

# Constitution

## Living My Way Limited

**Australian Company Number (ACN) 110 995 518**

**Australian Business Number (ABN) 47 110 995 518**

**A company limited by guarantee**

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# 1 INTERPRETATION

## 1.1 Definitions

In this Constitution unless the context otherwise requires:

**ABN** means Australian Business Number.

**ACN** means Australian Company Number.

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

**Act** means the *Corporations Act 2001* (Cth) as amended or re-enacted from time to time and includes any statutory instruments issued under the *Corporations Act 2001* (Cth).

**ACNC** means the Australian Charities and Not-for-profits Commission or any successor body.

**ASIC** means the Australian Securities and Investments Commission or any successor body.

**Board** means the board of directors.

**CEO** means the Chief Executive Officer of the Company from time to time.

**Chairperson** means chair of the Board who is elected by the directors to be the company's Chairperson under clause 15.4.

**Company** means Living My Way Limited (ACN 110 995 518) (ABN 47 110 995 518).

**Constitution** means this document and includes any variation or replacement of it.

**Deductible Contribution** means a contribution of money or property as described in item 7 or item 8 of the table in section 30.15 of the Income Tax Assessment Act in relation to the objects of the Company.

**Director** means a person appointed as a director of the company or who is appointed to the position of an alternative director and is acting in that capacity.

**Gift** means gifts or property for the principal purpose of the Company.

**Income Tax Assessment Act** means the *Income Tax Assessment Act 1997* (Cth).

**Member** means members of the company entered on the Register under clause 5.7 and **Office** means the registered office of the company.

**Policies** means any policy made by the Board under clause 16.9.

**Regulations** means regulations made by the Board under clause 16.9.

**Replaceable Rules** means the replaceable rules under, or as referred to in, the Act as amended or re-enacted from time to time.

**Register** means the register of Members to be kept pursuant to the Act.

**Seal** means the common seal of the company (if any).

**Secretary** means any person appointed to perform the duties of company secretary of the Company and specified in the company register in accordance with section 120 of the Act.

**Special resolution** means a resolution:

- (a) of which notice as set out in clause 8.8 has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

**Subsidiary** means, in relation to a body corporate, a body corporate that is a subsidiary of the first-mentioned body by virtue of Division 6 of the Act.

**Vice-Chairperson** means a person elected by the directors to be the company's Vice-chairperson under clause 15.4.

**Writing** or **Written** include printing, lithography, photography, electronic documents saved in PDF format, including emails and other electronic means, modes or reproducing or representing words in a visible form.

## 1.2 General interpretive provisions

In this Constitution:

- (a) words importing the singular number include the plural number and vice versa; words importing any gender include every other gender; and words referring to a person include corporations;

- (b) where a word or an expression is defined, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (c) any reference to a clause is a reference to a clause of this Constitution;
- (d) headings to clauses, and italicised notes in brackets following some clauses, are added for convenience only and do not affect interpretation;
- (e) a word or an expression which is defined in the Act has the same meaning when used in this Constitution unless the context otherwise requires; and
- (f) includes means "includes without limitation".

### **1.3 Replaceable Rules**

The Replaceable Rules do not apply in respect of the Company except when they are expressly stated to apply.

### **1.4 Determining percentage of votes**

Where a clause requires the calculation of the percentage of votes a Member has, that percentage must be calculated as at midnight before the relevant event.

### **1.5 Written notice**

Written notice includes notice given by way of:

- (a) facsimile; and
- (b) electronic transmission;

### **1.6 Signing**

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

### **1.7 Representatives**

A representative appointed by a Member that is a corporation may, unless otherwise specified in the appointment, exercise on that corporation's behalf,

all of the powers that the corporation could exercise at a meeting or in voting on a resolution.

## **1.8 Corporations Act 2001 (Cth)**

In this Constitution unless the contrary intention appears:

- (a) where an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, that expression has the same meaning as in that provision of the Act;
- (b) “section” means a section of the Act; and
- (c) section 111L(1) of the Act applies.

## **2 PUBLIC COMPANY LIMITED BY GUARANTEE**

### **2.1 Public Company limited by Guarantee**

The Company is a public company limited by guarantee and does not have share capital.

### **2.2 Not-for-profit**

The Company is a not-for-profit entity registered with the ACNC and its activities are not to be carried on for profit or gain of the Members.

## **3 OBJECTS AND POWERS OF THE COMPANY**

### **3.1 Objects of the Company**

Acknowledging the rights of persons requiring attendant care due to a disability to determine their own lives, and the need to be open to exploring and adopting options and opportunities that facilitate or enable such persons to live rich and full lives, the objects for which the Company is established are to provide benevolent relief to such persons by;

- (a) facilitating access to essential medical, health and other necessary care;
- (b) assisting participation in communities to the fullest extent possible;
- (c) acting as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects; and

- (d) doing such other things as are incidental or conducive to the attainment of these objects, including:
  - (i) assisting with the management of attendant care and support in ongoing relationship with funds providers; and
  - (ii) acting as advocate to advance standing in the community and with funding bodies.

### **3.2 Legal capacity and powers of the company**

- (a) The Company has the following powers, which may only be used to carry out its objects set out in clause 3.1:
  - (i) the powers of an individual; and
  - (ii) all the powers of a company limited by guarantee under the Corporations Act.
- (b) The Company cannot:
  - (i) issue debentures whether irredeemable or redeemable; or
  - (ii) grant a floating charge over the Company's property.

### **3.3 Company may have a Seal**

- (a) The Company may, but need not, have a Seal. If the Company has a Seal, it must have set out on it:
  - (i) if the Company has its ACN in its name, the Company's name; or
  - (ii) otherwise, the Company's name and either:
    - (i) the expression "Australian Company Number" or "ACN" and the Company's ACN; or
    - (ii) if the last 9 digits of the Company's ABN are the same, and in the same order as the last 9 digits of its ACN, the expression "Australian Business Number" or "ABN" and the Company's ABN.
- (b) The Company may have a duplicate Seal. The duplicate must be a copy of the Seal with the words "duplicate seal" added.

- (c) If the Company has a Seal, the Directors must provide for the safe custody of the Seal, which may only be used on the authority of the Directors or of a committee of the Directors authorised by the Directors.

### **3.4 Agent exercising the company's power to make contracts**

Subject to the operation of a law that requires a particular procedure to be complied with in relation to the contract, the Company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the Company's express or implied authority and on behalf of the Company. The power may be exercised without using a common seal.

### **3.5 Execution of documents by the company**

- (a) The Company may execute a document without using a common seal if the document is signed by:
  - (i) two (2) Directors; or
  - (ii) a Director and Secretary.
- (b) If the Company has a Seal, the Company may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by:
  - (i) two (2) Directors; or
  - (ii) a Director and a Secretary.

## **4 INCOME AND PROPERTY OF THE COMPANY**

### **4.1 Income and property to be applied towards objects**

All income and property of the Company must be solely applied towards the promotion of the objects of the Company.

### **4.2 No payments to Members**

Subject to clause 4.3, no part of the income or property of the Company may be paid by way of dividend, bonus or otherwise to the Members of the Company.

### **4.3 Payments in good faith**

Nothing in this Constitution prevents the Company from making payment in good faith with prior Board approval up to a fair and reasonable amount:

- (a) of reasonable and proper remuneration to any Directors or employees of the Company;
- (b) to any Member of the Company in relation to any contract, right or claim in which that Member is interested or which arises other than by virtue of the Member's membership of the Company;
- (c) to any Member or non-members for goods or services supplied to the Company and reimbursement of reasonable expenses incurred while providing services to the Company;
- (d) of fair and reasonable interest on any money lent to the Company by any Member of the Company at a rate not exceeding that fixed for the purposes of this clause by the Company in a general meeting; or
- (e) of reasonable or proper rent for premises let by any Member to the Company.

## **5 MEMBERSHIP**

### **5.1 Membership classes**

The Directors may at any time determine different classes of Membership, with those classes having different rights and obligations attaching thereto as determined by the Directors.

### **5.2 Entry as a Member**

- (a) The Members as at the date of adoption of this constitution and any persons the Board admits to membership are the Members of the Company.
- (b) The rights and privileges of a Member are personal, non-transferable and cease on the death of a Member or on the cessation of a Member's membership.

### **5.3 Eligibility for membership**

To be eligible to be a Member, a person must:

- (a) be eligible to apply to be a Member under clause 5.4;
- (b) support the objects of the Company; and

- (c) agree to comply with the Company's Constitution (including paying the guarantee under clause 6.1), and by-laws passed by the directors from time to time.

#### **5.4 Membership application process**

A person may apply to become a Member of the Company by writing to the CEO stating that they:

- (a) want to become a Member;
- (b) support the objects of the Company; and
- (c) agree to comply with the Company's Constitution (including paying the guarantee under clause 6.1) and any by-laws passed by the Directors from time to time.

#### **5.5 CEO to decide whether to approve membership**

- (a) The CEO must consider an application for membership within a reasonable time after the Company receives the application.
- (b) The CEO may admit a person as a member subject to final board approval if the CEO considers it to be in the best interest of the Company.
- (c) The CEO must provide the Board with a list of persons admitted to membership pursuant to clause 5.5(b), the type of services those persons are receiving and if requested by the Board with the signed applications for membership.

#### **5.6 Decision on membership**

- (a) At the board meeting following the receipt of the application and information pursuant to clause 5.5(c), the Board must consider the application for membership.
- (b) If the Board approves an application, the Company Secretary must as soon as possible:
  - (i) enter the new Member on the Register; and
  - (ii) the CEO must write to the applicant to inform them that their application was approved, and the date that their membership commenced (under clause 5.7).

- (c) If the Board rejects an application the CEO 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.

## **5.7 When a person becomes a Member**

An applicant will become a Member when they are entered on the Register.

## **5.8 Expulsion of Members**

- (a) If any Member refuses or neglects to comply with the provisions of this Constitution or conducts themselves in a way which has brought or is likely to bring discredit upon the Company, the Directors may by resolution do any of the things set out in clause 5.8(d) in respect of that Member.
- (b) At least fourteen (14) days before the Directors' meeting at which a resolution under clause 5.8(a) will be considered, the CEO or Secretary must notify the Member in writing:
  - (i) that the Directors are considering a resolution to warn, suspend or expel the Member;
  - (ii) that this resolution will be considered at a directors' meeting and the date of that meeting;
  - (iii) what the Member is said to have done or not done;
  - (iv) the nature of the resolution that has been proposed; and
  - (v) that the Member may provide an explanation to the Directors, and details of how to do so.
- (c) Before the Directors pass any resolution under clause 5.8(a), the Member must be given a chance to explain or defend themselves by:
  - (i) sending the Directors a written explanation before that directors' meeting; and/or
  - (ii) speaking at the meeting.
- (d) After considering any explanation under clause 5.8(c), the Directors may:
  - (i) take no further action;
  - (ii) warn the Member;

- (iii) suspend the Member's rights as a Member for a period of no more than twelve (12) months;
  - (iv) expel the Member;
  - (v) 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
  - (vi) require the matter to be determined at a general meeting.
- (e) The Directors cannot fine a Member.
  - (f) The CEO or Secretary must give written notice to the Member of the decision under clause 5.8(d) as soon as possible.
  - (g) Disciplinary procedures must be completed as soon as reasonably practical.

## **5.9 Cessation of membership**

A Member will cease to be a Member on:

- (a) death;
- (b) unless the member is also a Director, the date a Member ceases to receive services from the Company;
- (c) unless the member is a Director and also receives services from the Company, the date the Director ceases to be a Director
- (d) the date of the resolution expelling the Member from the Register as contemplated by clause 5.8(d)(iv); and
- (e) resignation by written notice to the Company having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice.

## **5.10 Readmission**

The Board may impose an administration fee on a person applying for readmission as a Member.

## **5.11 Dispute Resolution**

Disputes between Members (if in their capacity as Members) if unresolvable using the Company's internal grievance procedures are to be referred by the Directors to a Community Justice Centre for mediation in accordance with the *Community Justice Centres Act 1983* (NSW).

## **6 GUARANTEE AND LIABILITY OF MEMBERS**

### **6.1 Guarantee**

Each Member must contribute an amount not more than AU\$2.00 to the property of the Company if the Company is wound-up while the Member is a Member or within 12 months after the cessation of their membership under clause 5.9, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the time the Member stopped being a Member; or
- (b) costs of winding-up.

### **6.2 Members liability is limited**

The liability of the Members of the Company is limited to AU\$2.00.

## **7 RESOLUTIONS OF COMPANY WITHOUT MEETINGS**

### **7.1 Circulating resolutions when more than one Member**

- (a) Except in the case of a resolution under section 329 of the Act to remove an auditor, or any other resolution which the Act or this Constitution requires to be passed at a general meeting, the Company may pass a resolution without a general meeting being held if a majority of Members eligible to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when a majority of Members eligible to vote on the resolution have signed the document.

- (d) Clause 7.1:
  - (i) shall apply only where the Company is a charity registered with the Australian Charities and Not-for-profits Commission; and
  - (ii) does not affect any rule of law relating to the assent of Members not given at a general meeting.

## **7.2 Resolutions of company when one Member**

If the Company has only one Member, that Member may pass a resolution by the Member recording it and signing the record.

## **8 CALLING MEETINGS OF MEMBERS**

### **8.1 Calling of a general meetings of Members by a Director**

A minimum of two Directors may call a general meeting of the Company's Members.

### **8.2 Calling of a general meeting by Directors when requested by Members**

- (a) The Directors of the Company must call and arrange to hold a general meeting on the request of Members with at least 5% of the votes that may be cast at a general meeting.
- (b) The request must:
  - (i) be in Writing;
  - (ii) state any resolution to be proposed at the meeting;
  - (iii) be signed by the Members making the request; and
  - (iv) be given to the Company.
- (c) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (d) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.

### **8.3 Failure of Directors to call a general meeting**

- (a) Members who make a request under clause 8.2 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called. The meeting must be held not later than 3 months after the request is given to the Company.
- (c) To call the meeting the Members requesting the meeting may ask the Company for a copy of the Register. The Company must give the Members the copy of the Register within 7 days after request without charge.
- (d) The Company must pay the reasonable expenses the Members incurred because the Directors failed to call and arrange the meeting.
- (e) The Company may recover the amount of the expenses from the Directors. However, a Director is not liable for the amount if they prove that they took all reasonable steps to cause the Directors to comply with clause 8.2. The Directors who are liable are jointly and individually liable for the amount. If a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

### **8.4 Calling of a general meeting by Members**

- (a) Members with at least 5% of the votes that may be cast at a general meeting of the Company may call, and arrange to hold, a general meeting.
- (b) The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (c) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called.

### **8.5 Providing notice of meetings**

- (a) Subject to clause 8.5(b) at least 21 days notice must be given of a meeting of the Company's Members.

- (b) The Company may call on shorter notice:
  - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
  - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) A Company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 8.5(d).
- (d) At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to:
  - (i) remove an auditor under section 329 of the Act; or
  - (ii) remove a Director under clause 15.3(d) or appoint a Director in place of a Director removed under that clause.

## **8.6 Notice of meetings of Members to Members and directors**

- (a) Written notice of a meeting of the Company's Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) The Company may give the notice of a meeting to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member; or
  - (iii) by sending it to the facsimile number or electronic address (if any) nominated by the Member.
- (c) A notice of meeting sent by post is taken to be given 2 days after it is posted. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

## **8.7 Auditor entitled to notice and other communications**

The Directors must give the Company's auditor, if any:

- (a) notice of a general meeting in the same way that a Member of the Company is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member of the Company is entitled to receive.

## **8.8 Contents of notice of meetings of Members**

A notice of a meeting of the Company's Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (i) that the Member has a right to appoint a proxy; and
  - (ii) whether or not the proxy needs to be a Member of the Company.

## **8.9 Notice of adjourned meetings**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

- 8.10** The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or the ASIC, declares proceedings at the meeting to be void.

## **9 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS**

### **9.1 Members' resolutions**

- (a) Members with at least 5% of the votes that may be cast at a general meeting may give the Company notice of a resolution that they propose to move at a general meeting.
- (b) The notice must:
  - (i) be in Writing;
  - (ii) set out the wording of the proposed resolution; and
  - (iii) be signed by the Members proposing to move the resolution.
- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

### **9.2 Company giving notice of Members' resolutions**

- (a) If a company has been given notice of a resolution under clause 9.1, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
- (b) The Company must give all of its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Directors do not receive the Members notice in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.
- (e) The Company need not give notice of the resolution if:
  - (i) it is more than 1,000 words long or defamatory; or

- (ii) the Members making the request have not provided the Company a sum reasonably sufficient to meet the expenses that the Company will reasonably incur in giving the notice.

## **10 MEMBERS' STATEMENTS TO BE DISTRIBUTED**

### **10.1 Grounds for statement**

Members may request the Company to give to all of its Members a statement provided by the Members making the request about:

- (a) a resolution that is proposed to be moved at a general meeting;  
or
- (b) any other matter that may be properly considered at a general meeting.

### **10.2 Who may request**

The request made under clause 10.1 must be made by Members with at least 5% of the vote that may be cast on the resolution.

### **10.3 How request to be made**

The request made under clause 10.1 must be:

- (a) in Writing;
- (b) signed by the Members making the request; and
- (c) given to the Company.

### **10.4 Copies for signing**

Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

### **10.5 Distribution of statement**

After receiving the request, the Company must distribute to all of the Company's Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

## **10.6 When Company bears cost**

The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

## **10.7 When Members bear cost**

The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

## **10.8 When Company need not comply with request**

- (a) The Company need not comply with the request if the statement is more than 1,000 words long or defamatory.
- (b) The Members making the request are responsible for the expenses of the distribution, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

# **11 HOLDING MEETINGS OF MEMBERS**

## **11.1 Purpose**

A meeting of Members must be held for a proper purpose.

## **11.2 Time and place for meetings of Members**

A meeting of Members must be held at a reasonable time and place.

## **11.3 Technology**

- (i) The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (ii) The Company may hold a meeting of its members as a wholly virtual meeting.

#### **11.4 Quorum**

- (a) No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by:
  - (i) if there is only 1 to 3 Members, then all of the Members;
  - (ii) if there are 4 or more Members, then subject to clause 11.4(b), 4 Members.

For the purposes of this clause and clause 11.4(b) "Member" includes a person attending as a proxy or a body corporate representative.

- (b) If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Member or Members present constitute a quorum.

#### **11.5 Chairing meetings of members**

- (a) The Chairperson is to be the chair at every general meeting of the Company. If the Chairperson cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting the Vice-Chairperson is to be chair of the meeting, and if the Vice-Chairperson also cannot or will not chair the meeting or is not present within 15 minutes after the time appointed for the holding of the meeting the Directors present may elect one of their number to be the chair of the meeting but if they do not do so the Members present must elect the chair of the meeting.
- (b) The Chairperson must adjourn a meeting of the Company's Members if the Members present with a majority of votes at the meeting agree or direct that the Chairperson must do so.

#### **11.6 Auditor's right to be heard at general meetings**

- (a) The Company's auditor (if any) is entitled to attend any general meeting of the Company.

- (b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The auditor is entitled to be heard even if:
  - (i) the auditor retires at the meeting; or
  - (ii) the meeting passes a resolution to remove the auditor from office.
- (d) The auditor may authorise a person in Writing as their representative for the purpose of attending and speaking at any general meeting.

### **11.7 Adjourned meetings**

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### **11.8 Annual general meetings**

#### **(a) Holding of annual general meetings**

The Company must, if required by the Act, hold an annual general meeting.

#### **(b) Business of annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting;

- (i) the consideration of the annual financial report, Directors' report and auditor's report;
- (ii) the election of Directors;
- (iii) the appointment of the auditor;
- (iv) the fixing of the auditor's remuneration.

#### **(c) Questions at annual general meetings**

- (i) The Chairperson of an annual general meeting must allow a reasonable opportunity for Members as a whole

at the meeting to ask questions about or make comments on the management of the Company.

- (ii) If the Company's auditor or their representative is at the meeting, the Chairperson of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct the audit and the preparation and content of the auditor's report.

## **12 VOTING AT A MEMBERS' MEETING**

### **12.1 How many votes a Member has**

- (a) On a show of hands each Member has 1 vote.
- (b) On a poll, each Member has 1 vote.
- (c) The Chairperson does not have a casting vote in addition to any vote they have as a Member.

### **12.2 Objections to right to vote at a meeting of the company's Members**

A challenge to a right to vote at a Members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the Chairperson, whose decision is final.

### **12.3 Votes need not all be cast in the same way**

On a poll, a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

### **12.4 How voting is carried out**

- (a) A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the Chairperson is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

- (c) Subject to this Constitution and the Act, resolutions of Members are to be decided by simple majority of votes cast in respect of the relevant resolution.

### **12.5 Matters on which a poll may be demanded**

- (a) A poll may be demanded on any resolution proposed at a Members' meeting.
- (b) Without limiting clause 12.5(a), a poll can be demanded on any resolution concerning:
  - (i) the election of the Chairperson of a meeting; or
  - (ii) the adjournment of a meeting.
- (c) A demand for a poll may be withdrawn.

### **12.6 When a poll is effectively demanded**

- (a) At a Members' meeting a poll may be demanded by:
  - (i) at least 2 Members entitled to vote on the resolution;
  - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the Chairperson.
- (b) The poll may be demanded:
  - (i) before a vote is taken on the proposed resolution;
  - (ii) before the voting results on a show of hands on the proposed resolution are declared; or
  - (iii) immediately after the voting results on a show of hands on the proposed resolution are declared.

### **12.7 When and how polls must be taken**

- (a) A poll demanded on a matter other than the election of a Chairperson or the question of an adjournment must be taken when and in the manner the Chairperson directs.
- (b) A poll on the election of a Chairperson or on the question of an adjournment must be taken immediately.

- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

### **13 Power of attorney**

- (a) If a Member executes or proposes to execute an instrument or to act by or through an attorney they must:
  - (i) produce to the Company for noting the instrument appointing the attorney;
  - (ii) on request by the Company, file with the Company a certified copy of that instrument which is to be retained by the Company.
- (b) The Directors may on the first production of that instrument of attorney and from time to time subsequently require any evidence as they think fit that the instrument of attorney is effective and current.

## **14 PROXIES**

### **14.1 Who can appoint a proxy**

Each Member of the Company who is entitled to attend and vote at a meeting of the Company's Members may appoint a person (who does not need to be a Member) as the Member's proxy to attend and vote for the Member at the meeting.

### **14.2 Rights of proxies**

A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting, except while the Member is present;
- (b) to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

### **14.3 Company sending appointment forms or lists of proxies must send to all Members**

If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list, the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise, the Company must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

#### **14.4 Appointing a proxy**

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
  - (i) the Member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

- (b) The Chairperson of the meeting may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 14.4(a).
- (c) An undated appointment is taken to have been dated on the day it is given to the Company.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If the proxy appointment does so:
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
  - (iii) if the proxy is the Chairperson, the proxy must vote on a poll, and must vote that way; and

- (iv) if the proxy is not the Chairperson, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (e) If a proxy is also a Member, this clause does not affect the way that the person can cast any votes they hold as a Member.
- (f) An appointment does not have to be witnessed.
- (g) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

#### **14.5 Proxy documents**

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
  - (i) the proxy's appointment; and
  - (ii) if the appointment is signed or otherwise authenticated in a manner prescribed by the Regulations by the appointor's attorney, the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) The Company receives an appointment or an authority when it is received at any of the following:
  - (i) the office;
  - (ii) a fax number at the office; or
  - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) If the notice of meeting specifies other electronic means by which a Member may give the appointment or authority, then the Company as prescribed by the Regulations will receive the appointment or authority.

## **14.6 Validity of proxy vote**

- (a) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.
- (b) Unless the Company has received Written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Member dies;
  - (ii) the Member is mentally incapacitated;
  - (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed by a third party.

## **15 DIRECTORS**

### **15.1 Number of directors**

The Company must have at least 5 Directors, but not more than 9 Directors (excluding alternate Directors), of which at least 2 must be ordinarily resident in Australia.

### **15.2 Directors term of Appointment**

- (a) Each Director of the Board is, subject to this Constitution, to hold office for a term of 3 years.
- (b) Each Director is, subject to this Constitution, to hold office for a maximum term of 10 years, unless the both the Board of Directors and the Members determine by resolution that a Director can serve a longer maximum term.
- (c) At the end of each term the Director may be nominated for re-election. Nominations for re-election are to be received by the Board at least 7 days prior to the annual general meeting.
- (d) At least one third of the directors must retire at each annual general meeting and if eligible in accordance with clause 15.2(b) and 15.2(e), may be nominated for re-election.

- (e) A Director is eligible to be nominated for election as a Director after holding office for the maximum term of 10 years following a 12 month break after completing the maximum term of 10 years.
- (f) A Director will cease to be a Member of the Company at the time he or she ceases to be a Director of the Company, unless he or she has submitted a written request to the Company to continue as a Member and this is approved by the directors or the Director also receives services from the Company.

### **15.3 Appointment and removal of directors**

- (a) To be eligible for nomination as a Director a person must be a Member of the Company.
- (b) The Directors may appoint an eligible person as a Director.
- (c) If a person is appointed as a Director under clause 15.3(a) the Company must confirm the appointment by resolution at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the end of the Company's next annual general meeting.
- (d) The Company in general meeting may by resolution:
  - (i) remove a Director from office despite anything in this Constitution; or
  - (ii) appoint Directors.
- (e) A resolution passed by the Company in general meeting appointing or confirming the appointment of 2 or more Directors is void.

### **15.4 Chairperson and Vice-Chairperson**

- (a) The Directors must elect a Director as Chairperson of the Company to chair meetings of the Board and meetings of Members.
- (b) The Directors must elect a Director as Vice-Chairperson to act in the role of Chairperson when required in accordance with this Constitution.
- (c) The Chairperson and Vice-Chairperson are to hold that office until the first meeting of the Board following each annual general meeting.

- (d) The Directors may remove the Chairperson or Vice-Chairperson from that office at any time and elect another director as Chairperson or Vice-Chairperson.

### **15.5 Attendance at meetings**

- (a) Subject to clause 15.5(b) a Director automatically ceases to be a Director of the Company if a Director fails to attend either:
  - (i) three consecutive Board Meetings; or
  - (ii) at least 75% of board meetings in any 12 months period.
- (b) A Director does not cease to be a Director of the Company if the Board has passed, on application by the Director, a resolution permitting the conduct under clauses 15.5 (a)(i) and a(ii) for any 12 months period.

### **15.6 Interest of directors**

- (a) Director may not hold any other office with or be an employee of the Company.
- (b) A Director may not act as the auditor for the Company.
- (c) Subject to this clause 15.6 and any rule of law or equity to the contrary, a Director may contract, transact, or enter into an arrangement with the Company and no such contract, transaction or arrangement entered into by or on behalf of the Company or any other contract, transaction or arrangement in which a Director is in any way interested is avoided or rendered voidable because of that person being a Director.
- (d) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest.
- (e) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote on the matter,unless subclauses 15.6(f) or 15.6(g) allow the Director to be present.

- (f) The Director who has a material personal interest in a matter may be present and vote if Directors who do not have a material personal interest in the matter have passed a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - (ii) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- (g) The Director who has a material personal interest in a matter may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Act.
- (h) If there are not enough Directors to form a quorum for a Directors' meeting because of subclause 15.6(e), one or more of the Directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

## **15.7 Remuneration of directors**

- (a) The Company may pay fees to the Directors as follows:
  - (i) a Director may elect not to receive fees, however, by electing not to receive fees a Director does not reduce their duties or responsibilities in any way;
  - (ii) the maximum sum of fees paid to the Directors in a financial year must be approved by resolution of the Members in a general meeting, and
  - (iii) the Directors must decide by resolution how the maximum sum of fees approved by the Members for a financial year is to be divided amongst themselves.
- (b) The Directors are entitled to be reimbursed for all reasonable expenses properly incurred in good faith attending or in connection with:
  - (i) their attendance at any meeting of the Company or of the Board or any committee of Directors; and
  - (ii) carrying out their duties in any manner properly authorised by the Board.

- (c) The Directors must approve by resolution at a meeting of the directors all other payments the Company makes to the Directors.

### **15.8 Vacation of office**

The office of a Director automatically becomes vacant if the Director:

- (a) ceases to be a Member of the Company;
- (b) resigns by giving Written notice to the Company;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) is removed pursuant to the provisions of section 203D of the Act;
- (e) is removed from office in accordance with this Constitution or the Act;
- (f) ceases to be a director pursuant to paragraph 15.5.
- (g) is disqualified from managing corporations under Part 2D.6 of the Act; or
- (h) dies.

### **15.9 Financial benefits**

The Company must not provide financial benefits to a Director except as permitted by, and in accordance with, the provisions of the Act or this Constitution.

### **15.10 Defect in appointment**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or a member of a committee, or to act as a Director, or that a person so appointed was disqualified, all acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

## **16 POWERS AND DISCRETIONS OF DIRECTORS**

### **16.1 CEO**

- (a) The Board may appoint one (1) or more persons to the position of CEO for any specified or unspecified term, but not for life.
- (b) The Board may delegate any of the powers of the Board to the CEO on the terms, and subject to any restrictions, that the Board decides so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.

### **16.2 Business of the company**

The business of the Company must be managed by or under the direction of the Directors who may exercise all the powers of the Company except any powers that the Act or this Constitution, require to be exercised by the Company in general meeting. No resolution made by the Company in general meeting invalidates any prior act of the Directors that would have been valid if the resolution had not been made.

### **16.3 Appointment of attorneys**

The Directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors), for the period and subject to such conditions as the Directors think fit.

### **16.4 Appointment of auditor**

The Directors must appoint an auditor of the Company if an auditor has not been appointed by the Company in general meeting within 1 month after the day on which the Company was incorporated.

### **16.5 Directors may execute security over the assets of the company**

If the Directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of such liability.

## **16.6 Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time determine.

## **16.7 Directors discretion**

Unless otherwise provided, if the Directors are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

## **16.8 Committees and Delegation**

### **(a) Board's power to establish committees**

The Board may establish committees as follows:

- (i) a committee will comprise two or more committee members, of which at least one must be a Director;
- (ii) the committee members otherwise need not be a Director or Member and may incorporate the expertise of non-members and subject matter experts;
- (iii) the committee has the purpose set out in its charter approved by the Board, and may undertake the powers and functions delegated to it by the Board;
- (iv) in the absence of any provision in the committee charter or Regulations, the meetings and proceedings of a committee must be carried out in accordance with the provisions of clause 17, subject to any necessary changes and any directions made by the Directors; and
- (v) committee members may be paid in accordance with clause 4.3.

### **(b) Power to delegate**

The Directors may by resolution delegate any of their powers to:

- (i) a committee established under clause 16.8(a);
- (ii) a Director; or
- (iii) an employee of the Company.

(c) **Delegate to act in accordance with directions**

The committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.

(d) **Effectiveness of exercise of delegates power**

The exercise of the power by the committee or delegate is as effective as if the Directors had exercised it.

(e) **Directors liable for delegate**

If the Directors delegate a power under clause 16.8(a), the Directors are responsible for the exercise of the power by the delegate as if the Directors themselves had exercised the power unless exonerated under section 190(2) of the Act.

**16.9 Power to make Regulations or Policies**

- (a) The Board may from time to time make, vary and rescind Regulations or Policies in relation to the Company.
- (b) The Regulations or Policies for the time being in force, and which are not inconsistent with this Constitution, are binding on Members and have full effect accordingly.

**17 DIRECTORS RESOLUTIONS AND MEETINGS**

**17.1 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The copies of the document containing the resolution may be electronic form and may be signed by electronic means.
- (d) The resolution is passed when the last of the Directors that constitute a majority of the Directors signs.

## **17.2 Calling directors' meetings**

A Director may at any time and the Secretary on the request of a Director must convene a board meeting.

## **17.3 Chairing directors' meetings**

The Chairperson is to chair meetings of the Board, but if at any meeting the Chairperson is not present within 15 minutes after the time appointed for holding the meeting, or is unwilling or unable to chair the meeting, the Vice-Chairperson is to chair the meeting, or if the Vice-Chairperson is not present within 15 minutes after the time appointed for holding the meeting, or is unwilling or unable to chair the meeting, the Directors may elect one of their number present to chair the meeting.

## **17.4 Quorum at directors' meetings**

- (a) Subject to clause 15.6(h), four (4) Directors constitute a quorum for a meeting of the Board.
- (b) The quorum must be present at all times during the meeting.

## **17.5 Passing of directors' resolutions**

Questions arising at any board meeting must be decided by a majority of votes. Each Director present at a board meeting has 1 vote. In the case of an equality of votes, the Chairperson does not have a second or casting vote.

## **18 ALTERNATE DIRECTORS**

An alternate director is entitled to be paid the expenses provided in this constitution but is not entitled to receive directors' fees.

## **19 SECRETARY**

### **19.1 Requirement for secretary**

The Company must have at least 1 Secretary.

### **19.2 Appointment of secretary**

The Directors must appoint a Secretary.

### **19.3 Natural person not a minor as secretary**

A Secretary must be a natural person who has attained the age of 18 years.

#### **19.4 Australian resident as secretary**

The Secretary, or 1 of the secretaries, must be a person who ordinarily resides in Australia.

#### **19.5 Acting secretary**

- (a) If there is no Secretary, or no Secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the Secretary may be done by or in relation to any assistant or deputy Secretary.
- (b) If there is no assistant or deputy Secretary, or no assistant or deputy Secretary is capable of acting, by or in relation to any act or thing required or authorised to be done by, or in relation to, the Secretary, an officer may be authorised by the Directors to act as Secretary, either generally or in relation to the doing of that act or thing.

#### **19.6 Terms and conditions of office of secretary**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.
- (b) The Board may terminate or suspend any appointment of a person as a Secretary.

### **20 MINUTES**

#### **20.1 Company must keep minute books**

The Company must keep minute books in which it records within 1 month:

- (a) proceedings and resolutions of meetings of the Members;
- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

#### **20.2 Minutes to be signed**

The Company must ensure that the minutes are to be signed within a reasonable time after the meeting by either

- (a) the Chairperson of the meeting, or

- (b) the Chairperson of the next meeting.

### **20.3 Resolution without meeting**

The Company must ensure that a Director signs minutes of the passing of a resolution without a meeting, within a reasonable time after the resolution is passed.

### **20.4 Location of minute books**

The Company must keep the minute books of the Company at:

- (a) electronically;
- (b) the Company's registered office;
- (c) the Company's principal place of business in Australia; or
- (d) another place approved by the ASIC.

### **20.5 Inspection by Members**

The Company must ensure that the minute books for the meetings of its Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

### **20.6 Requests by Members**

- (a) A Member may ask the Company in Writing for a copy of:
  - (i) any minutes of a meeting of the Company's Members or an extract of the minutes; or
  - (ii) any minutes of a resolution passed by Members without a meeting.
- (b) If the Company does not require the Member to pay for the copy, the Company must send it:
  - (i) within 14 days after the Member asks for it; or
  - (ii) any longer period that the ASIC approves.
- (c) If the Company requires payment for the copy, the Company must send it:
  - (i) within 14 days after the Company receives the payment; or within any longer period that the ASIC approves.

## **21 INSPECTION OF BOOKS**

The Directors may but are not required to authorise a Member to inspect books of the Company.

## **22 INSPECTION OF ACCOUNTS**

The Directors may determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounting and other records of the Company, or any of them, are to be opened to the inspection of Members not being Directors, and no Member (not being a Director) has any right of inspecting any account or book or paper of the Company, except as conferred by statute or authorised by the Directors.

## **23 NOTICES**

### **23.1 When notice is given**

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given or the day on which the action is to be taken may be counted in calculating the period.

### **23.2 Notice by Members of address for service**

Each Member must notify the Company in Writing of an address in Australia or email address for service of notice. Subject to this Constitution and the Act, if the Member fails to do so, the Member is not entitled to any notice.

### **23.3 How notices are given**

Subject to the Act and this Constitution, the Company may give notice and a person may give notice to the Company:

- (a) personally;
- (b) by post, to the last known address of the recipient;
- (c) by facsimile number or email address (if any) nominated by the recipient;
- (d) by any other means permitted by law consented to by the sender and the recipient.

### **23.4 When notices are taken to be given**

- (a) A notice sent by post is taken to be given two days after it is posted.

- (b) A notice sent by fax is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission. A notice sent by email is taken to be given when the email is sent, unless the sender has been notified, by a system or person involved in the delivery of the email to the addressee, that the email has not been successfully delivered.

## 24 WINDING UP AND REVOCATION OF ENDORSEMENT

### 24.1 Winding Up

- (a) If the Company is wound up during the time of a Member's membership or within 1 year afterwards, each Member undertakes to contribute to the assets of the Company for payment of:
  - (i) debts and liabilities of the Company contracted before the Member's membership ceases;
  - (ii) costs, charges and expenses of the winding up of the Company; andsuch amount as may be required but not exceeding the amount outlined in clause 6.1.
- (b) If upon the winding up or dissolution of the Company, there remains after the satisfaction of all its debts and liabilities any property whatsoever, that property must not be paid or distributed among the Members of the Company.
- (c) All remaining property of the Company under clause 24.1(b) must be paid and applied by the Company to any corporation or body as determined at or before the time of the winding up (**Recipient Organisation**):
  - (i) having objects similar to the objects of the Company; and
  - (ii) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as imposed on the Company under this Constitution.
- (d) The Directors must determine the Recipient Organisation.
- (e) If a selection under clause 24.1(d) cannot be made the Members will determine the Recipient Organisation.

- (f) If a selection under clause 24.1(e) cannot be made, the Supreme Court of New South Wales will determine the Recipient Organisation.

## **24.2 Revocation of Australian Tax Office endorsement**

- (a) Where the Company has been endorsed as a deductible gift recipient as an organisation or in relation to a public fund under Subdivision 30-BA of the Income Tax Assessment Act, then where:
  - (i) the Company is wound up; or the fund is wound up; or
  - (ii) the endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked;

then any surplus assets of the Gift Fund remaining after payment of all liabilities must be transferred to an institution or fund that complies with clause 24.1 and is an endorsed deductible gift recipient.

- (b) Where the Company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act is revoked only in relation to one of those funds then it may transfer any surplus assets of the fund after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient.

## **25 INDEMNITY**

### **25.1 Indemnity against proceedings**

Subject to clause 25.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate or a member of a committee established under clause 16.8 is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
- (b) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Act by the court.

## **25.2 Indemnity against liabilities**

Subject to clause 25.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate or a member of a committee established under clause 16.8 is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability incurred by the person as such a Director, Secretary or executive officer to another person (other than the Company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

## **25.3 Insuring officers of the company**

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate or a member of a committee established under clause 16.8 against:

- (a) any liability incurred by that person as such a Director, Secretary or executive officer or committee member which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of section 182 or 183 of the Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever the outcome provided the costs and expenses are not incurred for the reasons set out in section 199A(3) of the Act.

## **25.4 Company may make separate contracts and bring separate actions**

- (a) The Company may confirm the indemnities in clauses 25.1 and 25.2 by separate contract with, or on behalf of, 1 or more of the persons indemnified.
- (b) The indemnities given by the Company in clauses 25.1 and 25.2 do not affect the right of the Company to bring any demand or action against any Director, Secretary or executive officer of the Company or its related bodies corporate or a member of a committee established under clause 16.8, including any demand or action arising out of the negligence of that person.

## **25.5 Directors may resolve to not indemnify**

The Directors may resolve that the indemnities in clauses 25.1 and 25.2 are not to apply to a specified person or class of persons and the indemnities will not apply unless the Company has confirmed the indemnity under clause 25.4(a) by a contract that is in force.

## **25.6 Interpretation**

Nothing in clauses 25.1 to 25.4, is to be taken to limit the power of the Company, as permitted by the Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the Company or its related bodies corporate.

## **25.7 Payments not remuneration**

Any payment made by the Company under clauses 25.1 to 25.3 does not constitute remuneration for the purposes of this Constitution.

## **25.8 Deregistration and Winding up**

The obligations of the Company to indemnify every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate or a member of a committee established under this clause 25 are extinguished and terminated immediately prior to the Company taking any steps required under the Act for the Company to be voluntary de-registered or wound up.

## **26 BRANCH REGISTERS**

### **26.1 Company may keep branch registers**

The Company may establish and cause to be kept outside the state (including outside of Australia) where its principal register is kept a branch Register of Members in accordance with the provisions of the Act.

### **26.2 Directors to determine manner in which branch registers are kept**

Subject to the provisions of the Act and of the provisions of this Constitution, any branch Register must be established and kept in the manner the Directors determine.

### **26.3 Delegation**

The Directors may empower any officer of the Company or any other person to establish and keep any branch Register in a manner that the Directors determine.

## **27 AMENDING THIS CONSTITUTION**

### **27.1 By special resolution**

The Company may modify or repeal this Constitution or a provision of this Constitution, by Special Resolution.

### **27.2 Date effective**

A Special Resolution modifying or repealing this Constitution takes effect:

- (a) if no later date is specified in the resolution, the date on which the resolution is passed; or
- (b) on a later date specified in or determined in accordance with the resolution.