

CONSTITUTION OF PLAYABILITY INCORPORATED

1 DEFINITIONS

In this constitution:

Act means the *Associations Incorporation Act 2009* (NSW).

association or **Playability Inc.** has the meaning given to that term in clause 2.

committee has the meaning given to that term under the Act.

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

Regulation means the *Associations Incorporation Regulation 2016* (NSW).

Subscription Amount means \$1.00.

2 NAME

The name of the association is PlayAbility Incorporated. Playability Incorporated is referred to in this constitution as "**Playability Inc.**" or "**the association**".

3 OBJECTS

- (a) PlayAbility Inc. is an inclusive service that provides individualised social and disability supports to children and families in the Bega Valley and surrounds. Our vision is for families to have the capacity to raise their children in an environment that promotes safety and wellbeing, builds their confidence and skills, creates resilience and forms connections to their community and culture.
- (b) PlayAbility Inc. aims to:
 - (i) Provide flexible services that are family centred and build on the strengths and competencies of children and their families.
 - (ii) Provide diverse opportunities for children with additional needs to play, develop skills, function independently, and interact effectively in social situations.
 - (iii) Provide innovative evidence based practices that support social, cognitive and physical development as well as the emotional wellbeing of children and their families.
 - (iv) Support children and their families and carers during periods of transition between activities, programs and services to ensure equity of access.
 - (v) Promote and facilitate the inclusion and integration of children living with disability and developmental delay as valued members of our local community.
 - (vi) Overcome barriers encountered by families and children with disabilities or cultural and social differences through advocacy and support.
 - (vii) Integrate Indigenous culture into all services delivered within the community.
 - (viii) Present a service that acknowledges and values Indigenous culture and actively collaborates and seeks input from members of the Indigenous community.

- (ix) Facilitate communication and collaboration between families and relevant professionals to identify and achieve their goals by building a team around the child.
 - (x) Provide information and advocacy that empowers families to make informed decisions regarding the development and wellbeing of their children.
 - (xi) Promote community awareness of diversity and the ability of children and their families to participate meaningfully in the community.
 - (xii) Provide capacity building supports and information to families and caregivers that strengthen their skills in promoting their child's development within daily routines.
- (c) The association shall be responsible for:
- (i) Raising, obtaining and receiving funds or other aid for the purpose of achieving the objects of the association by means of subscriptions, donations, National Disability Insurance Scheme claims, bequests, other functions or any other means.
 - (ii) Investing any monies of the association and holding investments of the same not immediately required in such manner as may be permitted by law for the investment of trust funds.
 - (iii) Receiving, acquiring or holding all land, monies, securities and other real and personal property.
 - (iv) Employing such persons as may be required to promote any of the above objects or to provide any service in accordance with them.
 - (v) Applying the capital and income of the association and property towards the objects of the association and to all such lawful things that are incidental or ancillary to, or conclusive to, and not inconsistent with, the achievement of these objects.

4 NON-DISTRIBUTION OF PROFITS

- (a) The income and property of the association, however derived, shall, subject to any obligations under charitable trust law or any other statutory requirements, be used and applied solely in the promotion of the objects of the association and in the exercise of powers conferred upon the association by this constitution.
- (b) No portion of this income and property shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the members of the association.
- (c) The requirement contained in clause 4(b) shall not, however, prevent the payment in good faith of:
 - (i) interest (provided it is based on the prevailing rate of interest charged by banks, building societies or credit unions for unsecured loans) to any such member in respect of moneys advanced by that member to the association, or otherwise owing by the association to the member; or
 - (ii) any remuneration to any officers or employees of the association or other person in return for services rendered to the association.

5 MEMBERSHIP AND FEES

- (a) A person is eligible to be a member of the association if:
 - (i) they are an individual;
 - (ii) they are not an employee of the association;
 - (iii) they accept the objects and constitution of the association; and
 - (iv) they apply for, and are approved for, membership of the association in accordance with this clause 5.
- (b) Subject to satisfying the criteria set out in clause 5(a), an individual may apply for membership of the association by making a written application to the committee for membership.
- (c) As soon as reasonably practicable after receiving an application for membership, the committee must determine whether or not to accept an application for membership.
- (d) As soon as reasonably practicable after the committee makes a determination under clause 5(c) above, the committee must notify the applicant as to whether their application for membership has been approved or rejected. The committee is required to give the reasons for the rejection of an application if requested in writing by the applicant.
- (e) If the committee approves the application for membership, the relevant applicant must pay the Subscription Amount to the association, as directed by the committee, within 28 days of receiving confirmation of the acceptance of the application by the committee.
- (f) The secretary of the association must, on receipt of the Subscription Amount by the association, enter, or cause to be entered, the applicant's name in the register of members. On the name of the applicant being entered into the register of members, the applicant becomes a member of the association.
- (g) Other than payment of the Subscription Amount in accordance with clause 5(e), no other fees (including annual fees) are payable by the members in connection with their membership.
- (h) A person ceases to be a member of the association if the person dies, resigns from their membership or is expelled from the association (including under clause 8).

6 REGISTER OF MEMBERS

- (a) A register of members must be kept by the association showing the name, address, date of commencement of membership and cessation of membership for each member.
- (b) The register of members must be kept in New South Wales:
 - (i) at the main premises of the association; or
 - (ii) if the association has no premises, at the association's official address.
- (c) The register of members must be open for inspection, free of charge, by any member of the association at any reasonable hour.

- (d) If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection.
- (e) A member must not use information about a person obtained from the register to contact or send material to the person, other than for:
 - (i) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the association or other material relating to the association; or
 - (ii) any other purpose necessary to comply with a requirement of the Act or the Regulation.
- (f) If the register of members is kept in electronic form:
 - (i) it must be convertible into hard copy; and
 - (ii) the requirements in clauses 6(b) and 6(c) apply as if a reference to the register of members is a reference to a current hard copy of the register of members.

7 MEMBERS' LIABILITY

The members of the association have no liability to contribute towards the payment of debts and liabilities of the association or the costs, charges and expenses of the winding up of the association.

8 DISCIPLINING MEMBERS

- (a) A member may be expelled from membership of the association (or otherwise disciplined) by the committee, if, in the opinion of the committee, after affording the member an opportunity of offering an explanation of his/her conduct, the conduct is regarded as being detrimental to the interests of the association.
- (b) A member who wishes to appeal against a decision expelling or otherwise disciplining him/her may do so within seven days after notice of the decision is given to the member by the committee by notifying the secretary in writing that s/he wishes the decision to be reviewed at the next general meeting of the association.
- (c) On receipt of a notice from a member under clause 8(b), the committee must convene a general meeting of the association. The general meeting must be held within 28 days after the date on which the committee received the notice.
- (d) At a general meeting of the association convened under clause 8(c):
 - (i) no business other than the question of the appeal is to be transacted; and
 - (ii) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both; and
 - (iii) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (e) The appeal is to be determined by a simple majority of votes cast by members of the association.

9 DISPUTES BETWEEN MEMBERS

- (a) In the event of a dispute arising between members (in their capacity as members), or between a member and the association, or a member and the committee, the procedure set out in this clause 9 will apply.
- (b) Each party to the dispute must nominate a representative within seven days of the dispute arising. Those representatives must then attempt to settle the dispute by negotiation.
- (c) Should the nominated representatives be unable to resolve the dispute within 14 days (or such other period as they may agree upon) the dispute must be referred to a person mutually agreed upon for mediation.
- (d) If the dispute is not resolved by the above procedures, it may be referred to a community justice centre for mediation in accordance with the *Community Justice Centres Act 1983* (NSW).

10 MANAGEMENT OF ASSOCIATION

- (a) The management of the association will be vested in a committee consisting of the office bearers of the association (as set out in clause 10(c) and three other committee members.
- (b) Subject to the Act, the Regulation, this constitution and any resolution passed by the association in general meeting, the committee:
 - (i) is to control and manage the affairs of the association;
 - (ii) may exercise all the functions that may be exercised by the association, other than those functions that are required by this constitution to be exercised by a general meeting of members of the association; and
 - (iii) has power to perform all the acts and do all things that appear to the committee to be necessary or desirable for the proper management of the affairs of the association.
- (c) The office bearers are the president, vice president, secretary and treasurer of the association.
- (d) No member of the committee shall be appointed to any salaried office of the association or any office of the association paid by fees and no remuneration or other benefit in money or otherwise shall be given by the association to any member of the committee, except the repayment of reasonable out-of-pocket expenses.
- (e) The office bearers and other members of the committee must be elected at an annual general meeting or general meeting of the association.
- (f) Any casual vacancy occurring in the committee may be filled by a person nominated by the committee, and the person so appointed to fill such vacancy will hold office for the unexpired term of the member so replaced. Alternatively, the committee may convene a general meeting of the association for the election of office bearers and other members of the committee by the members by way of resolution.
- (g) Each member of the committee will hold office from the date of their election or appointment until the next annual general meeting, at which point they are eligible

for re-election. There is no maximum number of consecutive terms for which a committee member may hold office.

11 ELECTION OF COMMITTEE MEMBERS

- (a) Nominations of candidates for election as office bearers of the association or as ordinary committee members:
 - (i) must be made in writing, signed by two members of the association and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
 - (ii) must be delivered to the secretary of the association at least seven days before the date fixed for the holding of the annual general meeting at which the election is to take place.
- (b) If insufficient nominations are received to fill all vacancies on the committee, the candidates nominated are taken to be elected and further nominations are to be received at the annual general meeting.
- (c) If insufficient further nominations are received, any vacant positions remaining on the committee are taken to be casual vacancies.
- (d) If the number of nominations received is equal to the number of vacancies to be filled, the persons nominated are taken to be elected.
- (e) If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held.
- (f) The ballot for the election of office bearers and ordinary committee members of the committee is to be conducted at the annual general meeting in any usual and proper manner that the committee directs.
- (g) A person nominated as a candidate for election as an office bearer or as an ordinary committee member of the association must be a member of the association.

12 PROCEEDINGS OF THE COMMITTEE

- (a) The committee must meet together for the dispatch of business at least once in each month. The president of the association may at any time, and the secretary of the association on the requisition of any two members of the committee must, summon a meeting of the committee.
- (b) The quorum for meetings of the committee will be three committee members.
- (c) Notice of committee meetings must be given at the previous committee meeting or by notice in writing to the members of the association specifying the place, the day and the hour of meeting and the general nature of the business to be dealt with at the meeting.
- (d) The committee may function validly provided its number is not reduced below the quorum. Should committee numbers fall below the quorum the remaining committee members may act only to appoint new committee members.
- (e) Questions arising at any meeting of the committee will be decided by a majority of votes of those present. In case of an equality of votes, the chairperson of the meeting has a second or casting vote.

- (f) If, within half an hour of the time appointed for a committee meeting, a quorum is not present, the meeting may be dissolved or adjourned.
- (g) A committee meeting may be held at two or more venues using any technology approved by the committee that gives each of the committee's members a reasonable opportunity to participate. A committee member who participates in a committee meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

13 VACATION OF OFFICE

A vacancy in the office of a member of the committee occurs if the member:

- (a) dies;
- (b) becomes insolvent under administration within the meaning of the Corporations Act;
- (c) becomes a mentally incapacitated person;
- (d) resigns from office by notice in writing to the secretary;
- (e) is absent without the consent of the committee from all meetings of the committee held during a period of 3 months;
- (f) ceases to be a member of the association;
- (g) is expelled as a member;
- (h) holds any office of profit under the association;
- (i) is directly or indirectly interested in any contract or proposed contract with the association; or
- (j) is removed from office upon resolution being passed by 75% of members present at a properly constituted general meeting called for that purpose. For the avoidance of doubt, the removal of a committee member need not be the sole purpose of the general meeting.

14 GENERAL MEETINGS

- (a) An annual general meeting of the association must be held each year within six months from the end of the financial year of the association.
- (b) The committee may, whenever it thinks fit, convene a general meeting of the association.
- (c) A general meeting must be convened by the committee within three months of receiving a written request to do so from at least five percent of the membership of the association.
- (d) A general meeting may be held at two or more venues using technology approved by the committee that gives each of the association's members a reasonable opportunity to participate. A member who participates in a general meeting using that technology is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

- (e) At least 14 days' notice of all general meetings and notices of motion must be given to members. In the case of general meetings where a special resolution is to be proposed, notice of the resolution must be given to members at least 21 days before the meeting.
- (f) In the case of the annual general meeting the following business must be transacted:
 - (i) confirmation of the minutes of the last annual general meeting and any recent special general meeting;
 - (ii) receipt of the committee's report upon the activities of the association in the last financial year;
 - (iii) election of office bearers and other members of the committee; and
 - (iv) receipt and consideration of a statement from the committee which is not misleading and gives a true and fair view of the last financial year of the association's income and expenditure, assets and liabilities, mortgages, charges and other securities, trust properties.
- (g) The quorum for a general meeting is three members. If within half an hour of the time appointed for a general meeting a quorum is not present, the meeting must be dissolved or adjourned.
- (h) Voting at general meetings will be by a show of hands unless a secret ballot is demanded. Decisions will be made by a simple majority vote except for those matters which must be decided by special resolution, where 75% of the members of the association must vote in favour of the resolution.
- (i) In the case of an equality of votes, chairperson of the general meeting has a second or casting vote.
- (j) Nominations of candidates for election as office bearers or other committee members may be made at the annual general meeting or in such other ways as may be determined by the association at a general meeting or under this constitution.

15 PROXIES AND REPRESENTATIVES

- (a) A member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the member is a body corporate, a representative to attend and cast a vote at that meeting. An appointment under this clause 15(a) must be in writing in the form required by the association.
- (b) If a proxy appointed to attend and cast a vote at a general meeting under clause 15(a) is a body corporate, the proxy may appoint a representative to attend and cast a vote at that meeting.
- (c) Neither the proxy nor the representative need be a member.

16 POSTAL OR ELECTRONIC BALLOTS

- (a) The association may hold a postal or electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under clause 8(b)).

- (b) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

17 OFFICE BEARERS

- (a) The president, or in the president's absence the vice-president, will act as chairperson at each general meeting and committee meeting of the association.
- (b) If the president and vice-president are absent from a meeting or unwilling to act, the members present at the meeting may elect one of their number to act as chairperson.
- (c) The secretary must ensure that records of the business of the association including financial information, this constitution, the register of members, minutes of all general and committee meetings and a file of correspondence are kept. These records must be available for inspection by any member and must be held at the registered office of the association.
- (d) Despite clause 17(c) above, the committee may refuse to permit a member of the association to inspect or obtain a copy of records of the association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the association.
- (e) The treasurer must ensure that all money received by the association is paid into an account in the association's name in such bank, building society or credit union as the committee may from time to time direct.
- (f) Funds raised by means of a fundraising appeal within the meaning of the Charitable Fundraising Act 1991 (NSW) must be maintained in accordance with that act.
- (g) All accounts shall be presented to and passed for payment at a committee meeting and full details of all such approvals shall be entered in the minute book of the association.
- (h) Payments must be made through electronic funds transfers approved by the committee or two authorised signatories of the association, by cash or by cheque signed by two signatories authorised by the committee. Major or unusual expenditures must be authorised in advance by the committee or at a general meeting.
- (i) The treasurer must ensure that correct books and accounts are kept showing the financial affairs of the association, including those required to be maintained under the *Charitable Fundraising Act 1991* (NSW). These records must be available for inspection by any member and must be held at the registered office of the association.

18 SPECIAL RESOLUTIONS

A special resolution must be passed by the members of the association in accordance with section 39 of the Act to effect the following:

- (a) a change of the association's name;
- (b) a change of the association's constitution;
- (c) a change of the association's objects;

- (d) an amalgamation with another incorporated association;
- (e) to voluntarily wind up the association and distribute its property; and
- (f) to apply for registration as a company of a co-operative.

19 PUBLIC OFFICER

- (a) The committee must ensure that a person is appointed as public officer.
- (b) The public officer must be a person who is at least 18 years of age and a resident of New South Wales.
- (c) The committee may at any time remove the public officer and appoint a new public officer that satisfies the criteria set out in clause 19(b).
- (d) The public officer will be deemed to have vacated their position if the public officer:
 - (i) dies;
 - (ii) resigns from their office as public officer;
 - (iii) is removed by the committee or at a general meeting;
 - (iv) suffers bankruptcy or financial insolvency;
 - (v) becomes a mentally incapacitated person; or
 - (vi) takes residency outside of New South Wales.
- (e) When a vacancy occurs in the position of public officer the committee must within 28 days notify the Office of Fair Trading by the prescribed form and appoint a new public officer.
- (f) The public officer is required to notify the Office of Fair Trading by the prescribed form if any of the following circumstances occurs:
 - (i) they are appointed as public officer (within 28 days of that appointment);
 - (ii) their residential address changes (within 28 days of that change occurring);
 - (iii) a change to the association's name, objects or constitution is passed by way of special resolution by the members (within 28 days of the special resolution being passed by special resolution);
 - (iv) the association is required to notify the Office of Fair Trading of its financial affairs (within the period stipulated in the Act); and
 - (v) a change in the association's official address (within 28 days of the change occurring).
- (g) The public officer may be an office bearer, committee member or any other person regarded as suitable for the position by the committee.
- (h) The public officer must keep a register of members of the committee which must
 - (i) contain the name and residential address of each committee member and the date on which they became a member of the committee;

- (ii) be updated within one month of any change taking place; and
 - (iii) be made available for inspection by any person, at all reasonable hours and free of charge.
- (i) The common seal of the association must be kept at the registered office of the association and may only be affixed to a document with the approval of the committee. The stamping of the common seal must be witnessed by the signatures of two members of the committee.

20 AUDIT

- (a) The auditor or auditors will be elected at the annual general meeting. They shall examine all accounts, vouchers, receipts, books, etc., and furnish a report thereon to the members at the annual meeting. Audits shall be conducted at regular intervals of not more than twelve months.
- (b) An auditor shall not be a member or closely related to a member of the committee.
- (c) Subject to clause 20(d), notice of the intention to nominate an auditor to replace the current auditor will be given to the secretary at least twenty-one (21) days before the relevant annual general meeting. The secretary will send a copy of the nomination to the current auditor at least seven (7) days before the relevant annual general meeting. The current auditor will be entitled to attend the annual general meeting and if that person so wishes to be heard at such annual general meeting.
- (d) Where the current auditor submits a resignation, or notifies the secretary of the intention not to seek re-election as auditor, clause 20(c) will not apply.

21 MINUTES

The committee will cause minutes to be made:

- (a) of all appointments of office-bearers and members of the committee;
- (b) of the names of members of the committee present at all meetings of the association and of the committee; and
- (c) of all proceedings at all meetings of the association and of the committee.

22 WINDING UP

- (a) The association will be wound up if the association so resolves by way of special resolution.
- (b) If the association is wound up, its assets must be applied to the debts and liabilities of the association and the costs, charges and expenses of the winding up of the association.
- (c) Subject to the Act and the Regulation, and after the application of clause 22(b), any surplus property of the association is to be transferred to another organisation or organisations with objects similar to the objects of the association and which prohibits the distribution of its income and property among its members.
- (d) In making any distributions under this clause 22, the association must ensure it satisfies all legal obligations applying to any funds or property over which a charitable trust exists.

23 MISCELLANEOUS

- (a) The financial year of the association commences on 1 July and ends on 30 June (or such other dates as the Board approves from time to time).
- (b) The association must effect and maintain insurance as is required under the Act together with any other insurance which may be required by law or regarded as necessary by the association.
- (c) Service of documents on the association is effected by serving them on the public officer or by serving them personally on two members of the committee.
- (d) For the purpose of these constitution, a notice may be served on or given to a person
 - (i) by delivering it to the person personally;
 - (ii) by sending it by pre-paid post to the address of the person; or
 - (iii) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (e) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given and served:
 - (i) in the case of a notice given or served personally, on the date on which it is received by the addressee;
 - (ii) in the case of a notice sent by pre-paid post, will be deemed to have been received two days after the date of posting; and
 - (iii) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent, or if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.