

Corporations Law

A company limited by guarantee

Constitution of Montessori Children's House Limited

**19 Wienholt Street
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**CONSTITUTION OF MONTESSORI CHILDREN’S HOUSE
LIMITED
ABN 86 010 125 470**

A COMPANY LIMITED BY GUARANTEE

1 Definitions

1.1 In this Constitution:

- (1.a)** “Annual Membership Fee” means the annual fee Members must pay in accordance with regulation 10.
- (1.b)** “Committee” means the committee established to act on behalf of MCH under regulation 18.
- (1.c)** “Constitution” means the rules for the operation of MCH set out in this Constitution as amended from time to time.
- (1.d)** “MCH” means Montessori Children’s House Limited ABN 86 010 125 470.
- (1.e)** “MCH Preschool or Kindergarten” means preschools and/or kindergartens operated by MCH in carrying out its Objects.
- (1.f)** “Member” means a person who is listed in the Members’ Register as a member of MCH and “Membership” has the corresponding meaning.
- (1.g)** “Members’ Register” means the register of members required to be maintained by MCH under the Corporations Law.
- (1.h)** “Objects” means the objects of MCH set out in regulation 7.

2 Interpretation

- 2.1 Except so far as a contrary intention appears, in a provision of this Constitution that deals with a matter dealt with in a particular rule of the Corporations Law, the regulation of this Constitution has the same meaning as the rule of the Corporations Law.
- 2.2 In this Constitution, unless there is something in the subject or context inconsistent herewith:-

- (2.a) Paragraph headings are for convenience only and will not affect the interpretation of the provisions of the Constitution;
- (2.b) Words importing only singular include the plural and vice versa;
- (2.c) Words importing any gender include the other gender;
- (2.d) Words importing only natural persons include corporations, partnerships, joint ventures, associations or other body corporate and any governmental or semi-governmental agency and vice versa;
- (2.e) A reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (2.f) A reference to a document includes an amendment or supplement to, or replacement or notation of that document.
- (2.g) A reference to a party to a document includes that party's successors and permitted assigns; and
- (2.h) A reference to a regulation means a regulation number or sub-regulation of this Constitution.

3 Company Limited by Guarantee

3.1 MCH is limited by guarantee.

4 Liability of Members

4.1 The liability of Members is limited.

4.2 Each Member undertakes to contribute \$50.00 to the property of MCH if it is wound up while they are a Member or within 1 year after they cease to be a Member.

5 Registered Office & Place of Business

5.1 The registered office of MCH is any place in Australia the Committee nominates from time to time.

5.2 MCH must:

- (2.a) keep its registered office open to the public each business day at times determined by MCH and permitted by Corporations Law;
- (2.b) display the words "Registered Office" at its registered office; and
- (2.c) display its name prominently at every place where MCH carries on business that is open to the public.

6 Effects of Constitution

6.1 This Constitution is a contract between -

- (1.a) MCH and each Member;
- (1.b) MCH and each Committee Member; and
- (1.c) A Member and each other Member,

and each person agrees to observe and perform the terms of this Constitution so far as they apply to that person.

7 Objects

7.1 MCH's objects are the carrying on and promotion of:-

- (1.a) pre-schools and kindergartens; and
- (1.b) any other activities, educational or otherwise that benefit the community or a particular section of the community.

8 Rights and Powers of MCH

8.1 MCH has all legal rights, capacities and powers of a natural person and body corporate as permitted by the Corporations Law in achieving the Objects.

9 Membership

- 9.1 No child may enrol at MCH Preschools or Kindergartens unless at least one parent or legal guardian of the child or children is a Member.
- 9.2 If 2 or more parents or guardians apply for Membership on the basis of the same child or children, they are to be treated as joint Members.

- 9.3 Joint members are treated as one Member for the purpose of this Constitution including payment of all Membership fees and voting, and Joint Members are jointly and severally liable for payment of any amounts owing under this Constitution.
- 9.4 A Member may have more than one child at MCH Preschool or Kindergarten, and that does not increase Membership fees, nor the Member's voting or other rights or obligations under this Constitution.
- 9.5 The Committee will accept an application and admit an applicant as a Member if:-

(5.a) His, her or their child or children is accepted, but for Membership of MCH, for enrolment in a MCH Preschool or Kindergarten;

(5.b) They apply in the approved form which is signed by them; and

(5.c) The entrance fee of \$25 is attached.

9.6 If the application is accepted, the honorary secretary will send the applicant written notice of acceptance and include the applicant's details in the Members' Register.

9.7 Membership continues until the Member ceases to be a Member or Membership is otherwise terminated under regulation 12.

10 Annual Membership Fee

10.1 Members must pay the Annual Membership Fee decided by the Committee from time to time, provided it does not exceed \$50.00.

10.2 The Annual Membership Fee is payable in 2 equal payments upon invoice.

11 Members' Register

11.1 MCH will establish and maintain the Members' Register.

11.2 The Members' Register will be kept at a place determined by MCH as required by the Corporations Law.

11.3 MCH will allow any person authorised by the Corporations Law to view the Members' Register.

12 Cessation of Membership

12.1 Membership will cease as of June 30 and December 31 each year for all those members whose child or children ceased to be enrolled at MCH Preschool or Kindergarten during the previous 6 months.

12.2 If a Member does not pay their Annual Membership Fee within 14 days of being due, the honorary secretary or honorary treasurer may give notice to the Member terminating Membership.

- 12.3 The Committee may, if it considers appropriate, reinstate the Member on receipt of all arrears owing by the Member.
- 12.4 If a member does not comply with this Constitution or does any act or omission that the Committee considers is unbecoming of a member or prejudicial to the interest of MCH, the Committee may, at its discretion, terminate the Member from Membership of MCH.
- 12.5 If the Committee calls a meeting to consider whether a Membership should be terminated under regulation 12.4, it must give the Member at least 1 week's notice of its intention to meet to allow the Member an opportunity to provide a written explanation for their conduct.

13 General Meetings

- 13.1 An annual general meeting of MCH will, subject to the Corporations Law, be held within 3 months of the end of each financial year.
- 13.2 Annual general meetings will be held at a time and place nominated by the Committee.
- 13.3 The Committee may at any time call, or will call, if required by the Corporations Law, a general meeting of MCH.
- 13.4 MCH must give Members at least 21 days' notice of any impending general meeting, specifying the time and place and details of the general nature of business.
- 13.5 An annual report by the director of each education centre conducted by MCH will be tabled at the annual general meeting for consideration of Members.

14 Notice of Meetings

- 14.1 MCH must give notice of general meetings to each Member and the auditor of MCH.
- 14.2 No other person is entitled to receive notices of general meetings.

15 Proceedings at General Meetings

- 15.1 No business will be transacted at any general meeting of MCH unless a quorum of Members is present within 30 minutes after the time for the general meeting set out in the notice of the general meeting.
- 15.2 The quorum for a general meeting is 10 Members whether present in person or represented by proxy or attorney.
- 15.3 If the quorum is not present within 30 minutes after the time for the general meeting set out in the notice of general meeting, the general meeting will be adjourned to the same time, day and place in the following week.
- 15.4 If at the adjourned general meeting the quorum is not present within 30 minutes after the time for the general meeting set for the adjourned general meeting, the Members present will, provided at least 3 Members are present, be deemed to satisfy the quorum requirement.
- 15.5 The president will chair general meetings.
- 15.6 If the president is not present within 15 minutes after the time appointed for the general meeting or is unwilling to act, the vice-president will chair the general meeting.
- 15.7 If the president and vice-president are not present within 15 minutes after the time appointed for the general meeting or are unwilling to act, the Members present or represented by proxy or attorney will elect another Committee Member to chair the general meeting.
- 15.8 The chair may, with the consent of the majority of the Members present at the general meeting, adjourn the general meeting to a time and place as the chair decides to finalise any business left unfinished.

16 Voting at General Meetings

- 16.1 Voting at general meetings will be decided by a show of hands, unless a poll is requested by the chair or 3 or more Members present in person or represented by proxy or attorney.
- 16.2 Each Member has one vote on both a show of hands and poll.

- 16.3 If a poll is requested, the chair will decide the manner in which it will be taken, and if necessary the poll will be conducted after an interval or adjournment that the chair directs.
- 16.4 A declaration by the chair on the result of the show of hands or poll and an entry to that effect in MCH's minutes is conclusive evidence of the result of a vote.
- 16.5 The chair has a casting vote in addition to any vote they have in their capacity as Member.
- 16.6 Members may vote in person or be represented by proxy or attorney.
- 16.7 No member is entitled to vote at any general meeting if their Annual Membership Fee is more than 14 days in arrears at the date of the general meeting.
- 16.8 The instrument appointing a proxy must be signed and in the following or other form issued and approved by the Committee:

MONTESSORI CHILDREN'S HOUSE LIMITED

I, of
 a Member of the
 MONTESSORI CHILDREN'S HOUSE LIMITED appoint
 of or failing
 them the president as my proxy to vote for me on my behalf at the
 general meeting of MCH to be held on the day of
 20 ... or any adjournment thereof.

I direct my proxy to vote *in favour of/*against/*as my proxy thinks fit on the following resolutions:

Signed this day of 20

.....

*strike out whichever is not desired.

- 16.9 The instrument appointing the proxy must be delivered to the registered office of MCH prior to the time set for the general meeting or such earlier time if nominated by the Committee.

17 The Committee

- 17.1 The office-bearers of MCH are the president, vice-president, honorary treasurer and honorary secretary elected under this Constitution (“Office-Bearers”).
- 17.2 The Committee will consist of the Office-Bearers and at least 2 other persons to a maximum of 4 elected by the Members and other persons who may be appointed by the Committee to be on the Committee (“the Committee Members”).
- 17.3 The election of Committee Members by the Members will occur at each annual general meeting.
- 17.4 Elections for Committee Members will proceed as follows:
- (4.a) 2 members must nominate a candidate;
 - (4.b) The nomination must be in writing, signed by the nominating Members and the candidate, set out the nominated position and be delivered to the honorary secretary at least 14 days before the annual general meeting when the election is to take place, or such other lesser period as the Committee may approve.
 - (4.c) A list of the candidates’ names in alphabetical order with the nominating Members’ names and the nominated position of the candidate will be posted in the foyer of registered office of MCH at least 7 days prior to the annual general meeting, or such lesser period as the Committee may approve.
 - (4.d) MCH will, if candidates exceed vacancies, prepare balloting lists containing the names of the candidates in alphabetical order, and each Member at the annual general meeting may vote for any number of candidates not exceeding the number of vacancies.
 - (4.e) The successful candidate for each Office-Bearer position will be the candidate for that position with the most number of votes.
 - (4.f) Other candidates will be ranked according to the number of votes received from the highest to the lowest. The successful candidates for non Office-Bearer positions will be those candidates ranked highest, required to fill available vacancies.

- 17.5 The Members by ordinary resolution, may increase or decrease the number of Committee Members able to be elected by the Members in addition to Office-Bearers.
- 17.6 The Committee may appoint additional Members to the Committee.
- 17.7 All Committee Members, whether elected or appointed, will retire at the next annual general meeting.
- 17.8 The office of a Committee Member is vacant if they:
- (8.a) cease to be eligible or are prohibited from being a director by operation of the Corporations Law;
 - (8.b) become bankrupt or make arrangement or composition with their creditors generally;
 - (8.c) resign their office by notice in writing to MCH;
 - (8.d) are absence from meetings of the Committee for 6 months without permission of the Committee;
 - (8.e) are removed by MCH by ordinary resolution; or
 - (8.f) cease to be a Member.
- 17.9 For the purposes of the Corporations Law, the Committee Members will be directors and the honorary secretary will also be the secretary.

18 Powers and Duties of the Committee

- 18.1 The Committee will manage the business of MCH.
- 18.2 The Committee has all powers and privileges of CMH contained in this Constitution that are not required, under this Constitution or Corporations Law to be exercised by MCH in general meeting.
- 18.3 MCH may, by ordinary resolution, overrule any directions made by the Committee.
- 18.4 A resolution made by MCH in general meeting overruling a direction made by the Committee will not invalidate any prior act of the Committee that was valid before MCH passed the resolution.
- 18.5 The Committee will keep minutes, signed by the chair, of:
- (5.a) appointments of officers, employees and contractors;

(5.b) names of Members and Committee Members present at all general meeting of the MCH and the Committee; and

(5.c) proceedings at all meetings of MCH and the Committee.

18.6 The Committee may by resolution, power of attorney, or under seal and on terms it thinks fit appoint any person, company or body as its attorney or agent to exercise its powers and duties under this Constitution.

18.7 The Committee may employ or contract any person or company that it considers necessary to achieve the Objects.

19 Committee Meetings and Resolutions

19.1 The Committee may regulate its meetings as it thinks fit, provided it meets at least 10 times each year.

19.2 Meetings may be called by any Committee Member.

19.3 The president will chair meetings, and if they are not present, within 15 minutes after the time appointed for the meeting or the president is unwilling to act, the vice-president will chair the meeting.

19.4 If the president and vice-president are not present within 15 minutes after the time appointed for the meeting or are unwilling to act, one of the Committee Members present will be elected to chair the meeting.

19.5 Voting at meetings of the Committee will be decided by a simple majority of Committee Members based on a show of hands.

19.6 The chair has the casting vote in addition to any vote they have in their capacity as Committee Member.

19.7 Committee Members must disclose to the Committee any actual or possible conflict of interest that they may have with any proposed transaction of CMH that is currently before the Committee.

19.8 Committee Members with any actual or possible conflict of interest must not vote in any matter in which they have an interest.

19.9 The quorum necessary of the transaction of business of the Committee is 3 Committee Members.

- 19.10 If there are less than 3 Committee Members in 2 successively called Committee meetings, those Committee Members at the second Committee meeting may, notwithstanding a quorum is not present, appoint another Member to be a Committee Member.
- 19.11 Business conducted at a Committee meeting is not invalidated if it is later discovered that any Committee Member was not appointed correctly or was disqualified from acting as a Committee Member.
- 19.12 The Committee may pass a resolution without meeting if it is signed by not less than 75% of Committee Members.

20 Sub-Committees and Advisory Boards

- 20.1 The Committee may on such terms and conditions as the Committee thinks fit, delegate any of its powers or functions to a sub-committee of Committee Members and/or other Members (“the Sub-Committee”).
- 20.2 The Sub-Committee must comply with any terms and conditions imposed by the Committee.
- 20.3 The Committee may on such terms and conditions as the Committee thinks fit, appoint an advisory board of Committee Members, other Members and/or other persons (“the Advisory Board”).
- 20.4 The Advisory Board must comply with any terms and conditions that the Committee impose and only act in an advisory capacity.
- 20.5 Meetings of the Sub-Committee must be conducted in accordance with this Constitution as if it were the Committee.

21 Honorary Secretary

- 21.1 If the Members do not elect an honorary secretary, the Committee must appoint one of the Committee Members to be the honorary secretary.

22 Distribution of Funds

- 22.1 MCH will apply all income and property of MCH solely for the promotion of the Objects.
- 22.2 MCH must not distribute any funds to the Members.
- 22.3 Nothing in regulation 22.2 prohibits a payment made by MCH or the Committee in good faith to a Member:-
- (3.a) for services rendered or goods supplied in the ordinary course of MCH's business;
 - (3.b) for interest charged on overdrawn accounts on money lent by the Member; or
 - (3.c) for rent of property let by the Member.

23 Employees

- 23.1 If a Member has a complaint about any employee, contractor or agent of MCH, it must be made in writing to the honorary secretary.
- 23.2 The honorary secretary must bring any complaint raised under regulation 23.1 before the Committee to decide.
- 23.3 An employee, contractor or agent of MCH can not be a Committee Member, but can be invited to attend Committee meetings in a consultative capacity.

24 Seal

- 24.1 MCH may have a seal and if so, the Committee will provide for its safe custody.
- 24.2 The seal will be used to execute a document only with the authority of the Committee.
- 24.3 Every document to which the seal is affixed will be witnessed by 2 Committee Members.
- 24.4 The Committee may execute a document without using the seal if the document is signed by 2 Committee Members.

25 Accounts

- 25.1 The Committee must ensure proper accounting and other records of MCH are maintained in accordance with the Corporations Law.
- 25.2 The Committee must appoint an auditor for the purposes of the Corporations Law to, amongst other things, audit the accounts of the Company.
- 25.3 The Committee will distribute copies of a profit and loss account and balance sheet accompanied with a copy of the auditor's report to those parties entitled to a copy under the Corporations Law.
- 25.4 The Committee will produce at each annual general meeting a balance sheet and profit and loss account that was prepared less than 6 months before the meeting.
- 25.5 No Member, other than Committee Members has the right to inspect any record of MCH unless authorised by the Committee, MCH in a general meeting or the Corporations Law.

26 Winding Up

- 26.1 MCH will be wound up if:
 - (1.a) Membership is less than 3 Members; or
 - (1.b) MCH calls a general meeting to dissolve MCH and at least 75% of Members vote in favour of dissolution.
- 26.2 Any excess funds or property remaining after MCH is wound up or dissolved will be distributed to another institution or institutions, whether incorporated or not, that has similar objects to MCH.
- 26.3 No funds whatsoever are to be distributed to Members.

27 Indemnity

- 27.1 Every officer, Committee Member, auditor or agent of MCH is indemnified out of the property of MCH against any liability incurred by them in their capacity as officer, auditor or agent in-

- (1.a)defending any proceedings, whether civil or criminal where-
- (1.a.i)judgment is given in his or her favour;
 - (1.a.ii) he or she is acquitted; or
 - (1.a.iii) relief under the Corporations Law is granted to him by the court;
- and
- (1.b) any case involving liability to a third party except where the liability arises out of conduct involving a lack of good faith.

28 Serving of Notices

28.1 MCH may give a notice or other documents to a Member:-

- (1.a)by leaving it in the foyer of the registered office of MCH marked with the Member's name;
- (1.b) by sending it by post to the last known address of the Member; or
- (1.c)by sending it to the last known facsimile number or electronic address of the Member.

28.2 MCH may give a notice to Joint Members by giving the notice to the joint holder first named in the Members' Register.

28.3 MCH receives a notice or other documents when received at MCH's registered office or is delivered personally to the honorary secretary.

28.4 Any notice given by MCH to a Member is taken to be given immediately on the notice being placed in the foyer of the registered office of MCH, or being sent by facsimile or electronically, including e-mail, to the Member, or 2 days after the date that it was posted.

29 Directors' and Officers' Liability Insurance

29.1 MCH recognises the need to ensure sufficient funds are available to pay and/or indemnify each Committee Member against loss arising from any claim by reason of any wrongful act or omission in their capacity as an officer of MCH and made against them whether jointly (with MCH and/or other officers of MCH) or severally.

- 29.2 The Committee will ensure that a directors' and officers' liability insurance policy is taken out with a reputable insurer which policy must:
- (2.a) provide cover in an amount and on terms considered appropriate by the Committee acting reasonably (but the amount of such cover will not at any time be less than \$2,000,000.00); and
 - (2.b)** be continuously maintained expiring 7 years after MCH is dissolved or wound up.
- 29.3 If any new policy of such insurance is commenced, the Committee must ensure that the new policy will provide cover for claims arriving during the previous cover but not made until the new policy has taken effect.