



**Russell Kennedy**  
Lawyers



**CONSTITUTION OF  
LUKE BATTY FOUNDATION LIMITED**

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A public company limited by guarantee under the  
*Corporations Act 2001 (Cth)*

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## TABLE OF CONTENTS

<b>THE COMPANY</b> .....	<b>3</b>
<b>1</b> <b>OBJECTS</b> .....	<b>3</b>
<b>2</b> <b>COMPANY POWERS</b> .....	<b>4</b>
<b>NON-PROFIT AND TAX EXEMPTIONS</b> .....	<b>4</b>
<b>3</b> <b>PUBLIC FUND</b> .....	<b>4</b>
<b>4</b> <b>INCOME AND PROPERTY</b> .....	<b>5</b>
<b>5</b> <b>HARM PREVENTION CHARITY</b> .....	<b>6</b>
<b>MEMBERS</b> .....	<b>6</b>
<b>6</b> <b>MEMBERSHIP</b> .....	<b>6</b>
<b>7</b> <b>RIGHTS AND OBLIGATIONS OF MEMBERS</b> .....	<b>7</b>
<b>8</b> <b>ENTRANCE FEE AND ANNUAL SUBSCRIPTIONS</b> .....	<b>7</b>
<b>9</b> <b>RESIGNATION AND EXPULSION OF MEMBERS</b> .....	<b>7</b>
<b>10</b> <b>CESSATION OF MEMBERSHIP</b> .....	<b>8</b>
<b>GENERAL MEETINGS</b> .....	<b>8</b>
<b>11</b> <b>MEETINGS OF MEMBERS</b> .....	<b>8</b>
<b>12</b> <b>PROCEEDINGS AT GENERAL MEETINGS</b> .....	<b>10</b>
<b>BOARD OF DIRECTORS</b> .....	<b>13</b>
<b>13</b> <b>BOARD OF DIRECTORS</b> .....	<b>13</b>
<b>14</b> <b>REMOVAL OF DIRECTORS</b> .....	<b>13</b>
<b>15</b> <b>POWERS AND DUTIES OF THE BOARD</b> .....	<b>14</b>
<b>16</b> <b>COMMITTEES</b> .....	<b>15</b>
<b>17</b> <b>ELECTION OF CHAIR</b> .....	<b>15</b>
<b>18</b> <b>ELECTION OF DIRECTORS</b> .....	<b>15</b>
<b>19</b> <b>APPOINTMENT OF A SECRETARY</b> .....	<b>15</b>
<b>BOARD MEETINGS</b> .....	<b>16</b>
<b>20</b> <b>PROCEEDINGS OF THE BOARD</b> .....	<b>16</b>
<b>FINANCIAL AND LEGAL</b> .....	<b>18</b>
<b>21</b> <b>AMENDMENT OF CONSTITUTION OR NAME</b> .....	<b>18</b>
<b>22</b> <b>ACCOUNTS AND AUDIT</b> .....	<b>18</b>

23	MINUTES OF PROCEEDINGS.....	18
24	COMMON SEAL.....	19
25	OFFICERS INDEMNITY AND INSURANCE.....	19
26	NOTICES.....	20
27	LIMITED LIABILITY.....	20
28	LIMIT OF CONTRIBUTION BY MEMBERS IN WINDING UP.....	20
29	EXCESS PROPERTY ON WINDING UP.....	21
	DEFINITIONS AND INTERPRETATION.....	21
30	DEFINITIONS.....	21
31	INTERPRETATION.....	24
32	FOUNDER.....	24
	PUBLIC FUND RULES.....	26

**CONSTITUTION**  
of  
**LUKE BATTY FOUNDATION LIMITED**

A public company limited by guarantee  
under the *Corporations Act 2001* (Cth)

**THE COMPANY**

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**1 OBJECTS**

**1.1 Principal Object**

The Principal Object of the Company is the promotion of the prevention or the control of human behaviour that is harmful or abusive to human beings. The particular human behaviour to be addressed by the Company is Family Violence in Australia.

**1.2 Additional Objects**

In support of the Principal Object, the Company's additional objects are to:

- 1.2.1 prevent and reduce incidents of Family Violence;
- 1.2.2 provide information to persons affected by Family Violence;
- 1.2.3 facilitate community educational forums for women, men, children, organisations and the community in relation to Family Violence;
- 1.2.4 conduct campaigns and provide training to increase awareness generally in relation to Family Violence;
- 1.2.5 develop support groups and networks for women, children and other persons affected by Family Violence;
- 1.2.6 undertake advocacy to address and close gaps in the Family Violence system; and
- 1.2.7 do all such lawful things, consistent with these Objects, necessary or desirable to support and further these Objects.

**1.3 Charitable institution**

- 1.3.1 Despite anything to the contrary, the Company is established to be a charitable institution; pursues charitable Objects only; and applies its income in promoting those charitable Objects only.
- 1.3.2 The Company has been endorsed (or will seek endorsement as soon as practicable after registration) as exempt from tax under Subdivision 50-B of the ITAA (endorsement as a tax concession charity).

## **2 COMPANY POWERS**

### **2.1 Powers at law**

Solely for the purpose of carrying out the Objects, the Company may, in any manner permitted by the Corporations Act:

- 2.1.1 exercise any power;
- 2.1.2 take any action; and
- 2.1.3 engage in any conduct or procedure,

which under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by its constitution.

### **2.2 Specific powers**

Without limiting clause 2.1, the Company may pursue the Objects by:

- 2.2.1 raising money to further the Objects and to secure sufficient funds for the pursuit of the Objects; and
- 2.2.2 receiving any funds and applying those funds in a manner that best attains the Objects.

## **NON-PROFIT AND TAX EXEMPTIONS**

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## **3 PUBLIC FUND**

### **3.1 Establishing and maintaining the Public Fund**

The Company hereby establishes and maintains a public fund in accordance with the Public Fund Rules. The Public Fund Rules shall be deemed to incorporate the following:

- 3.1.1 The Public Fund is for the specific object of the promotion of the prevention or the control of human behaviour that is harmful or abusive to human beings. The particular human behaviour to be addressed is Family Violence in Australia.
- 3.1.2 The Public Fund is established to receive all gifts of money or property for the object stated in clause 3.1.1.
- 3.1.3 Any money received because of gifts referred to in clause 3.1.2 will be credited to the Public Fund's bank account.
- 3.1.4 The Public Fund will not receive any other money or property into its account.
- 3.1.5 The Public Fund will comply with Subdivision 30-EA of the ITAA.

### **3.2 Public Fund Rules**

- 3.2.1 The Public Fund Rules form part of this Constitution.

- 3.2.2 Any expression in a provision of the Public Fund Rules, which relates to a particular defined term or provision of this Constitution, has the same meaning as in that defined term or provision of this Constitution.

### **3.3 Winding up the Public Fund**

If the Public Fund of the Company is wound up, any surplus assets of the Public Fund must be transferred to another public fund that is on the Register of Harm Prevention Charities under Subdivision 30-EA of the ITAA.

## **4 INCOME AND PROPERTY**

### **4.1 Distributions to Members**

The income and property of the Company, however derived, shall be used and applied solely in the promotion of the Objects of the Company, and no portion of the income or property of the Company shall be distributed, paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to any Member or Director.

### **4.2 Payment for services rendered**

Nothing in clause 4.1 prevents the payment in good faith to an Officer or Member:

- 4.2.1 of commercially reasonable and proper remuneration for any services to the Company in the ordinary and usual course of business;
- 4.2.2 for goods supplied in the ordinary and usual course of business;
- 4.2.3 of interest at a commercial rate on money borrowed from an Officer or Member;
- 4.2.4 of reasonable rent for premises let by an Officer or Member in the ordinary course of their business; or
- 4.2.5 of any sum permitted to be paid under clause 25 or under a deed entered into under clause 25,

provided that any such payment, or any other payment permitted by this Constitution, made or proposed to be made to a Director, has been previously approved by the Board (in any generic or specific case).

### **4.3 Payments to Directors**

The Directors shall not be paid by way of remuneration for their services, provided that:

- 4.3.1 reimbursement for reasonable travel and other expenses incurred by them when engaged in the business of the Company, attending meetings or otherwise in carrying out the duties of a Director shall be paid where payment does not exceed any amount previously approved by the Board; and
- 4.3.2 payment for any service rendered to the Company in a professional or technical capacity outside the scope of the ordinary duties of a Director shall be made where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

## **5 HARM PREVENTION CHARITY**

### **5.1 Agreement to abide by Ministerial Rules**

The Company agrees to comply with any rules that the Families Minister and the Treasurer may make to ensure that gifts made to the Public Fund are only used for the Objects.

### **5.2 Statistical Information**

5.2.1 The Company and its Public Fund must provide statistical information on donations, as requested by the Families Department, within four months of the end of the financial year.

5.2.2 An audited financial statement for the Company and its Public Fund must be supplied by the Company with the annual statistical return referred to in clause 5.2.1.

5.2.3 The audited financial statement referred to in clause 5.2.2 must provide information on the expenditure of Public Fund monies and the management of Public Fund assets.

### **5.3 Informing the Families Department**

The Company must inform the Families Department as soon as possible if:

5.3.1 the Company changes its Objects;

5.3.2 the Company changes its name or the name of its Public Fund;

5.3.3 there is any change to the membership of the management committee of the Public Fund under the Public Fund Rules;

5.3.4 the Company has departed from (or the Constitution or the Public Fund Rules have been amended so that they depart from) the model rules for public funds contained in the Guidelines; or

5.3.5 the Company or its Public Fund suffers any financial difficulties.

### **5.4 Conduit policy**

The Company must not act as a mere conduit for the donation of money or property to other organisations, bodies or persons.

## **MEMBERS**

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## **6 MEMBERSHIP**

### **6.1 Members**

The following persons are Members:

6.1.1 on and from incorporation, the persons named in the Company's application for registration as an Australian company; and

6.1.2 any other person who becomes a Member by virtue of clause 6.3,

until those persons cease to be Members pursuant to clauses 9 or 10.

## **6.2 Classes and rights**

The membership of the Company consists of one class of membership known as "Ordinary Members".

## **6.3 Admission to and Eligibility for Membership**

Membership shall be open to those persons who either:

- 6.3.1 have an interest in supporting the Objects; or
- 6.3.2 are distinguished and responsible persons highly regarded and accountable to the community,

and:

- 6.3.3 the person agrees in writing to become a Member;
- 6.3.4 a resolution has been passed by the Board to admit that person as a Member; and
- 6.3.5 the resolution has the prior written approval of the Founder.

## **6.4 Commencement of Membership**

Membership commences upon the later of:

- 6.4.1 the date upon which the Board's resolution to admit the person as a Member takes effect; and
- 6.4.2 the date upon which a person becomes eligible to become a Member.

## **7 RIGHTS AND OBLIGATIONS OF MEMBERS**

- 7.1 The rights of Members are not transferable, and end when the Member ceases to be a Member in accordance with clauses 9 or 10.
- 7.2 By joining the Company, a Member agrees to support the Objects.

## **8 ENTRANCE FEE AND ANNUAL SUBSCRIPTIONS**

No entrance fee or annual subscription is payable by the Members as an incident or condition of membership of the Company.

## **9 RESIGNATION AND EXPULSION OF MEMBERS**

### **9.1 Resignation**

A Member may resign their membership of the Company at any time by providing at least 1 month's written notice to the Board.

### **9.2 Resignation and status as a Director**

Upon giving notice pursuant to clause 9.1 a Member who is also a Director will be deemed to have given notice to resign as a Director pursuant to clause 14.1.2(e).



### **9.3 Discipline of Members**

The Board may by resolution, and with the prior written approval of the Founder, suspend or expel a Member for:

- 9.3.1 failing to comply with this Constitution, including without limitation conduct prejudicial to the Objects; or
- 9.3.2 conduct prejudicial to the interests of the Company or other misconduct.

## **10 CESSATION OF MEMBERSHIP**

10.1 A Member ceases to be a Member:

- 10.1.1 on resignation, expulsion, death or ceasing to have legal capacity; or
- 10.1.2 on becoming insolvent, bankrupt, under administration or upon making any arrangement or composition with their creditors generally.

10.2 If a Member ceases to be a Member, the date of ceasing to be a Member must be entered in the Register.

## **GENERAL MEETINGS**

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### **11 MEETINGS OF MEMBERS**

#### **11.1 Annual general meeting**

11.1.1 An annual general meeting of the Company shall be held in accordance with the requirements of the Corporations Act and the ACNC Act and at such times and places as the Board may determine.

11.1.2 The ordinary business of the annual general meeting is:

- (a) to receive and consider the financial reports and the reports of the Directors and of the auditors and of any other documents required by law to be laid before the meeting; and
- (b) to transact any other business which under this Constitution, the Corporations Act or the ACNC Act ought to be transacted at an annual general meeting.

11.1.3 No business shall be transacted at an annual general meeting other than:

- (a) the ordinary business referred to in clause 11.1.2; and
- (b) any special business set out in the notice of meeting.

#### **11.2 Special general meetings**

11.2.1 A general meeting of Members other than the annual general meeting shall be called a special general meeting.

11.2.2 The Board may, whenever it thinks fit, convene a general meeting and must convene a general meeting on a requisition of:

- (a) Members, as provided for by the Corporations Act or under the ACNC Act; or
- (b) the Chair.

- 11.2.3 The requisition for a special general meeting shall state the objects of the meeting and shall be signed by the Members or Chair making the requisition and be sent to the office of the Company and may consist of several documents in a like form, each signed by one or more of the Members or Chair making the requisition.
- 11.2.4 Special general meetings may only consider business of which notice has been given in accordance with clause 11.3.

### **11.3 Notice of general meetings**

Subject to the provisions of the Corporations Act, the ACNC Act and this Constitution:

- 11.3.1 Not less than 21 clear days' notice of a general meeting shall be given in the manner provided in clause 26 to the Members, Directors and auditors of the Company, specifying the place, day and hour of the meeting and in the case of special business the general nature of that business.
- 11.3.2 The Company may call on shorter notice an annual general meeting if all the Members entitled to attend and vote at the annual general meeting agree beforehand.
- 11.3.3 The Company may call on shorter notice a special general meeting if Members with at least 95% of the votes that may be cast at the special general meeting agree beforehand.
- 11.3.4 The accidental omission to give notice of a general meeting to, or the non-receipt of any such notice by, any of the Members shall not invalidate any resolution passed at any such meeting.
- 11.3.5 A Member desiring to bring any business before a meeting may give notice of that business in writing to the Board who shall include all legitimate business in the notice calling the next general meeting after the receipt of the notice.

### **11.4 Postal Ballots**

- 11.4.1 Subject to the provisions of the Corporations Act and the ACNC Act, whenever the Board thinks fit it may submit any question or resolution to the vote of all Members entitled to a vote at a general meeting of the Company by means of a postal ballot in such form and returnable in such manner as the Board decides, provided that notice of any postal ballot shall be given to each Member in the manner provided in clause 11.3.
- 11.4.2 A resolution approved by a majority or specific majority of the Members voting by such ballot shall have the same force and effect as such a resolution would have if carried by such a majority or specific majority at a duly constituted general meeting of the Company competent to pass such a resolution.

### **11.5 Use of Technology**

General meetings may be held at more than one place, provided that the technology that is used enables each Member present at all places the meeting is held to clearly and simultaneously communicate with every other such Member.

## **12 PROCEEDINGS AT GENERAL MEETINGS**

### **12.1 Quorum**

12.1.1 No business shall be transacted at a general meeting unless a quorum is present at the commencement of business.

12.1.2 The quorum for consideration of the business of a general meeting is the presence in person, by proxy or attorney of a simple majority of the Members entitled to vote.

### **12.2 Chairperson of general meetings**

The Chair is entitled to act as chairperson of general meetings, but if no Chair has been elected, or if at any meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting, or unwilling to act, the Members present may choose one of their number to be chairperson of the meeting.

### **12.3 Absence of quorum**

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Members present (being not less than the lesser of three or the number of Members) shall be a quorum. The meeting is otherwise dissolved.

### **12.4 Adjournment of meeting**

The chairperson of a meeting may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It is not otherwise necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

### **12.5 Poll**

12.5.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) by the chairperson of the meeting;
- (b) by the lesser of three Members or the number of Members; or
- (c) by the Chair.

12.5.2 Unless a poll is so demanded a declaration by the chairperson 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 Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

## **12.6 Manner of taking poll**

If a poll is duly demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith.

## **12.7 Casting vote by Chair**

In the case of an equality of votes whether on a show of hands or on a poll, the chairperson of the general meeting only has a second or casting vote if he or she is the Chair. Otherwise the question is deemed to be lost.

## **12.8 Voting**

12.8.1 Each Member has one vote and may vote:

- (a) in person;
- (b) by the appointment of a single proxy, who shall be entitled to vote on a show of hands as well as on a poll; or
- (c) by attorney.

12.8.2 A proxy or attorney need not be a Member and may be appointed for all, any number of, or for a particular meeting.

12.8.3 The decision of the chairperson of a meeting as to the validity of a proxy or power of attorney shall be final and conclusive.

12.8.4 Where a person present at a general meeting represents personally or by proxy or attorney of more than one Member, the following provisions apply to a vote taken on a show of hands:

- (a) the person is entitled to one vote only despite the number of Members the person represents; and
- (b) the person's vote will be taken as having been cast for all the Members the person represents.

## **12.9 Qualification of voters**

An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection shall be referred to the chairperson of the meeting, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

**12.10 Proxies**

12.10.1 An appointment of a proxy is valid if it meets the requirements of Part 2G.2 Division 6 of the Corporations Act and this Constitution.

12.10.2 The instrument appointing a proxy shall be in writing under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy shall be lodged at the registered office of the Company or such other place as is specified for that purpose in the notice convening the meeting not less than 48 hours before the proxy purports to vote at any general meeting of the Company. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct their proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote as they think fit.

12.10.3 The instrument appointing a proxy may be in the following form or in a common or usual form:

“To: Luke Batty Foundation Limited

I ..... of  
.....  
being a member of Luke Batty Foundation Limited (“**Company**”)  
hereby appoint

..... of  
..... or  
failing them ..... of  
..... as  
my proxy to vote on my behalf at the general meeting of the  
Company to be held on the ..... day of ..... and at  
any adjournment thereof.

The proxy is hereby authorised to vote \*in favour of/\*against the  
following resolutions:

Signed this ..... day of .....

*Note: In the event of the member desiring to vote for or against  
any resolution they shall instruct their proxy accordingly. Unless  
otherwise instructed, the proxy may vote as they think fit.*

\*Strike out whichever is not desired.”

12.10.4 Unless the Company has received written notice of the matter before the  
start or resumption of the meeting at which a proxy votes, a vote cast by  
the proxy will be valid even if, before the proxy votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the proxy’s appointment; or
- (d) the Member revokes the authority under which the proxy was  
appointed by a third party.

- 12.10.5 The appointment of a proxy or attorney is not revoked by the appointer attending the general meeting, but:
- (a) if the appointer votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on that resolution; and
  - (b) if the appointer otherwise takes part in the meeting in relation to a resolution the proxy or attorney must not take part in the meeting in relation to that resolution.

## **BOARD OF DIRECTORS**

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### **13 BOARD OF DIRECTORS**

#### **13.1 Initial Directors**

On and from incorporation of the Company, the initial Directors are those persons named in the Company's application for registration as an Australian company.

#### **13.2 Board of Directors**

The affairs of the Company shall be managed by a Board of Directors consisting of between 4 and 9 Directors, comprising:

- 13.2.1 the Chair, elected in accordance with clause 17; and
- 13.2.2 between 3 and 8 ordinary Directors, elected by the Members in accordance with clause 18 at every third annual general meeting, but that retiring Directors shall be eligible for re-election, and in the absence of any candidates the Directors continue as Directors.

#### **13.3 Qualification of Directors**

No person is eligible to be elected or act as a director of the Company unless:

- 13.3.1 that person is over the age of 18 years;
- 13.3.2 the Founder provides its prior written approval for that person to become a Director;
- 13.3.3 that person consents in writing to become a Director; and
- 13.3.4 that person is not prohibited or disqualified or otherwise prevented from acting as a director of a company under the Corporations Act or a responsible person of a registered charity under the ACNC Act.

### **14 REMOVAL OF DIRECTORS**

#### **14.1 Removal of Directors and vacation of office**

- 14.1.1 Without limiting the rights of the Members under the Corporations Act, the Members may by special resolution remove any Director before the expiration of his or her period of office.
- 14.1.2 The office of a Director will automatically become vacant if the Director:
  - (a) dies or is physically incapable of fulfilling their duties as a Director;

- (b) was but ceases to be a Member;
- (c) becomes disqualified from being a director pursuant to the Corporations Act or ACNC Act;
- (d) 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;
- (e) resigns his or her office by notice in writing to the Company;
- (f) for more than 6 months is absent without permission of the Board from meetings of the Board held during that period;
- (g) becomes a bankrupt or makes any arrangement or composition with personal creditors generally; or
- (h) has the approval to be as a Director by the Founder withdrawn.

#### **14.2 Power of Board to act notwithstanding vacancies**

The Board may continue to act notwithstanding a vacancy on the Board, however if the number of Directors falls below 3, then the Board shall not, except in the case of emergencies, or for the purposes of filling up vacancies or convening a general meeting of the Company, act so long as the number is below this minimum.

### **15 POWERS AND DUTIES OF THE BOARD**

#### **15.1 General powers**

The Board:

- 15.1.1 may, subject to the Constitution and the Corporations Act, exercise all such powers and functions as may be exercised by the Company other than those powers and functions that are required by the Constitution to be exercised by general meetings of the members of the Company; and
- 15.1.2 subject to the Constitution and the Corporations Act, has power to perform all such acts and things as appear to the Board to be essential for the proper management of the business and affairs of the Company.

#### **15.2 Control and investment of Company's funds**

- 15.2.1 The Board shall control the Company's funds and manage its financial affairs.
- 15.2.2 All cheques and other negotiable instruments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed, or otherwise executed in such manner as the Board may from time to time determine.

#### **15.3 Liability**

Subject to the Corporations Act, Directors are not liable by reason only of their directorship to contribute towards the payment of the debts and liabilities of the Company or the costs, charges and expenses of the winding up of the Company.

## **16 COMMITTEES**

### **16.1 Committees**

The Board may delegate any of its powers and/or functions (not being duties imposed on the Board as the directors of the Company by the Corporations Act or the general law), to one or more committees consisting of such Members of the Company and/or other persons (at least one of whom shall be a member of the Board) as the Board thinks fit. Any committee so formed shall conform to any regulations or directions that may from time to time be made or given by the Board in relation to such committee, and subject thereto shall have power to co-opt any Member or Members of the Company and all Members of such committees shall have one vote.

### **16.2 Regulation of committees**

Subject to the provisions of the Constitution and committee regulations or directions from clause 16.1, every committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairperson shall have a second or casting vote.

## **17 ELECTION OF CHAIR**

- 17.1 Subject to clause 17.2, the Members may from time to time elect a Chair of the Company who shall be a Director holding office for the purpose of clause 13.2.1.
- 17.2 A person will not be eligible for election as the Chair unless they have the prior written approval of the Founder.
- 17.3 The election of the Chair may otherwise be conducted in accordance with clause 18 as if a reference to the election of Directors is read as the election of the Chair.

## **18 ELECTION OF DIRECTORS**

- 18.1 Nominations of candidates for election as a Director must be signed by the Member, contain a consent to act as a Director signed by the candidate, and must be received at least 14 days before the annual general meeting.
- 18.2 If the number of nominations of candidates for election does not exceed the number of vacancies the candidates so nominated shall be declared duly elected at the annual general meeting.
- 18.3 If the number of nominations of candidates exceeds the vacancies, balloting lists shall be printed containing in alphabetical order the names of the candidates nominated and one such list shall be delivered at least 5 days before the annual general meeting, to each Member.
- 18.4 The Chair must declare the election result at the annual general meeting.

## **19 APPOINTMENT OF A SECRETARY**

- 19.1 One or more Secretaries shall be appointed by the Board on such terms and conditions as the Board determines from time to time.
- 19.2 A Secretary shall be entitled to attend meetings of the Board and the Members, if so directed by the Board from time to time.



## **BOARD MEETINGS**

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### **20 PROCEEDINGS OF THE BOARD**

#### **20.1 Meetings**

20.1.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, provided that it must meet at least 3 times each financial year. The Board must convene at the request of at least 2 Directors or the Chair.

20.1.2 Written notice of each Board meeting shall be given to each Director by delivering it, or by sending it by post, facsimile or email addressed to his or her usual or last known postal address or facsimile or email contact at least 2 business days before the date of the meeting.

20.1.3 In cases of urgency a meeting may be held without the notice required under clause 20.1.2, provided that:

- (a) as much notice as practicable is given by whatever means will reach each Director as soon as possible; and
- (b) no resolution may be passed at the meeting except by unanimous agreement of all Directors present.

20.1.4 The business transacted at the Board meeting shall be only that listed on the notice, however the chairperson of the meeting may allow other business deemed urgent to be transacted.

#### **20.2 Voting**

20.2.1 Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Directors present shall for all purposes be deemed a determination of the Directors.

20.2.2 Where something is to be determined or voted on by the Board each Director shall have 1 vote.

20.2.3 Questions arising at a meeting of the Board shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such manner as the chairperson may determine.

20.2.4 Unless otherwise expressly provided in the Constitution, there shall be no voting by proxy or by post at Board meetings.

20.2.5 In case of an equality of votes the Chair shall have a second or casting vote.

#### **20.3 Quorum**

The quorum necessary for the transaction of the business of the Board shall be 3 Directors, one of which must be the Chair.

#### **20.4 Chairperson of Board meetings**

The Chair will act as chairperson of Board meetings.

## **20.5 Circulatory resolutions and telephone meetings**

- 20.5.1 A resolution in writing signed by all of the Directors for the time being entitled to receive notice of meetings of the Board shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held provided that the Directors signing the resolution would constitute a quorum and would have power to pass such resolution at a meeting of the Board. Any such resolution may consist of several documents in similar form each signed by one or more Directors. Any such document sent by a Director by facsimile transmission, or other means of communication approved by the Directors, shall be deemed to have been signed by such Director and to suffice for the purpose of this clause.
- 20.5.2 Meetings of the Board may be held at more than one place provided that the technology that is used enables each member present at all places the meeting is held to clearly and simultaneously communicate with every other such member.
- 20.5.3 For the purposes of the Constitution the contemporaneous linking together by telephone or other electronic means of a number of the Directors not less than a quorum shall be deemed to constitute a meeting of the Directors and all the provisions thereof as to meetings of the Board shall apply to such meetings by telephone or other electronic means so long as the following conditions are met:
- (a) all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be entitled to notice of a meeting by telephone and to be linked by telephone for the purposes of such meeting;
  - (b) notice of any such meeting may be given by telephone or other electronic means;
  - (c) each of the Directors taking part in the meeting by telephone or other electronic means must be able to hear each of the other directors taking part in the meeting; and
  - (d) at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.
- 20.5.4 A Board meeting held using a form of technology in accordance with clause 20.5.3 is deemed to have been held at the place determined by the chairperson of that meeting, provided that at least one of the Directors who took part in the meeting was at that place for the duration of the meeting.

## **20.6 Acts of Board or committees valid notwithstanding defective appointment etc.**

All acts done at any Board meeting or any meeting of a committee of Directors or by any person acting as a Director shall notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or person acting as Director, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

## **20.7 Conflicts**

Any Director who is in any way, directly or indirectly, interested in any contract or arrangement or proposed contract or arrangement with the Company or any actual or proposed exercise by the Company of any of its powers and functions, shall declare the nature of such interest prior to the consideration of such matter and must not:

20.7.1 be present while the matter is being considered; or

20.7.2 vote on the matter.

## **FINANCIAL AND LEGAL**

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### **21 AMENDMENT OF CONSTITUTION OR NAME**

No modification or repeal of this Constitution or any provision of this Constitution, and no change in the Company's name will be effective unless:

21.1 it is passed as a special resolution in accordance with the Corporations Act; and

21.2 the special resolution has the prior written approval of the Founder.

### **22 ACCOUNTS AND AUDIT**

22.1 The Board shall, in accordance with the requirements of the Corporations Act and the ACNC Act:

22.1.1 cause proper accounting and other records to be kept, and

22.1.2 cause financial statements to be made and laid before each annual general meeting of the Company as prescribed by the Corporations Act and the ACNC Act.

22.2 Subject to the Corporations Act and the ACNC Act, the Board may 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 will be open to inspection by Members (other than Directors).

22.3 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 the Board or by the Company in general meeting.

22.4 A properly qualified auditor/s shall be appointed with their duties regulated in accordance with the requirements of the Corporations Act and the ACNC Act.

### **23 MINUTES OF PROCEEDINGS**

23.1 The Board shall cause minutes of the resolutions and proceedings of each general meeting, and Board meeting and each committee meeting to be kept in books provided for that purpose and shall be signed by the chairperson of the meeting at which the proceedings took place, or the chairperson of the next succeeding meeting.

23.2 Where minutes have been so entered and signed then, unless the contrary is proved:

23.2.1 the meeting shall be deemed to have been duly convened and held;

- 23.2.2 all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and
- 23.2.3 all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

## **24 COMMON SEAL**

- 24.1 The Board will determine whether or not the Company is to have a common seal and, if so, will provide for the safe custody of such seal.
- 24.2 The common seal, if any, of the Company shall not be affixed to any instrument except by the authority of the Board and the affixing of the common seal shall be attested by the signatures of those authorised to attest to the affixing of the common seal from time to time.

## **25 OFFICERS INDEMNITY AND INSURANCE**

### **25.1 Indemnity**

- 25.1.1 To the Relevant Extent and subject to the Corporations Act, the Company shall indemnify every person who is or has been an Officer out of the assets of the Company To the Relevant Extent against any Liability incurred by the Officer in or arising out of the conduct of the affairs or business of the Company, or in or arising out of the discharge of the Duties of the Officer, unless such Liability arises out of conduct involving a lack of good faith.
- 25.1.2 Without limiting clause 25.1.1, the Company may, to the extent to which the Company is not precluded by law from doing so, execute and deliver any deed, agreement or other document in favour of any Officer or former Officer to whom this clause 25.1 applies, confirming the indemnities contained in this clause 25.1, in relation to that person. This clause 25.1 shall apply whether or not any such deed, agreement or other document is given.

### **25.2 Insurance**

To the extent permitted by law, the Company may (but is not obliged to) pay, or agree to:

- 25.2.1 make payments of amounts by way of premium in respect of any contract effecting insurance on behalf, or in respect of, an Officer against any liability incurred by the Officer in, or arising out of, the conduct of the business of the Company, or in or arising out of, the discharge of the Duties of the Officer; and
- 25.2.2 bind itself in any deed (in such terms as the Directors consider appropriate) with any Officer to make the payments.

### **25.3 Access**

- 25.3.1 Where the Directors consider it appropriate, the Company may:
- (a) give a Director or former Director access to various Company papers, including documents provided or available to the Directors and other papers referred to in those documents; and

- (b) bind itself in a deed (in such terms as the Directors consider appropriate) with a Director or former Director to give that access.

25.3.2 Nothing contained in clause 25.3.1, or in any deed entered into between the Company and any Director or former Director pursuant to that clause will in any way exclude, limit or restrict the right of access to the Company's books conferred on such persons by the Corporations Act.

## **26 NOTICES**

- 26.1 A notice may be given by the Company to any Member personally, by post to the Member's address as set out in the Register, or to such facsimile number or e-mail or other electronic address as the Member may have supplied the Company for the giving of notices. The fact that a Member has supplied a fax number or e-mail or other electronic address for the giving of notices does not require the Company to give any notice to that Member by that electronic means.
- 26.2 In the case of a Member who has not supplied the Company with a postal address within the Commonwealth of Australia, the Company may give notice to that Member by sending it by air mail to the address outside Australia (if any) advised by the Member.
- 26.3 A notice or other document given by the Company will be deemed to have been served on a Member:
- 26.3.1 in the case of a notice sent by post (including by air mail pursuant to clause 26.2), at the expiration of 24 hours after the envelope or wrapper containing the same is posted. In proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice or document was addressed and put in the post office or a post office letter box; and
  - 26.3.2 in the case of a notice sent by fax, e-mail or other electronic means, on the business day next following the day on which it is sent.
- 26.4 Notice of every general meeting of the Company shall be given in the manner set out in this clause 26 to:
- 26.4.1 every Member except those Members who (having no registered address within the Commonwealth of Australia) have not provided to the Company an address outside Australia for the giving of notices; and
  - 26.4.2 the auditor for the time being of the Company.

## **27 LIMITED LIABILITY**

Subject to clause 28, the liability of Members is limited and Members are not liable by reason only of their membership to contribute towards the payment of the debts and liabilities of the Company.

## **28 LIMIT OF CONTRIBUTION BY MEMBERS IN WINDING UP**

Each Member undertakes to contribute to the property of the Company, in the event of it being wound up while the Member's membership is current or within one year after the Member ceases to be a Member, for payment of the debts and liabilities of the Company contracted before the Member ceases to be a Member and the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding TEN DOLLARS (\$10.00).

## 29 EXCESS PROPERTY ON WINDING UP

If, upon the winding up or dissolution of the Company, there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to some other institution or institutions:

- 29.1 having objects similar to the Objects of the Company and which are Charitable;
  - 29.2 being listed in the Register of Harm Prevention Charities if the Company was on that register;
  - 29.3 which prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 4;
  - 29.4 which – if the Company is endorsed by the Australian Taxation Office as income tax exempt — are also currently endorsed as income tax exempt on the same basis as the Company; and
  - 29.5 having the prior written approval of the Founder,
- such institution or institutions to be determined at or before the time of dissolution by:
- 29.6 resolution of the Members, and failing that,
  - 29.7 resolution of the Board, and failing that,
  - 29.8 application to the Supreme Court of Victoria for determination.

## DEFINITIONS AND INTERPRETATION

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### 30 DEFINITIONS

In this Constitution:

- 30.1 "**ACNC Act**" means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
- 30.2 "**Board**" means the board of directors of the Company for the purposes of the Corporations Act being the whole or any number (not being less than a quorum) of the board of the Company for the time being acting as such in accordance with the Constitution.
- 30.3 "**Chair**" means the person elected pursuant to clause 17, who is to be a Director and chairperson of general meetings of the Members and meetings of the Board.
- 30.4 "**Charitable**" means charitable for the purposes of all of the following:
  - 30.4.1 the Commonwealth common law;
  - 30.4.2 the Victorian common law; and
  - 30.4.3 the *Charities Act 2013* (Cth), but only while that Act is in force.
- 30.5 "**Company**" means the company established or continued in existence under this Constitution.

- 30.6 “**Constitution**” means this constitution as for the time being in force.
- 30.7 “**Corporations Act**” means the *Corporations Act 2001* (Cth).
- 30.8 “**Director**” means a member of the Board.
- 30.9 “**Duties of the Officer**” includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment (in any capacity) of an Officer by the Company or, where applicable, a subsidiary of the Company, to any other corporation.
- 30.10 “**Families Department**” has the same meaning as in the ITAA.
- 30.11 “**Families Minister**” has the same meaning as in the ITAA.
- 30.12 “**Family Violence**” means violent, abusive or intimidating behaviour carried out by an adult person against the person’s partner or former partner (“**victim**”), whether occurring in the home or in public, including:
- 30.12.1 physical assault (including punching, hitting, kicking, pushing, slapping, choking, or the use of weapons);
  - 30.12.2 sexual assault (including being forced to have sex or participate in sexual activities, either by watching or participating);
  - 30.12.3 emotional abuse (including making the victim feel worthless, criticising the victim’s personality, looks, or dress, constantly putting the victim down, and threatening to hurt the victim or the victim’s children or pets);
  - 30.12.4 verbal abuse (including yelling, shouting, name-calling and swearing at the victim);
  - 30.12.5 social abuse (including stopping the victim from seeing friends and family, and isolating the victim socially or geographically);
  - 30.12.6 damaging property such as furniture, the house or pets in order to threaten or intimidate the victim; and
  - 30.12.7 financial abuse (including taking control of the victim’s money, not giving the victim enough money to survive on, forcing the victim to hand over money, and not letting the victim have a say in how it is spent).
- 30.13 “**Founder**” means successively Rosemary Batty and any person or persons nominated by the Founder or Founders to succeed him, her or them as Founder or as one of the Founders, by instrument in writing or, in the case of a sole Founder, or the last surviving Founder, by will and such appointment or nomination will be effective at a time or in circumstances as provided for in the instrument and may appoint or nominate persons to act in succession to one another.
- 30.14 “**Guidelines**” means the Guidelines to the Register of Harm Prevention Charities published by the Families Department from time to time.
- 30.15 “**ITAA**” means *Income Tax Assessment Act 1997* (Cth).
- 30.16 “**Liability**” includes costs, charges, losses, damages, expenses and penalties.
- 30.17 “**Member**” means a member for the time being of the Company appearing as such in the register of members.

- 30.18 **“Objects”** means the objects contained in clause 1, including the Principal Object and the additional objects set out in clause 1.2.
- 30.19 **“Officer”** means:
- 30.19.1 a member of the Board;
  - 30.19.2 a Secretary; or
  - 30.19.3 a person:
    - (a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the affairs of the Company;
    - (b) who has the capacity to affect significantly the Company’s financial standing; or
    - (c) in accordance with whose instructions or wishes the Directors are accustomed to act (excluding advice given by the person in a proper performance of functions attaching to the person’s professional capacity or their business relationship with the Directors).
- 30.20 **“Person”** includes an individual, incorporated and unincorporated group or organisation, parts of incorporated and unincorporated groups or organisations and a company or incorporated entity.
- 30.21 **“Principal Object”** means the Principal Object contained in clause 1.1.
- 30.22 **“Public Fund”** means the Luke Batty Foundation Fund established and maintained under clause 3 and the Public Fund Rules.
- 30.23 **“Public Fund Rules”** means the Public Fund Rules annexed to and forming part of this Constitution.
- 30.24 **“Register”** means the register of Members of the Company.
- 30.25 **“Regulation”** means any regulation made under this Constitution.
- 30.26 **“Secretary”** means a person appointed by the Board pursuant to clause 18, to act as the secretary of the Company for the purposes of the Corporations Act.
- 30.27 **“To the Relevant Extent”** means:
- 30.27.1 to the extent the Company is not precluded by law from doing so;
  - 30.27.2 to the extent, and for the amount that the Officer is not otherwise entitled, to be indemnified and is not otherwise actually indemnified; and
  - 30.27.3 where the liability is incurred in or arising out of the conduct of the business of another corporation, or in the discharge of the duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.



## **31 INTERPRETATION**

### **31.1 Interpretation rules**

Unless the contrary intention appears in the Constitution:

- 31.1.1 words importing the singular include the plural, and words importing the plural include the singular;
- 31.1.2 words importing a gender include every other gender;
- 31.1.3 words used to denote persons generally or importing a natural person include any company, corporation, body corporate or other body (whether or not the body is incorporated);
- 31.1.4 a reference to a person includes that person's successors, legal personal representatives and permitted transferees;
- 31.1.5 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 31.1.6 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;
- 31.1.7 headings and bold text are for convenience only and do not affect its interpretation; and
- 31.1.8 a Member is to be taken to be present at a general meeting if the Member is present in person or by proxy or attorney.

### **31.2 Application of the Corporations Act**

- 31.2.1 The Constitution is to be interpreted subject to the Corporations Act. However, the rules that apply as replaceable rules to companies under the Corporations Act do not apply to the Company.
- 31.2.2 Unless the contrary intention appears, a word or expression in a clause that is defined in section 9 of the Corporations Act has the same meaning in the Constitution as in that section.

## **32 FOUNDER**

- 32.1 There is established under this Constitution the office of Founder.
- 32.2 The Founder and any person who may by succession become the Founder may resign or renounce such position by notice in writing to the Board and upon the giving of such notice the person giving the same shall for the purpose of this Constitution cease to be the Founder or to be a person who may by succession become the Founder (as the case may be) but any such person shall remain eligible to become the Founder by succession or appointment.
- 32.3 The powers and rights of the Founder under this Constitution may only be exercised by the Founder personally and may not, unless expressly otherwise provided in this

Constitution, be exercised or exercisable by any person claiming through them or be capable of being assigned or delegated.

- 32.4 Where, by this Constitution, any power, discretion or right is exercisable only with the approval or consent of the Founder, that power, discretion or right shall, if no Founder is in office at the time of its exercise or purported exercise, be exercisable without any such consent.

**PUBLIC FUND RULES**

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**RULES**

of

**LUKE BATTY FOUNDATION FUND****(A PUBLIC FUND)**

- 1     **Establishment:** The **Luke Batty Foundation Fund** is established pursuant to the Constitution of the Company.
- 2     **Object of the Public Fund:** The object of the Public Fund is to promote the prevention or the control of human behaviour that is harmful or abusive to human beings. The particular human behaviour to be addressed by the Public Fund is Family Violence in Australia.
- 3     **Seeking funds from the public:** Members of the public must be invited to make gifts of money or property to the Public Fund for the prevention or the control of human behaviour that is harmful or abusive to human beings.
- 4     **Public Fund's management committee:** A management committee of no fewer than three persons must administer the Public Fund as follows:
  - 4.1    The management committee must be appointed by the Company.
  - 4.2    A majority of the members of the management committee must be "responsible persons" as set out in the Guidelines.
- 5     **Separate bank account for the Public Fund:** A separate bank account must be opened to deposit money donated to the Public Fund, including interest accruing thereon, and gifts to the Public Fund must be kept separate from other funds of the Company.
- 6     **Income and the Public Fund Account:** Money from interest on donations, income derived from donated property, and money from the realisation of such property must be deposited into the Public Fund.
- 7     **Not-for-profit:** The Public Fund must be operated on a not-for-basis in accordance with clause 4 of the Company's Constitution.
- 8     **Receipts:**
  - 8.1    Receipts, containing the elements specified in Subdivision 30-CA of the ITAA, must be issued in the name of the Public Fund.
  - 8.2    Proper accounting records and procedures must be kept and used for the Public Fund.

**Note:** See also clauses 3.1.1 to 3.1.5 of the Company's Constitution, which are deemed incorporated into these Public Fund Rules.

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