



CONSTITUTION OF HELPINGMINDS LIMITED

2021

Adopted by the Board of Directors by Special Resolution at a General Meeting of the Company on 26 October 2021

Contents

1. PRELIMINARY	1
1.1. TYPE OF COMPANY	1
1.2. OBJECT OF THE COMPANY	1
1.3. AMENDING THIS CONSTITUTION	1
1.4. REPLACEABLE RULES	1
1.5. DEFINITIONS	2
1.6. INTERPRETATION	2
2. MEMBERS	3
2.1. WHO IS A MEMBER	3
2.2. LIABILITY	3
2.3. NO DIVIDENDS	3
2.4. MEETINGS	3
3. DIRECTORS	3
3.1. NUMBER OF DIRECTORS	3
3.2. ELECTION AND APPOINTMENT	3
3.3. ELIGIBLE CANDIDATES	3
3.4. NOTICE	4
3.5. TERM	4
3.6. RETIREMENT OF ELECTED DIRECTORS	4
3.7. RE-ELECTION	4
3.8. ELECTION	4
3.9. CHAIR AND DEPUTY CHAIR	5
3.10. CESSATION OF DIRECTOR'S APPOINTMENT	5
3.11. REMOVAL FROM OFFICE	5
3.12. TOO FEW DIRECTORS	6
4. DIRECTORS' DUTIES AND INTERESTS	6
5. DIRECTORS' REMUNERATION	6
6. DIRECTORS' INTERESTS	6
6.1. GENERAL	6
6.2. CONFLICTS OF INTEREST	7
6.3. INTEREST IN RELATED COMPANY	7
7. BOARD MEETINGS	8
7.1. CONVENING BOARD MEETINGS	8
7.2. NOTICE OF BOARD MEETING	8
7.3. USE OF TECHNOLOGY	8
7.4. QUORUM	8
7.5. MAJORITY DECISIONS	8
7.6. CIRCULAR RESOLUTIONS	8
7.7. VALIDITY OF ACTS	9
8. SECRETARY	9
9. TREASURER	9
10. FINANCIAL REPORTS AND AUDIT	9
10.1. COMPANY MUST KEEP FINANCIAL RECORDS	9

10.2. FINANCIAL REPORTING	9
10.3. AUDIT OR REVIEW	9
11. INDEMNITY AND INSURANCE	9
11.1 INDEMNITY TO OFFICERS	9
11.2 INSURANCE	10
11.3 DEFINITION OF OFFICER	10
12. WINDING UP AND DISTRIBUTION OF SURPLUS ASSETS	10

CONSTITUTION OF HELPINGMINDS LIMITED

1. PRELIMINARY

1.1. Type of Company

- (a) The Company is a company limited by guarantee.
- (b) The Company must not operate for the profit or gain of individual Members. For this purpose, the Company must:
 - (i) only use its property and income to further its objects; and
 - (ii) not distribute any of its property or income, directly or indirectly to Members except for bona fide compensation for services rendered or expenses incurred for the Company.

1.2. Object of the Company

The object of the Company is to support and assist people with mental health issues and their families and carers to live their best possible lives by:

- (a) The direct provision of services;
- (b) Individual and systemic advocacy;
- (c) The development and maintenance of relationships with key stakeholders, the general community, reference and advisory groups, all levels of government and any other person or organisation which might assist the Company in pursuing its object;
- (d) Continuous exploration, and where appropriate implementation, of new and innovative ways of pursuing the Company's object;
- (e) Meeting identified community needs to provide services to people who are not necessarily affected by mental health issues, where it is considered that doing so will assist in the pursuit of the Company's object; and
- (f) Any other means consistent with the Company's object.

1.3. Amending this Constitution

- (a) Subject to clause 1.3(b), the Members may amend this Constitution by passing a Special Resolution at a General Meeting.
- (b) The Members may not amend this Constitution if as a result of the amendment the Company is no longer a charity.

1.4. Replaceable rules

The replaceable rules under the *Corporations Act 2001* (Cth) apply except to the extent that they are inconsistent with a specific rule in this Constitution.

1.5. Definitions

The following definitions apply in this Constitution.

Annual General Meeting means the annual general meeting of Members of the Company.

Board means the board of Directors of the Company.

Board Meeting means a meeting of the Directors to conduct Company business.

Chair means the person elected by the Directors in accordance with clause 3.9.

Company means HelpingMinds Limited.

Deputy Chair means the person elected by Directors in accordance with clause 3.9.

Director means a member of the Board.

Extraordinary Meeting means a meeting of Members other than an Annual General Meeting.

General Meeting means an Annual General Meeting or an Extraordinary Meeting.

Member means a person who is a member of the Company under this Constitution.

Secretary means the person appointed to that office in accordance with clause 8.

Special Resolution means, depending on the context, a resolution of either the Members at a General Meeting or the Board at a Board Meeting:

- (i) of which the Members or Directors (as the case may be) have been given at least 7 days' notice in writing of its proposed text; and
- (ii) that has been passed by at least 75% of the votes cast by the Members or Directors (as the case may be) present and able to vote on the resolution.

Treasurer means the Director appointed to that office in accordance with clause 9.

1.6. Interpretation

Headings are for convenience only and do not affect interpretation. The rules in this clause 1.6 also apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified, reenacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document, or a provision of a document, is to that document or provision as amended; and
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (b) A singular word includes the plural, and vice versa.

- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.

2. MEMBERS

2.1. Who is a Member

A person is a Member if the person is a Director. A person ceases to be a Member on ceasing to be a Director.

2.2. Liability

A Member's liability to contribute to the Company if it is wound up is limited to \$1.00.

2.3. No dividends

The Company must not pay dividends to Members.

2.4. Meetings

- (a) The chairperson at a General Meeting is the Chair or in the Chair's absence the Deputy Chair.
- (b) No business may be transacted at any General Meeting unless a quorum is present at the start of and at all times during that General Meeting.
- (c) A quorum is one-half (rounded up) of the Members.
- (d) If a General Meeting is adjourned because of a lack of a quorum, and at the adjourned General Meeting a quorum is not present within fifteen minutes from the time appointed for that meeting, the Members present and entitled to vote are a quorum and may transact the business for which the General Meeting was called.
- (e) A Member may not appoint a proxy.

3. DIRECTORS

3.1. Number of Directors

The Company must have at least 6 Directors and, until otherwise decided by the Board, not more than 12 Directors.

3.2. Election and Appointment

- (a) Directors are elected at the Annual General Meeting in accordance with clauses 3.3 to 3.8 inclusive.
- (b) The Board may appoint a person to be a Director at any time by Special Resolution.

3.3. Eligible candidates

- (a) The Company's auditor and any partner, director or employee of the auditor's firm is not eligible to be a Director.
- (b) The Company cannot elect a person as a Director at an Annual General Meeting unless:
 - (i) the person retires at the meeting and seeks reelection;

- (ii) the Board nominates the person as a Director; or
- (iii) at least 10 business days (or any other period fixed by the Board) before the date of the meeting at which election is to occur, the Company receives both:
 - (A) a nomination of the person by a Member (other than the person); and
 - (B) a consent to act as a Director signed by the person.

3.4. Notice

The Company must notify Members of every candidate for election at least 7 days before the next Annual General Meeting.

3.5. Term

- (a) If the Board appoints a Director under clause 3.2(b) that Director's term:
 - (i) starts upon appointment, unless otherwise specified; and
 - (ii) ends at the first Annual General Meeting after the appointment, unless ended sooner under this Constitution.
- (b) If a Director is elected at an Annual General Meeting the Director's term:
 - (i) starts at that Annual General Meeting; and
 - (ii) ends at the conclusion of the second Annual General Meeting after the Director is elected unless ended sooner under this Constitution.

3.6. Retirement of Elected Directors

- (a) At each Annual General Meeting:
 - (i) One-half of the Directors, or if there is not a multiple of two, then the number nearest half; and
 - (ii) any other Director not in this half who was last elected two (2) or more years ago,

must retire.
- (b) The Directors to retire are those who have been Directors the longest since their last election. As between persons last elected as Directors on the same day, those to retire must be determined by lot, unless those Directors agree otherwise.

3.7. Re-election

- (a) A retiring Director is eligible for re-election.
- (b) A retiring Director may stand for election again by indicating their intention in writing to the Directors before nominations for election close. A retiring Director may only be renominated if the Board is unanimously in favour of such renomination.

3.8. Election

- (a) If the properly nominated candidates are no more than the positions to be filled, and there is no vote cast against any properly nominated candidate, they are deemed duly elected at the next Annual General Meeting.

- (b) If the number of proposed candidates exceeds the number of positions to be filled, a vote must be taken at the Annual General Meeting.
- (c) Each position must be the subject of a separate vote unless the meeting resolves, with no vote cast against the resolution, that the appointments may be voted on together.

3.9. Chair and Deputy Chair

- (a) At the first Board Meeting following the Annual General Meeting, the Directors must elect two Directors, the first Director as the Company's elected Chair, and the second Director as the Company's Deputy Chair.
- (b) The election of the Chair and Deputy Chair may be held by any means determined by the Board, but in the event of an equality of votes, the matter must be determined by the drawing of lots.
- (c) The role of the Chair will be to chair all Board Meetings and General Meetings and to perform other duties as determined by the Directors and recorded in a Board policy.
- (d) The role of the Deputy Chair will be to chair all Board Meetings and General Meetings and perform the duties of the Chair at any time when the Chair is unable to do so.
- (e) The Board may remove the Chair or Deputy Chair from office at any time by ordinary resolution (without the participation of the relevant person).
- (f) The Directors present at a meeting must elect 1 of the Directors present to chair any meeting if any of the following applies:
 - (i) there is no Chair or Deputy Chair;
 - (ii) neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) neither the Chair nor the Deputy Chair is willing to act.

3.10. Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the *Corporations Act 2001* (Cth) (or an order made under that Act) or the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) to be a director;
- (b) becomes physically or mentally incapable of performing the functions of that office;
- (c) fails to attend 3 consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (d) resigns by notice in writing to the Company;
- (e) is removed from office under clause 3.11;
- (f) ceases to be eligible to act as a Director under this Constitution; or
- (g) dies.

3.11. Removal from office

The Board may by Special Resolution remove any Director from office. The notice of the Special Resolution must specify the reason for the proposed removal from office.

3.12. Too few Directors

If the number of Directors is reduced below the minimum required, the continuing Directors may only:

- (a) appoint Directors up to that minimum number; and
- (b) convene a meeting of Directors.

4. DIRECTORS' DUTIES AND INTERESTS

Each Director must comply with the duties of a Director as prescribed by law, which include:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purposes of the Company;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner prescribed by the Board from time to time;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

5. DIRECTORS' REMUNERATION

The Company must not pay fees or other remuneration to a Director for acting as a Director, except, with the approval of the Board, the Company may:

- (a) pay the Chair such remuneration for acting as Chair as may be approved by the Board. Such remuneration is to be paid by the Company as an honorarium. The amount of any honorarium is to be determined by the Board each financial year;
- (b) pay sitting fees for attendance at Board meetings and any committee of the Board;
- (c) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; and
- (d) reimburse a Director for expenses properly incurred in connection with the affairs of the Company.

6. DIRECTORS' INTERESTS

6.1. General

- (a) A Director is not disqualified by virtue of their position as Director from:
 - (i) holding any office or place of profit (except that of auditor) under any corporation in which the Company is a shareholder, or otherwise interested in the Company; or
 - (ii) contracting with the Company either as vendor, purchaser or otherwise.

- (b) A contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested is not avoided by reason only of that Director holding the position of a Director.
- (c) A Director is not liable to account to the Company for any profit arising from any office or place of profit or realised by any contract or arrangement by reason only of that Director holding the position of a Director or of the fiduciary relationship established by that position.

6.2. Conflicts of interest

- (a) The Board must ensure that the Company has a conflicts of interest policy which applies to all Directors, volunteers and employees of the Company and includes the requirement for a conflict of interest register.
- (b) A Director must ensure that any interest or association the Director has which might cause the Director to have a conflict of interest with the interests of the Company is recorded in a conflict of interest register.
- (c) A Director must disclose to the other Directors the nature and extent of any actual (or which could be perceived as a) material conflict of interest in a matter that is to be considered at a meeting (or is proposed in a circular resolution), as soon as practicable after the relevant facts have come to that Director's knowledge, and must ensure that the Secretary records the declaration in the minutes of the relevant meeting.
- (d) A Director's failure to make a disclosure under clauses 6.2(b) or 6.2(c) does not render void or voidable a contract or arrangement in which the Director has an actual or potentially perceived conflict of interest.
- (e) A Director who has disclosed an interest of the kind referred to in clause 6.2(c) may:
 - (i) not be present while the matter is being considered at a Board Meeting;
 - (ii) not vote on the matter;
 - (iii) still be counted in determining whether or not a quorum is present at any Board Meeting at which that contract or arrangement or proposed contract or arrangement is being considered;
 - (iv) not sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (v) not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

6.3. Interest in Related Company

- (a) Unless the Company otherwise directs, a Director may be or become a director or other officer of, or otherwise interested in, a related company or any body corporate in which the Company may be interested without being accountable to the Company for any remuneration or other benefits received as a result.
- (b) The Directors may exercise the voting power conferred by the shares which are held or owned by the Company in any related company or other body corporate, or exercisable by them as directors of the related company or the other body corporate, in the manner they think fit (including in favour of any resolution appointing

themselves or any of the Directors as officers of the related company or other body corporate).

- (c) Any Director may vote in favour of the exercise of the voting rights even if they may be, or are about to be, appointed a director or other officer of a related company or the other body corporate and are, or may become, interested in the exercise of the voting rights.

7. BOARD MEETINGS

7.1. Convening Board Meetings

- (a) Only the Chair or any 3 Directors may convene a Board Meeting at any time.
- (b) The Board must meet at least once quarterly.

7.2. Notice of Board Meeting

- (a) Notice of each Board Meeting must be given to each Director at least 24 hours before the meeting or otherwise as determined by the Board. The Chair, or in the Chair's absence, the Deputy Chair can approve an urgent Board Meeting with less than 24 hours' notice to each Director, and providing a quorum is present at the meeting, it may proceed.
- (b) Notice of a Board Meeting may be given to a Director by email.

7.3. Use of technology

A Board Meeting may be held using any means of audio or audiovisual communication by which each Director participating can hear and be heard by each other Director.

7.4. Quorum

Unless the Board decides otherwise, the quorum for a Board Meeting is 50% or more of the Directors at the time of the meeting, and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audiovisual communication if the Director is able to hear and be heard by all others attending.

7.5. Majority decisions

- (a) Questions arising at a Board meeting must be decided by a majority vote of Directors present (either in person or by use of technology) and voting. If the votes are equal, the Chair has a deliberative and a casting vote at Board Meetings.
- (b) A resolution in writing signed by all Directors is as valid and effectual as if it had been passed at a Board Meeting duly convened and held.
- (c) A resolution in writing may consist of several documents in like form, each signed by 1 or more Directors and if so signed it takes effect on the last date on which a Director signs 1 of the documents.
- (d) A resolution bearing an electronic copy of a signature is deemed to be signed.

7.6. Circular Resolutions

Circular resolutions, where Directors put a resolution to the Board with the object of passing a resolution without holding a Board Meeting, may be used when the Board needs to make a decision outside of a Board Meeting.

7.7. Validity of acts

All acts done by the Board or a committee 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 as a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

8. SECRETARY

The Board must appoint a secretary for such term, and upon such conditions as it thinks fit, and any secretary may be removed by it at any time.

9. TREASURER

The Board must appoint one of its number as treasurer for such term, and upon such conditions as it thinks fit, and any treasurer may be removed by it at any time.

10. FINANCIAL REPORTS AND AUDIT

10.1. Company must keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee), and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and, if required, audited,

and must allow a Director and, where the financial statements are required to be audited or reviewed, the Company's auditor to inspect those records at all reasonable times.

10.2. Financial reporting

If required by law, the Board must cause the Company to prepare a complying financial report and a Directors' report.

10.3. Audit or review

If required by law, the Board must cause the Company's financial report for each financial year to be audited or reviewed and obtain an auditor's report.

11. INDEMNITY AND INSURANCE

11.1 Indemnity to Officers

To the extent permitted by law, the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person as an officer of the Company. This indemnity does not include an indemnity against any of the following liabilities incurred as an officer of the Company:

- (a) a liability owed to the Company or a related body corporate;
- (b) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (c) any other liability against which the law does not permit a company to indemnify an officer.

11.2 Insurance

The Company must pay the premium required to insure an officer of the Company against any liability incurred by the officer as an officer, and against any liability for costs and expenses incurred by the officer in prosecuting or defending proceedings, whether civil or criminal, and whatever the outcome of the proceedings, except in circumstances prohibited by law.

11.3 Definition of Officer

officer means any person who is or has been a Director, Secretary or chief executive officer of the Company.

12. WINDING UP AND DISTRIBUTION OF SURPLUS ASSETS

- (a) If the Company is wound up any surplus remaining after satisfying its liabilities must be applied to one or more Complying Entities.
- (b) If the Company's endorsement as a deductible gift recipient is revoked, any surplus of:
 - (i) gifts of money or property for the principal purpose of the Company;
 - (ii) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
 - (iii) money received by the Company because of such gifts and contributions,must be applied to one or more Complying Entities.
- (c) In this clause 12,

Complying Entity is, at the Relevant Time, a fund, authority or institution determined by the Board or, failing such determination, by the Supreme Court of Western Australia:

 - (i) which has objects similar to the objects of the Company, which is charitable at law and to which income tax deductible gifts can be made;
 - (ii) which is not a member of the Company; and
 - (iii) whose Constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution; and

Relevant Time is the time of the Company's winding up or the revocation of its endorsement as a deductible gift recipient, as relevant.