

Constitution

The Benevolent Society

ABN 95 084 695 045 (“Society”)

A Company Limited by Guarantee

www.benevolent.org.au

benevolent SOCIETY

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PART 1: Preamble

In 1813, an association called The New South Wales Society for Promoting Christian Knowledge and Benevolence was formed to minister to the needy. In 1818, that organisation was reconstituted as The Benevolent Society of New South Wales with the aim of “relieving the Poor, the Distressed, the Aged and Infirm”. From its inception, The Benevolent Society of New South Wales sought, not only to improve the conditions of those in the colony who had a need but was also the Colony’s leading advocate for social reform and government assistance. In 1866, the Society established the Lying in Hospital of New South Wales, the first hospital in Australia devoted entirely to the needs of women. When the Government resumed the old Benevolent Asylum in which this facility was housed, in 1902, part of the compensation the Society received was used to build The Royal Hospital for Women at Paddington which the Benevolent Society administered for the next 90 years. Throughout such crises as the 1893 Bank Crash, the First World War, the Pneumonic Influenza epidemic which followed it and The Great Depression of the 1930s, the Benevolent Society of New South Wales was one of the State’s foremost providers of services to those in need. It has continued in this role, servicing the needs of children, women and aged persons.

In 1998, the *Benevolent Society of New South Wales Act 1902*, which constituted the Benevolent Society of New South Wales as a statutory corporation, was repealed and the funds, assets, and liabilities of the statutory corporation were assumed by the Society, being a company registered under the Corporations Act. In 2000, The Benevolent Society of New South Wales changed its name to The Benevolent Society.

The preamble has been inserted for historical purposes only and does not affect the operation or interpretation of the Constitution.

PART 2: Constitution

1 Purpose of Society

1.1 Charitable purposes

The Society is established as a charitable institution and will pursue charitable purposes.

1.2 Objects

The predominant objects for which the Society is established are to:

- (a) raise funds for, and otherwise assist and support, programmes supporting people and communities in Australia who are disadvantaged, in need or vulnerable;
- (b) improve the economic, personal and social circumstances of people and communities in Australia who are disadvantaged, in need or vulnerable;
- (c) by any appropriate means (including the training of persons) act as, and support and assist others to be, leaders in the provision of relief for people and communities in Australia who are disadvantaged, in need or vulnerable; and
- (d) do such other things as are incidental or ancillary to the attainment of the objects of the Society.

2 Income

2.1 Application of income for objects and purposes only

The profits (if any) or other income and the property of the Society, however derived, must be applied solely towards the promotion of the objects and purposes of the Society as set out in Rule 1.

2.2 No dividend, bonus or profit to be paid to Members

No part of the profits or income or property of the Society may be paid or transferred to the Members, either directly or indirectly by way of dividend, bonus or otherwise.

2.3 Payment by the Society in good faith

- (a) Subject to Rules 8.9, 8.10 and 8.11, Rule 2.2 does not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:
 - (i) of remuneration for services to the Society; or
 - (ii) for goods supplied in the ordinary course of business;
 - (iii) by way of interest on money lent to the Society at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the Society's bankers on overdrawn accounts;
 - (iv) by way of reasonable and proper rent for premises let to the Society; and

- (v) by way of payment arising from the participation in any social bond program.
 - (b) For the avoidance of doubt, nothing in this Constitution prevents a Director, Member or other person from:
 - (i) being remunerated by the Society in their capacity as an employee on arms-length terms; or
 - (ii) receiving services by the Society in the Society's ordinary course of business.
-

3 Membership

3.1 Ordinary Members

- (a) Subject to Rule 3.1(b), a person may apply to become an Ordinary Member by submitting to the Secretary a properly completed application in the form prescribed by the Directors that:
 - (i) is signed by the applicant;
 - (ii) is proposed by one Member, seconded by another Member and signed by both unless the Society has only one Member, in which case the application for membership may be proposed and signed by that Member alone; and
 - (iii) be accompanied by such documents or evidence as to eligibility as the Directors may require.
- (b) The Directors may consider an application for membership and accept it even if some or all of the criteria required by Rule 3.1(a) have:
 - (i) not been met; or
 - (ii) been met in some other way.

3.2 Honorary Members

- (a) The Directors may, in their discretion, resolve to admit an Ordinary Member as an Honorary Member of the Society in recognition of that member's contribution to the Society over a period of time.
- (b) Once a resolution has been passed in accordance with Rule 3.2(a), the Secretary must ensure that:
 - (i) the person to be admitted as an Honorary Member receives an invitation to become an Honorary Member; and
 - (ii) the Secretary has received a consent to become an Honorary Member by that person.

3.3 Effect of application

By completing an application form, the Member agrees to be bound by this Constitution and any other Rules, policies or other standards prescribed by the Directors from time to time.

3.4 Decision on membership

- (a) The Directors must consider and resolve whether to accept or reject each application for membership as soon as practicable upon its receipt.
- (b) Within a reasonable time after the Directors have made their decision, the Secretary must ensure that the applicant is given notice that:
 - (i) states whether the application was successful or not; and
 - (ii) if successful, requests payment of the Application Fee (if any) and Annual Subscription Fee, and specifies when and how payment is to be made.
- (c) The Directors may waive the requirement for an applicant to pay the Application Fee and/or Annual Subscription Fee.
- (d) The Directors are not required to give reasons for rejection of an application for membership of the Society.

3.5 Admission to Ordinary Membership

- (a) Except for a person who was a Member at the time when this Constitution was adopted, a person is admitted as an Ordinary Member when:
 - (i) an application by the applicant is accepted under Rule 3.4; and
 - (ii) subject to Rules 3.4(c) and 3.11, the applicant pays the Application Fee (if any) and Annual Subscription Fee in the manner specified by the Directors.
- (b) If payment of the Application Fee is not made as required, the Directors may, in their discretion, cancel their acceptance of the application for membership of the Society.

3.6 Admission to Honorary Membership

Except for a person who was an Honorary Member at the time when this Constitution was adopted, a person is admitted as an Honorary Member when they:

- (a) are admitted as an Honorary Member by the Directors; and
- (b) have given their consent to be admitted as an Honorary Member, under Rule 3.2.

3.7 Secretary to record admissions in the Register

- (a) The Secretary must ensure that the admission of a Member and the details of that Member are entered in the Register as soon as practicable after the Member's admission and, subject to Rules 3.4(c) and 3.11, their payment of the Application Fee.

- (b) The following must be entered in the Register in respect of each Member:
 - (i) the name and address of the Member;
 - (ii) the date of admission to and cessation of membership, as applicable;
 - (iii) the class of membership to which the Member belongs; and
 - (iv) any other information required by the Directors from time to time.
- (c) A Member must promptly notify the Society of any change in the details with respect to that Member which are recorded in the Register.

3.8 Members rights

Each Ordinary Member and each Honorary Member has the right to be notified of and attend general meetings of the Society together with those rights described at Rules **Error! Reference source not found.** to 7.2.

3.9 Annual Subscription Fee

The Directors may determine from time to time:

- (a) the amount of the Annual Subscription Fee for each year, for each Member or any class of Member; and
- (b) the manner in which it is to be paid.

3.10 Payment of Annual Subscription Fee

Subject to any contrary notice by the Directors specifying a date and manner of payment, each Member must pay the applicable Annual Subscription Fee in advance by 1 July each year. For the avoidance of doubt, the initial annual subscription fee is payable in addition to the application fee.

3.11 Waiver of Annual Subscription Fee

The Directors may waive the payment of all or any part of an Annual Subscription Fee for a Member or any class of Member.

3.12 Directors may create and vary classes and class rights

The Directors may, in their discretion, but subject to this Constitution and the Corporations Act:

- (a) establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
- (b) vary or cancel the rights, restrictions and obligations of Members in any new or existing class, if:
 - (i) 75% of the Members of that class give their written consent; or

- (ii) a special resolution to that effect is passed at a separate meeting of those Members.

The Rules on general meetings apply so far as they are capable of application and with the necessary changes to every such separate meeting.

3.13 Ceasing to be a Member

A member ceases to be a Member if that member:

- (a) resigns;
- (b) dies;
- (c) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the person's joint or separate estate generally;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (e) has not responded within three months to a written request from the Secretary that they confirm in writing that they want to remain a member;
- (f) has their membership terminated in accordance with this Constitution; or
- (g) being a corporation, is dissolved or otherwise ceases to exist, has a liquidator or provisional liquidator appointed to it, or is unable to pay its debts.

3.14 Resignation

- (a) A Member may by written notice to the Secretary resign from membership with immediate effect or with effect from a specified date occurring not more than 1 month after the service of the notice.
- (b) A Member remains liable after resignation for any Annual Subscription Fee due and unpaid at the date of the Member's resignation and for all other money due by the Member to the Society and in addition for any sum for which the Member is liable as a member under Rule 3.17 and Rule 16.

3.15 Non-payment of Annual Subscription Fee

If the Annual Subscription Fee for a Member remains unpaid for a period of twelve calendar months after it becomes due the membership of the Member will automatically terminate, in which case the Member ceases to be a Member. The Directors may, but are not obliged to, reinstate a Member whose membership is terminated under this Rule if that Member pays all overdue Annual Subscription Fee amounts.

3.16 Censuring, suspension or expulsion by Directors

- (a) If any Member:
- (i) wilfully refuses or neglects to comply with the provisions of this Constitution; or
 - (ii) acts in a manner which, in the opinion of the Directors, is prejudicial to the interests or reputation of the Society,
- the Directors may by resolution censure, suspend or expel the Member from the Society, provided that the procedure set out in Rules 3.16(b) to 3.16(d) is observed.
- (b) At least one week before the meeting of the Directors at which a resolution referred to in Rule 3.16(a) is passed, the Member must be given notice of such meeting setting out:
- (i) what is alleged against the Member; and
 - (ii) the intended resolution.
- (c) At such meeting and before the passing of such resolution, the Member must be given an opportunity of giving, orally or in writing, any explanation the Member thinks fit.
- (d) If the Member elects to have the question dealt with by the Society in general meeting:
- (i) the Member may, by notice in writing lodge with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with by the Society in general meeting;
 - (ii) a general meeting of the Society must be called for the purpose; and
 - (iii) if, at the meeting, a resolution is passed by a majority of at least two-thirds of those present and voting (such vote to be taken by ballot), the Member concerned must be dealt with in accordance with the resolution.
- (e) If a resolution is passed by the Directors or the Members to expel the Member, the membership of the Member will automatically terminate, in which case the Member ceases to be a Member.

3.17 Limited liability

A Member has no liability as a Member except as set out in this Rule 3.14(b) and Rule 16.

3.18 Membership not transferable

No membership interest, benefit or right of any Member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to effect the same.

4 General meetings

4.1 Annual general meeting

Annual general meetings of the Society are to be held in accordance with the Corporations Act.

4.2 Power to convene general meeting

The Directors may convene a general meeting when they think fit and must do so if required to do so under the Corporations Act.

4.3 Members have power to convene general meeting

If there are not sufficient Directors for a quorum, a Director or any two or more Members may convene a general meeting of the Society at the cost of the Society.

4.4 Notice of general meeting

Notice of a meeting of Members must be given in accordance with Rule 14 and the Corporations Act.

4.5 Calculation of period of notice

In computing the period of notice to be given in a notice of meeting under Rule 4.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

4.6 Non-receipt of notice of general meeting

The non-receipt of notice of a general meeting, or the accidental omission to give notice of a general meeting to a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

4.7 Directors entitled to attend general meetings

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

5 Cancellation or postponement of general meetings

5.1 Cancellation or postponement of general meeting

Where a general meeting (including an annual general meeting) is convened by the Directors (or any one or more of them), the Directors may, when they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by the Directors. This Rule does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by the Directors on the request of Members, or to a meeting convened by the Court.

5.2 Written notice of cancellation or postponement of general meeting

Written notice of cancellation or postponement of a general meeting must be given to all persons entitled to receive notices of general meetings from the Society. The notice must be given at least 3 days before the date for which the meeting is convened and must specify the reason for

cancellation or postponement. The notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting; and
- (b) a place for the holding of the meeting (which may be either the same as or different to the place specified in the notice convening the meeting that was postponed).

5.3 Notice period for postponed general meeting

The number of clear days from when a notice postponing the holding of a general meeting is given to the date specified in that notice for the holding of the meeting may not be less than the number of days' notice of the meeting required to be given by this Constitution or the Corporations Act.

5.4 Business at postponed general meeting

The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting that was postponed.

5.5 Non-receipt of notice of cancellation or postponement of a general meeting

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

5.6 Proxy at postponed general meeting

Where:

- (a) by the terms of an instrument appointing a proxy or of an appointment of a Representative, the appointed person is authorised to attend and vote at:
 - (i) a general meeting to be held on a specified date; or
 - (ii) a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

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

6 Proceedings at general meetings

6.1 Reference to a Member

A reference to a Member in this Rule 6 means a person who is a Member, or (if that Member is not present):

- (a) a proxy; or
- (b) a Representative

of that Member (but only one of them).

6.2 Number for a quorum

Five Members present are a quorum at a general meeting.

At a meeting adjourned under Rule 6.3(b), two Members present at the meeting are a quorum.

6.3 Requirement for a quorum

No business may be transacted at a general meeting unless there is a quorum present at the time the business is dealt with and decision/s made.

If quorum not present

If within 30 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by or on requisition of the Members, is dissolved; and
- (b) otherwise, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

At a meeting adjourned under Rule 0(b), if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

6.4 Chairman to preside over general meeting

If the Directors have elected one of their number as Chairman, that person is entitled to preside as chairman at a general meeting.

6.5 Absence of chairman at general meeting

If a general meeting is held and:

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

the following, in order of precedence, may preside unless unable or unwilling to do so:

- (c) a Deputy Chairman (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present.

6.6 Conduct of a general meeting

- (a) The chairman of the meeting which is a general meeting:
 - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting.
- (b) A meeting of Members may be held in two or more places linked together by any technology so long as it:
 - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
 - (ii) enables the chairman to properly confirm the identity of the person attending;
 - (iii) enables the chairman to be aware of proceedings in each place; and
 - (iv) enables the Members in each place to vote on a show of hands and on a poll.
- (c) A decision by the chairman under this Rule is final.

6.7 Adjournment of general meeting

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting. The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and any place fixed by the chairman at the time of the adjournment, but only unfinished business is to be transacted at a meeting resumed after an adjournment.

6.8 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given in accordance with Rule 4.4.

6.9 Questions decided by majority

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

6.10 Equality of votes - casting vote for chairman of the general meeting

If there is an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member.

6.11 Declaration of results

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded in accordance with Rule 6.12(a) and the demand is not withdrawn. A declaration by the chairman of the general meeting that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Society, is conclusive evidence of the fact. Neither the chairman of the meeting nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

6.12 Poll

(a) Subject to the provisions of the Corporations Act, a poll may be properly demanded:

- (i) by the chairman of the meeting; or
- (ii) by at least 3 Members.

A demand for a poll must be made before or on the declaration of the result of a show of hands.

(b) If a poll is properly demanded in accordance with Rule 6.12(a):

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

6.13 Objection to voting qualification

Objection may not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken. Every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is valid.

6.14 chairman of the meeting to determine any poll dispute

If there is a dispute as to the admission or rejection of a vote, the chairman of the meeting must decide it and the decision made in good faith is final and conclusive.

7 Votes of Members

7.1 Voting rights

Subject to the rights and any restrictions attached to or affecting any class of Members and to any other restrictions in this Constitution:

- (a) Each member present at a general meeting (in person or by its representative) may exercise only one vote on a show of hands regardless of how many proxies that member holds.
- (b) Each member present at a general meeting (in person or by its representative) may exercise one vote on a poll.
- (c) Each person present may exercise one vote for each proxy that person holds.
- (d) If more than one person present at a meeting purports to exercise the vote of a particular Member in a poll, only the vote of the person who is mentioned first in Rule 6.1 will be counted.

7.2 Right to appoint proxy

- (a) Subject to the Corporations Act, a Member entitled to attend at a meeting of the Society or of any class of Members is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (b) To be effective, an instrument appointing a proxy under this Rule, together with any evidence of non-revocation the Directors require, must be received by the Society at least 48 hours before the meeting.
- (c) The instrument appointing a proxy may be prescribed or accepted by the Directors.

7.3 If Annual Subscription Fee not paid

In addition to any other rights of the Society, for as long as an Annual Subscription Fee is due and payable by a Member and not paid, that Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy, attorney or Representative, at a general meeting of the Society.

8 Directors

8.1 Number of Directors

The minimum number of Directors is three. The maximum number of Directors is 12 or such lower number as the Directors determine, provided the Directors have been authorised by the Society in general meeting to make such a determination if required under the Corporations Act.

The number determined by the Directors must not be less than the number of Directors in office at the time the determination takes effect.

8.2 Continuation of Directors

- (a) The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.
- (b) Rules 8.3 and 11.6 apply retrospectively to the Directors in office at the time of the addition of these Rules to the Constitution, as calculated from the year they were first appointed as a Director.

8.3 Term of office of Director

- (a) An ordinary term of a Director elected or re-elected at a general meeting of the Society is three years (subject to the Director ceasing to hold office as a Director earlier pursuant to Rule 8.12).
- (b) A Director may serve a maximum of three continuous terms of three years as a Director through election or re-election at a general meeting of the Society without also being an Officebearer, as defined at Rule 11.1 and Rule 11.6.
- (c) No Director may serve for more than 13 years (including as an Officebearer).
- (d) The Directors may, by a 75% or greater majority, waive the continuous service restrictions in Rule 8.3(b) and/or Rule 8.3(c) above in special circumstances and vary the tenure regime in Rule 8.3(a).

8.4 Appointment by the Directors

Subject to Rule 8.1, the Directors may appoint a Member to be a Director, either to fill a casual vacancy or as an addition to the existing Directors (**Appointed Director**).

8.5 Term of office of Appointed Director

- (a) Each Appointed Director holds office until the conclusion of the next annual general meeting of the Society following his or her appointment, but is eligible for election at that meeting.
- (b) The time between the appointment of an Appointed Director and their election at the next annual general meeting should not be included in the calculation of tenure pursuant to Rules 8.3(b) and 8.3(c).

8.6 Retirement at end of term

- (a) At each annual general meeting any Director who is not an Officebearer who has held office for three years since last being elected, must retire from office.
- (b) At each annual general meeting any Director who is also an Officebearer who has held office for five years since last being elected must retire from office.

8.7 Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting at which that Director retires.

8.8 Directors elected at general meeting

- (a) A retiring Director may offer himself or herself for re-election for another term if they are not disqualified from holding office as a Director and re-election for the full ordinary term of three years would not breach Rule 8.3(b) or Rule 8.3(c). The Society may re-elect a retiring Director by resolution.
- (b) The Society may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a Member to that office.

8.9 Remuneration of Directors

A Director may not be paid any remuneration for services as a Director.

8.10 Reimbursement of expenses

A Director is entitled to be reimbursed out of the funds of the Society for their reasonable travel, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the affairs of the Society.

8.11 Other payments to Directors

Any payment to a Director not prohibited under Rule 8.9 (including a payment permitted under Rule 8.10) must be approved by the Directors.

8.12 Director's interests

Subject to the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Society (unless being or becoming a Director would breach any law by reason of holding that office and the permission given by this Rule);
- (b) hold any office or place of profit in any other Society, body corporate, trust or entity promoted by the Society or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Society;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Society or persons dependent on or connected with them;

- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Society, except as auditor;
- (f) if any other Directors determine that the Director's interest should not disqualify the Director from considering or voting on a matter, participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where that matter is being considered by the Directors; and
- (g) sign or participate in the execution of a document by or on behalf of the Society.

8.13 Vacation of office

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

- (a) dies;
- (b) is removed by the Society in accordance with the Corporations Act;
- (c) becomes bankrupt;
- (d) becomes prohibited from being a director of a company by any reason of any order made under the Corporations Act or other legislation applicable to the Society;
- (e) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (f) resigns office by notice in writing to the Society;
- (g) is not present at meetings of the Directors for a continuous period of six months without leave of absence from the Directors; or
- (h) ceases to be a Member.

9 Powers and duties of Directors

9.1 Directors responsible for management of Society

The Directors are responsible for the management of the business of the Society and may exercise all the powers of the Society that are not, by the Corporations Act or by this Constitution, required to be exercised by the Society in general meeting.

9.2 Specific powers of Directors

Without limiting the generality of Rule 9.1 the Directors may exercise all the powers of the Society to create by-laws, borrow or raise money, to charge any property or business of the Society or all of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Society or of any other person.

9.3 Delegation of powers

The Directors may delegate any of the powers conferred on them by this Constitution, subject to any directions of the Directors from time to time. Any delegation of those powers may or may not be to the exclusion of the powers of the Directors, as the Directors see fit, and may be revoked or varied by the Directors.

9.4 Chief executive officer

The Directors may appoint a chief executive officer designated by whatever title the Directors think fit.

9.5 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or agent of the Society for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.

9.6 Provisions in power of attorney

A power of attorney granted under Rule 9.5 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

9.7 Minutes

The Directors must direct minutes of meetings to be made and kept in accordance with the Corporations Act.

9.8 Powers of delegation

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

10 Proceedings of Directors

10.1 Directors meetings

The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

10.2 Director may convene a meeting

The Chairman or at least three Directors may at any time convene a meeting of the Directors.

10.3 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors, except for a decision under Rule 10.4.

10.4 chairman of the meeting has a casting vote

In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

10.5 Quorum

Until otherwise determined by the Directors, three Directors are a quorum.

10.6 Effect of vacancy

The continuing Directors may act despite a vacancy in their number. However, if their number is reduced below the minimum fixed by Rule 8.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or for calling a general meeting.

10.7 Chairman to preside over Directors' meeting

The Chairman is entitled to preside over any meeting of the Directors. If the Chairman is not present and able and willing to act as chairman of the meeting within 30 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement):

- (a) a Deputy Chairman; or
- (b) a Director chosen by a majority of the Directors present.

10.8 Directors' committees

The Directors may delegate any of their powers to committees consisting of the Directors that they think fit and may revoke that delegation.

10.9 Powers delegated to Directors' committees

A committee to which any powers have been delegated under Rule 10.8 must exercise those powers in accordance with any directions of the Directors.

10.10 Advisory committees

The Directors may appoint one or more advisory committees consisting of such persons as the Directors think fit. Such advisory committees shall act in an advisory capacity only. The advisory committees shall conform to any regulations that are given by the Directors and, subject to such regulations, have the power to co-opt any person to the advisory committee.

The Directors may appoint non-Directors to advisory committees and determine whether or not they may vote.

10.11 Directors' committee meetings

Subject to Rule 10.9, the meetings and proceedings of a committee consisting of two or more Directors are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are applicable.

10.12 Secretary to keep register of Committees

The Secretary must ensure that:

- (a) a register of all committees constituted under this Rule 10.12 includes the following information:
 - (i) the name and purpose of the committee;
 - (ii) membership of the committee, including name, date of appointment and cessation of each committee member; and
 - (iii) any powers delegated, or direction given, to the committee by the Directors.

10.13 Attendance by Chairman and Directors at Committee Meetings

- (a) The Chairman is an ex officio member of all such committees and is entitled to attend and vote at all meetings of such committees.
- (b) Directors who are not the Chairman, may attend all meetings of all committees, but only if appointed to a committee may a Director vote at that committee's meetings.

10.14 Directors' Decisions made without Meetings

The Directors may make decisions and pass resolutions without meeting so long as they do so in a way that is consistent with the law and with any policies adopted by the Directors from time to time in relation to making decisions or passing resolutions without meetings.

The references to a Director in this Rule do not include:

- (a) a Director whom the Chairman or a Deputy Chairman is satisfied is absent from Australia at the relevant time; and
- (b) a Director who has given a notice to the Society stating that he or she will be unable to be contacted for Society affairs during a period which includes the relevant time.

10.15 Meeting by use of technology

- (a) A Directors' meeting may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent a reasonable time before the meeting.
- (b) The simultaneous linking together by telephone or other electronic means of a sufficient number of the Directors to constitute a quorum constitutes a meeting of the Directors. All the provisions in this constitution relating to meetings of Directors apply, as far as

they can and with any necessary changes, to meetings of the Directors by telephone or other electronic means.

- (c) A meeting held by telephone or other electronic means must be held in such a way as to:
 - (i) give each Director present a reasonable opportunity to participate in proceedings;
 - (ii) enable the chairman of the meeting to be aware of proceedings in each place; and
 - (iii) enable each Director present to vote.
- (d) A Director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (e) A meeting by telephone or other electronic means is taken as held at the place decided by the chairman of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.
- (f) If, before or during the meeting, a technical difficulty occurs which means that one or more of the directors cease to participate, the chairman may adjourn the meeting until the difficulty is remedied or may, if a quorum of Directors remains present, continue with the meeting.
- (g) A Director may not leave a telephone meeting by disconnecting the telephone without the consent of the chairman of the meeting and a Director is deemed to be present and form part of the quorum throughout the meeting unless the Director obtains the consent of the chairman of the meeting to leave the meeting.

10.16 Validity of acts of Directors

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director (including when acting in the capacity as an Officebearer) are valid even if it is afterwards discovered that there was some defect in the appointment, election or qualification of any of them or that any of them were disqualified or had vacated office.

11 Officebearers

11.1 Officebearers

The Officebearers of the Society are a Chairman, a Deputy Chairman and a Chairman, Audit, Finance and Risk Committee (each an “**Officebearer**”).

11.2 Appointment of the Officebearers

- (a) The Directors may from time to time appoint any Director who has served as a Director for less than eight years to serve as an Officebearer.
- (b) A Director may only hold one Officebearer position at a time.

- (c) Where there is more than one nominee for a position of Officebearer then the Directors shall vote to determine which nominee receives the position in a manner which they consider appropriate.

11.3 Termination of Officebearers

The Directors may, by a 75% or greater majority, remove any Officebearer prior to the expiration of his or her period of office.

11.4 Powers and duties of the Officebearers

The Directors may from time to time determine the powers and duties of each Officebearer.

11.5 Chairman and Deputy Chairman to take active leadership role

Without limiting Rule 11.4, the Chairman and any Deputy Chairman is to undertake an active leadership role in respect of planning for the Society's future.

11.6 Term

- (a) The term of each Officebearer is five years (subject to the Officebearer ceasing to hold office as an Officebearer earlier for any reason).
- (b) A Director may only serve one term as Chairman. On ceasing to hold office as Chairman, the Chairman is eligible to be appointed as Chairman, Audit, Finance and Risk Committee.
- (c) A Director may only serve one term as Deputy Chairman. On ceasing to hold office as Deputy Chairman, the Deputy Chairman is eligible to be appointed as Chairman or Chairman, Audit, Finance and Risk Committee.
- (d) A Director may only serve one term as Chairman, Audit, Finance and Risk Committee. On ceasing to hold office as Chairman, Audit, Finance and Risk Committee, the Chairman, Audit, Finance and Risk Committee is eligible to be appointed as Chairman or Deputy Chairman.
- (e) A Director may serve two terms in an Officebearer position, in accordance with Rules 11.6(b), 11.6(c) and 11.6(d) above, but only if it would not result in continuous service of more than 13 years as a Director.
- (f) The Directors may, by a 75% or greater majority, waive the continuous service restriction in Rule 11.6(e) and vary the tenure regime in Rule 11.6(a) above in special circumstances.

12 Secretary

12.1 Appointment of Secretary

There must be at least one Secretary who is to be appointed by the Directors for such term and upon such conditions as the Directors think fit.

12.2 Suspension and removal of Secretary

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

12.3 Powers, duties and authorities of Secretary

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors.
- (b) Without limiting the Secretary's obligations under this Constitution or the Corporations Act, the duties of the Secretary include:
 - (i) ensuring that the necessary registers required to be kept by the Corporations Act are established and properly maintained;
 - (ii) ensuring that all returns required to be lodged with the Australian Securities and Investments Commission are prepared and filed within appropriate time limits;
 - (iii) ensuring the organisation of, and attendance at, meetings of the members and the directors, including sending notices, the preparation of agendas and the compilation of minutes; and
 - (iv) ensuring that any other administrative functions that are necessary for the running of the Society are carried out.
- (c) An act done by a person acting as a Secretary is not invalidated by reason only of:
 - (i) a defect in the person's appointment as a secretary; or
 - (ii) the person being disqualified to be a secretary,if that circumstance was not known by the person when the act was done.

13 Seals

13.1 Safe custody of common seals

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

13.2 Use of common seal

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

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

14 Service of documents

14.1 Methods of service

The Society may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the last known address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a fax number or electronic address nominated by the Member.

14.2 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

14.3 Fax or electronic transmission

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

14.4 Service on Members

In the case of service on Members, any method of service described in Rules 14.1, 14.2 or 14.3 is valid and effective even when:

- (a) the document is not received by the Member to whom it was sent; or
- (b) the document is returned to the sender through the post unclaimed.

15 Indemnity

15.1 Indemnity of officers, Auditors and agents

Every person who is or has been:

- (a) a Director; or
- (b) a Secretary;

of the Society,

is entitled to be indemnified out of the property of the Society against:

- (c) every liability incurred by the person in that capacity to a person other than the Society or a related body corporate where the liability does not arise out of a lack of good faith (except a liability for legal costs); and

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

unless:

- (e) the Society is forbidden by statute to indemnify the person against the liability or legal costs; or
- (f) an indemnity by the Society of the person against the liability or legal costs would, if given, be made void by statute.

15.2 Insurance

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

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

16 Winding up

16.1 Contributions on winding up

Each Member undertakes to contribute to the Society's property if the Society is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Society's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves,

an amount not to exceed \$100.00.

16.2 Application of property on winding up

If any property remains on the winding-up or dissolution of the Society and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other charitable institution:

- (a) having objects and/or purposes similar to the objects and purposes of the Society set out in Rule 1;
- (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Society under this Constitution; and

- (c) being an institution accepted as a deductible gift recipient under sub-division 30 of the Tax Act by the Commissioner of Taxation or otherwise approved for these purposes by the Commissioner of Taxation.

The institution is to be determined by the Members at or before the time of dissolution, and in default by application to the Supreme Court of New South Wales.

16.3 Loss of Endorsement

If the endorsement of the Society as a deductible gift recipient is revoked, the following assets remaining after the payment of the Society's liabilities must be transferred to a charitable fund, authority or institution to which income tax deductible gifts can be made:

- (a) deductible gifts of money or property received for the purpose of the Society;
- (b) deductible contributions made in relation to an eligible fundraising event held to raise funds for the purpose of the Society; and
- (c) money received by the Society because of such deductible gifts and contributions.

17 Accounts

The Directors must cause the accounts of the Society to be maintained and audited in accordance with the law.

18 Inspection and requirement to keep records

- (a) The Society must establish and administer all registers required to be kept by the Society in accordance with the Corporations Act and each member must provide the Society with such information as is required for the Society to comply with this Rule 18(a).
- (b) Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Society or any of them will be open to the inspection of Members and/or the general public.
- (c) A Member other than a Director does not have the right to inspect any books, records or documents of the Society except as provided by law or authorised by the Directors.
- (d) Unless proved incorrect, the Register is sufficient evidence of the matters shown in the register.

19 Amendments

The Society may add to, alter, amend or repeal this Constitution, or any provision of it, by special resolution.

20 Internal disputes and complaints

20.1 Internal disputes

The Directors shall ensure that a mechanism is established for resolving internal disputes within the Society. This mechanism may include:

- (a) the appointment of an independent person to arbitrate the dispute;
- (b) a process to bring the parties together to resolve the dispute at an early stage;
- (c) a process to ensure that all parties receive a full and fair opportunity to present their case; and
- (d) where the dispute cannot be resolved internally by arbitration or mediation a policy of referring the matter to a Community Justice Centre or similar organisation which functions as a centre for dispute resolution.

20.2 Complaints

The Directors shall establish a mechanism that properly and effectively deals with complaints made by members of the public and complaints from employees about the Society.

21 Rules

21.1 Power to formulate rules of the Society

Without limiting the Directors powers under this constitution, the Directors may from time to time pass resolutions to make regulations and rules relating to:

- (a) the qualifications of Members and applicants for membership;
- (b) the procedure for and timing of an application for admission to membership;
- (c) procedure for nomination of Directors; and
- (d) any other matter not being inconsistent with this constitution which relates to the operations or conduct of the Society.

21.2 Inconsistency

In the event of any inconsistency between rules or regulations formulated pursuant to Rule 21.1 and the provisions of this constitution or the provisions of the Corporations Act, the provisions of this constitution and the Corporations Act will prevail.

22 Definitions and interpretation

22.1 Definitions

In this Constitution unless the contrary intention appears:

Annual Subscription Fee means the amount fixed from time to time by the Directors under Rule 3.9.

Application Fee means an amount determined by the Directors from time to time in respect of an application for membership of the Society, which shall be an amount not exceeding the Annual Subscription Fee for the year in which an application for membership is received.

Appointed Director has the meaning given to it in Rule 8.3.

Auditor means the auditor for the time being of the Society.

Chairman means the Director appointed as chairman for the time being under Rule 11.

Chairman, Audit, Finance and Risk Committee means the Director appointed as chairman of the Audit, Finance and Risk Committee for the time being under Rule 11.

chairman of the meeting means the chairman of the meeting who:

- (a) if it is a meeting of Members, is entitled to preside under Rule 6.4 or 6.5; or
- (b) if it is a meeting of the Directors, is entitled to preside under Rule 10.7.

Constitution means this constitution as it is amended from time to time.

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

Deputy Chairman means the Director appointed as deputy chairman for the time being under Rule 11.

Director means a director of the Society.

Directors means all or some of the directors of the Society acting as a board.

Honorary Member means a member of the Society admitted under Rule 3.6.

Officebearers has the meaning assigned to it in Rule 11.

Ordinary Member means a member of the Society admitted under Rule 3.5.

Member means an Ordinary Member, an Honorary Member or any other class of member of the Society established by the Directors from time to time.

Register means the register of the Society's Members.

Registered Office means the registered office for the time being of the Society.

Representative means a person appointed to represent a Member that is a body corporate.

Rule means a rule of this Constitution.

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

Society means The Benevolent Society ABN 95 084 695 045.

Tax Act means *Income Tax Assessment Act 1997* (Cth).

22.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telex, telegram, facsimile and other modes of representing or reproducing words in a visible form;
- (e) a reference to a Rule is a reference to one of the Rules;
- (f) a power, an authority or a discretion given to a Director, the Directors, the Society in general meeting or a Member may be exercised from time to time and at any time;
- (g) a power of delegation can be made to a particular office and/or to a particular person;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (j) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (k) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (m) if an act under this agreement to be done by a party on or by a given day is done after 5.30 pm on that day, it is taken to be done on the next day.

22.3 Corporations Act

In this Constitution unless the contrary intention appears an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

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

22.4 Headings

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

22.5 Powers

Powers conferred on the Society, the Directors, a committee of Directors, a Director or a Member may be exercised at any time and from time to time.