

CONSTITUTION OF GROW

Australian **Company** Number (ACN 008 485 827)

Australian Business Number (ABN 12 008 485 827)

A **company** limited by guarantee

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Preliminary

1. Name of the company

The name of the **company** is GROW (the **company**).

2. Type of company

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

3. Limited liability of members

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

4. The guarantee

Each member must contribute an amount not more than \$20 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- 4.1 debts and liabilities of the company incurred before the member stopped being a member, or
- 4.2 costs of winding up.

5. Definitions

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

Charitable purpose

6. Object

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

- 6.1 to provide hope and recovery to people who strive to achieve and maintain good mental health;
- 6.2 to further develop and influence the role of peer support as a method to achieve good mental health through the continued development of the company's programs, research and partnership with other like-minded services and institutions;
- 6.3 to promote the methods, principles and programs prescribed or issued by the company as a genuine and authentic approach to recovery from mental illness;
- 6.4 to raise and receive money to further the aims of the company and to secure sufficient funds for the purposes of the company; and
- 6.5 to do any other things which are incidental or conducive to the attainment of any of the above Objects.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- 7.1 the powers of an individual, and
- 7.2 all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The income and property of the company must be applied solely towards the objects set out in clause 6.
- 8.2 No portion of the profits, income or property may be paid or transferred directly or indirectly to its members, except as provided in clauses 8.3 and 73.
- 8.3 Clauses 8.1 and 8.3 do not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services (including professional services and any rental fees) they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or
 - (b) making a payment to a member in carrying out the company's charitable purpose(s).

9. Amending the constitution

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

10. Director Fees

- 10.1 The company must not pay fees to a **director** for acting as a **director** unless otherwise agreed by the Board.
- 10.2 The company may:
- (a) pay a director for work they do for the company, other than as a director, for goods or services they have provided at fair and reasonable rates or rates more favourable to the company or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
- 10.3 Any payment made under clause 10.2 must be approved by the directors.
- 10.4 The company may pay premiums for insurance indemnifying **directors**, as allowed for by law (including the **Corporations Act**) and this constitution

Members

11. Membership and register of members

- 11.1 The members of the **company** are:
- (a) **existing members**,
 - (b) any other person that the **directors** allow to be a member, in accordance with this constitution, and
 - (c) the **transitional members**.
- 11.2 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:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, 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 address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.
- 11.3 The **company** must give current members access to the register of members.
- 11.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11.5 For the avoidance of doubt, as at the date of adoption of this constitution the **company** only has individual members.

12. Who can be a member

- 12.1 A person who supports the purposes of the company is eligible to apply to be a member of the company under clause 13
- 12.2 In this clause, 'person' means an individual or incorporated body.
- 12.3 Employees of the company are not eligible for membership of the company
- 12.4 Notwithstanding the above, the eligibility of membership will be determined by the board in its absolute discretion.

13. How to apply to become a member

- 13.1 A person may apply to become a member of the **company** by writing to the secretary and:
- (a) submitting an application in the form which the **Board** determines
 - (b) paying any membership fee which the **Board** determines
 - (c) agreeing to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

14. Directors decide whether to approve membership

- 14.1 The **directors** must consider an application for membership within a reasonable time after the secretary receives the application.
- 14.2 If the directors approve an application, 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 (see clause 15).
- 14.3 If the **directors** reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.

15. When a person becomes a member

Other than **existing members**, an applicant will become a member when they are entered on the register of members.

16. When a person stops being a member

- 16.1 A person immediately stops being a member if they:
- (a) die
 - (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
 - (c) resign, by writing to the secretary
 - (d) fail to pay their membership fee for a period of 12 months;
 - (e) are expelled under clause 0
 - (f) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member
 - (g) cease to be a **director** of the **company**
 - (h) are engaged as an employee of the **company**
- 16.2 Any member who ceases to be a member under clause **Error! Reference source not found.**, may at any time apply to be re-admitted as a member.

17. Fees

Subject to the **Corporations Act**, the **company** may by resolution of the **board** require the payment of membership fees of any amount, on any terms and at any times as the board resolves

Dispute resolution and disciplinary procedures

18. Dispute resolution

- 18.1 The dispute resolution **procedure** in this clause applies to disputes (disagreements) under this constitution between a member or **director** and:
- (a) one or more members
 - (b) one or more **directors**, or
 - (c) the **company**.
- 18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 0 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days:
- (a) tell the **directors** about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 18.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the **directors**, or
 - 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.
- 18.6 A mediator chosen by the **directors** under clause 18.5 ((b)(i)):
- (a) may be a member or former member of the **company**
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 18.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and not make a decision on the dispute.

19. Disciplining members

- 19.1 In accordance with this clause, the **directors** may resolve to warn, suspend or expel a member from the **company** if the **directors** 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**.
 - (c) notwithstanding (a) and (b), a member may not be expelled unless the resolution is supported by at least 75% of the **directors** present.
- 19.2 At least 28 days before the **directors'** meeting at which a resolution under clause 19.1 will be considered, the secretary must notify the member in writing:
- (a) that the **directors** are considering a resolution to warn, suspend or expel the member
 - (b) that this resolution will be considered at a **directors'** meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the **directors**, and details of how to do so.
- 19.3 Before the directors pass any resolution under clause 19.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the **directors** a written explanation before that **directors'** meeting, and/or
 - (b) speaking at the meeting.
- 19.4 After considering any explanation under clause 19.3, 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) expel the member
 - (e) refer the decision to an unbiased, independent person on conditions that the **directors** consider appropriate (however, the person can only make a decision that the **directors** could have made under this clause), or
 - (f) require the matter to be determined at a **general meeting**.
- 19.5 The **directors** cannot fine a member.
- 19.6 The secretary must give written notice to the member of the decision under clause 19.419.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 19.9 Any member expelled from the company may at any time apply to be re-admitted as a member.

General meetings of members

20. General meetings called by directors

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

21. General meetings called by members

- 21.1 If the **directors** do not call the meeting within 21 days of being requested under clause 20.2, members with more than 50% of the votes of all members may call and arrange to hold a general meeting.
- 21.2 To call and hold a meeting under clause 21.121.1 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 21.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the **directors** did not call and hold the meeting.

22. Annual general meeting

- 22.1 A **general meeting**, called the annual general meeting, must be held at least once in every calendar year.
- 22.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **company's** activities
 - (b) a review of the **company's** finances
 - (c) any auditor's report
 - (d) the election of **directors**, and
 - (e) the appointment and payment of auditors, if any.
- 22.3 Before or at the annual **general meeting**, the **directors** must give information to the members on the **company's** activities and finances during the period since the last annual general meeting.

22.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

23. Notice of general meetings

23.1 Notice of a general **meeting** must be given to:

- (a) each member entitled to vote at the meeting
- (b) each **director**, and
- (c) the auditor (if any).

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

23.3 Subject to clause 23.4, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
- (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (a) remove a **director**
- (b) appoint a **director** in order to replace a **director** who was removed, or
- (c) remove an auditor.

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

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
- (b) the general nature of the meeting's business
- (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.

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

24. Quorum at general meetings

24.1 For a **general meeting** to be held, at least 3 (three) members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting or if fewer than 3 Members are entitled to vote at that meeting, then all of the Members who are entitled to vote (or Attending Members representing those Members).

24.2 When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

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

24.4 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.

24.5 If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week
- (b) if the time is not specified – the same time, and
- (c) if the place is not specified – the same place.

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

25. Auditor's right to attend meetings

- 25.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 25.2 The company must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

26. Representatives of members

- 26.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 31, and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a **director**.
- 26.2 The appointment of a representative by a member must:
- (a) be in writing
 - (b) include the name of the representative
 - (c) be signed on behalf of the member, and
 - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 26.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 26.4 The appointment may be standing (ongoing).

27. Using technology to hold meetings

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

28. Chairperson for general meetings

- 28.1 The **elected chairperson** is entitled to chair **general meetings**.
- 28.2 The deputy chairperson must chair the **general 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 is unwilling to act as chairperson of the meeting.
- 28.3 If neither the elected chairperson nor the deputy chairperson is present within 30 minutes after the time appointed for the meeting or are unwilling to act, then the Attending Members who are present at the meeting may (by majority vote) elect one of their number to act as chair.

29. Role of the chairperson

- 29.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 29.2 The chairperson does not have a casting vote.

30. Adjournment of meetings

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

Members' resolutions and statements

31. Members' resolutions and statements

- 31.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 31.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 31.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 31.4 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.
- 31.5 The percentage of votes that members have (as described in clause 31.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 31.6 If the **company** has been given notice of a members' resolution under clause 31.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 31.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

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

- 32.1 If the **company** has been given a notice or request under clause 31:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 32.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1 000 words long
 - (b) the **directors** consider it may be defamatory
 - (c) clause 32.1(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.

33. Circular resolutions of members

- 33.1 Subject to clause 33.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 33.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 33.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a **director** or remove a **director**
 - (b) for passing a **special resolution**, or
 - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 33.4 A circular resolution is passed if the majority of members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 33.5 or clause 33.6.

- 33.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 33.6 The **company** may send a circular resolution by email to members where such members have nominated an email address in accordance with clause 67 and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

34. How many votes a member has

Each member has one vote.

35. Challenge to member's right to vote

- 35.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 35.2 If a challenge is made under clause 35.1 the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

36. How voting is carried out

- 36.1 Voting must be conducted and decided by:
- (a) a show of hands
 - (b) a vote in writing, or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 36.2 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.
- 36.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 36.4 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.

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

- 37.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least two **members present, or**
 - (b) where the **company** has more than 2 members, **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.
- 37.2 A vote in writing must be taken when and how the chairperson directs, unless clause 37.3 applies.
- 37.3 A vote in writing must be held immediately if it is demanded under clause 37.137.1:
- (a) for the election of a chairperson under clause 28.3, or
 - (b) to decide whether to adjourn the meeting.
- 37.4 A demand for a vote in writing may be withdrawn.

38. Appointment of proxy

- 38.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 38.2 A proxy does not need to be a member.
- 38.3 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 37.1.

- 38.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **company's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 38.5 A proxy appointment may be standing (ongoing).
- 38.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 23.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 38.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 38.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
 - (b) is mentally incapacitated
 - (c) revokes the proxy's appointment, or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 38.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

39. Voting by proxy

- 39.1 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).
- 39.2 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.

Directors

40. Number of directors

- 40.1 The **company** must have at least five and no more than eleven directors.
- 40.2 To the extent possible, the board shall include at least one and not more than two **directors** nominated by the **National Program Team**.

41. Election and appointment of directors

- 41.1 The existing directors are the people who have agreed to act as **directors** of the **company**.
- 41.2 Apart from **directors** appointed under clause 41.5, the members may elect a **director** by a resolution passed in a **general meeting**.
- 41.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 41.4 A person is eligible for election as a **director** of the **company** if they:
- (a) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a **director** at a **general meeting** and has been a **director** since that meeting), or they are nominated by the **National Program Team**
 - (b) give the **company** their signed consent to act as a **director** of the **company**, and
 - (c) are not ineligible to be a **director** under the **Corporations Act** or the **ACNC Act**.
- 41.5 The directors may appoint a person as a **director** to fill a casual vacancy or as an additional **director** if that person:
- (a) gives the **company** their signed consent to act as a **director** of the **company**, and

- (b) is not ineligible to be a **director** under the **Corporations Act** or the **ACNC Act**.
- 41.6 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.

42. Election of office bearers

- 42.1 The **board** must elect from its members **directors** to act as **elected chairperson**, deputy chairperson and honorary treasurer at the first meeting of **directors** following each annual **general meeting**.
- 42.2 Office bearers will be elected for a period of 12 months and are eligible for re-election.
- 42.3 A person does not cease to be the **elected chairperson** if that person retires as **director** at a meeting of members and is re-elected as a **director** at that meeting (or any adjournment of that meeting).

43. Term of office

- 43.1 At each annual **general meeting**:
- (a) any **director** appointed by the **directors** to fill a casual vacancy or as an additional **director** must retire, and
 - (b) at least one-third of the remaining **directors** must retire.
- 43.2 The **directors** who must retire at each annual general meeting under clause 43.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 43.3 Other than a director appointed under clause 41.5, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 43.4 Each director must retire at least once every three years.
- 43.5 A director who retires under clause 43.1 may nominate for election or re-election, subject to clause 43.6.
- 43.6 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**

44. When a director stops being a director

- 44.1 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) were nominated by the **National Program Team** and the **National Program Team** notifies the **company** that the relevant **director** is no longer a representative of the **National Program Team**
 - (e) are absent for a continuous period of 6 months without approval from the **directors**, or
 - (f) become ineligible to be a **director** of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

45. Powers of directors

- 45.1 The **directors** are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 6.
- 45.2 The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 45.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 47, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

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

46. Auxiliary Bodies

46.1 Auxiliary bodies to the company may be established with the approval and authority of the board and shall at all times be subject to the direction and control of the board.

46.2 The functions of auxiliary bodies may include the raising of funds for the company and the dissemination of information and advice concerning the company and its objects.

46.3 The name of any proposed auxiliary body shall be submitted to the board for its approval and the name shall, where practicable, consist of the company with a descriptive name indicating the auxiliary body's character and/or location

47. Delegation of directors' powers

47.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the (such as a chief executive officer) or any other person, as they consider appropriate.

47.2 The delegation must be recorded in the company's minute book.

48. Execution of documents

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

(a) two **directors** of the **company**, or

(b) a **director** and the secretary, or

(c) one **director** and another person authorised by the **board** for that purpose.

Duties of directors

49. Duties of directors

49.1 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 50

(f) to ensure that the financial affairs of the **company** are managed responsibly, and

(g) not to allow the **company** to operate while it is insolvent.

50. Conflicts of interest

50.1 A **director** must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of **directors** (or that is proposed in a circular resolution):

(a) to the other **directors**, or

(b) if all of the **directors** have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.

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

50.3 Each director who has a material personal interest in a matter that is being considered at a meeting of **directors** (or that is proposed in a circular resolution) must not, except as provided under clauses 50.4:

(a) be present at the meeting while the matter is being discussed, or

- (b) vote on the matter.
- 50.4 A **director** may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest
 - (b) their interest relates to an insurance contract that insures, or would insure, the **director** against liabilities that the **director** incurs as a **director** of the **company** (see clause 71)
 - (c) their interest relates to a payment by the **company** under clause 70 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
 - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the **director** to vote on the matter, or
 - (e) the **directors** who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the **director**, the nature and extent of the **director's** interest in the matter and how it relates to the affairs of the **company**, and
 - (ii) says that those **directors** are satisfied that the interest should not stop the **director** from voting or being present.

Directors' meetings

51. When the directors meet

The **directors** may decide how often, where and when they meet.

52. Calling directors' meetings

- 52.1 A **director** may call a directors' meeting by giving reasonable notice to all of the other **directors**.
- 52.2 A **director** may give notice in writing or by any other means of communication that has previously been agreed to by all of the **directors**.

53. Chairperson for directors' meetings

- 53.1 The **elected** chairperson is entitled to chair directors' meetings.
- 53.2 If there is no chairperson, the elected chairperson is unwilling to act or the elected chairperson is not present within ten minutes after the time appointed for holding the meeting, the deputy chair shall be chairperson
- 53.3 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if neither the elected chairperson nor the deputy chair is:
 - (a) present within ten minutes after the starting time set for the meeting, or
 - (b) present but is unwilling to act as chairperson of the meeting.
- 53.4 A person does not cease to be the **elected chairperson** if that person retires as a member of the **board** at a meeting (other than the annual **general meeting**) and is re-elected as a **director** at that meeting (or any adjournment of that meeting).

54. Quorum at directors' meetings

- 54.1 Unless the **directors** determine otherwise, the quorum for a **directors'** meeting is a majority (more than 50%) of all the **directors**.
- 54.2 A quorum must be present for the whole **directors'** meeting.

55. Using technology to hold directors' meetings

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

56. Passing directors' resolutions

A **directors'** resolution must be passed by a majority of the votes cast by **directors** present and entitled to vote on the resolution.

57. Valid proceedings

- 57.1 An act at any meeting of **directors** or a committee or an act of any person acting as a **director** is not invalidated by:
- (a) a defect in the appointment or continuance in office of a person as a **director**, a member of the committee or of the person so acting; or
 - (b) a person so appointed being disqualified or not being entitled to vote,
- 57.2 if that circumstance was not known by the **directors**, committee or person (as the case may be) when the act was done

58. Circular resolutions of directors

- 58.1 The **directors** may pass a circular resolution without a directors' meeting being held.
- 58.2 A circular resolution is passed if all directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 58.3 or clause 58.4.
- 58.3 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.
- 58.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 58.5 A circular resolution is passed when the last **director** signs or otherwise agrees to the resolution in the manner set out in clause 58.3 or clause 58.4.

Secretary

59. Appointment and role of secretary

- 59.1 The company must have at least one secretary, who may also be a director.
- 59.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- 59.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 59.4 The role of the secretary includes:
- (a) maintaining a register of the **company's** members, and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), **directors'** meetings and circular resolutions.

Chief Executive Officer

60. Appointment of chief executive officer

- 60.1 The **board** may appoint a chief executive officer designated by whatever title the **board** thinks fit.
- 60.2 The appointment may be for the period, at the remuneration and on the conditions that the board thinks fit.
- 60.3 The board may remove the chief executive officer at any time, subject to any contract between the company and the chief executive officer.

National Program Team

61. National Program Team

- 61.1 A **National Program Team** will be established.

- 61.2 The purpose of the National Program Team is to ensure that the development and delivery of the company's programs is informed by participants in those programs
- 61.3 The terms of reference of the National Program Team will be as determined by directors from time to time.

Minutes and records

62. Minutes and records

- 62.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of members
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a members' statement distributed to members under clause 32.
- 62.2 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**.
- 62.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 62.1, and
 - (b) the **directors** may authorise a member to inspect other records of the **company**, including records referred to in clause 62.1 and clause 63.1.
- 62.4 The **directors** must ensure that minutes of a **general meeting**, a **directors'** meeting or a committee are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 62.5 The directors must ensure that minutes of the passing of a circular resolution (of members or **directors**) are signed by a **director** within a reasonable time after the resolution is passed.

63. Financial and related records

- 63.1 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.
- 63.2 The **company** must also keep written records that correctly record its operations.
- 63.3 The **company** must retain its records for at least 7 years.
- 63.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

64. By-laws

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

Notice

65. What is notice

- 65.1 Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 0 to 68, unless specified otherwise.
- 65.2 Clauses 0 to 68 do not apply to a notice of proxy under clause 38.6.

66. Notice to the company

- 66.1 Written notice or any communication under this constitution may be given to the **company**, the **directors** or the secretary by:
- (a) delivering it to the **company's** registered office
 - (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
 - (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
 - (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

67. Notice to members

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

68. When notice is taken to be given

- 68.1 A notice:
- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
 - (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
 - (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
 - (d) given under clause 67.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

69. Company's financial year

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

Indemnity, insurance and access

70. Indemnity

- 70.1 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.
- 70.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

- 70.3 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).
- 70.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

71. Insurance

71.1 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 against any liability incurred by the person as an officer of the **company**.

72. Directors' access to documents

- 72.1 A **director** has a right of access to the financial records of the company at all reasonable times.
- 72.2 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

73. Winding up

If the **company** is wound up, any **surplus assets** must not be paid to or distributed among the members, but must be dealt with as follows:

- 73.1 all remaining **Community Housing Assets** in a Participating Jurisdiction on winding up must be transferred to another Registered Provider or to a **Housing Agency** in the jurisdiction in which the asset is located;
- 73.2 for all other assets of the **company**, the assets may be given or transferred to:
- (a) a Registered Provider or **Housing Agency**;
 - (b) one or more bodies corporate, associations or institutions (whether or not a member or members) selected by the members by resolution at or before the dissolution of the **company**:
 - (i) having objects similar to the Objects of the **company**; and
 - (ii) whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the **company** pursuant to clause 8; or
 - (c) if there are no bodies corporate, associations or institutions which meet the requirements of clause 72.2(a) or 72.2(b) (i) or (ii) to one or more bodies corporate, associations or institutions (whether or not a member or members) determined by a **general meeting** of the members by resolution at or before dissolution of the **company**, the objects of which are the promotion of charity and gifts which are allowable deductions pursuant to the Income Tax Assessment Act 1997 (Cth); or
 - (d) if the members do not make a selection pursuant to clauses 72.2 (a) or 72.2 (b) (i) or (ii) for any reason, to one or more bodies corporate, associations or institutions meeting the requirements of clauses 72.2(a) or 72.2(b)(i) or (ii) selected by the **board**, subject to the **board** obtaining court approval pursuant to the **Corporations Act** to exercise this power.

Definitions and interpretation

74. Definitions

In this constitution:

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

Community Housing Asset has the meaning given to it under the Housing Act 2003 (Qld).

board means the **board of directors** for the time being of the **company**

company means GROW, the **company** referred to in clause 1

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

director means a person defined as a **director** by the **Corporations Act**

elected chairperson means a person elected by the **directors** to be the **company's** chairperson under clause 42

existing member means a person who is named in the application for registration of the **company**, with their consent, as a proposed member of the **company**

general meeting means a meeting of members and includes the annual **general meeting**, under clause 22.1

Housing Agency has the meaning given to it under the Housing Act 2003 (Qld)

member means a person whose name is entered in the Register as a member of GROW.

member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting

National Program Team means a team established in accordance with clause 61

Registered Office means 1014 Logan Road, Holland Park West, Q 4121 or such other place as **the company** from time to time determines.

Registered Provider has the meaning given to it under the *Housing Act 2003 (Qld)*.

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

special resolution means a resolution:

- of which notice has been given under clause 23.5(c)23.5(c), and
- that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution

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.

transitional members means those members listed under clause 77.

75. Reading this constitution with the Corporations Act

75.1 The replaceable rules set out in the Corporations Act do not apply to the company.

75.2 While the company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.

75.3 If the company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.

75.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

76. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression,
- (b) words importing any one gender are deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided,
- (c) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations); and
- (d) a notice or document required by this constitution to be signed may be authenticated by the **Corporations Act** or any other law.

77. Transition provisions

77.1 From the date of adoption of this constitution until the date that is six months later, the following persons will be **transitional members**:

- Peter Barker
- Jeremy Morse
- John MacIsaac
- Ian Sloan

- Leonie Young.

77.2 On the date that is six months after the adoption of this constitution, the membership of the transitional members will automatically cease.

77.3 Any transitional member who ceases to be a member by operation of this clause 77 may at any time re-apply to be a member.