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CONSTITUTION OF AUSTRALIAN INSTITUTE OF PLAY LIMITED

Australian Company Number (ACN) 647 865 647
Australian Business Number (ABN) 52 647 865 647

A Company Limited by Guarantee not having Share Capital

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Appendix 1 - Rationale

Preliminary

1. Name of the company

The name of the **company** is
Australian Institute of Play Limited (the **company**).

2. Type of company

The **company** is a not-for-profit public **company** limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$10 (the guarantee) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **company** incurred before the member stopped being a member, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 70 and 72.

Charitable purposes and powers

6. Object

The **company's** object is to pursue the following charitable purpose(s):

Our objects are:

- a. The Australian Institute of Play is established to be a charity. Our purpose is to promote, enable and protect Australian children and their right to play. The organisation aims to use play to build resilience and wellbeing for and with children across communities, and particularly those who are vulnerable and disadvantaged. Evidence demonstrates that play is many things to children, including an intervention tool for health, wellbeing and efficacy.

Under these terms, as a result of this charity:

- Australian children will be represented, in relation to their human right to play as outlined in the Article 31 United Nations Human Rights Convention on the Rights of a Child.
- Increased opportunities for play will be influenced and conditions for play elevated across the community.

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- Australian children will be consulted and their voices elevated in relation to play, especially where 'play is not accessible'.
 - Australian governments' and organisations' actions will be monitored to ensure that they abide by obligations under the United Nations Human Rights – Convention on the Rights of Child.
 - The Australian public will be made aware of any government or organisational breaches of obligations under the two covenants set out above, through education campaigns, publications or any other legal means.
- b. The Australian Institute of Play will intervene on Australian children's sedentary activities and advance Australian children's health by:
- Providing play-related services to intervene on children's physical inactivity addressing conditions that may result in related lifestyle diseases and developmental delays.
 - Creating conditions for community empowerment to support children to play actively to achieve aforementioned health outcomes for communities.
 - Supporting the health and wellbeing of children afforded by daily and regular participation in play.
 - Celebrating and disseminating advice on children's physical development, physical literacy and physical health achieved through daily and regular play.
 - Advising on children, who suffer from, or who are at risk of suffering from, a lifestyle disease as a result of declining participation in daily and regular play.
 - Promoting play to assist in breaking intergenerational cycles where conditions have been unsafe and therefore not conducive to play.

Further detail informing the organisation's purpose is contained in the organisation's rationale Appendix 1.

7. Powers

Subject to clause 8, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- a. the powers of an individual, and
- b. all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The assets and income of the **company** shall be applied solely to further its objects and no portion shall be distributed directly or indirectly to its members, except as provided in clauses 8.2 and 69.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things, provided they are done in good faith:

- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
- (b) making a payment to a member in carrying out the **company's** charitable purpose(s).

9. Amending the constitution

- 9.1 Subject to clause 9.2, the members may amend this constitution by passing a **special resolution**.
- 9.2 The members must not pass a **special resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

Members

10. Membership and register of members

- 10.1 The members of the **company** are:
 - (a) **initial members**, and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 10.2 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
 - (a) for each current member:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. date the member was entered on to the register.
 - (b) for each person who stopped being a member in the last 7 years:
 - i. name
 - ii. address
 - iii. any alternative address nominated by the member for the service of notices, and
 - iv. dates the membership started and ended.
- 10.3 The **company** must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11. Who can be a member

- 11.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 12.
- 11.2 In this clause, 'person' means an individual or incorporated body.

12. How to apply to become a member

A person (as defined in clause 11.2) may apply to become a member of the **company** by writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purpose(s) of the **company**, and

- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 4 if required.

13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 13.2 If the directors approve an application, the secretary must as soon as possible:
 - (a) enter the new member on the register of members, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.
- 13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters.

14. When a person becomes a member

Other than **initial members**, an applicant will become a member when they are entered on the register of members.

15. When a person stops being a member

A person immediately stops being a member if they:

- (a) die
- (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
- (c) resign, by writing to the secretary
- (d) are expelled under clause 17, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

Dispute resolution and disciplinary procedures

16. Dispute resolution

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
 - (a) one or more members
 - (b) one or more directors, or
 - (c) the **company**.
- 16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days:
 - (a) tell the directors about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.

- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - i. for disputes between members, a person chosen by the directors, or
 - ii. for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 16.6 A mediator chosen by the directors under clause 16.5(b)(i):
- (a) may be a member or former member of the **company**
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.

17. Disciplining members

- 17.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:
- (a) the member has breached this constitution, or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company**.
- 17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 17.3 Before the directors pass any resolution under clause 17.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
 - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the directors may:
- (a) take no further action
 - (b) warn the member
 - (c) suspend the member's rights as a member for a period of no more than 12 months
 - (d) expel the member
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - (f) require the matter to be determined at a **general meeting**.

- 17.5 The directors cannot fine a member.
- 17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of members

18. General meetings called by directors

- 18.1 The directors may call a **general meeting**.
- 18.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
 - (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a **general meeting** must:
 - (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **company**.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

19. General meetings called by members

- 19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 19.2 To call and hold a meeting under clause 19.1 the members must:
 - (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **company**.
- 19.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

20. Annual general meeting

- 20.1 A **general meeting**, called the annual **general meeting**, must be held:
 - (a) within 18 months after registration of the **company**, and
 - (b) after the first annual **general meeting**, at least once in every calendar year.

- 20.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:
- (a) a review of the **company's** activities
 - (b) a review of the **company's** finances
 - (c) any auditor's report
 - (d) the election of directors, and
 - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.
- 20.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

21. Notice of general meetings

- 21.1 Notice of a **general meeting** must be given to:
- (a) each member entitled to vote at the meeting
 - (b) each director, and
 - (c) the auditor (if any).
- 21.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
 - (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
 - (b) appoint a director in order to replace a director who was removed, or
 - (c) remove an auditor.
- 21.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
 - (b) the general nature of the meeting's business
 - (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
 - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 21.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

22. Quorum at general meetings

- 22.1 For a **general meeting** to be held, at least **[50%]** members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 22.2 No business may be conducted at a **general meeting** if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
 - (b) if the time is not specified – the same time, and
 - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

23. Auditor's right to attend meetings

- 23.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 23.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

24. Representatives of members

- 24.1 An incorporated member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 31, and
 - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 24.2 The appointment of a representative by a member must:
- (a) be in writing
 - (b) include the name of the representative
 - (c) be signed on behalf of the member, and
 - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 24.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 24.4 The appointment may be standing (ongoing).

25. Using technology to hold meetings

- 25.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 25.2 Anyone using this technology is taken to be present in person at the meeting.

26. Chairperson for general meetings

- 26.1 The **elected chairperson** is entitled to chair **general meetings**.

- 26.2 The members present and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:
- (a) there is no **elected chairperson**, or
 - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

27. Role of the chairperson

- 27.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 27.2 The chairperson does not have a casting vote.

28. Adjournment of meetings

- 28.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

29. Members' resolutions and statements

- 29.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 29.5 The percentage of votes that members have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 29.6 If the **company** has been given notice of a members' resolution under clause 29.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 29.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

30. Company must give notice of proposed resolution or distribute statement

- 30.1 If the **company** has been given a notice or request under clause 29:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or

- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 30.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
 - (a) it is more than 1 000 words long
 - (b) the directors consider it may be defamatory
 - (c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
 - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

31. Circular resolutions of members

- 31.1 Subject to clause 31.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members and set out the wording of the resolution.
- 31.3 Circular resolutions cannot be used:
 - (a) for a resolution to remove an auditor, appoint a director or remove a director
 - (b) for passing a **special resolution**, or
 - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 31.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.
- 31.5 Members may sign:
 - (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 The **company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

32. How many votes a member has

Each member has one vote.

33. Challenge to member's right to vote

- 33.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

34. How voting is carried out

- 34.1 Voting must be conducted and decided by:
- (a) a show of hands
 - (b) a vote in writing, or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

35. When and how a vote in writing must be held

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **members present**
 - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
 - (c) the chairperson.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
- (a) for the election of a chairperson under clause 26.2, or
 - (b) to decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

36. Appointment of proxy

- 36.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy does not need to be a member.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 35.1.

- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **company's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 36.5 A proxy appointment may be standing (ongoing).
- 36.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 21.5(d) or at the **company's** registered address at least 48 hours before a meeting.
- 36.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 36.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
 - (b) is mentally incapacitated
 - (c) revokes the proxy's appointment, or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

37. Voting by proxy

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 37.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

38. Number of directors

The **company** must have at least three and no more than ten directors.

39. Election and appointment of directors

- 39.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.
- 39.2 Apart from the initial directors and directors appointed under clause 39.5, the members may elect a director by a resolution passed in a **general meeting**.
- 39.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.

- 39.4 A person is eligible for election as a director of the **company** if they:
- (a) are a member of the **company**, or a representative of a member of the **company** (appointed under clause 24)
 - (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),
 - (c) give the **company** their signed consent to act as a director of the **company**, and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 39.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the **company**, or a representative of a member of the **company** (appointed under clause 24)
 - (b) gives the **company** their signed consent to act as a director of the **company**, and
 - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 39.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

40. Election of chairperson

The directors must elect a director as the **company's elected chairperson**.

41. Term of office

- 41.1 At each annual **general meeting**:
- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and
 - (b) at least one-third of the remaining directors must retire.
- 41.2 The directors who must retire at each annual **general meeting** under clause 41.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 41.3 Other than a director appointed under clause 39.5, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 41.4 Each director must retire at least once every three years.
- 41.5 A director who retires under clause 41.1 may nominate for election or re-election, subject to clause 41.6.
- 41.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution**.

42. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**
- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of the **company**

- (e) are a representative of a member, and that member stops being a member
- (f) are a representative of a member, and the member notifies the **company** that the representative is no longer a representative
- (g) are absent for 3 consecutive directors' meetings without approval from the directors, or
- (h) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

43. Powers of directors

- 43.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 6.
- 43.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 43.3 The directors must decide on the responsible financial management of the **company** including:
 - (a) any suitable written delegations of power under clause 44, and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 43.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

44. Delegation of directors' powers

- 44.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 44.2 The delegation must be recorded in the **company's** minute book.

45. Payments to directors

- 45.1 The **company** must not pay fees to a director for acting as a director.
- 45.2 The **company** may:
 - (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 45.3 Any payment made under clause 45.2 must be approved by the directors.
- 45.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

46. Execution of documents

The **company** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **company**, or
- (b) a director and the secretary.

Duties of directors

47. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **company**
- (b) to act in good faith in the best interests of the **company** and to further the charitable purpose(s) of the **company** set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48
- (f) to ensure that the financial affairs of the **company** are managed responsibly, and
- (g) not to allow the **company** to operate while it is insolvent.

48. Conflicts of interest

48.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors, or
- (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.

48.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

48.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 48.4:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

48.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the **company**, and the other members have the same interest
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 66)
- (c) their interest relates to a payment by the **company** under clause 65 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or

- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

49. When the directors meet

The directors may decide how often, where and when they meet.

50. Calling directors' meetings

- 50.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 50.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

51. Chairperson for directors' meetings

- 51.1 The **elected chairperson** is entitled to chair directors' meetings.
- 51.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:
 - (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but does not want to act as chairperson of the meeting.

52. Quorum at directors' meetings

- 52.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 52.2 A quorum must be present for the whole directors' meeting.

53. Using technology to hold directors' meetings

- 53.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 53.2 The directors' agreement may be a standing (ongoing) one.
- 53.3 A director may only withdraw their consent within a reasonable period before the meeting.

54. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

55. Circular resolutions of directors

- 55.1 The directors may pass a circular resolution without a directors' meeting being held.
- 55.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.

- 55.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 55.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.

Secretary

56. Appointment and role of secretary

- 56.1 The **company** must have at least one secretary, who may also be a director.
- 56.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.
- 56.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 56.4 The role of the secretary includes:
- (a) maintaining a register of the **company's** members, and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

57. Minutes and records

- 57.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of members
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a members' statement distributed to members under clause 30.
- 57.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 57.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 57.1, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 57.2 and clause 58.1.
- 57.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 57.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

58. Financial and related records

- 58.1 The **company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 58.2 The **company** must also keep written records that correctly record its operations.
- 58.3 The **company** must retain its records for at least 7 years.
- 58.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

By-laws

59. By-laws

- 59.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 59.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

60. What is notice

- 60.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 60.2 Clauses 61 to 63 do not apply to a notice of proxy under clause 36.6.

61. Notice to the company

Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
- (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

62. Notice to members

- 62.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)

- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

62.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

63. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 62.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

64. Company's financial year

The **company's** financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

65. Indemnity

- 65.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 65.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 65.3 In this clause, 'to the relevant extent' means:
 - (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

66. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

67. Directors' access to documents

- 67.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 67.2 If the directors agree, the **company** must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors, and
 - (b) any other documents referred to in those documents.

Winding up

68. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 69.1.

69. Distribution of surplus assets

- 69.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- 69.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.
- 69.3 If the Australian Institute of Play is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation, fund, authority or institution with similar objects to which income tax deductible gifts can be made and which is also charitable at law:
- (a) gifts of money or property for the principal purpose of the organisation
 - (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation, and
 - (c) money received by the organisation because of such gifts and contributions.

Definitions and interpretation

70. Definitions

In this constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)

company means the **company** referred to in clause 1

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

elected chairperson means a person elected by the directors to be the **company's** chairperson under clause 40

general meeting means a meeting of members and includes the annual **general meeting**, under clause 20.1

initial member means a person who is named in the application for registration of the **company**, with their consent, as a proposed member of the **company**

member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting

registered charity means a charity that is registered under the **ACNC Act**

special resolution means a resolution:

- i. of which notice has been given under clause 21.5(c), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution, and

surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

71. Reading this constitution with the Corporations Act

- 71.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 71.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- 71.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 71.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

72. Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

Appendix 1 - Rationale

AUSTRALIAN INSTITUTE OF PLAY

“Play is the way children make sense of the world in which they live!”

Maxim Gorky

Rationale

Prepared by Dr Gregor Mews & Mr Hyahno Moser

Our philosophical approach

Play – a concept of such complexity that our society is unable to grasp its full potential. In the Australian context the contemporary approaches to play are merely reduced to the adult capability to deal with arguments that are based on duality and dual properties, e.g. have and have not or exclusion and inclusion. However, play represents a distinct concept with characteristics that are so far reaching that its essence is easily lost or escapes in the process of reducing it to something concrete (practical and quantifiable). We acknowledge that the contemporary paradigm of society aims to deal with the concrete existence of reality. This paradigm offers limited views and options to gain an understanding of complex concepts such as play. The quantitative dimension is dominant and therefore creates a reductionist confinement (mental abstraction) in which the essence and the value of play escapes. Hence, why we need a different way to deal (ontologically) with play related to childhood development and consequently as part of the wider society. While the mainstream is continuously committed to an expansion of thinking and doing on the basis of the rule of logic, the possibility of grasping life through play is diminished. The Institute of Play rationale consciously transcends this approach. We expand our thinking and doing into the space of dialectics and non-linear actions. Both approaches embrace the complexity of play and enable a shared understanding what life ought to be about. In this space, we all can realise that we have space and

in fact are the space of play. We as sentient beings imbue space with life. If we situate ourselves in the space, we become active participants or the players, can utilise arguments that originated from evidence (including but not limited to rule-of-logic) and expand them in ways that convey the essence and power of play in diverse ways. By realising that mental abstraction (policies) diverted us away from play, it is time for critical reflection and conscious actions that situate childhood play in the heart of the decisions we make while we are living in confined and contradictory spaces. Children's lived experience needs to be created now. Adults need to acknowledge that action needs to occur where children wish to direct it.

The following key elements outline the Australian Institute of Play rationale. The arguments presented here derive from scientific evidence and relate them to mental abstractions on play in the context of human rights and cultural advancement, childhood health and wellbeing (including mental health) and human development. The Institute of Play conceives childhood play as a core foundational pillar to our human existence and our collective future development.

Play and childhood our primary concern

Children of all ages are visibly present as part of the everyday-life-experience of so many Australian households no matter where they choose to live, work and play. At the same time children are a sign of a healthy human habitat, in much the same way that salmon indicate the health of rivers. Children are a kind of 'indicator species' for healthy cities (Gill, 2017), and have also been described as being like canaries in the mines (Gleeson & Sipe, 2006): they are the group who are most likely to disappear from the streets as societies change while perception of danger continues to dominate the discourse.

Today children's opportunities for play are in decline. When children start to disappear from or are marginalised from spaces that make up everyday life in our society – it is of deep concern. The causes are diverse and complex, societal and

receive interdisciplinary attention reaching into areas such as education, health, psychology, environment, geography, design and sociology (S. A. Alexander et al., 2014). Consequently, serious cardio-metabolic disorders and mental health issues such as depression have been on the rise in adolescence and in early adulthood (Herrington & Brussoni, 2015; Sallis, Prochaska, & Taylor, 2000; Salmon, Owen, Crawford, Bauman, & Sallis, 2003; Tremblay et al., 2015).

If we are collectively committed to creating a healthier society and a sustainable future for all, we need to accommodate space, time and permission in everything we do to allow children to develop to their full potential (Mews, 2018).

Defining Play

Play is an evolving and complex concept that is comprised of internal mind experiences as well as visible body activities. Attempts to define play over time in the context of childhood led to the development of an United Nation definition that focuses only on children as part of the General Comment no. 17 to Article 31 of the UN Convention on the Rights of the Child (United Nation, 1989), UN-CRC, refers to play as follows:

“Children’s play is any behaviour, activity or process initiated, controlled and structured by children themselves; it takes place whenever and wherever opportunities arise. Caregivers may contribute to the creation of environments in which play takes place, but play itself is non-compulsory, driven by intrinsic motivation and undertaken for its own sake, rather than as a means to an end. Play involves the exercise of autonomy, physical, mental or emotional activity, and has the potential to take infinite forms, either in groups or alone. These forms will change and be adapted throughout the course of childhood. The key characteristics of play are fun, uncertainty, challenge, flexibility and non-productivity. Together, these factors contribute to the enjoyment it produces and the consequent incentive to continue to play. While play is often

considered non-essential, the Committee reaffirms that it is a fundamental and vital dimension of the pleasure of childhood, as well as an essential component of physical, social, cognitive, emotional and spiritual development.” (United Nations Human Rights Office of the High Commissioner, 2013, pp. 4-5)

Contrary to adulthood the importance of play in the childhood context is generally well understood and less disputed (Freeman & Tranter, 2011; Gleeson & Sipe, 2006; Louv, 2008; Lynch, 1977), but a general consent on a short and concise definition for play is missing. Rather than being seen as a constraint, the Institute of Play conceives it as a validation of the fact that play as a concept is so complex it escapes and embraces ambiguity in itself underpinning the fundamental foundation of the concept.

Defining Childhood

Childhood refers to the conceptual and physical development of the child (Piaget, Gattegno, & Hodgson, 1962) or the shaping process of parental behaviours that allow for the ideal family setting to be created, where a child can develop (Leach and Spock in: Freeman & Tranter, 2011). The UN-CRC (United Nation, 1989) refers to childhood as the age range from 0 to 18 years. Pending on the theoretical discourse the age range might vary and therefore can be inconsistent across the research literature. Sometimes the range can be reduced to 15 years of age.

Essentially, the fundamental importance of enabling environments that facilitate play can be addressed in early childhood (3- 8 years old), middle childhood (8- 12 years old) and adolescents (12- 18 years old). Sobel (2004) examined children in different age groups and level of development with regards to their relationship to the environment and found:

Age 4 – Children begin to explore. Until the age of seven, their home is the centre of their world.

Age 8 to 11 – Their homes become unimportant and their representation moves to the map’s periphery. Children explore lots, woods, ditches and other interesting places around their home.

Age 12 – The social world of malls and shopping centres appeals to them, their ‘earth period’ wanes.

Age 17 – Their ‘gasoline period’ begins, with the car at the centre of their world. Often, it never ends (Nixon, 1997).

As children grow with experience, they reach different stages of human development. Early childhood focuses on the awareness of all natural physical stages of growing up. The middle childhood and early adolescent years focus on the physical changes that children in their respective age range begin to develop and undergo during the puberty phase (AAAS Science NetLinks, 2017). However, even the age classification between early and middle childhood can vary. For Chawla (2002) the middle childhood 6 to 12 years. It is the time, when children become programmed and try to connect with the natural and built environment around them. As children experience and develop on an individual basis boundary conditions remain ambiguous, however, based on the literature, the Institute of Play focuses on childhood in the range of 0 to 15 years of age.

Play in childhood - a Human Right

The human right dimension is a core element of our fundamental argument for change and a vital dimension of childhood in general. The UN Convention on the Rights of the Child and the General Comment Number 17 clearly legitimises formally that every child has a right to rest, leisure, play and recreational activities, cultural life and the arts. Article 31 of the Convention, commonly understood as the Right to Play, represents the foundational pillar of the Australian Institute of Play and is an urgent call to action. Article 31 recognises *“the right of the child to rest and leisure, to engage in play and recreational*

activities appropriate to the age of the child and to participate freely in cultural life and the arts.”

Despite the articulation of the rights of children to play, especially where they live, play continues to be under threat and receding at a severe rate (Moser et al, 2018). Research indicates that children are the natural experts of the local environment in which they grow up in and should be treated as such (Mews, 2018). Their voice is still missing in many adult created processes that affect their health and wellbeing as well as the opportunity and access to play.

The Australian Institute of Play approach to the human rights of children is an affirmation of our collective commitment to contribute to the reversal of the decline of play by stressing the following:

1. Children’s Right to be Free

As outlined by the United Nations Rights Human Rights Office of the High Commissioner, the Convention on the Rights of Child, there are inherent dignities, equalities and inalienable rights of all members of the human family. The foundations of which are **freedom**, justice and peace. The High Commission also outlined, in the Convention on the Rights of Child: *“the child, by reason of his **physical and mental immaturity**, needs special safeguards and care”*.

Play is a central mechanism to safeguarding this maturity. Play is a significant means by which children develop, learn and grow into functional adults and community citizens. It is also the means by which children celebrate who they are now, rejuvenate and restore. In addition, Article 3.1 of the Conventions on the Rights of Child states, *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration.**”* Further, Article 6.1 stresses that “States Parties recognise that every child has the inherent **right to life.**” while 6.2 states that the maximum extent possible to survival and **development** of the child needs to be ensured.

2. Children's Right to Express Themselves

As described above, for children to grow, what is in the best interest of children is 'play'. In affordance of play we secure what is very important to children and support them to lead happy joyous lives. In order to enable conditions that facilitate play and accommodate the freedom of children - they have a right to express themselves. In this context Article 13.1 directly supports this argument by stating that *"The child shall have the right to freedom of expression"*. Play being a fundamental concept associated with childhood, is a main form in which children express themselves. To further strengthen this argument, Article 12.2 states that children shall have *"the opportunity **to be heard in any judicial and administrative proceedings** affecting the child, either directly, or through a representative or an appropriate body"*. The Institute of Play represents an appropriate body that elevates and advocates children's views in relation to play in judicial and administrative proceedings.

3. Children's Right to Culture and Community through Play

Specificity is given to the affordance and nudges of play as a human right, as outlined in

Article 31 of the UN Convention on the Rights of the Child:

- a) States Parties recognise the right of the child to rest and leisure, **to engage in play** and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
- b) States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

In addition to the three core human right pillars, we are committed to actions in direct response to Article 32 to protect children *"from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's*

education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."

Protecting these human rights of the child is essential to protecting a good life for children now and protecting the overall wellbeing and development of human species. Cumulatively, these rights underpin the conditions in which a culture of play as part of childhood can flourish.

Cultural advancement

Children's play is central to human and cultural development. It is the activity built into our species to shape growing brains and bodies for adulthood, it supports immediate health and wellbeing of the child's brain and body, propelling cultural norms (Gray, 2011). As Gray points out play is in decline and along with it children's development: *"Over the past half century, in the United States and other developed nations, children's free play with other children has declined sharply. Over the same period, anxiety, depression, suicide, feelings of helplessness, and narcissism have increased sharply in children, adolescents, and young adults"* (Gray, 2011). With the general decline of play comes a decline of traditional play culture.

Play for health and wellbeing

The World Health Organisation (WHO) defines health as a *"state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity"*. Play for health and wellbeing covers themes from physical activity in the context of health promotion and science on physical activity and play, environments for play, time for play, organised leisure or recreation, behavioural science, and mental health. Play offers direct health benefits through physical activity; also referred to as active play. Active play is increasingly promoted and considered a vital form of play (S. A. Alexander et al., 2014). The degree of effort should be moderate to vigorous for at least 180 minutes and in later childhood 60 minutes a day (World Health Organisation, 2010). Despite play being in decline, active play currently accounts for the dominant means of physical activity for children aged 0 to 17

(Schottler, 2019). In November 2019, the World Health Organisation released a report outlining a global emergency in relation to children's inactivity (Guthold et al, 2019). WHO declared *"The majority of the world's adolescents do not meet current physical activity guidelines. Urgent scaling up and implementation of known effective policies and programmes is needed to increase activity in adolescents. Investment and leadership at all levels to intervene on the multiple causes and inequities that might perpetuate the low participation in physical activity and sex differences, as well as engagement of youth themselves, will be vital to strengthen the opportunities for physical activity in all communities."*

As health comprises not just the physical but also the mental and spiritual domain, it is necessary to consider the emotional and mental development perspective. Mental health derived from the environment manifests in a variety of different ways depending on the age group and personality development. When depriving children from experiences where they may not develop to their full potential cognitive capacity. A study found that contact with nature and therefore playing outdoors not only relieves stress or is good for health, but is also better for the well-being of all generations (Keniger, Gaston, Irvine, & Fuller, 2013). Lekies and Beery emphasise that children understand and learn most when they have direct contact with their natural environment (Lekies & Beery, 2013). Children make these discoveries at their own pace. This does not just require time but also patience by adults. A reason and relevance for that lies in the speed of development of the human brain (Renz-Polster & Hüther, 2013). For millennia the time for brain development has not become shorter but much longer. The formation of a complex network of nerve cells in the brain takes time. Compare to our closest relatives, the great apes, which has completed his brain development after only three to four years, this process is much slower in humans.

In relation to the current generation of children, Renz-Polster and Hüther express concern and stress that *"important development processes in the child's brain take*

no longer or only partially place. This means for the learning behaviour of children a decrease of motivation, comprehension, retention, remembering, recognising a certain context and a limited ability to recognise and resolve conflicts. Their social behaviour is determined by a gradual withdrawal in self-created worlds, rejecting different ideas, aggressive defence of once established coping skills, lack of empathy, rigidity and problems in the acquisition of psychosocial skills”¹ (Renz-Polster & Hüther, 2013, p. 29).

Overall, there is an overwhelming body of evidence related to this issue, however a recent article from American Journal for Paediatrics highlights that *“Research demonstrates that developmentally appropriate play with parents and peers is a singular opportunity to promote the social-emotional, cognitive, language, and self-regulation skills that build executive function and a prosocial brain. Furthermore, play supports the formation of the safe, stable, and nurturing relationships with all caregivers that children need to thrive.”* (Yogman et al, 2018, p.1). Further, play is not frivolous: it enhances brain structure and function and promotes executive function (i.e., the process of learning, rather than the content), which allow us to pursue goals and ignore distractions. When play and safe, stable, nurturing relationships are missing in a child’s life, toxic stress can disrupt the development of executive function and the learning of prosocial behaviour; in the presence of childhood adversity, play becomes even more important. The mutual joy and shared communication and attunement (harmonious serve and return interactions) that parents and children can experience during play regulate the body’s stress response (Yogman et al, 2018, p.1).

¹ Translated by author from: “Wichtige Entwicklungsprozesse im kindlichen Gehirn finden nicht mehr oder nur eingeschränkt statt. Für das Lernverhalten der Kinder bedeutet dies einen Rückgang an Motivation, Verstehen, Behalten, Erinnern, Erkennen von Zusammenhängen und eine eingeschränkte Fähigkeit beim Erkennen und Lösen von Konflikten. Ihr Sozialverhalten wird bestimmt von einem zunehmenden Rückzug in selbst geschaffene Welten, Ablehnung fremder Vorstellungen, aggressiver Verteidigung einmal einschlagener Bewältigungsstrategien, mangelndm Einfühlungsvermögen, Ridigität und Problemen bei der Aneignung psychosozialer Kompetenzen.“

This rationale has been co-authored by Dr Gregor Mews and Mr Hyahno Moser.

About Gregor Mews

Adding quality to urban environments - Dr. Gregor (Greg) H. Mews holds a tenure track position at Queensland University of Technology as part of the Landscape Architecture program. His philosophy is based on social constructivism researching the human condition in relation to spatial practice, sustainable and healthy development with humanities collective bio-history in mind. Greg uses a range of mixed-research methods to make a difference in the nexus of children health and play in the real world internationally. Greg holds an honorary adjunct position at the Health Research Institute at the University of Canberra and is on the Advisory Board for Research into Practice of The Journal for Public Space. He is published widely and lectures regularly at Technical University of Berlin (Germany), Yale University (USA), University of Canberra (Australia), University of Kassel (Germany) and University of NSW (Australia). Greg has received several high profile research scholarships, twelve work-related awards and completed his PhD on the production of space and play.

About Hyahno Moser

Mr Hyahno Moser is a strong advocate for children and outdoor free play. An experienced Program Manager with a demonstrated history of working in the non-profit organization management industry he is skilled in Event Management, Public Speaking, Community Engagement, Community Development, and Program Management. He is a strong program and project management professional with a Bachelor's degree focused on Parks, Recreation and Leisure Facilities Management from Griffith University.

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