

Constitution

**Playgroup Australia
Limited**

ACN 142 795 695

A Public Company Limited by Guarantee

Adopted on 28 November 2022

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1 Nature of the Company

- (a) The Company is a public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) The liability of the Members is limited to \$50.00.

2 Objects

- (a) The Company is established for community service purposes. Its object is to promote playgroup models and support playgroups to provide benefits to all children, parents, carers, families and the wider community. The Company will achieve this through:
 - (i) championing the important role of the Playgroup Movement as a whole in supporting all young children, families and communities;
 - (ii) supporting the Playgroup Movement by (but not limited to):
 - (A) promoting participation in the Playgroup Movement;
 - (B) promoting and facilitating communications and information sharing within the Playgroup Movement; and
 - (C) empowering local families to come together in community driven playgroup settings in collaboration with our Members;
 - (iii) supporting the State and Territory Playgroup Organisations who are currently Voting Members;
 - (iv) receiving any funds and distributing these funds in a manner that best attains the Objects of the Company;
 - (v) liaising with Government and other bodies to develop and improve legislation, policies, and support for playgroups for the benefit of the people who use playgroups, including children as well as parents, families and the wider community; and
 - (vi) doing all such things as are incidental or conducive to the operation of the Company and otherwise for the attainment of all or any of the Objects.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
 - (i) carry out the Objects of the Company; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 2(b)(i)**.

3 Membership

3.1 Members of the Company

- (a) The Members are those:
 - (i) noted as such in the Company's Register as at the date this Constitution is adopted; and
 - (ii) applicants that have been admitted as Members in accordance with **clause 3.3**;
and have not since ceased to be a Member.
- (b) If an applicant is admitted as a Member, the Secretary must ensure that:
 - (i) the applicant is given notice of admission as a Member; and
 - (ii) the name, address, Membership Class and date of admission to membership are entered in the Register.
- (c) The Secretary must ensure that each applicant not admitted as a Member is informed of this decision. The Board may, but is not required to, provide reasons for the decision not to admit an applicant as a Member.

3.2 Membership Classes

- (a) The Company will have the following Membership Classes:
 - (i) Voting Members, comprising State and Territory Playgroup Organisations;
 - (ii) Affiliate Members; and
 - (iii) such further or other Membership Classes as are established by the Board.
- (b) Voting Members are entitled to vote through their Representatives at general meetings of Members.
- (c) Affiliate Members are not entitled to:
 - (i) vote at general meetings of Members; or
 - (ii) nominate a person to stand for election to the Board of the Company.
- (d) The Board may establish a new Membership Class.

3.3 Becoming a Voting Member

To become a Voting Member an applicant must:

- (a) have a genuine commitment to and an understanding of the Objects;
- (b) be nominated for membership by an existing Voting Member;
- (c) be a State and Territory Playgroup Organisation;
- (d) complete and lodge a membership application in such form as determined by the Directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (e) ensure that all information provided when applying for membership of the Company is true and accurate and is not misleading or deceptive;
- (f) pay any entrance and annual subscription fee that may be required under

clause 4;

- (g) satisfy the membership criteria as the Board may resolve from time to time, acting reasonably; and
- (h) be admitted into membership by an ordinary resolution of the Board.

3.4 Becoming an Affiliate Member

To become an Affiliate Member an applicant must:

- (a) have a genuine commitment to and an understanding of the Objects;
- (b) be nominated for membership by an existing Voting Member;
- (c) complete and lodge a membership application in such form as determined by the Directors from time to time which, for the avoidance of doubt, may include applying using the Internet;
- (d) ensure that all information provided when applying for membership of the Company is true and accurate and is not misleading or deceptive;
- (e) pay any entrance and annual subscription fee that may be required under **clause 4;**
- (f) be admitted into membership by an ordinary resolution of the Board; and
- (g) satisfy such other membership criteria, including in relation to a particular class of membership, as the Board may resolve from time to time, acting reasonably.

4 Application Fee**4.1 Amount of fees**

- (a) Subject to **clause 4.1(b)**, the:
 - (i) entrance fee, payable upon admission to any category of Non-voting Member; and
 - (ii) annual subscription, levies payable upon renewal of membership in any category of membership;is the amount determined by the Board as approved by the Voting Members from time to time.
- (b) For the avoidance of doubt, the Board may determine differential entrance and annual subscription fees for different Membership Classes.

5 Removal and cessation of membership**5.1 Resignation**

- (a) A Member may resign from membership of the Company by giving written notice to the Secretary, and the resignation shall take effect from the date of receipt of the notice of resignation or such later date as may be stated in the notice.
- (b) Despite resignation of a Member under **clause 5.1(a)**, such Member's liability for any fees, subscriptions or other moneys in arrears at the date of such resignation shall continue until discharged by payment.

5.2 Removal from membership

- (a) Subject to **clause 5.2(b)**, a Member may be removed by ordinary
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resolution of the Voting Members at a general meeting.

- (b) The following provisions must be fulfilled before a Member can be removed by a resolution of the Members under **clause 5.2(a)**:
- (i) a majority of the Directors must agree that the Member has:
 - (A) failed to comply with a provision of this Constitution;
 - (B) failed to satisfy the relevant eligibility requirements for the Member's Membership Class; or
 - (C) is otherwise no longer considered suitable to be a Member;
 - (ii) the Board must give at least 2 months' written notice to the Member of the intention to terminate their membership and the grounds of the intended termination;
 - (iii) the Member must be invited, in the written notice, to provide to the Board any written representations which the Member wishes the meeting of Members to consider;
 - (iv) if the Member makes written representations, and requests that they be notified to the other Members, in sufficient time before the notices of meeting are sent to the Members, the Board must ensure that a copy of the representations is included in the notices calling the meeting;
 - (v) if copies of the representations have not been included in the notices of meeting, for any reason, the Member may require the representations to be read out at the meeting; and
 - (vi) whether or not representations have been circulated or read, the Member must be given a full and fair opportunity to address the meeting.

5.3 Other cessation of membership

A Member also ceases to be a Member, in the case of bodies corporate:

- (a) upon the dissolution of the Member; or
- (b) upon the insolvency of the Member.

5.4 No profits for Members

- (a) Subject to **clause 5.4(b)**, all of the assets and income of the Company shall be applied solely in the furtherance of the Objects of the Company and no portion shall be distributed directly or indirectly to any Member in their capacity as a Member.
- (b) Nothing in clause **5.4(a)** prevents a payment from being made to a Member:
 - (i) in carrying out the Objects of the Company; and
 - (ii) in good faith, of an amount, calculated on arm's length terms, in respect of goods or services actually supplied to the Company by a Member in the ordinary and usual course of the Member's business.

6 General meetings

6.1 Convening of meetings

- (a) The Secretary must comply with a request to convene a general meeting of the Members on:
- (i) the request of the Chair or any 2 Directors of the Company; or
 - (ii) a requisition signed by not less than 3 of the Members entitled to vote at any general meeting at the relevant time. Such requisition shall be in writing and shall state any resolution to be proposed at the meeting.
- (b) Any general meeting must be held at a reasonable time and, if any Members are entitled to physically attend, at a reasonable location or locations.

6.2 Notice of general meeting

- (a) Notice of a general meeting:
- (i) must give at least 21 days' notice of the meeting (unless all Voting Members agree beforehand);
 - (ii) may be given by any form of communication permitted by the Corporations Act;
 - (iii) must specify the place, the day and the hour of meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act;
 - (iv) if virtual meeting technology is to be used – must provide sufficient information to allow Members to participate by means of the technology; and
 - (v) if the meeting is an AGM – must include at least the following items of business:
 - (A) to receive the statement of accounts and balance sheet;
 - (B) to elect the auditor or auditors and to fix the auditor's remuneration, as required; and
 - (C) subject to **clauses 9.5-9.6**, to announce any new Directors appointed to the Board.
- (b) The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

6.3 Quorum at general meetings

- (a) A quorum for the purposes of a general meeting of Members shall be at least 50% of Voting Members, whether present by proxy or by Representative.
- (b) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chair:
- (i) if the meeting was convened by or on the requisition of Members, it must be dissolved; or
 - (ii) in any other case it must stand adjourned to the same day in the

next week at the same time and place or to another day and at another time and place determined by the Board.

- (c) If a meeting has been adjourned to another time and place determined by the Board, then notwithstanding any other provision, not less than 7 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.
- (d) If, at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

6.4 Appointment of chair and powers of chair

- (a) The Chair or, in his/her absence, the Deputy Chair, shall preside as chair at every general meeting of Members.
- (b) If for any reason neither the Chair nor Deputy Chair is present within 15 minutes of the time nominated for the meeting to start, the Members who are present and entitled to vote at the meeting shall select one of their own present to chair the meeting.
- (c) The chair of a general meeting may, in his/her discretion, expel any person from a general meeting if the chair reasonably considers that the person's conduct is inappropriate.

6.5 Casting vote of chair

The chair of a general meeting is not entitled to a second or casting vote on all resolutions, whether by show of hands or on a poll.

6.6 Adjournment of meetings

- (a) The chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) When a meeting is adjourned for less than 30 days, it is not necessary to give a further notice of the adjourned meeting.

6.7 Voting on show of hands

- (a) All resolutions put to the vote of a general meeting of Members must be decided on a show of hands unless:
 - (i) a poll is demanded in accordance with **clause 6.8**; or
 - (ii) virtual meeting technology is used, in which case voting must occur by poll.
- (b) On a show of hands, each Voting Member present by Representative or by proxy, and who is not more than 1 month in arrears in respect of any fees due by that Member, has one vote.
- (c) On a show of hands, a declaration by the chair that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the

number or proportion of the votes recorded in favour of or against the resolution.

6.8 Vote on a poll

- (a) Subject to **clause 6.8(b)**, a poll may be demanded in respect of a resolution at a general meeting:
 - (i) by the chair; or
 - (ii) by at least 3 Voting Members present and entitled to vote on the resolution.
- (b) The only times at which a poll properly may be demanded are:
 - (i) before the vote on that resolution is taken;
 - (ii) before the result is declared on a show of hands; or
 - (iii) immediately after the result is declared on a show of hands.
- (c) On a poll each Voting Member present by Representative or by proxy, and who is not more than 1 month in arrears in respect of any annual subscription or subscriptions due by that Voting Member, has one vote.
- (d) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (e) A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.
- (f) The chair, in his/her discretion may expel any Member or Director from a general meeting if the chair reasonably considers that the Member or Director's conduct is inappropriate behaviour within the terms of **clause 6.8(g)**.
- (g) The following conduct may be considered inappropriate in a general meeting:
 - (i) the use of offensive or abusive language which is directed to any person, object or thing;
 - (ii) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance; and
 - (iii) the use or consumption of any drug by a person at the meeting.

6.9 Using technology to hold meetings

- (a) The Company may hold a general meeting at two or more venues using any virtual meeting technology that gives the Voting Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) A person participating through the use of technology will be deemed to be present at the meeting in person.
- (c) A Representative participating on behalf of a Voting Member through the use of virtual meeting technology:
 - (i) must be given the opportunity to participate in a vote in real time; and
 - (ii) may, in the sole discretion of the Board, be given the opportunity to record a vote in advance of the meeting, in which case the Representative may elect to vote in real time or in advance.

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- (d) A document that is required or permitted to be tabled at a meeting using virtual meeting technology is taken to have been tabled if it is:
 - (i) given to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) before the meeting; or
 - (ii) made accessible to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) during the meeting.

7 Proxies

7.1 Proxies

- (a) At meetings of Members, each Member may attend through its Representative or by proxy or through the Representative's proxy and, in the case of a Voting Member, vote through that person.
- (b) A person attending as a proxy shall be deemed to have all the powers of the relevant Member, except where expressly stated to the contrary in this Constitution or the Corporations Act.

7.2 Appointment of proxies

- (a) A Member or Representative may appoint any person as a proxy to attend and, in the case of a Voting Member, vote in their place at a general meeting.
- (b) The proxy must be appointed in writing, in the form from time to time required by the Board, and signed by the Member or Representative appointing the proxy.
- (c) If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution except in the manner specified in the document.

7.3 Verification of proxies

Notwithstanding any other provision, a proxy shall be deemed to be invalid unless the following provisions are fulfilled:

- (a) each Member or Representative appointing a proxy must send or deliver to the Company, for receipt at least 48 hours before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote, the following:
 - (i) the document appointing the proxy; and
 - (ii) if the appointment is signed by the Member's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- (b) The required documents must be either sent or delivered to the Company's office address, fax number or electronic address, and marked to the attention of the relevant person, as specified for that purpose in the notice convening the meeting.

7.4 Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document or power of attorney is valid despite:

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- (a) the death or unsoundness of mind of the appointor; or
 - (b) the revocation of the instrument or of the authority under which the instrument was executed, except where the Secretary has been notified in writing of such event before the commencement of the meeting or adjourned meeting at which the proxy is used, in which case the proxy shall be deemed to be invalid.

8 Members' Representatives

- (a) A Member that is a body corporate may appoint an individual as a Representative to exercise all or any of the powers of the Member under this Constitution or otherwise at law.
- (b) The appointment may be a standing one.
- (c) The appointment may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (d) A Member may appoint more than 1 Representative, but only 1 Representative may exercise the body's powers at any one time.
- (e) Unless otherwise specified in the appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.

9 Board of Directors as governing body

9.1 Number and composition of Directors

- (a) The Company must have at least six and no more than eleven Directors.
- (b) The Board must comprise:
 - (i) up to three Board Appointed Directors appointed pursuant to **clause 9.4**; and
 - (ii) up to eight Voting Member Appointed Directors appointed pursuant to **clause 9.5 or 9.6**.

9.2 Term of office of Directors

- (a) The term of office of a Board Appointed Director:
 - (i) commences upon appointment by the Board under **clause 9.4**; and
 - (ii) expires at the end of the second AGM following the appointment (unless a shorter period is specified in the resolution appointing the Board Appointed Director, in which case the term expires at the end of that period).
 - (b) The term of office of a Voting Member Appointed Director appointed pursuant to **clause 9.5**:
 - (i) commences upon appointment pursuant to **clause 9.5** (unless a Voting Member Appointed Director is already in office pursuant to clause 9.6, in which case it commences thirty days after appointment or on that Voting Member Appointed Director's resignation); and
 - (ii) expires on the earlier of:
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- (A) the relevant Voting Member notifying the Secretary in writing that the Voting Member Appointed Director's appointment is withdrawn;
 - (B) the relevant Voting Member appointing a substitute Voting Member Appointed Director pursuant to clause 9.5; or
 - (C) at the end of the second AGM following the appointment.
- (c) The term of office of a Voting Member Appointed Director appointed pursuant to **clause 9.6**:
 - (i) commences upon appointment pursuant to **clause 9.6**; and
 - (ii) expires on the earlier of:
 - (A) thirty days after a replacement appointment is made by the relevant Voting Member pursuant to **clause 9.5**; or
 - (B) the second AGM following the appointment.
 - (d) Subject to clause 9.2(e), all Directors may be reappointed.
 - (e) The maximum continuous term of office of all Directors is the longer of:
 - (i) six years; or
 - (ii) three terms of office.

9.3 Eligibility as a Director

A person is only eligible for appointment as a Director if:

- (a) the person has not been an employee of the Company or of any related entity employing staff of the Company for any period of time in the 12 months leading up to the date of appointment.
- (b) the person has consented in writing to be a Director;
- (c) the person is not ineligible to be a Director under:
 - (i) the Corporations Act; or
 - (ii) the ACNC Act; and
- (d) in the case of a Voting Member Appointed Director, the person is a director or board member of a Voting Member at the time of their appointment; and
- (e) in the case of a Board Appointed Director, the person has not been an employee, director or board member of a STO for any period of time in the 12 months leading up to the date of appointment.

9.4 Appointment of Board Appointed Directors

- (a) The Board may, in its discretion, and from time to time, appoint up to a maximum of three Directors to serve at any one time.
- (b) In addition to the eligibility criteria in clause 9.3, Board Appointed Directors must be individuals whose background, skills and/or experience are (in the sole discretion of the Board) considered prudent or necessary to enhance the ability of the Board to better discharge its role and the legal duties and responsibilities of the Directors.

9.5 Appointment of Voting Member Appointed Directors by Voting Members

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- (a) There is one Voting Member Appointed Director position for each Voting Member.
 - (b) Voting Members may only appoint individuals who are eligible for appointment pursuant to clause 9.3 as Voting Member Appointed Directors.
 - (c) A Voting Member may appoint, remove or substitute the individual appointed to a Voting Member Appointed Director position at any time by giving written notice to the Secretary.
 - (d) The appointment, removal or substitution of a Voting Member Appointed Director will be effective from the date the notice is received by the Secretary, or such later date as may be stated in the notice.

9.6 Appointment of Voting Member Appointed Directors by the Board

- (a) If a Voting Member Appointed Director position remains vacant for any period exceeding four weeks, then after complying with **clause 9.6(b)** the Board may appoint an individual who:
 - (i) is eligible for appointment pursuant to **clauses 9.3(a)-(d)**; or
 - (ii) if the criterion in **clause 9.3(d)** cannot be met because no director or board member of the relevant Voting Member is willing or able to be appointed as a Voting Member Appointed Director – is:
 - (A) eligible for appointment pursuant to **clauses 9.3(a)-(c) and (e)**; and
 - (B) resides in the State or Territory of the relevant Voting Member;to fill that position.
- (b) Before making any appointment under **clause 9.6(a)**, the Board must:
 - (i) notify the relevant Voting Member in writing that, if the position is not filled within two weeks of the date of the notice, the Board will appoint an individual to fill the vacant position; and
 - (ii) use its best endeavours to consult with the relevant Voting Member about any proposed candidate (or candidates) identified for the position no less than one week before any appointment.

9.7 Less than three Directors

If the number of Directors is less than three, the remaining Directors may, except in an emergency, act only to:

- (a) increase the number of Directors to a number sufficient to meet that minimum number; or
- (b) convene a general meeting of the Company.

9.8 Retirement and removal from office

- (a) A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time of giving the notice to the Company or, if another time is specified in the notice, at that time.
- (b) The Voting Members may remove a Director from office in accordance with the Corporations Act.

9.9 Vacation of office

Without limiting any other provision, the office of a Director becomes vacant if the Director:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) is absent without the consent of the Directors from the meetings of the Directors:
 - (i) for any 3 meetings during a continuous period of 6 months; or
 - (ii) for any 3 consecutive meetings;and the Board resolves that the office of that Director be vacated; or
- (e) is or becomes ineligible from being a Director under the Corporations Act or the ACNC Act.

9.10 Chair and Deputy Chair

- (a) At the first meeting of the Board after each AGM meeting, the Board shall elect from amongst the then current Directors a Chair and Deputy Chair.
- (b) The Chair and Deputy Chair of the Board shall be elected to take place in accordance with the following provisions:
 - (i) all Directors will be eligible for election as:
 - (A) Chair; or
 - (B) Deputy Chair,except for any Director who expressly indicates that they do not wish to be considered for either position;
 - (ii) the election of the Chair will be conducted first and will be held by secret ballot, unless only one Director wishes to be considered for election to this office, in which case that Director will be considered automatically elected as Chair;
 - (iii) in the case of more than one Director wishing to be considered for the position of Chair, the Director who obtains a simple majority of votes from the Board shall be considered elected to the position of Chair;
 - (iv) if the outcome of the secret ballot in **clause 9.10(b)(ii)** is a tie, a further secret ballot shall be conducted between the tied Directors and the Director who obtains a simple majority of votes shall be elected to the position of Chair, and if the outcome of the further secret ballot is also a tie, the result will be determined by drawing lots;
 - (v) subject to the next following paragraph, once the Chair has been elected, the provisions of **clause 9.10(b)(i)** to **9.10(b)(iv)** (inclusive) shall apply with necessary modifications, in relation to the election of a Deputy Chair; and

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- (vi) notwithstanding any other provision, a Director may at any one time occupy only one of the office bearer positions referred to in this clause (Chair and Deputy Chair) and so once elected to, and whilst occupying, an office bearer position is no longer eligible for election to any other office bearer position.
 - (c) A Director shall not serve more than 6 consecutive years as Chair.
 - (d) The Chair shall, subject to the provisions of this Constitution and the law, act as chairperson of the Board, and otherwise shall have the role and responsibilities from time to time determined by the Board.
 - (e) The Deputy Chair shall, subject to the provisions of this Constitution and the law, on an as-needs basis, act in place of the Chair as chairperson of the Board, and otherwise shall have the role and responsibilities from time to time determined by the Board.

10 Directors' remuneration

10.1 Payment for expenses

- (a) Directors may be entitled to be paid sitting fees for their role as Directors provided that such fees are approved annually in advance by the Voting Members at a properly constituted meeting of Members.
- (b) In addition to any sitting fees approved by the Voting Members, Directors shall be entitled, on an equitable basis, to be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board, or any of its committee or general meetings, or otherwise in the execution of their duties as Directors, provided that such expenses have first been approved by the Board.

11 Powers of directors

- (a) The Directors may exercise all of the powers of the Company which are not, by the Corporations Act or by this Constitution, required to be exercised by the Voting Members in general meeting or otherwise.
 - (b) The Directors must comply with their duties as directors under legislation and common law and, for as long as the Company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, with the duties described in Governance Standard 5 of the regulations made under the ACNC Act which are:
 - (i) 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;
 - (ii) to act in good faith in the best interests of the Company and to further the Objects;
 - (iii) not to misuse their position as a Director;
 - (iv) not to misuse information that they gain in their role as a Director;
 - (v) to disclose any perceived or material conflicts of interest;
 - (vi) to ensure that the financial affairs of the Company are managed responsibly; and
 - (vii) not to allow the Company to operate while insolvent.
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12 Proceedings of directors

12.1 Convening of Directors' meetings

- (a) The Board will meet not less than 4 times per year, but otherwise as necessary to discharge their duties and functions.
- (b) The Chair or any other 2 Directors may request the Secretary to convene a meeting of the Board at any time and the Secretary must comply with such request.
- (c) Notice of each meeting of the Directors must:
 - (i) be given to each Director atleast:
 - (A) 14 days before a meeting;
 - (B) despite **clause 12.1(c)(i)**, at least 24 hours before a meeting dealing with urgent business; or
 - (C) otherwise as determined by resolution of the Board, except in the case of a Director who is out of Australia or who has been given leave of absence from the Board; and
 - (ii) if virtual meeting technology is to be used – provide sufficient information to allow Directors to participate by means of the technology.
- (d) A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

12.2 Quorum and voting at Directors' meetings

- (a) A quorum for the purposes of a meeting of the Board is a simple majority of the Board as then constituted.
- (b) Questions arising at a meeting of the Board must be decided in the manner from time to time determined by the Board, and in the absence of any such agreement, by a majority of votes of Directors present and voting.
- (c) A Director participating through the use of virtual meeting technology must be given the opportunity to participate in a vote in real time.

12.3 Chair or Deputy Chair as chairperson of meetings

- (a) The Chair or, in his/her absence, the Deputy Chair, shall preside as chair at every meeting of the Board.
- (b) If for any reason neither the Chair nor the Deputy Chair is present within 15 minutes of the time nominated for the Board meeting to start, the Directors who are present and entitled to vote at the meeting shall select one of their number to chair the meeting.

12.4 Chair's vote at Directors meetings

The Chair has a second or casting vote at meetings of Directors.

12.5 Teleconference meeting of the Board

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- (a) A meeting of Directors may be held by means of the contemporaneous linking together by telephone, radio or other form of instantaneous audio or audio and visual communication of a number of Directors constituting not less than the quorum required for the purpose of this Constitution provided that the conditions set out in **clause 12.5(b)** are fulfilled.
- (b) The conditions referred to in the immediately preceding clause are that:
- (i) all the Directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of the meeting to be conducted by telephone, radio or other form of instantaneous audio or audio and visual communication;
 - (ii) notice of any such meeting shall be given in accordance with **clause 12.1(c)**;
 - (iii) each of the Directors taking part in the meeting shall be linked by telephone, radio or other form of instantaneous audio or audio and visual communication and must throughout the meeting be able to hear each of the other Directors so taking part;
 - (iv) at the commencement of the meeting each Director must acknowledge his/her presence to all the other Directors taking part; and
 - (v) if the Secretary is not present at the meeting one of the Directors so present shall take minutes of the meeting.
- (c) Director may not leave a meeting conducted pursuant to **clause 12.5(a)** by disconnecting his or her telephone, radio or other form of communication unless he/she has previously obtained the express consent of the chair of the meeting.
- (d) A Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone, radio or other form of instantaneous audio or audio and visual communication unless they have previously obtained the express consent of the chair of the meeting to leave the meeting.
- (e) A minute of the proceedings at a meeting held by telephone, radio or instantaneous audio or audio and visual communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified on a correct minute by the chair of the meeting if present at the meeting.
- (f) A meeting by electronic communications shall not be invalidated by a voluntary or involuntary disconnection of a participant provided that there shall remain or be reconnected sufficient Directors able to communicate with each other as constitutes a quorum.

12.6 Delegation of powers to committee

- (a) The Board may delegate any of their powers, except this power to delegate, to committees consisting of such Directors and such other persons as they think fit.
- (b) In the exercise of any powers delegated to it, a committee formed by the Board:
- (i) must conform to the directions of the Board; and
 - (ii) otherwise shall conduct its meetings and proceedings in
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accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.

12.7 Minutes

- (a) The Board must cause minutes of all proceedings of general meetings, of meetings of the Board and of committees formed by the Board to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

12.8 Resolution in writing

- (a) A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.
- (b) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- (c) In relation to a resolution in writing:
 - (i) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
 - (ii) a document bearing a facsimile of a signature is to be treated as signed.

12.9 Conflict of Interest

The Board shall, agree from time to time in writing on its policy for the regulation of conflicts of interest, which shall include a requirement that Directors only be engaged to provide goods or services to or on behalf of the Company if:

- (a) that Director is for bona fide reasons considered by Board, agreed to be a suitable person to provide, such goods or services;
- (b) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
- (c) the goods or services are provided on arms-length terms;
- (d) the provision of the goods and services is disclosed clearly and expressly to the Members in the annual report of the Company; and
- (e) the Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

12.10 Validity of acts of Directors

All acts done by a meeting of the Board or of a committee appointed by the Board or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

12.11 Use of technology to hold Board meetings

Playgroup Australia Limited

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- (a) The Board may hold its meetings using any virtual meeting technology that is agreed to by the Board.
 - (b) The use of any virtual meeting technology must give Directors a reasonable opportunity to participate including a reasonable opportunity to exercise a right to speak.
 - (c) The Board's agreement may be a standing one.
 - (d) A Director participating through the use of virtual meeting technology is deemed to be present at the meeting in person.

13 Alternate Directors

Directors are not permitted to appoint alternate directors.

14 Chief Executive Officer

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- (a) The Board may appoint any person to act as chief executive officer of the Company (by whatever title determined by the Board) for the period and on the terms (including as to remuneration) the Board see fit.
 - (b) The Board may, upon terms and conditions and with any restrictions they see fit, confer on the chief executive officer any of the powers that the Board can exercise, except this power to delegate.
 - (c) The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the chief executive officer.
 - (d) If the chief executive officer becomes incapable of acting in that capacity, the Directors may appoint any other person to act temporarily as chief executive officer until such time as the position can be permanently filled.

15 Secretary

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- (a) The Directors may:
 - (i) appoint, and terminate the appointment of, one or more Secretaries;
 - (ii) determine their terms and conditions of appointment.
 - (b) A Secretary shall be responsible to carry out all acts and deeds required by this Constitution, the Corporations Act, the ACNC Act or otherwise by law to be carried out by the Secretary of the Company.

16 By-laws

The Board may, by resolution of the Board, make or adopt by-laws with respect to any matter or thing for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Company, which by-laws shall be binding on the Members, provided that to the extent of any inconsistency, this Constitution shall prevail over all such by-laws.

17 Seals and execution of documents

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- (a) If the Company has one, the Board must provide for the safe custody of the Seal.
 - (b) The Company may execute a document by affixing the Seal to the

document where the fixing of the Seal is witnessed by:

- (i) 2 Directors;
 - (ii) a Director and the Secretary; or
 - (iii) a Director and some other person appointed by the Directors for the purpose.
- (c) The Company may execute a document without the use of a seal if the document is signed by:
- (i) 2 Directors; or
 - (ii) a Director and a Secretary.

18 Public Fund requirements

- (a) Playgroup Australia Limited shall establish and maintain a fund known as the Playgroup Australia Limited Public Fund (“the Fund”). The Fund shall be maintained and used for the purpose of carrying out the objects of Playgroup Australia Limited as described in this Constitution
- (b) An account will be established to receive all gifts received by Playgroup Australia Limited. This account must only include any money or property which is a gift to Playgroup Australia Limited or which is received because of such gifts including, without limitation, interest received on any monies in the account.
- (c) All receipts for gifts must be issued in the name of Playgroup Australia Limited.
- (d) Receipts issued for gifts must include:
 - (i) the name of the Fund on behalf of Playgroup Australia Limited;
 - (ii) the fact that the receipt is for a gift; and
 - (iii) the Australian Business Number of Playgroup Australia Limited.
- (e) The general public will be invited to make gifts to the Playgroup Australia Limited Public Fund for the purposes of carrying out the objects of the Fund.
- (f) The Fund is to be managed by a Management Committee of not less than three committee members. Playgroup Australia Limited must ensure that the majority of those charged with the administration of the Fund are persons having a degree of responsibility to the general community by reason of their occupation or standing in the community.
- (g) The Australian Taxation Office must be notified of any alterations made to the public fund requirements.

19 Winding up or revocation of endorsement

19.1 Contribution of a Member on winding up

If required, each Member must contribute an amount (not more than the amount specified in clause 1(c)) to the assets of the Company if it is wound up while they are a Member, or within one year of the Member ceasing to be a Member, for the:

- (a) payment of the debts and liabilities of the Company incurred before they ceased to be a Member; and/or
 - (b) costs, charges and expenses of winding up.
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19.2 Distribution of assets on winding up or revocation

- (a) If the Company is a Deductible Gift Recipient, any DGR gifts must be deposited in a separate bank account or otherwise identified so that they can be distinguished from other assets of the Company.
- (b) If the Company is a Deductible Gift Recipient and is wound up, or it ceases to be endorsed as a Deductible Gift Recipient, any DGR gifts remaining after satisfying the Company's liabilities and expenses must be transferred to a Charity or Charities which:
 - (i) has similar objects to those of the Company as described in this Constitution;
 - (ii) prohibits the distribution of income, profit or assets to its Members in their capacity as Members; and
 - (iii) is endorsed as a Deductible Gift Recipient.
- (c) On the winding up of the Company, any assets remaining after complying with clause 19.2(b) must be given or transferred to a Charity or Charities which:
 - (i) has similar objects to those of the Company as described in this Constitution; and
 - (ii) prohibits the distribution of income, profit or assets to its Members in their capacity as Members.
- (d) The Voting Members must decide which Charity or Charities will receive a distribution pursuant to clause 19.2(b) or 19.2(c). The recipient Charity or Charities must not include any of the Voting Members unless the Voting Member (or Voting Members) meets the requirements set out in clause 19.2(b) or 19.2(c) (as the case requires).
- (e) If the Voting Members fail to decide, the matter must be determined by application to the Supreme Court of the Australian Capital Territory.

20 Indemnity**20.1 Costs and expenses**

Every officer and past officer of the Company is indemnified by the Company against any liability for costs and expenses incurred by that person as an officer:

- (a) in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
- (b) in connection with any application in relation to those proceedings in which the Court grants relief to the person under the Corporations Act.

20.2 Liabilities to third parties

Every officer and past officer of the Company is indemnified against any liability incurred by that person as an officer to a person other than the Company or a related body corporate, except a liability which arises from conduct that involves a lack of good faith.

20.3 Insurance premiums

The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company against:

Playgroup Australia Limited

- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
- (b) other liability incurred by the person as an officer of the Company except a liability which arises from conduct that involves a wilful breach of duty in relation to the Company or a contravention of sections 184(2) or (3) of the Corporations Act or the ACNC Governance Standards.

21 Accounts, audit and records

21.1 Accounts

The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act and ACNC Act (as required) and must comply with the requirements of these laws in respect of reporting and the provision of accounts to Members.

21.2 Audit

If required by law:

- (a) a registered company auditor must be appointed; and
- (b) the remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

21.3 Rights of Inspection

Subject to the Corporations Act, the Board shall determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by resolution of the Board.

22 Notices

22.1 Persons authorised to give notices

- (a) A notice given by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, or, in the case of the Company, by the Secretary or a Director.
- (b) The signature of a person on a notice given by the Company may be written, printed or stamped.

22.2 Method and time of giving notices

In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given by:

- (a) delivering it to the street address of the addressee and shall be taken to have been received at the time of delivery;
- (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee and shall be taken to have been received on the next business day (or 5th business day if sent outside Australia) after posting;
- (c) sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee and shall be taken to have been received when the transmission is complete; or
- (d) sending it by means of any other technology which the Members in general meeting agree to be permissible for the purpose of giving notices.

22.3 Addresses for giving notices to Members and to the Company

For the purposes of **clause 22.2**:

- (a) ~~The address, facsimile, email or other contact details of a Member are~~

the last details formally notified by the Member to the Company with a request that they be recorded in the Register or the other records of the Company.

- (b) The street and postal address of the Company is the registered office of the Company and the facsimile, e-mail or other contact details are as the Company may specify from time to time by written notice to the Members as the contact details for the Company.

22.4 Proof of giving notices

The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgement of receipt of the e-mail.

22.5 Persons entitled to notice of meeting

Notice of every general meeting must be given by a method authorised by this Constitution to every Member, Director and the auditor for the time being of the Company, if any. No other person is entitled to receive notices of general meetings.

23 Dispute resolution

23.1 Disputes covered

The procedures set out below must be followed in relation to the resolution of a dispute or difference (**dispute**) concerning this Constitution, its subject matter or the rights or liabilities of the parties to this Constitution.

23.2 Notice in writing

If a dispute of the type referred to in **clause 23.1** arises, either party may at any time give written notice to the other party and provide a copy of same to the Board. The written notice must adequately specify and provide details of the nature of the dispute.

23.3 Negotiation in good faith

On receipt of a notice delivered in accordance with **clause 23.1**, the parties must within 10 days, in good faith and acting reasonably, do their best to resolve the dispute quickly through negotiation by conferring at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by any other means. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute.

23.4 Mediation

- (a) If the dispute has not been resolved within 10 business days after delivery of a notice under **clause 23.2**, or such later date as the parties may agree, the dispute will be referred to mediation.
- (b) If the parties do not agree on a mediator, then the mediator must be appointed by the President of the ACT Law Society.
- (c) Unless the parties agree otherwise or the mediator otherwise determines, the mediator's fee and any other costs of the mediation itself (such as for venue hire or refreshments) must be shared equally between the parties, but the parties must each pay their own costs of preparing for and
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participating in the mediation (such as for travel and legal representation).
The parties agree to comply with any determination by the mediator in relation to costs under this provision.

23.5 Implementation of agreement reached through negotiation or mediation

The parties must do whatever is reasonably necessary to put into effect any negotiated or mediated agreement or other resolution of the dispute.

24 Interpretation

24.1 References to law and the Constitution

A reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; or
- (b) this Constitution, where amended, means this Constitution as so amended.

24.2 Replaceable rules

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

24.3 Presumptions of interpretation

- (a) Unless the context otherwise requires a word which denotes:
 - (i) the singular denotes the plural and vice versa;
 - (ii) any gender denotes the other genders; and
 - (iii) a person denotes an individual and a body corporate.
 - (b) Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - (c) Headings and any table of contents must be ignored in the interpretation of this Constitution.
 - (d) Unless the context otherwise requires a reference to a time of day means that time of day in the State or Territory in which the Office is situated.
 - (e) For the purposes of determining the length of a period (but not its commencement) a reference to:
 - (i) a day means a period of time commencing at midnight and ending 24 hours later; and
 - (ii) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.
 - (f) Where a period of time is specified and is to be calculated before or after a given day, act or event, it must be calculated without counting that day or the day of that act or event.
 - (g) A provision of this Constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as
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if it required it to be done on or by the next business day.

- (h) A reference to a business day means a day during which banks are open for general banking business in the state or territory in which the Office is situated.
- (i) A reference to an Act of Parliament, whether State or Federal, includes a reference to that Act of Parliament as amended from time to time, and a reference to a specific provision of an Act of Parliament means, unless the context demands otherwise, a reference to the equivalent provision in any later amended version of that Act of Parliament, or if the original Act of Parliament has been repealed in any Act of Parliament substituted in its place.

25 Definitions

In this Constitution, except where the context requires otherwise:

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

Affiliate Member means a person properly admitted as a Member of the Company and having the rights specified in **clause 3.2(c)**.

AGM means an annual general meeting of the Members of the Company and, where the content requires, means the specific annual general meeting in the context.

Board means the board of Directors of the Company.

Board Appointed Directors means the Directors appointed to the Board by the Directors in accordance with **clause 9.4** and satisfying the eligibility criteria in **clause 9.3**.

body corporate means a corporation, as that expression is defined in the Corporations Act, and any other form of organisation, whether or not incorporated, which the Board determines may be treated as a body corporate.

Chair means the chair of the Board, elected from time to time in accordance with this Constitution.

Charity means a charity registered under the ACNC Act.

Company means Playgroup Australia Limited ACN 142 795 695.

Corporate Member means a Member who is a body corporate.

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

Deputy Chair means the person elected to that position in accordance with this Constitution.

Deductible Gift Recipient means an entity to which tax deductible gifts may be made pursuant to Division 30 of the ITAA 97.

DGR gifts means:

- (a) gifts of money or property for the Objects received during any time that the Company is endorsed as a Deductible Gift Recipient;
 - (b) contributions described in item 7 or 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event (as defined by section 995-1 of the ITAA 97) held for that purpose during any time that the Company is endorsed as a Deductible Gift Recipient; and
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- (c) money received by the Company because of such gifts or contributions during any time that the Company is endorsed as a Deductible Gift Recipient.

Director means a person appointed in accordance with this Constitution to perform the duties of a director of the Company.

ITAA 97 means the *Income Tax Assessment Act 1997* (Cth).

Member means a body corporate that, at the relevant time, is a properly admitted Member in accordance with this Constitution.

Membership Class means a membership class listed in **clause 3.2(a)**.

Person includes a natural person and a corporation within the meaning of section 57A of the Corporations Act.

Playgroup Movement means the playgroup movement in Australia generally and includes, but is not limited to, the children and their parents / carers who attend playgroups supported by the State and Territory Playgroup Organisations.

Register means the register of Members kept by the Company under the Corporations Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

Representative means, in relation to a Member, the representative of the Member appointed under **clause 8**.

Seal means, if the Company has one, the common seal of the Company, if any.

Secretary means a person appointed to perform the duties of a secretary of the Company.

State and Territory Playgroup Organisations (STO) means the playgroup organisations of the States and Territories of Australia being:

- (a) ACT Playgroups Association Inc (ABN 75 749 847 915);
- (b) Playgroup Association Northern Territory Inc. (ABN 63 791 968 509);
- (c) Playgroup NSW Inc (ABN 97 616 861 198);
- (d) Playgroup Queensland Ltd (ABN 80 180 917 496);
- (e) Playgroup SA Incorporated (ABN 78 201 463 413);
- (f) Playgroup Tasmania (ABN 42 783 652 787);
- (g) Playgroup Victoria Inc (ABN 13 094 186 877); and
- (h) Playgroup WA (Inc) (ABN 14 415 755 273).

and includes the successors and assigns of each STO, subject to each successor or assign being approved by the Board as the successor or assign for the purposes of this definition.

Voting Member means a State and Territory Playgroup Organisation that is a current Member of the Company.

Voting Member Appointed Directors means Directors appointed in accordance with **clause 9** and satisfying the eligibility criteria in **clause 9.3** or **clause 9.6** (whichever is applicable).

26 Transitional Provisions

The following clauses apply notwithstanding anything to the contrary in this Constitution.

26.1 Members

The Members immediately following the adoption of this Constitution will be those Members listed on the Register at the time of adoption.

26.2 Directors

- (a) Notwithstanding anything in the previous Constitution, the Directors in office immediately prior to the adoption of this Constitution will cease to hold office at the first AGM following its adoption.
- (b) Time served by Directors prior to the adoption of this Constitution will be taken into account for the purposes of clause 9.2(e).