

**CORPORATIONS ACT 2001
PUBLIC COMPANY LIMITED BY GUARANTEE**

**CONSTITUTION OF
CARERS NSW LIMITED
ACN 606 277 552**

18 November 2022

TABLE OF CONTENTS

PRELIMINARY	1
1. Name	1
2. Type of Company.....	1
3. Limited liability of members	1
4. The guarantee	1
5. Definitions.....	1
CHARITABLE PURPOSES AND POWERS	1
6. Object and charitable purposes of the Company.....	1
7. Powers.....	2
8. Not-for-profit	3
9. Amending the constitution	3
MEMBERSHIP.....	3
10. Membership and register of members	3
11. Who can be a member.....	4
12. Categories of members.....	4
13. Organisation membership	5
14. Life membership.....	5
15. Donor membership.....	5
16. Member rights.....	6
17. How to apply to become a member	6
18. When a person becomes a member	7
19. When a person stops being a member	7
20. Membership fees	8
DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES	8
21. Dispute resolution	8
22. Disciplining members	9
GENERAL MEETINGS OF MEMBERS	11
23. General meetings called by directors	11
24. General meetings called by members.....	11
25. Annual general meeting	12
26. Notice of general meetings	12
27. Quorum at general meetings	13
28. Auditor's right to attend meetings.....	13
29. Using technology to hold meetings	14
30. Chairperson for general meetings.....	14
31. Role of the chairperson.....	14
32. Adjournment of meetings	15
MEMBERS' RESOLUTIONS AND STATEMENTS.....	15
33. Members' resolutions and statements.....	15
34. Company must give notice of proposed resolution or distribute statement	15
VOTING AT GENERAL MEETINGS.....	16

35.	How many votes a member has.....	16
36.	Challenge to member’s right to vote	16
37.	How voting is carried out	16
38.	When and how a vote in writing must be held.....	17
39.	Appointment of proxy	17
40.	Voting by proxy	18
BOARD COMPOSITION AND APPOINTMENT OF DIRECTORS		19
41.	Number of directors	19
42.	Composition of the Board.....	19
43.	Company to have a skills-based Board	19
44.	Appointment of directors	19
45.	Term of office.....	20
46.	When a director stops being a director.....	21
47.	Election of the Elected Directors.....	22
48.	Payments to directors	25
THE BOARD.....		25
49.	Board governance	25
50.	Nominations Committee.....	26
51.	Office bearers	27
52.	Duties of office bearers.....	28
53.	Powers of directors	29
54.	Execution of documents	29
DUTIES OF DIRECTORS		29
55.	Duties of directors	29
56.	Conflicts of interest	30
MEETINGS OF THE BOARD.....		31
57.	When the Board meets.....	31
58.	Calling Board meetings.....	31
59.	Chairperson for Board meetings	31
60.	Quorum at Board meetings.....	31
61.	Using technology to hold directors’ meetings	32
62.	Passing directors’ resolutions.....	32
63.	Circular resolutions of directors	32
BOARD DELEGATION AND BOARD COMMITTEES.....		33
64.	Delegation of powers and formation of Standing Committees	33
MINUTES AND RECORDS.....		34
65.	Minutes and records.....	34
66.	Financial and related records	34
BY-LAWS		35
67.	By-laws.....	35
NOTICE		35
68.	What is notice	35

69.	Notice to the Company.....	35
70.	Notice to members	35
71.	When notice is taken to be given	36
FINANCIAL YEAR AND AUDIT.....		36
72.	Company's financial year.....	36
73.	Auditor.....	36
INDEMNITY, INSURANCE AND ACCESS		36
74.	Indemnity	36
75.	Insurance	37
76.	Directors' access to documents.....	37
WINDING UP		37
77.	Surplus assets not to be distributed to members	37
78.	Distribution of surplus assets	37
DICTIONARY AND INTERPRETATION		38
79.	Dictionary.....	38
80.	Reading this constitution with the Corporations Act.....	39
81.	Interpretation	40
SCHEDULE 1		41

PRELIMINARY

1. Name

The name of the Company is Carers NSW Limited (**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

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

- (a) debts and liabilities of the **Company** incurred before the member stopped being a member; or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in the **Dictionary** at the end of this document.

CHARITABLE PURPOSES AND POWERS

6. Object and charitable purposes of the Company

The **Company's** object is to pursue the following charitable purposes:

- (a) to consult with and act as a voice of **carers** in NSW;
- (b) to support **carers**, in the context of their family/caring relationship, to assist them in optimising their health, well-being, resilience and financial security;
- (c) to provide services to **carers** in the context of their family/caring relationship;
- (d) to encourage **carers** to identify themselves as carers and to recognise and be aware of their own needs;

-
- (e) to promote the recognition of **carers** in the community and that care is a social responsibility for all;
 - (f) to facilitate improvement in the response from the community to the needs of **carers** for:
 - (i) maintenance of dignity, health and well-being;
 - (ii) the exercise of rights;
 - (iii) services and support; and
 - (iv) adequate financial support;
 - (g) to identify gaps in service provision and highlight the unmet needs of **carers**;
 - (h) to act in an advisory capacity to service providers and governments on issues and needs as expressed by **carers**, and influence policy makers to achieve change for the benefit of **carers**;
 - (i) to participate in policy, research, planning, implementation and evaluation of activities relevant to **carers**;
 - (j) to advocate and where appropriate provide services to meet the particular needs of special **carer** groups identified from time to time;
 - (k) to promote and provide education, training, counselling, information, support and referral services;
 - (l) to establish and maintain relevant partnerships, arrangements and agreements; and
 - (m) to facilitate and promote research on **carer** issues and, where identified, to promote the need for research generally.

7. Powers

7.1 General Powers

Subject to clause 8, the **Company** has the following powers, which may only be used to carry out its purposes as set out in clause 6:

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

7.2 Specific powers

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

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

8. Not-for-profit

8.1 The **Company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 78.

8.2 Clause 8.1 does not stop the **Company** from doing the following things, provided they are done in good faith:

- (a) providing information, services or support to a member in their capacity as a **carer** or as a person receiving care and support;
- (b) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **Company**;
- (c) making a payment to a member in carrying out the **Company's** charitable purposes; or
- (d) reimbursement of reasonable expenses properly incurred by a director in carrying out their duties as a director.

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.

MEMBERSHIP

10. Membership and register of members

10.1 The members of the **Company** are:

- (a) **initial members**, and
- (b) any other person that the directors allow to be a member, in accordance with this constitution.

10.2 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 (and if the member is an **organisation**, also their authorised delegate):
 - (i) name and address;
 - (ii) if available, any alternative postal address nominated by the member for the service of notices;
 - (iii) if available, the member's electronic address contact details; and
 - (iv) date the member was entered on to the register.
- (b) for each person who stopped being a member in the last 7 years:
 - (i) name;
 - (ii) address;
 - (iii) any alternative postal address nominated by the member for the service of notices; and
 - (iv) dates the membership started and ended.

10.3 The **Company** must give current members access to the register of members.

10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members and in accordance with applicable privacy law.

10.5 Members (and if the member is an **organisation**, also their authorised delegate) must promptly advise the Secretary of any change in their address or **electronic address** contact details.

11. Who can be a member

11.1 An individual or **organisation** is eligible to be a member of the **Company** if:

- (a) In the opinion of the **Board** they support the purposes of the **Company**; and
- (b) they have applied and been approved for membership of the **Company** under clause 17.

12. Categories of members

12.1 Unless otherwise determined by the **Board**, members may be:

-
- (a) an individual member;
 - (b) an **organisation** member;
 - (c) a life member; or
 - (d) a donor member.

13. Organisation membership

- 13.1 The exercise on an **organisation** member's membership rights is achieved through the appointment by the **organisation** of a delegate. The **organisation** must notify the Secretary in writing of an appointment of a delegate.
- 13.2 An **organisation** member may change its delegate at any time by written notice to the Secretary. The **organisation** must also notify the previous delegate of the change.
- 13.3 An **organisation** member may authorise its delegate to:
- (a) attend, participate and vote in general meetings of the **Company**; and
 - (b) nominate an eligible individual for election to the **Board**.
- 13.4 An **organisation** member is responsible for any statement, action taken, or decision made on its behalf by its delegate.

14. Life membership

- 14.1 In recognition of exceptional service or special contribution to the **Company**, the **Board**, by unanimous vote, may confer on any natural person (subject to their acceptance) life membership of the **Company**. Any member may nominate a person for consideration for life membership. Nominations should be accompanied by a detailed citation in support of the nomination.
- 14.2 Life members are individual members and have the same rights as any other individual member.
- 14.3 Life membership continues for the life of the person unless the membership ceases as set out in clause 19.

15. Donor membership

- 15.1 The **Board** may offer membership as a donor member to an individual or **organisation** who has made a generous donation to the **Company**. If the **Board's** offer is accepted, the individual or **organisation** becomes a member of the **Company** on the later of the date of acceptance or a date determined by the **Board**.
- 15.2 Donor members who are natural persons have the same rights as individual members. Donor members who are **organisations** have the same rights as **organisation** members.

16. Member rights

16.1 Each member of the **Company** has the following rights:

- (a) to receive notice of, attend and vote at **general meetings** of the **Company**;
- (b) to nominate eligible individuals for election to the **Board**;
- (c) to nominate any person for consideration by the **Board** for life membership; and
- (d) to receive information about and the opportunity to participate in the **Company's** activities.

16.2 Only members who are natural persons and are eligible have the right to be elected or appointed to the **Board**.

17. How to apply to become a member

17.1 A person (including an **organisation**) who wants to become a member of the **Company**, or nominate an individual for life membership, must apply in writing to the **Board**, using the form or forms approved by the Secretary.

17.2 An application for membership must be signed by the applicant (or in the case of life membership, the nominating member or member's delegate) and lodged with the Secretary.

17.3 The application for membership must include enough information for the **Board** to determine whether the applicant is an individual or an **organisation**, a donor or a member of **Friends of Carers NSW**, and if the applicant is an **organisation** whether it is a:

- (a) **Carer Support Group**;
- (b) for profit or not for profit organisation;
- (c) unincorporated or incorporated organisation;
- (d) donor organisation; or
- (e) government organisation;

and what the **organisation's** objects and activities are.

17.4 An application for membership must be considered by nominated delegates of the **Board** as soon as practicable after it has been received. Such delegates may recommend that the **Board** accept, defer or decline an application for membership.

-
- 17.5 If the **Board** rejects 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.
- 17.6 A person whose application for membership has been declined by the **Board** may appeal to the next **general meeting** of the **Company** to be admitted as a member by lodging a notice of appeal with the Secretary within 7 days of being notified of the **Board's** decision to decline the membership. In the case of an application for life membership, the nominating member or member's delegate may appeal.
- 17.7 The **general meeting** of the **Company** may allow or reject the appeal. The Secretary must write to the applicant to advise the outcome of their appeal.
- 17.8 If the **Board** approves an application, or the **general meeting** of the **Company** allows an appeal, the Secretary must as soon as possible:
- (a) enter the new member on the register of members, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started.

18. 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.

19. When a person stops being a member

- 19.1 A person immediately stops being a member if they:
- (a) die;
 - (b) are wound up or otherwise dissolved or deregistered (for an **organisation** member);
 - (c) resign, by writing to the Secretary;
 - (d) fail to pay (where required to do so) a membership fee within three months of the due date; or
 - (e) have their membership terminated under clause 22.
- 19.2 If a member fails to advise the Secretary of a change of address as required under clause 10.5, and the Secretary advises the Board that, despite reasonable attempts to do so over a period of not less than three months, the Secretary has been unable to contact the member, the Board may resolve to terminate the person's membership of the **Company** effective on the date of the Board's resolution.

20. Membership fees

- 20.1 Members, other than members that the **Board** determines are exempt, must on admission to membership pay to the **Company** a joining fee as determined by the **Board**.
- 20.2 In addition to any amount payable by the member under clause 20.1, members must also pay to the **Company** an annual membership fee determined by the **Board** before 1 July each calendar year. If the member became a member on or after 1 July in any calendar year, the annual membership fee is payable on becoming a member and before 1 July in each succeeding calendar year.
- 20.3 The **Board** may set different fees for different categories of member.
- 20.4 The **Board** may, at its discretion, set a higher or reduced fee, or waive the fee for certain members.
- 20.5 Life members are exempt from the payment of membership fees.
- 20.6 Unless otherwise determined by the **Board**, individual members and **Carer Support Groups** are exempt from payment of joining fees or annual membership fees.

DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

21. Dispute resolution

- 21.1 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**.
- 21.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 22.
- 21.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 21.4 If those involved in the dispute do not resolve it under clause 21.3, 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.
- 21.5 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
 - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **Company** has its registered office.

21.6 A mediator chosen by the directors under clause 21.5(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.

21.7 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.

22. Disciplining members

22.1 In accordance with this clause, the **Board** may resolve to warn, suspend or expel a member from the **Company** if the directors consider that:

- (a) the member has breached this constitution; or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **Company**.

22.2 At least 14 days before the **Board** meeting at which a resolution under clause 22.1 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 **Board** 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.
- 22.3 Before the directors pass any resolution under clause 22.1, 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.
- 22.4 After considering any explanation under clause 22.3, the directors may:
- (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) 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);
 - (e) require the matter to be determined at a **general meeting**; or
 - (f) terminate the membership of the member.
- 22.5 The directors cannot fine a member.
- 22.6 The Secretary must give written notice to the member of the decision under clause 22.4 as soon as possible.
- 22.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 22.8 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.
- 22.9 An individual or organisation whose membership was terminated by the **Board** under this clause 22 may, after a period of two years, seek readmission to membership of the **Company** by applying to the **Board** with evidence in support of their application that they will act in a manner that is in the interests of the **Company**. A resolution passed by at least two thirds of the directors is necessary for readmission of the former member to membership of the **Company**.

GENERAL MEETINGS OF MEMBERS

23. General meetings called by directors

- 23.1 The directors may call a **general meeting**.
- 23.2 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.
- 23.3 The percentage of votes that members have (in clause 23.2) is to be worked out as at midnight before the members request the meeting.
- 23.4 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**.
- 23.5 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.

24. General meetings called by members

- 24.1 If the directors do not call the meeting within 21 days of being requested under clause 23.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 24.2 To call and hold a meeting under clause 24.1 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**.
- 24.3 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.

25. Annual general meeting

25.1 A **general meeting**, called the annual **general meeting**, must be held:

- (a) within 18 months after registration of the **Company**; and
- (b) after the first annual **general meeting**, at least once in every calendar year.

25.2 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.

25.3 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**.

25.4 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**.

26. Notice of general meetings

26.1 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).

26.2 Notice of a **general meeting** must be provided at least 21 days before the meeting.

26.3 Notice of a **general meeting** must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held as a virtual and/or hybrid meeting, 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.

26.4 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

27. Quorum at general meetings

27.1 For a **general meeting** to be held, at least 20 members (a quorum) must be present (in person, by proxy or by delegate) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a delegate or proxy of more than one member).

27.2 No business may be conducted at a **general meeting** if a quorum is not present.

27.3 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 and/or technology is not specified – the same place and technology.

27.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

28. Auditor's right to attend meetings

28.1 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.

28.2 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.

29. Using technology to hold meetings

- 29.1 The **Company** may hold a **general meeting** at two or more venues or at such other place or places as may be determined by the **Board** using any form of technology that gives the members as a whole a reasonable opportunity to participate.
- 29.2 Anyone using this technology is taken to be present in person at the meeting.
- 29.3 Subject to applicable law, any place of a meeting does not need to be a physical location and may be a virtual or online location. Meetings may be a hybrid mix of in person, virtual and/or online.
- 29.4 If the technology used for a general meeting encounters a technical difficulty which prevents a member in attendance being able to participate, the chairperson may, subject to the **Corporations Act** and quorum requirements:
- (a) allow the meeting to continue; or
 - (b) adjourn the meeting for a reasonable amount of time to address the technical difficulty or to such other date, time and place as the chairperson considers appropriate.

30. Chairperson for general meetings

- 30.1 The President, or if absent, the Vice-President (**elected chairperson**) is entitled to chair **general meetings**.
- 30.2 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.

31. Role of the chairperson

- 31.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must encourage a balanced participation by members and give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 31.2 The chairperson must decide on matters of order at the meeting.
- 31.3 In the case of an equality of votes at a general meeting, the chairperson has a second or casting vote.

32. Adjournment of meetings

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

MEMBERS' RESOLUTIONS AND STATEMENTS

33. Members' resolutions and statements

- 33.1 A member or members 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).
- 33.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 33.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 33.4 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.
- 33.5 If notice of a members' resolution has been given to the **Company**, the resolution must be considered at the next **general meeting** held more than two months after the notice was given.
- 33.6 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

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

- 34.1 If the **Company** has been given a request under clause 33:
- (a) in time to send the notice of the 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 the 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 a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **Company** will pay these expenses.

34.2 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 1000 words long;
- (b) the directors consider it may be defamatory;
- (c) clause 34.1(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.

VOTING AT GENERAL MEETINGS

35. How many votes a member has

35.1 Each member has one vote.

36. Challenge to member's right to vote

36.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.

36.2 If a challenge is made under clause 36.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

37. How voting is carried out

37.1 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 (including electronic voting) that is fair and reasonable in the circumstances.

37.2 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.

37.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

37.4 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.

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

- 38.1 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 five **members present**;
 - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (c) the chairperson.
- 38.2 A vote in writing must be taken when and how the chairperson directs, unless clause 38.3 applies. The chairperson may direct that the vote be taken via electronic voting.
- 38.3 A vote in writing must be held immediately if it is demanded under clause 38.1:
- (a) for the election of a chairperson under clause 30.2; or
 - (b) to decide whether to adjourn the meeting.
- 38.4 A demand for a vote in writing may be withdrawn.

39. Appointment of proxy

- 39.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 39.2 A proxy does not need to be a member.
- 39.3 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 in a vote in writing (but only to the extent allowed by the appointment); and
 - (c) join in to demand a vote in writing under clause 38.1.
- 39.4 An appointment of proxy must be signed by the member appointing the proxy, using the proxy form determined by the **Board**, and must contain:
- (a) the member's name;
 - (b) if the chairperson of the **general meeting** is not appointed as proxy, the proxy's name (and if applicable the office held by the proxy);
 - (c) the meeting(s) at which the appointment may be used; and

-
- (d) if desired by the member, directions to their proxy as to how they must vote on one or more of the resolutions listed on the notice for the meeting.

39.5 A proxy appointment may be standing (ongoing).

39.6 Unless an **organisation** appoints another person as their proxy, their delegate is deemed to be their proxy for the purposes of this constitution.

39.7 Proxy forms must be received by the **Company** at the address stated in the notice under clause 26.3(d) or at the **Company's** registered address at least 48 hours before a meeting.

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

39.9 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) has lost decision making capacity;
- (c) revokes the proxy's appointment, or
- (d) if an **organisation**, revokes the authority of their delegate.

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

40. Voting by proxy

40.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).

40.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
- (b) if the way they must vote is specified on the proxy form, must vote that way; and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

BOARD COMPOSITION AND APPOINTMENT OF DIRECTORS

41. Number of directors

The **Company** must have at least three and, unless otherwise determined at a general meeting, no more than twelve directors.

42. Composition of the Board

42.1 Unless otherwise determined at a general meeting, the **Board** shall consist of:

- (a) up to nine elected directors; and
- (b) up to three appointed directors, appointed by the **Board**.

42.2 A majority of directors will be, where possible, **carers** or persons who have previously experienced the role of carer.

43. Company to have a skills-based Board

Subject to this constitution, the **Company** will be governed by a skills-based **Board**, with directors having appropriate skills, competencies and experience aligned to the **Skills Matrix** approved by the **Board** from time to time.

44. Appointment of directors

44.1 The directors and their term of office as at the date of adoption of this revised **Company** constitution are the people listed in Schedule 1.

44.2 Apart from the appointed directors and directors appointed under clause 44.6, the members may elect a director by a resolution passed in a **general meeting**.

44.3 Each of the elected 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.

44.4 A person is eligible for election as an elected director of the **Company** if they:

- (a) have been an individual or life member of the **Company** for at least 12 months (or such lesser period that the **Board** may determine);
- (b) meet the **Eligibility Criteria** as determined by the **Board** after advice from the **Nominations Committee**;
- (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 this constitution, the **Corporations Act** or the **ACNC Act**.

44.5 A person is eligible for appointment by the **Board** as an appointed director if:

- (a) they possess skills that the **Board** regards as being useful to the **Company**;
- (b) give the **Company** their signed consent to act as a director of the **Company**;
- (c) if not a member, agree to become a member; and
- (d) are not ineligible to be a director under this constitution, the **Corporations Act** or the **ACNC Act**

44.6 The directors may appoint a person as a director to fill a casual vacancy or as an additional director 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 this constitution, the **Corporations Act** or the **ACNC Act**.

44.7 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

44.8 Additional directors appointed under clause 44.7 hold office until the end of the next **general meeting**.

45. Term of office

45.1 Elected directors

- (a) The term of office of an elected director ends at the third annual **general meeting** after the person's election as an elected director.
- (b) Unless otherwise disqualified from being re-elected or being appointed as an appointed director under this constitution, the Corporations Act or the ACNC Act, an elected director whose term of office ends under clause 45.1(a) is eligible to be re-elected as an elected director or appointed by the **Board** as an appointed director.
- (c) Other than a director appointed under clause 44.6, an elected 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.

45.2 **Board appointed directors**

- (a) The **Board** appointed directors shall be appointed by a resolution of the **Board**, provided that a **Board** appointed director candidate may not vote on a resolution concerning their appointment as a **Board** appointed director.
- (b) The process for calling of expressions of interest for **Board** appointed director candidates and the process for assessing responses and making recommendations to the **Board** by the **Nominations Committee** shall be as determined by the **Board**.
- (c) The term of office of a **Board** appointed director commences at the end of the **Board** meeting appointing them and ceases at the end of the **Board** meeting following the next annual **general meeting** after the person's appointment as a **Board** appointed director.
- (d) Unless otherwise disqualified from being re-elected or being appointed as an appointed director under this constitution, the Corporations Act or the ACNC Act, a **Board** appointed director whose term of office ends under clause 45.2(c) is eligible to be re-elected as an elected director or appointed by the **Board** as an appointed director.

45.3 **Directors appointed to a casual vacancy**

- (a) Subject to this constitution, unless otherwise determined by the **Board**, a person appointed to a casual vacancy holds office for the balance of the term of the vacant director position.

45.4 **General provisions**

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

46. **When a director stops being a director**

46.1 A director stops being a director if they:

- (a) give written notice of resignation as a director to the **Company**;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the **Company**;

-
- (e) are absent for two or more consecutive directors' meetings without approval from the directors;
 - (f) lose their decision making capacity and an independent medical practitioner certifies that this incapacity will continue for a period of at least three months;
 - (g) hold any salaried office of the **Company** or any office of the **Company** paid by fees;
 - (h) are bankrupt or in financial insolvency;
 - (i) are convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than three months; or
 - (j) become ineligible to be a director of the **Company** under this constitution, the **Corporations Act** or the **ACNC Act**.

46.2 Where requested by the Secretary, a former director must, within 14 days of receiving the request:

- (a) return to the Secretary all confidential documents of the **Company**, and all other materials and property of the **Company** specified by the Secretary, in their possession or control; and
- (b) confirm in writing to the Secretary that all copies (including electronic copies) of the items listed in clause 46.2(a) have been destroyed (or in the case of electronic copies, deleted) by the former director.

47. Election of the Elected Directors

47.1 Ballot process

- (a) Unless otherwise determined by a **general meeting**, the election of elected directors shall be by a ballot of members conducted under a process approved by the **Board**.
- (b) The **Board** must appoint a person as returning officer for the purpose of the ballot. The returning officer must not be a person who is a candidate for election, an employee of the **Company** or a member of the **Company**.
- (c) The ballot process approved by the **Board** may include:
 - (i) a postal ballot of members;
 - (ii) electronic voting by members, provided that the Board is satisfied that the process of electronic voting used will;
 - (A) protect the secrecy of the member's vote; and

-
- (B) maintain the integrity of the ballot; and/or
 - (iii) a combination of postal ballot and electronic voting where all members are not able to use electronic voting.

The ballot process must also be approved by the returning officer.

- (d) If the number of **Eligible Candidates** is less than or equal to the number of vacancies to be filled, there will be no ballot for these positions and the returning officer will declare the **Eligible Candidates** elected as elected directors. The remaining vacancies (if any) will be filled by the **Board** as casual vacancies.

47.2 Calling for nominations

The **Company** must notify members at least two months prior to the date of the annual **general meeting** of the number of elected directors to be elected at the annual **general meeting** and provide information on how to make a nomination, the **Eligibility Criteria** and specify the dates designated by the **Board** for:

- (a) close of nominations, which shall be at least 28 days before the date of the annual **general meeting**;
- (b) close of voting; and
- (c) counting of votes and declaration of the results of the ballot.

47.3 Nomination procedure

- (a) Any two members may nominate an individual member or life member for election to the **Board**.
- (b) The nomination of a person for election to the **Board** must:
 - (i) be in writing;
 - (ii) be signed by the candidate and at least two nominators;
 - (iii) be lodged with the Secretary on or before the day designated for close of nominations.
- (c) The nominated candidate must provide information about themselves (including their alignment with the **Eligibility Criteria**) in a format determined by the **Board** and may also nominate a scrutineer to observe the counting of votes on the day designated for counting of votes.
- (d) The Secretary must refer all nominations meeting the requirements of clauses 47.3(b) and 47.3(c) to the **Nominations Committee** for review against the **Eligibility Criteria**.

-
- (e) If the candidate withdraws at any time, the votes for that candidate will not be counted and the election will proceed.

47.4 Preparation of ballot material to go to members

- (a) Where an election is required, the Secretary or their delegate must prepare ballot material to be provided to each member.
- (b) The ballot material must include:
 - (i) a list of all **Eligible Candidates**, with the order of listing to be determined by drawing names at random;
 - (ii) indication of any candidate that is currently a director of the **Company**;
 - (iii) information provided by the candidate about themselves (if provided by the candidate);
 - (iv) any recommendations to members made by the **Board**;
 - (v) information on the ballot process; and
 - (vi) instructions on how to vote and submit the vote to the returning officer.

47.5 Issue of ballot material and conduct of the ballot

- (a) The Secretary or their delegate must ensure that the ballot material is sent to members eligible to vote no later than 14 days before the date of the annual **general meeting**. The material may be sent by post or by electronic communication to the member's **electronic address**.
- (b) If the member is voting by postal ballot, the ballot paper issued to the member must be initialled by the Secretary or their delegate, and the member must mark the ballot paper by placing a tick or a cross opposite the names of their preferred candidates, up to a maximum of the number of vacancies to be filled, in accordance with the instructions on how to vote.
- (c) If the member is voting by electronic voting they must follow the instructions provided for electronic voting and indicate the names of their preferred candidates, up to a maximum of the number of vacancies to be filled, in accordance with the instructions on how to vote.
- (d) All votes (whether made electronically or submitted by mail) must be received by the Secretary on or before the closing date determined by the **Board**.

47.6 Declaration of the ballot

-
- (a) After the ballot is closed the returning officer must count the ballot.
 - (b) In the case of an equality of votes in an election for the last available position(s), those candidates receiving equal votes, may if they are all present at the annual **general meeting**, decide among themselves who is to be elected. Failing such agreement, the Secretary or their delegate must determine who is elected by lot, drawing the required number of names from a container in which are the names of all of the candidates who received an equal number of votes.
 - (c) The returning officer must report the results of the election in writing to the chairperson of the annual **general meeting** who must then declare the results to the meeting.
 - (d) Unless otherwise directed by the **general meeting**, the returning officer must promptly destroy all ballot papers received and ensure that electronic votes are de-identified to prevent identification of the member's vote.

48. Payments to directors

48.1 The **Company** must not pay fees to a director for acting as a director.

48.2 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**.

48.3 Any payment made under clause 48.2 must be approved by the directors.

48.4 The **Company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

THE BOARD

49. Board governance

49.1 The **Board** is responsible for attaining the charitable purposes of the **Company**, the formulation and determination of **Board** policies, general organisation and direction of the **Company** and the appointment of a chief executive officer to assume delegated authority for the day-to-day management of the **Company**.

49.2 Subject to this constitution, the **Corporations Act** and the **ACNC Act**, the **Board** has the power to perform all such acts and do all such things as appear to the **Board** to be necessary or desirable for the proper management of the affairs of the **Company** and the furtherance of its charitable purposes, including the power to:

-
- (a) determine **Carers NSW** policies;
 - (b) approve the **Company** annual financial budget;
 - (c) receive, consider and act upon reports relevant to **Carers NSW**;
 - (d) enter into partnerships, arrangements or agreements with individuals or organisations (government or non government), corporates and other businesses;
 - (e) invest or otherwise deal with or commit **Company** funds;
 - (f) appoint, remove or suspend the chief executive officer and to determine the powers, duties, delegations and remuneration associated with the position;
 - (g) establish **Standing Committees** (including a **Nominations Committee**) and **Board** working groups from time to time;
 - (h) maintain a **Skills Matrix** to guide appointments of directors to the **Board**; and
 - (i) to fill casual vacancies on the **Board** between annual **general meetings**.

49.3 The duties of the **Board** include the duty to:

- (a) consult with and keep members informed;
- (b) adopt a **Board** code of conduct at the first meeting of the **Board** after each annual **general meeting**;
- (c) appoint an auditor;
- (d) sign off on end of year financial statements;
- (e) determine strategic directions for the **Company**; and
- (f) manage all risks to the **Company**.

49.4 The **Board** must act in accordance with any resolution passed by a **general meeting** of the **Company**.

49.5 The acts of the **Board** are valid despite any defect that may afterwards be discovered in the appointment or qualifications of a director.

50. **Nominations Committee**

50.1 The **Nominations Committee** membership shall be up to three directors and an independent person nominated by the **Board**.

50.2 No person may simultaneously be a candidate for the position of elected director and a member of the **Nominations Committee**.

50.3 The **Nominations Committee** will review the **Skills Matrix** and the **Eligibility Criteria**:

- (a) at least annually, and when requested to do so by the **Board**; and
- (b) where necessary, make recommendations to the **Board** as to appropriate amendments.

50.4 The Nominations Committee will review each elected director candidate's nomination against the **Eligibility Criteria** and advise the **Board** as to which candidates meet the **Eligibility Criteria** in the call for nominations under clause 47.2.

51. Office bearers

51.1 Four office bearers, being the President, Vice-President, Secretary and Treasurer shall be elected annually by and from the directors at a **Board** meeting convened immediately following the annual **general meeting**.

51.2 The procedure to elect the office bearers shall be:

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

52. Duties of office bearers

52.1 President

- (a) The President, or if absent the Vice-President, is to act as chairperson at each **general meeting** and **Board** meeting.
- (b) The President will act as spokesperson unless an alternative spokesperson has been appointed by the **Board**. Such spokesperson must make statements in accordance with previously agreed **Board** policy or, in an emergency, following consultation with at least 2 other directors.

52.2 Vice-President

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

52.3 Secretary

The Secretary must:

- (a) maintain a register of members in accordance with this constitution and ensure that it is updated within one month of any change taking place;
- (b) maintain a register of directors which contains the name and residential address of each director and the date on which they became a director and ensure that it is updated within one month of any change taking place;
- (c) ensure that minutes of all meetings are kept in the **Company's** records, with such minutes signed by the chairperson of the meeting or the chairperson of the next succeeding meeting;
- (d) ensure the safekeeping of the registers of members and directors and of the minutes;
- (e) ensure that notice of meetings is given in accordance with this constitution; and
- (f) ensure that an official annual report is available.

52.4 Treasurer

- (a) The Treasurer, together with the **Board**, must ensure that the **Company** engages people with suitable qualifications and experience to manage **Company** finances so that:
 - (i) proper accounting records are kept which correctly record and explain the transactions of the **Company** and its financial position;

-
- (ii) an appropriate set of financial delegations is maintained and approved by the **Board**
 - (iii) each **Board** meeting and the annual **general meeting** receive a report on the financial position of the **Company**; and
 - (iv) the books and accounts of the **Company** are audited annually.

53. Powers of directors

53.1 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.

53.2 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

54. Execution of documents

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

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

Documents may be delivered electronically and signed by use of Board approved electronic signing software (including use of different methods by multiple signatories), as permitted by section 110A(4) of the **Corporations Act**.

DUTIES OF DIRECTORS

55. Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Company**;
- (b) to act in good faith in the best interests of the **Company** and to further the charitable purpose(s) of the **Company** set out in clause 6;
- (c) not to misuse their position as a director;

-
- (d) not to misuse information they gain in their role as a director;
 - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 56;
 - (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.

56. Conflicts of interest

56.1 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.

56.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

56.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 56.4:

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

56.4 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 75);
- (c) their interest relates to a payment by the **Company** under clause 74 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:

-
- (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **Company**; and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

MEETINGS OF THE BOARD

57. When the Board meets

57.1 The directors may decide how often, where and when they meet. Meetings of the **Board** must be held at least four times each year.

58. Calling Board meetings

58.1 The President or any two directors may call a **Board** meeting by giving reasonable notice to all of the other directors.

58.2 The notice may be in writing or by any other means of communication that has previously been agreed to by all of the directors.

58.3 Except in special circumstances determined by the President, at least 48 hours notice of each meeting of the **Board** or the intention to make a resolution by way of circular resolution must be given to all directors.

59. Chairperson for Board meetings

59.1 The President, or in their absence, the Vice-President is entitled to chair **Board** meetings.

59.2 The directors at a **Board** meeting may choose a director to be the chairperson for that meeting if the President, or in their absence the Vice-President, is:

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

60. Quorum at Board meetings

60.1 Unless the directors determine otherwise, the quorum for a **Board** meeting is five, or if the **Board** has appointed two or more **Board** appointed directors, six.

60.2 Should the number of directors of the **Company** fall below the quorum, the remaining directors may act only to appoint additional directors.

60.3 A quorum must be present for the whole of the **Board** meeting.

60.4 If within half an hour of the time appointed for the **Board** meeting a quorum is not present the meeting lapses.

61. Using technology to hold directors' meetings

- 61.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors. Meetings may be hybrid in nature including a mix of in person, virtual and/or online.
- 61.2 The directors' agreement may be a standing (ongoing) one.
- 61.3 A director may only withdraw their consent within a reasonable period before the meeting.

62. Passing directors' resolutions

- 62.1 Questions arising at any meeting of the **Board** are to be decided by consensus. If a consensus cannot be reached, a vote must be taken.
- 62.2 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 62.3 Each director present has one vote (including the person presiding at the meeting) but in the case of an equality of votes, the chairperson may have a second or casting vote, except in relation to the election of office bearers.

63. Circular resolutions of directors

- 63.1 The directors may pass a circular resolution without a directors' meeting being held.
- 63.2 A circular resolution is passed if a majority of the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 63.3 or clause 63.4.
- 63.3 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.
- 63.4 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.
- 63.5 A circular resolution is passed when the last director needed for a majority of votes signs or otherwise agrees to the resolution in the manner set out in clause 63.3 or clause 63.4.
- 63.6 A circular resolution passed is to be recorded in the minutes of the **Board**.

BOARD DELEGATION AND BOARD COMMITTEES

64. Delegation of powers and formation of Standing Committees

- 64.1 The **Board** may, by resolution, delegate to the chief executive officer, a director or a **Standing Committee** (consisting of at least one **Board** member), the exercise of such of the **Board's** powers (other than this power of delegation) as are specified in the resolution.
- 64.2 A delegation under clause 64 must be made subject to conditions determined by the **Board** and communicated in writing to the persons concerned.
- 64.3 Despite a delegation by the **Board**, the **Board** may continue to exercise all or any of the powers delegated.
- 64.4 The **Board** may, by resolution, revoke wholly or in part any delegation under this clause.
- 64.5 A **Standing Committee** may meet and adjourn as it thinks proper.
- 64.6 A **Standing Committee** must report to each meeting of the **Board**.
- 64.7 The **Board** may:
- (a) appoint members of any **Standing Committee** from members of the **Company**; and
 - (b) in special circumstances, utilise the services of persons who are not members of the **Company**.
- 64.8 Subject to this clause 64, the provisions of this constitution applying to the calling and conduct of meetings of the **Board** (other than a quorum) apply to a **Standing Committee**, including the use of technology and passing of resolutions by circular resolution.
- 64.9 Unless otherwise determined by the **Board**, the quorum for a meeting of a **Standing Committee** is 50% + 1 of the members of the **Standing Committee**.
- 64.10 Questions arising at any meeting of a **Standing Committee** are to be decided by consensus. If a consensus cannot be reached, a vote must be taken.
- 64.11 If a vote is taken, the question is determined by a majority of votes of members of the **Standing Committee** who are present. Each person present has one vote, but in the case of an equality of votes the chairperson may have a second or casting vote.
- 64.12 Any act or thing done or suffered, or purporting to have been done or suffered, by a **Standing Committee** appointed by the **Board**, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the **Standing Committee**.

MINUTES AND RECORDS

65. Minutes and records

65.1 The **Company** must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of **general meetings**;
- (b) a copy of a notice of each **general meeting**; and
- (c) a copy of a members' statement distributed to members under clause 34.

65.2 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.

65.3 To allow members to inspect the **Company's** records:

- (a) the **Company** must give a member access to the records set out in clause 65.1; and
- (b) the directors may authorise a member to inspect other records of the **Company**, including records referred to in clause 65.2 and clause 66.1.

65.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

65.5 The directors must ensure that minutes of the passing of a circular resolution of directors are signed by a director within a reasonable time after the resolution is passed.

66. Financial and related records

66.1 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.

66.2 The **Company** must also keep written records that correctly record its operations.

66.3 The **Company** must retain its records for at least 7 years.

66.4 The directors must take reasonable steps to ensure that the **Company's** records are kept safe.

BY-LAWS

67. By-laws

67.1 The directors may pass a resolution to make by-laws to give effect to this constitution.

67.2 Members and directors must comply with by-laws as if they were part of this constitution.

NOTICE

68. What is notice

68.1 Anything written to or from the **Company** under any clause in this constitution is written notice and is subject to clauses 69 to 71, unless specified otherwise.

68.2 Clauses 69 to 71 do not apply to a notice of proxy under clause 39.6.

69. 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; or
- (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.

70. Notice to members

70.1 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); or
- (d) if agreed to by the member, by notifying the member at an email or other **electronic address** nominated by the member, that the notice is available at a specified place or address (including an **electronic address**).

70.2 If the **Company** does not have an address for the member, the **Company** is not required to give notice in person.

71. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 70.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

FINANCIAL YEAR AND AUDIT

72. 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.

73. Auditor

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

INDEMNITY, INSURANCE AND ACCESS

74. Indemnity

74.1 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**.

74.2 In this clause, 'officer' means a director or Secretary and includes a director or Secretary after they have ceased to hold that office.

74.3 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).

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

75. Insurance

75.1 The **Company** must effect and maintain insurance as required by law and other insurance determined by the **Board**.

75.2 To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **Company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Company** against any liability incurred by the person as an officer of the **Company**.

76. Directors' access to documents

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

76.2 If the directors agree, the **Company** must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors; and
- (b) any other documents referred to in those documents.

WINDING UP

77. Surplus assets not to be distributed to members

If the **Company** is wound up, any surplus assets must not be distributed to a member or a former member of the **Company**, unless that member or former member is a charity described in clause 78.1.

78. Distribution of surplus assets

78.1 Subject 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**.

78.2 The decision as to the charity or charities to be given the surplus assets must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Company** may apply to the Supreme Court to make this decision.

DICTIONARY AND INTERPRETATION

79. Dictionary

In this constitution:

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

Board means the directors of the **Company** acting as the Board of the **Company**.

carer means any individual who provides unpaid care or support to a family member or friend who has a disability, mental illness, drug and/or alcohol dependency, chronic condition, terminal illness or who is frail.

Carer Support Group means a group of **carers** who come together for information, support and other activities and who are recognised as such by the **Board**.

Carers NSW means **Carers NSW Incorporated** or the **Company** as the context permits.

Carers NSW Incorporated means the incorporated association in NSW known as Carers NSW and registered under the *Associations Incorporation Act 2009 (NSW)* under number Y0816328.

Company means the company referred to in clause 1.

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

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

electronic address means an email address, a mobile telephone number a social media address or other address able to receive messages via electronic means accepted by the **Company** and advised to the **Company** by a member, and in the case of the **Company**, also includes the **Company's** website and/or other social media platform of the **Company** able to accessed by a member.

Eligible Candidate means a person who has been nominated for a vacancy for elected director and whose nomination meets the requirements of clause 47.3 and whom the **Nominations Committee** has advised the **Board** meets the applicable **Eligibility Criteria**.

Eligibility Criteria means the criteria determined by the Nominations Committee in accordance with clause 44.4.

Friends of Carers NSW means individuals who are invited to join the honorary group of people with special expertise to assist the **Company** by providing advice or other services or act as champions publicly. This group assists by supplementing the

knowledge of the staff and **Board** or raising the public awareness of the **Company**. The **Board** may invite individuals to join this group.

general meeting means a meeting of members and includes the annual general meeting under clause 25.1.

initial member means the members of **Carers NSW Incorporated** immediately before the Effective Date.

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

Nominations Committee means the committee established under clause 50.

organisation means a group of persons with an agreed leadership structure including incorporated and unincorporated, profit and non-profit, carer support groups, donor, government, community service and corporate organisations that as a group have applied for and have been accepted as a member of the **Company**.

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

Skills Matrix means the matrix of desired director skills, competencies and experience determined by the Board from time to time.

special resolution means a resolution:

- (i) of which notice has been given under clause 26.3(c); and
- (ii) that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.

Standing Committee means a committee of the **Company** established by the **Board** which has specific ongoing delegated authority of the **Board**.

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.

80. Reading this constitution with the Corporations Act

80.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Company**.

80.2 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.

80.3 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.

80.4 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.

81. Interpretation

In this constitution:

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

Schedule 1

Stephen Bowles:	President	
	Elected Member:	2019 AGM – 2022 AGM
Michele Ferris:	Vice President	
	Elected Member:	2020 AGM – 2023 AGM
Bruce Howle:	Honorary Treasurer	
	Elected Member:	2021 AGM – 2024 AGM
Reid Johnson:	Honorary Secretary	
	Elected Member:	2021 AGM – 2024 AGM
Felicity Purdy:	Director	
	Elected Member:	2020 AGM – 2023 AGM
Greg Sam:	Director	
	Elected Member:	2021 AGM – 2024 AGM
Simon Dawes:	Director	
	Elected Member:	2019 AGM – 2022 AGM
Bettina Cass:	Director	
	Elected Member:	2020 AGM – 2023 AGM
Liane Corocher:	Director	
	Appointed Member:	9 June 2022 – 17 November 2022
Barbara Iordanidis:	Director	
	Appointed Member:	9 June 2022 – 17 November 2022