clause does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

- (a) of remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Company in a General Meeting; or
- (d) of a reasonable rent for premises let by a Member.

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## **5 Winding Up**

### **5.1 Contributions by members**

- (a) Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within one year after they cease to be a Member.
- (b) This contribution is for:
  - (i) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed \$10.

### **5.2 Application of Property**

- (a) Subject to clause 5.2(b) if any property remains on the winding up or dissolution of RichmondPRA Limited and after satisfaction of all its debts and liabilities, the property may not be paid to or distributed among the Members but must be given or transferred to some other institution:
  - (i) Having objects similar to the objects of the Company; and

- (ii) Whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under the Constitution.
- (b) If any Community Housing Assets in a Participating Jurisdiction remain on the winding up or dissolution of the Company and after satisfaction of its debts and liabilities, those assets must not be distributed among Members but must be transferred to a Registered Community Housing Provider or a Housing Agency in the jurisdiction in which the asset is located.
- (c) The relevant institution Registered Community Housing Provider and/or Housing Agency for the purposes of Clause 5.2 will be determined by Members at or before the time of dissolution.

### **5.3 Revocation of Australian Tax Office Endorsement**

- (a) Where the Company has been endorsed as a deductible gift recipient as an organisation or in relation to a public fund under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Commonwealth) (as amended), then where:
  - (i) the Company is wound up; or
  - (ii) the fund is wound up; or
  - (iii) the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Commonwealth) is revoked;

then any surplus assets of the Company or fund remaining after payment of all liabilities must be transferred to an institution or fund that:

- (iv) complies with clause 5.2;
- (v) is an endorsed deductible gift recipient; and
- (vi) where the company is endorsed as a public benevolent institution under section 30-45(1) of the *Income Tax Assessment Act 1997* (Commonwealth), is similarly endorsed.

- (b) Where the Company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* is revoked only in relation to one of those funds then it may transfer any surplus assets of the fund after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient

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## **6 Membership**

### **6.1 Number of members**

- (a) The minimum number of Members of the Company will be forty (40) or such greater or lesser number as the Directors determine from time to time, subject to that number complying with the Corporations Act.
- (b) The Members at the date of adoption of this Constitution and any person the Directors admit to Membership under clause 6.2 are the Members of the Company.

### **6.2 Admission as a member**

The Directors may admit any person as a Member if the person is eligible under clause 6.3 and agrees to be bound by this Constitution in any manner the Directors determine.

### **6.3 Membership Criteria**

To be eligible to be a Member, a person must:

- (a) be proposed and seconded by an existing Member; and
- (b) consent in writing to become a Member of the Company.

### **6.4 Membership Process**

- (a) The application for Membership must be made:
  - (i) in writing, signed by the applicant;
  - (ii) in such form as the Directors from time to time prescribe; and
  - (iii) accompanied by the membership fee, if any, determined by the Directors.

- (b) Each application for Membership must be considered by the Directors at the meeting of Directors first occurring after the application is made. At that meeting the Directors must determine whether to admit the applicant to Membership of the Company or whether to reject the application.
- (c) When an applicant has been accepted or rejected for Membership the Secretary must immediately notify the applicant of the decision of the Directors.

#### **6.5 Directors' discretion to admit or refuse admission as a Member**

The Directors have the discretion to refuse any person admission as a Member without giving any reason for refusing.

#### **6.6 Membership terms**

From the date of adoption of this Constitution, all Membership of the Company will be renewable every three (3) years. At the end of each three (3) year period, each Member must reapply for Membership.

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## **7 Ceasing to be a member**

### **7.1 Cessation of membership**

A Member ceases to be a Member on:

- (a) death;
- (b) resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;
- (c) failing to pay any subscription that may be prescribed by the Directors from time to time for a period of twelve months after the subscription was due and payable;
- (d) becoming a person whose personal estate is liable to be dealt with in any way under a law related to mental health;
- (e) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally;
- (f) the passing of a resolution by the Directors or Members in General Meeting pursuant to clause 7.2;

- (g) the expiry of the three year term of membership, unless the Member had applied for and been admitted as a Member for the following term; or
- (h) that Member ceasing to be a Director (in such circumstances the Member is able to make a new application for membership pursuant to clause 6.2 and 6.4).

## **7.2 Termination of membership**

- (a) Subject to this Constitution the Directors or Members in General Meeting may at any time terminate the membership of a Member if the Member:
  - (i) refuses or neglects to comply with this Constitution or any applicable Rules or regulations made by the Directors;
  - (ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company; or
  - (iii) fails to pay any debt due to the Company for a period of three months after the date for payment (such debt not including a subscription referred to in clause 7.1(c)).
- (b) For a decision of the Directors or the Members in General Meeting under clause 7.2 to be effective the dispute resolution procedure contained in clause 27 must be followed. The general nature of the allegations made against the Member must be notified to the Member and for the purposes of clause 27.1(a) this notification will be the notice of the Dispute.

## **7.3 Limited liability**

The Members have no liability as Members except as set out in clause 5.1.

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# **8 General Meetings**

## **8.1 Annual General Meetings**

Annual General Meetings of the Company are to be held in accordance with the Corporations Act.

## **8.2 Convening a General Meeting**

- (a) The Directors may convene and arrange to hold a General Meeting of the Company when they think fit.
- (b) The Directors must convene and arrange to hold a General Meeting of the Company if required to do so under section 249D or any other section of the Corporations Act.

## **8.3 Notice of a General Meeting**

Notice of a meeting of Members must be given in accordance with clause 32 and the Corporations Act.

## **8.4 Calculation of period of notice**

In computing the period of notice under clause 8.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

## **8.5 Cancellation or postponement of General Meeting**

- (a) Where a meeting of Members (including an Annual General Meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This clause 8.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

## **8.6 Notice of cancellation or postponement of a meeting**

- (a) Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:
  - (i) to each Member individually; and
  - (ii) to each other person entitled to be given notice of a meeting of the Company's Members under the Corporations Act.

## **8.7 Contents of notice of postponement of meeting**

A notice of postponement of a General Meeting must specify:

- (a) the postponed date and time for the holding of the meeting;

- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **8.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the General Meeting required to be given by this Constitution or the Corporations Act.

#### **8.9 Business at postponed meeting**

The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

#### **8.10 Proxy at postponed meeting**

Where by the terms of an instrument appointing a proxy:

- (a) the proxy is authorised to attend and vote at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by force of this clause 8.10, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **8.11 Non-receipt of notice**

The non-receipt of notice of a General Meeting or cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a General Meeting or cancellation or postponement of a General Meeting to, a person entitled to receive notice does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## **8.12 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

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## **9 Proceedings at General Meetings**

### **9.1 Number of a quorum**

- (a) One quarter of the current number of Members (or in case of an uneven number rounded up to the nearest whole number), or ten (10) Members (whichever is lesser) present in person or by proxy are a quorum at a General Meeting.
- (b) In determining whether a quorum is present, each individual attending as a proxy is to be counted, except that:
  - (i) where a Member has appointed more than one proxy, only one is to be counted; and
  - (ii) where the individual is attending both as a Member and as a proxy or in respect of more than one proxy, that individual is to be counted only once.

### **9.2 Requirement for a quorum**

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the Chairman of the meeting (on the Chairman's own motion or at the request of a Member or proxy who is present) declares otherwise.

### **9.3 If quorum not present**

If within fifteen minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director or at the request of Members, is dissolved; or

- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

#### **9.4 Adjourned meeting**

At a meeting adjourned under clause 9.3(b), five persons each being a Member or proxy present at the meeting are a quorum. If a quorum is not present within fifteen minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **9.5 Appointment and powers of Chairman of General Meeting**

If the Directors have elected one of their number as Chairman of their meetings, that person is entitled to preside as Chairman at a General Meeting.

#### **9.6 Absence of Chairman at General Meeting**

If a General Meeting is held and:

- (a) a Chairman has not been elected by the Directors; or
- (b) the elected Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following may preside as chair of the meeting (in order of precedence):

- (c) the deputy Chairman if a Director has been so elected by the Directors; or
- (d) a Director or Member elected by the Members present to preside as chair of the meeting.

#### **9.7 Conduct of General Meetings**

- (a) The Chairman of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) may require the adoption of any procedure which is, in the Chairman's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and

(iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chairman considers it necessary or desirable for the proper conduct of the meeting.

(b) A decision by the Chairman under this clause is final.

### **9.8 Adjournment of General Meeting**

(a) The Chairman of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place as the directors shall determine, but:

(i) in exercising the discretion to do so, the Chairman may, but need not, seek the approval of the Members present in person or by proxy; and

(ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

(b) Unless required by the Chairman, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

### **9.9 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **9.10 Votes of Members**

(a) Every Member has one vote.

(b) Subject to this Constitution:

(i) on a show of hands, each Member present in person and each other person present as a proxy of a Member has one vote; and

(ii) on a poll, each Member present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

### **9.11 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **9.12 Equality of votes – no casting vote for Chairman**

If there is an equality of votes, either on a show of hands or on a poll, then the Chairman of the meeting is not entitled to a casting vote in addition to any votes to which the Chairman is entitled as a Member or proxy or attorney or Representative, and consequently the resolution fails.

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

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact.
- (c) Neither the Chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **9.14 Poll**

If a poll is demanded:

- (a) it must be taken in the manner and at the date and time directed by the Chairman and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a Chairman or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## 9.15 Right to appoint proxy

- (a) Subject to the Corporations Act, a Member entitled to attend a meeting of the Company is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (b) The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct his proxy to vote in favour of or against any proposed resolutions. The proxy may vote as he thinks fit unless otherwise instructed.
- (c) With the exception of the Chairman who may be appointed in respect of an unlimited number of proxies, no Member, and no other person, may be appointed as and vote in accordance with more than five proxies.
- (d) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.
- (e) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority will be deposited at the registered office of the Company, or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid.
- (f) A vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of such death unsoundness of mind or revocation as aforesaid has been received by the Company at the registered office by 5pm on the day before the commencement of the meeting or adjourned meeting at which the instrument is used.

### **9.16 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies; or
- (b) the Member revokes the appointment or authority.

### **9.17 Objection to voting qualification**

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
  - (i) may not be raised except at that meeting or adjourned meeting; and
  - (ii) must be referred to the Chairman of the meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

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## **10 Directors**

### **10.1 Number of Directors**

The number of Directors shall be between five (5) and ten (10), subject to clause 10.2, and that number complying with the Corporations Act.

### **10.2 Change of number of Directors**

The Company in General Meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number of Directors is to retire from office.

### **10.3 Directors elected at General Meeting**

The Company may, at a General Meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

#### **10.4 Qualification of Directors**

To be eligible for the office of Director a person must:

- (a) have suitable qualifications, skills and experience to discharge the function of a Director as determined by the Directors from time to time;
- (b) be a Member of the Company;
- (c) not be an employee of the Company or any other entity controlled by the Company;
- (d) be proposed by a Member;
- (e) consent in writing to act as a Director; and
- (f) declare agreement with the Principles and Commitments.

#### **10.5 Election of officers**

At a meeting of the Directors held following the Company's adoption of this Constitution, the Directors shall elect the officers of the Company. Thereafter, the Directors shall elect those officers with such frequency as the Directors from time to time determine.

#### **10.6 Retirement of Directors – transitional rule applying for second and third Annual General Meetings**

- (a) At each of the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) Annual General Meetings from the date of adoption of this constitution, three (3) Directors must retire from office but are eligible for reappointment.
- (b) The three (3) Directors to retire at each of these meetings shall be determined by the Directors.
- (c) For the avoidance of doubt, this clause 10.6 ceases to have any application following the third (3<sup>rd</sup>) Annual General Meeting from the date of adoption of this constitution.

#### **10.7 Retirement of Directors – three year terms**

At each Annual General Meeting, any Director who has held office for three (3) years or more since last being elected, must retire from office but subject to clause 10.8 is eligible for reappointment.

### **10.8 Retirement of Directors – limit on period of service**

Notwithstanding clause 10.7, at each Annual General Meeting, any Director who, from the date of adoption of this constitution, has served as a director for ten (10) years or more (whether continuous or not) must retire from office and is not eligible for reappointment.

### **10.9 Removal of Directors**

The Members may by Ordinary resolution remove any Director before the expiration of that Director's period of office, and may by an Ordinary Resolution appoint another person in the place of that Director.

### **10.10 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires but subject to clause 10.8 is eligible for reappointment.

### **10.11 Casual vacancy or additional Director**

- (a) The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with clause 10.1.
- (b) A Director appointed under this clause holds office until the conclusion of the next Annual General Meeting of the Company but is eligible for election at that meeting.

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## **11 Remuneration of Directors**

- (a) The Directors may be paid fair and reasonable remuneration for their services as directors. The aggregate of such remuneration in any financial year may not exceed the amount approved by the Members in General Meeting.
- (b) The Annual Remuneration for a financial year must be ratified by:
  - (i) the Members in General Meeting; or
  - (ii) a committee to whom the Members in General Meeting have delegated that power.
- (c) A Director whose remuneration is included in the Annual Remuneration must not:

- (i) participate in that part of a General Meeting or a meeting of the Delegated Committee while the resolution to ratify the Annual Remuneration is being considered at the meeting; or
  - (ii) vote on the resolution to ratify the Annual Remuneration.
- (d) Where it is a condition of a Remuneration Approval that the Company must not amend this Constitution or part of this Constitution without the approval of the Fundraising Minister, a special resolution to modify or repeal the following provisions of the Constitution does not have any effect unless the Fundraising Minister has given written approval of the modification or repeal:
  - (i) a provision regarding the composition of the Board;
  - (ii) a provision regarding the quorum for a meeting of Directors;
  - (iii) a provision regarding conflicts of interest of Directors, including clause 20.6; and
  - (iv) a provision regarding the exclusion of a Director who is remunerated by the Company from participating in the consideration of, or voting on, a resolution to ratify the Annual Remuneration, including clause 11(c).

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## **12 Expenses of Directors**

- (a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.
- (b) Any payment to a Director must be approved by the Directors.

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## **13 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

- (b) resigns from the office by notice in writing to the Company;
- (c) becomes insolvent or bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditor;
- (d) is absent personally or by proxy or Alternate Director at three successive meetings of the Directors without leave of absence from the Directors; or
- (e) becomes prohibited for being a Director by reason of any order of any court of competent jurisdiction.

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## **14 Powers and duties of Directors**

### **14.1 Directors to manage the Company**

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in General Meeting.

### **14.2 Specific powers of Directors**

Without limiting the generality of clause 14.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to:

- (a) borrow or raise money;
- (b) charge any property or business of the Company; and
- (c) give any security for a debt, liability or obligation of the Company or of any other person.

### **14.3 Appointment of Chief Executive Officer**

Without limiting the generality of clause 14.1, the Directors have the power to appoint and remove the Chief Executive Officer of the Company or any person acting in that role, and determine the terms of such appointment.

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## **15 Rules**

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Company.

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## **16 Appointment of attorney**

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.
- (b) A power of attorney granted under this clause 16 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

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## **17 Directors' committees**

- (a) The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of such one or more of their number or such other persons as they think fit.
- (b) A committee to which any powers have been delegated under this clause 17 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.
- (c) The Directors may appoint a person to be Chairman of any committee constituted under this clause.

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## **18 Powers of delegation**

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by Section 198D of the Corporations Act.

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## **19 Validity of acts of directors**

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are taken as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote.

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## **20 Proceedings of directors**

### **20.1 Directors meetings**

- (a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### **20.2 Quorum for directors' meeting**

- (a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is one half of the Directors holding office, or if there is an odd number of Directors, then the majority of Directors holding office.
- (b) The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 10.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.

### **20.3 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

#### **20.4 Alternate Director and voting**

A person who is present at a meeting of Directors as an Alternate Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director. If that person is also a Director, then that person also has one vote as a Director in that capacity.

#### **20.5 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

#### **20.6 Interests of Directors**

- (a) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests.
- (b) Subject to clause 20.6(e), a Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.
- (c) If a Director has an interest in a matter, then subject to clause 20.6(b), clause 20.6(d), clause 20.6(e) and this Constitution:
  - (i) that Director may be counted in a quorum at the meeting of Directors that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that meeting;
  - (ii) that Director may participate in and vote on matters that relate to the interest;
  - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;

- (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (d) Nothing in clause 20.6(c) affects the duties of a Director:
- (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of Directors the fact and the nature, character and extent of the conflict; or
  - (ii) to comply with clause 20.6(a).
- (e) Notwithstanding clauses 20.2, 20.6(c)(i) and 20.6(b), where it is a requirement of a condition of a Fundraising Approval which is force and which has not been surrendered or revoked, a Director that is, or is to be, remunerated under clause 11(a) must:
- (i) be excluded from that part of a meeting of Directors; and
  - (ii) not be counted in a quorum for that part of a meeting of Directors,
- where their appointment, conditions of service, remuneration or any proposal for the supply of goods or services by them, or their immediate families, is being considered at that meeting.

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## **21 Chairman and deputy chairman of directors**

### **21.1 Election of Chairman**

The Directors may elect from their number a Chairman and a Deputy Chairman of their meetings and may also determine the period for which the persons elected as Chairman and Deputy Chairman are to hold office.

### **21.2 Absence of Chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a Chairman has not been elected under clause 21.1; or

- (b) the Chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the Deputy Chairman, if elected under clause 21.1, must be the Chairman of the meeting or, if the Deputy Chairman is not present, the Directors present must elect one of their number to be a Chairman of the meeting.

### **21.3 No casting vote for Chairman at Directors' meetings**

In the event of an equality of votes cast for and against a question, the Chairman of the Directors' meeting does not have a second or casting vote, and consequently the question is decided in the negative.

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## **22 Appointment of alternate director**

### **22.1 Appointment**

- (a) Subject to the Corporations Act, with the approval of the Directors, a Director (**Appointor**) may appoint a person to be an Alternate Director in the Director's place during such period as the Directors think fit.
- (b) Subject to the Corporations Act, an appointment of an Alternate Director must be effected by a notice in writing signed by the Chairman and by the Appointor, and delivered to the Company.

### **22.2 Notice**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the Appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the Appointor's place.

### **22.3 Alternate Director's powers**

An Alternate Director may exercise all the powers of the Appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the Appointor except to the extent that the Appointor has exercised or performed them.

## **22.4 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the Appointor; and
- (b) is responsible to the exclusion of the Appointor for the Alternate Director's own acts and defaults.

## **22.5 Alternate Director and remuneration**

An Alternate Director is entitled to receive from the Company any remuneration or benefit of the Director in whose place the Alternate Director is standing.

## **22.6 Termination of appointment of Alternate Director**

- (a) The appointment of an Alternate Director may be terminated at any time by the Directors even if the period, if any, of the appointment of the Alternate Director has not expired, and terminates in any event if the Appointor ceases to be a Director.
- (b) The termination of an appointment of an Alternate Director must be effected by a notice in writing signed by the Chairman and by the Appointor and delivered to the Company.

## **22.7 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the Appointor in determining the number of Directors.

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## **23 Meetings of committee**

### **23.1 Adjourning a meeting**

A Committee may meet and adjourn as it thinks proper.

### **23.2 Determination of questions**

- (a) Questions arising at a meeting of a Committee are to be determined by a majority of votes of the Members present and voting.
- (b) In the event of an equality of votes, the Chairman of the meeting does not have a casting vote.

### **23.3 Chairman of directors' committee**

- (a) Unless a Chairman has been appointed by the Directors under clause 17, the Members of a committee may elect one of their number as Chairman of their meetings.
- (b) If a meeting of a committee is held and:
  - (i) a Chairman has not been elected; or
  - (ii) the Chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;then the Members involved may elect one of their number to be Chairman of the meeting.

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## **24 Secretary**

### **24.1 Appointment of Secretary**

There must be at least one Secretary who is to be appointed by the Directors.

### **24.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **24.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

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## **25 Fellow**

The Directors may appoint as a Fellow of the Company any person who in the opinion of the Directors has rendered eminent service to the Company or its objects.

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## 26 Patron

The Members in General Meeting may appoint one or more Patrons of the Company.

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## 27 Dispute resolution

### 27.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of these rules or otherwise (**Dispute**), then either must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

- (a) The Member and the Company must in the period fourteen days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute.
- (b) If the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company.
- (c) If the disputants are unable to agree on a mediator within seven days of the Initial Period, the Member or the Company may request the President of LEADR<sup>1</sup> to nominate a mediator to whom the dispute will be referred.
- (d) The costs of the mediation will be shared equally between the Member and the Company.
- (e) Where:
  - (i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 27.1(b); or

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<sup>1</sup> LEADR is a not-for-profit organisation facilitating dispute resolution – further information can be found at [www.leadr.com.au](http://www.leadr.com.au).

(ii) the mediation has not occurred within six weeks of the date of the notice of the Dispute; or

(iii) the mediation fails to resolve the Dispute;

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

(f) The procedure in this clause will not apply in respect of proceedings for urgent or interlocutory relief.

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## **28 Documents**

Documents executed for and on behalf of the company must be executed by:

(a) two Directors;

(b) a Director and the Secretary; or

(c) such other persons as the Directors by resolution appoint from time to time.

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## **29 Accounts**

(a) The Directors must cause proper financial records to be kept and if required by the Corporations Act or otherwise considered by the Directors to be appropriate, cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.

(b) The Directors must distribute to the members copies of the annual financial reports of the Company accompanied by a copy of the Auditor's report and Directors' report in accordance with the requirements of the Corporations Act.

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## **30 Seals**

### **30.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

## **30.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

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

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## **31 Inspection of records**

### **31.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors).

### **31.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in General Meeting.

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## **32 Service of documents**

### **32.1 Document includes notice**

In this clause 32, a reference to a document includes a notice.

### **32.2 Methods of service**

- (a) The Company may give a document to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or

- (iii) by sending it to a fax number or electronic address nominated by the Member.
- (b) A document sent by post:
  - (i) if sent to an address in Australia, may be sent by ordinary post; and
  - (ii) if sent to an address outside Australia, must be sent by airmail; and
  - (iii) in either case is taken to have been received on the day after the date of its posting.
- (c) If a document is sent by fax or electronic transmission, delivery of the document is taken:
  - (i) to be effected by properly addressing and transmitting the fax or electronic transmission; and
  - (ii) to have been delivered on the day following its transmission.

### **32.3 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

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## **33 Indemnity**

The Company may indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity; and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or

- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

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### **34 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

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### **35 Contract**

The Company may enter into an agreement with a person referred to in clauses 33 and 34 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

### Principles and Commitments

#### 1. Principles for persons with a mental health problem

All persons with a mental health problem, regardless of disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth:

- (a) have the right to the best available physical and mental health services;
- (b) have the right to protection from discrimination on mental health grounds; economic, sexual and other forms of exploitation; physical or other abuse; and degrading treatment;
- (c) have the right to live and work in the community, and be supported and assisted in a manner reflective of this, taking into account community, family and cultural values; and
- (d) have the right to be treated with humanity and respect for the inherent dignity of the human person and rights as a person before the law, including the right to privacy, freedom of communication and religion or belief, and with a view to preserving and enhancing personal autonomy.

#### 2. Commitments

The Company hopes to build an organisation:

- (a) of high integrity with broad reach in Australia, including regional, rural and remote communities, providing support for the safety, social and emotional wellbeing, recovery and opportunity for people with a mental health problem, their families and their carers;
- (b) that is committed to developing and delivering programs that address and provide:
  - (i) assessment;
  - (ii) individual planning for recovery;
  - (iii) services which provide support for everyday living, employment and integration into the community;

- (iv) personally tailored services that promote whole of life goals and properly address specific challenges; and
- (v) coordinated support to enable access to the full range of services;
- (c) that is responsive to and values its Members and seeks, where appropriate, to promote and grow its membership base;
- (d) with capacity to research and influence national policy, and be a voice for all people who experience mental illness;
- (e) that is financially diverse and sustainable.

The Directors of the Company are therefore committed to governing the Company in a manner that is reflective of these Principles and Commitments.