



HENRY DAVIS YORK  
LAWYERS



# Constitution

---

**Thomas Kelly Youth Foundation Limited**

**A company limited by guarantee and not having share capital**

## CONTENTS

<b>CONSTITUTION</b>		<b>6</b>
<b>1</b>	<b>Interpretation</b>	<b>6</b>
	1.1 Definitions	6
	1.2 Interpretation	6
	1.3 Replaceable Rules	7
	1.4 Determining percentage of votes	7
	1.5 Representatives	7
<b>2</b>	<b>Company limited by guarantee</b>	<b>8</b>
<b>3</b>	<b>Objects of the company</b>	<b>8</b>
	3.1 Charitable objects	8
<b>4</b>	<b>No acting as a conduit</b>	<b>9</b>
<b>5</b>	<b>Public Fund</b>	<b>9</b>
<b>6</b>	<b>Agreement to abide by ministerial rules</b>	<b>10</b>
<b>7</b>	<b>Provision of statistical information</b>	<b>10</b>
<b>8</b>	<b>Informing the department</b>	<b>10</b>
<b>9</b>	<b>Powers of the Company</b>	<b>10</b>
	9.1 Legal capacity and powers of the Company	10
	9.2 Company may have a Seal	11
	9.3 Agent exercising the Company's power to make contracts	11
	9.4 Execution of documents by the Company	11
<b>10</b>	<b>Income and property of the Company</b>	<b>12</b>
	10.1 Income and property to be applied towards objects	12
	10.2 No payments to Members	12
	10.3 Payments in good faith	12
<b>11</b>	<b>Membership</b>	<b>12</b>
	11.1 Entry as a Member	12
	11.2 Expulsion of Members	13
	11.3 Cessation of membership	13
<b>12</b>	<b>Circulating resolutions of Members</b>	<b>13</b>
	12.1 Circulating resolutions when more than 1 Member	13
	12.2 Resolutions of company when 1 Member	13
<b>13</b>	<b>Calling meetings of Members</b>	<b>14</b>
	13.1 Calling of meetings of Members by a Director	14

13.2	Calling of general meeting by Directors when requested by Members	14
13.3	Failure of Directors to call a general meeting	14
13.4	Calling of general meeting by Members	15
13.5	Amount of notice of meetings	15
13.6	Notice of meetings of Members to Members and Directors	16
13.7	Auditor entitled to notice and other communications	16
13.8	Contents of notice of meetings of Members	17
13.9	Notice of adjourned meetings	17
13.10	Cancelled general meetings	17
13.11	Accidental omission or non-receipt of notice	17
<b>14</b>	<b>Members' rights to put resolutions at general meetings</b>	<b>18</b>
14.1	Members' resolutions	18
14.2	Company giving notice of Members' resolutions	18
<b>15</b>	<b>Members' statements to be distributed</b>	<b>19</b>
15.1	Grounds for statement	19
15.2	Who may request	19
15.3	How request to be made	19
15.4	Copies for signing	19
15.5	Distribution of statement	19
15.6	When Company bears cost	19
15.7	When Members bear cost	20
15.8	When Company need not comply with request	20
<b>16</b>	<b>Holding meetings of Members</b>	<b>20</b>
16.1	Purpose	20
16.2	Time and place for meetings of Members	20
16.3	Technology	20
16.4	Representation of Member	20
16.5	Quorum	21
16.6	Chairing meetings of Members	21
16.7	Auditor's right to be heard at Members' meetings	21
16.8	Adjourned meetings	22
16.9	Annual general meetings	22
<b>17</b>	<b>Voting at Members' meetings</b>	<b>23</b>
17.1	Simple resolutions	23
17.2	How many votes a Member has	23
17.3	Objections to right to vote at a meeting of the Members	23
17.4	Votes need not all be cast in the same way	23
17.5	How voting is carried out	23
17.6	Matters on which a poll may be demanded	24
17.7	When a poll is effectively demanded	24
17.8	When and how polls must be taken	24
17.9	Personal Representative's right to vote	25
<b>18</b>	<b>Proxies</b>	<b>25</b>
18.1	Who can appoint a proxy	25
18.2	Rights of proxies	25

18.3	Company sending appointment forms or lists of proxies must send to all Members	25
18.4	Appointing a proxy	26
18.5	Proxy documents	27
18.6	Validity of proxy vote	27
19	Directors	28
19.1	Number of Directors	28
19.2	Appointment and removal of Directors	28
19.3	Interests of Directors	29
19.4	Remuneration of Directors	29
19.5	Vacation of office of Director	30
19.6	Financial benefits	30
19.7	Defect in appointment	30
19.8	Wholly owned subsidiary	30
20	Powers and discretions of Directors	31
20.1	Business of the company	31
20.2	Appointment of attorneys	31
20.3	Directors may execute security over the assets of the Company	31
20.4	Negotiable instruments	31
20.5	Directors' discretion	31
20.6	Delegation	31
21	Directors resolutions and meetings	32
21.1	Circulating resolutions	32
21.2	Calling Directors' meetings	32
21.3	Use of technology	33
21.4	Chairing Directors' meetings	33
21.5	Quorum at Directors' meetings	33
21.6	Passing of Directors' resolutions	33
21.7	Deadlock	33
22	Alternate directors	34
22.1	Appointment	34
22.2	Notice of Directors' meetings	34
22.3	Exercise of powers by alternate director	34
22.4	Termination of appointment	34
22.5	Procedures for appointment and termination	34
22.6	Automatic vacation of office	34
22.7	Entitlements	34
23	Managing director	34
23.1	Appointment	34
23.2	Powers	35
23.3	Effect of cessation of Directorship	35
23.4	Revocation or variation of appointment or powers	35
24	Secretary	35
24.1	Requirement for Secretary	35
24.2	Appointment of Secretary	35
24.3	Natural person not a minor as Secretary	35

24.4	Defect in appointment	35
24.5	Acting Secretary	35
24.6	Terms and conditions of office of Secretary	36
25	Appointment of auditor	36
26	Minutes	36
26.1	Company must keep minute books	36
26.2	Minutes to be signed	36
26.3	Resolution without meeting	37
26.4	Location of minute books	37
26.5	Inspection by Members	37
26.6	Requests by Members	37
27	Inspection of books	38
28	Notices	38
28.1	Requirements	38
28.2	When notice is given	38
28.3	Notice by Members of address for service	38
28.4	How notices are given to Members	38
28.5	How notices are given to the Company	39
28.6	When notices are taken to be given	39
28.7	Notice to Members' attorney	39
29	Liability of Members	39
30	Winding up of the public fund	39
30.1	No distribution of remaining property	39
30.2	Remaining property to be applied to particular institutions	39
31	Winding up	40
31.1	Member contribution to assets	40
31.2	No distribution of remaining property	40
31.3	Remaining property to be applied to particular institutions	40
31.4	Directors to select institution	40
31.5	Institution chosen by independent third person	40
32	Indemnity	40
32.1	Indemnity against proceedings	40
32.2	Indemnity against liabilities	41
32.3	Insuring officers of the company	41
32.4	Company may make separate contracts and bring separate actions	41
32.5	Directors may resolve to not indemnify	42
32.6	Interpretation	42
32.7	Payments not remuneration	42
33	Branch Registers	42
33.1	Keeping of branch Registers	42
33.2	Directors to determine manner in which branch Registers are kept	42
33.3	Delegation	42

34	Amending this constitution	42
34.1	By Special Resolution	42
34.2	Date effective	43
35	Dispute Resolution	43

---

## CONSTITUTION

### Thomas Kelly Youth Foundation Limited (Company)

#### 1 Interpretation

---

##### 1.1 Definitions

The following words have the following meanings in this constitution, unless the context requires otherwise.

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

**ASIC** means the Australian Securities and Investments Commission.

**Board** means the board of Directors.

**Business Day** has the meaning given in the Act.

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

**Member** means a member of the Company.

**Personal Representative** means, in respect of a Member, a person who becomes entitled to exercise the rights attaching to membership in the Company held by the Member by reason of the death, mental ill health or bankruptcy of the Member.

**Public Fund** means the Thomas Kelly Youth Foundation Public Fund

**Replaceable Rules** has the meaning given in the Act.

**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 the person appointed as the Company secretary.

**Special Resolution** has the meaning given in the Act.

**Subsidiary** has the meaning given in the Act.

##### 1.2 Interpretation

The following apply in the interpretation of this constitution, unless the context requires otherwise.

- (a) A word or an expression which is defined in the Act has the same meaning in this constitution.
- (b) A reference to the singular includes the plural number and vice versa.
- (c) A reference to a gender includes a reference to each gender.
- (d) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (e) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (f) A reference to a clause is a reference to a clause of this constitution.
- (g) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it and any regulation or other statutory instrument issued under it.
- (h) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this document, their substitutes and assigns.
- (i) **Includes** means includes but without limitation.

### **1.3 Replaceable Rules**

The Replaceable Rules do not apply in respect of the Company except as expressly stated to apply in this constitution.

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

Where this constitution requires the percentage of votes that Members have to be worked out, that percentage must be worked out as at the midnight before the relevant event.

*(This reflects various sections of the Act including sections 249D(4), 249N(4), 249P(5) and 250L(4).)*

### **1.5 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.

*(This reflects section 250D(4) of the Act.)*



## **2 Company limited by guarantee**

---

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

## **3 Objects of the company**

---

### **3.1 Charitable objects**

- (a) The Company is a not for profit charitable institution established and located in Australia.
- (b) The principal object of the Company is to reduce alcohol-related violence and anti-social behaviour amongst young people in Australia by raising community awareness and contributing to the formation of government regulation and industry practice.
- (c) The principal activity of the Company is the promotion of the prevention or the control of human behaviour that is harmful or abusive to human beings, including but not restricted to behaviour arising from substance abuse relating to alcohol consumption.
- (d) Without limiting the generality of clauses 3.1(b) and (c), in pursuing the principal object and achieving the principal activity for which the Company is established, the Company will seek to:
  - (i) collect and collate data concerning incidents of alcohol-related violence at specific entertainment venues and within specific districts to provide reports to media and all levels of government;
  - (ii) engage with entertainment venues and representatives from the liquor and hotels industries to formulate policies targeted to reduce the likelihood of alcohol-related anti-social behaviour;
  - (iii) establish an interactive social media platform to engage with the youth community and provide a ranking system to rate the safety of specific venues and districts;
  - (iv) establish an annual youth forum event to heighten community awareness of the risks posed by alcohol-related anti-social behaviour to the youth community;
  - (v) develop education programs targeting at-risk demographics;
  - (vi) establish and maintain a public fund, the sole purpose of which will be to receive all gifts of money or property from the public for the objects stated in clause 3.1; and
  - (vii) do all things as are incidental or conducive to the attainment of any or all of the objects stated in clause 3.1.

#### **4 No acting as a conduit**

---

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

#### **5 Public Fund**

---

- (a) The Company will establish and maintain a public fund being the Public Fund which will be operated on a not-for-profit basis.
- (b) The objective of the Public Fund is to promote the prevention or the control of behaviour that is harmful or abusive to human beings.
- (c) Members of the public will be invited to make gifts of money or property to the Public Fund.
- (d) The Company will maintain a separate bank account for the Public Fund to which gifts of money, including interest accruing will be credited. Such monies will be kept separate from other funds of the Company and any money received because of such gifts must be credited to its bank account. The Public Fund must not receive any other money or property into its account and it must comply with Subdivision 30-EA of ITAA.
- (e) Money from interest on donations, income derived from donated property and money from the realisation of such property is to be deposited into the Public Fund.
- (f) The Public Fund will be administered by a public fund management committee or a subcommittee of the management committee, the majority of whom will have the requisite degree of responsibility to the wider Australian community by virtue of their tenure of public office or their position in the community.
- (g) No monies or assets in the Public Fund will be distributed to members or office bearers of the Company, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- (h) Receipts are to be issued in the name of the Public Fund and proper accounting records and procedures are to be kept and used for the Public Fund. Receipts issued by the Public Fund for gifts will state:
  - (A) that the receipt is for a gift made to the Public Fund;
  - (B) the Australian Business Number of the association;
  - (C) the fact that the receipt is for a gift; and
  - (D) any other matter required to be included on the receipt pursuant to the requirements of the Income Tax Assessment Act 1997.

## **6 Agreement to abide by ministerial rules**

---

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

## **7 Provision of statistical information**

---

- (a) The Public Fund will provide statistical information on gifts made to it in accordance with subdivision 30-EA of the Income Tax Assessment Act 1997 and the Guidelines to the Register of Harm Prevention Charities.
- (b) An audited financial statement for the Company and the Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Public Fund monies and the management of Public Fund assets.

## **8 Informing the department**

---

The Company will notify the department responsible for the administration of the Register of Harm Prevention Charities if there are:

- (a) changes to its principal activity;
- (b) changes to its name or the name of the Public Fund;
- (c) changes to the membership of the management committee of the Public Fund;
- (d) any departures from the model rules for public funds located in the Guidelines to the Register of Harm Prevention Charities; or
- (e) financial difficulties suffered by the Company or the Public Fund.

## **9 Powers of the Company**

---

### **9.1 Legal capacity and powers of the Company**

The Company has the legal capacity and powers of an individual anywhere in the world. The Company also has all the powers of a body corporate, including the power to:

- (a) issue debentures;
- (b) grant a circulating security interest over the Company's property;

- (c) arrange for the Company to be registered or recognised as a body corporate in any place outside the jurisdiction in which the Company is registered; and
- (d) do anything that it is authorised to do under any law (including a law of a foreign country).

*(This reflects section 124 of the Act.)*

## **9.2 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 the expression "Australian Company Number" (or "ACN") and the Company's ACN.

*(This reflects sections 123 and 149(1) of the Act.)*

- (b) 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.

## **9.3 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.

*(This reflects section 126 of the Act.)*

## **9.4 Execution of documents by the Company**

- (a) The Company may execute a document if the document is signed by:
  - (i) 2 Directors; or
  - (ii) a Director and Secretary.

*(This reflects section 127(1) of the Act.)*

- (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) 2 Directors; or
  - (ii) a Director and a Secretary.

*(This reflects section 127(2) of the Act.)*

## **10 Income and property of the Company**

---

### **10.1 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 as described in clause 3.

### **10.2 No payments to Members**

Subject to clause 10.3, no part of the income or property of the Company may be paid by way of dividend, bonus or otherwise to the Members.

### **10.3 Payments in good faith**

Nothing in this constitution prevents the Company from making payment in good faith:

- (a) by way of reimbursement for out-of pocket expenses incurred on behalf of the Company;
- (b) of reasonable and proper remuneration or compensation for services rendered;
- (c) to any Member 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; or
- (d) of reasonable interest on any money lent to the Company by any Member.

## **11 Membership**

---

### **11.1 Entry as a Member**

- (a) A general meeting of the Members or a duly constituted meeting of the Directors may resolve to invite a person to apply to be a Member.
- (b) Any person invited to apply to be a Member under clause 11.1(a) must pay the annual membership fee as determined by the Directors and comply with the conditions or requirements stipulated by the Directors or approved by the Members in general meeting, from time to time.
- (c) Every applicant for membership of the Company must sign an undertaking to be bound by the provisions of this constitution.
- (d) Admission to membership will only become effective upon the passing of a resolution of the Directors that the Member's name be entered into the Register. The Directors must not unreasonably delay consideration of such a resolution.
- (e) The rights and privileges of a Member are personal, non transferable and cease on death (if a Member is a natural person) or insolvency (if a Member

is a body corporate) as the case may be, or on the cessation of a Member's membership.

## **11.2 Expulsion of Members**

- (a) If any Member wilfully refuses or neglects to comply with the provisions of this constitution, has conducted itself in a way which has brought discredit upon the Company, or fails to pay an annual membership fee if required in accordance with clause 6.1, the Directors may by resolution expel that Member from the Company and remove that Member's name from the Register.
- (b) The Member in respect of which a resolution under clause 11.2(a) is proposed, must be given at least 14 days notice of the Director's meeting at which the resolution is to be considered and must be given an opportunity to:
  - (i) attend the meeting; and
  - (ii) give a written explanation or defence in relation to the resolution proposed under clause 11.2(a).

## **11.3 Cessation of membership**

A Member will cease to be a Member if the Member gives written notice of its resignation to the Company and the resignation is accepted by the Directors.

## **12 Circulating resolutions of Members**

---

### **12.1 Circulating resolutions when more than 1 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 all the Members 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 Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Member signs the document.
- (d) This clause does not affect any rule of law relating to the assent of Members not given at a general meeting.

### **12.2 Resolutions of company when 1 Member**

If the Company has only 1 Member, that Member may pass a resolution by the Member recording it and signing the record.

*(This reflects section 249B(1) of the Act.)*

### **13 Calling meetings of Members**

---

#### **13.1 Calling of meetings of Members by a Director**

A Director may call a meeting of the Members.

*(This reflects section 249C of the Act which is a Replaceable Rule.)*

#### **13.2 Calling of 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:
  - (i) Members with at least 5% of the votes that may be cast at the general meeting; or
  - (ii) at least 100 Members (or such different number as may be prescribed by the regulations) who are entitled to vote at the 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.

*(This reflects section 249D of the Act.)*

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

- (a) Members with more than 50% of the votes of all of the Members who make a request under clause 13.2 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 under clause 8.3(d) from the Directors. However, a Director is not liable for the amount if that Director proves that all reasonable steps to cause the Directors to comply with clause 13.2 have been taken. 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.

*(This reflects section 249E of the Act.)*

#### **13.4 Calling of 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. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (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.

*(This reflects section 249F of the Act.)*

#### **13.5 Amount of notice of meetings**

- (a) Subject to clause 13.5(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) The 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 13.5(d).
- (d) At least 21 days notice must be given of a meeting of the 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 19.2(c) or appoint a Director in place of a Director removed under that clause.

*(This reflects section 249H of the Act.)*



### 13.6 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.

*(This reflects section 249J(1) of the Act.)*

- (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;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by the Member;
  - (iv) by sending it to the Member by other electronic means (if any) nominated by the Member; or
  - (v) by notifying the Member in accordance with clause 13.6(c).

*(This reflects section 249J(3) of the Act.)*

- (c) If the Member nominates:
- (i) an electronic means (**nominated notification means**) by which the Member may be notified that notices of meeting are available; and
  - (ii) an electronic means (**nominated access means**) the Member may use to access notices of meeting,

the Company may give the Member notice of the meeting by notifying the Member (using the nominated notification means) that the notice of meeting is available and how the Member may use the nominated access means to access the notice of meeting.

*(This reflects section 249J(3)(A) of the Act.)*

- (d) A notice of meeting sent by post is taken to be given 2 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent. A notice of meeting given under clause 8.6(c) is taken to be given on the Business Day after the member is notified that the notice of meeting is available.

*(This reflects sections 249J(4) and 249J(5) of the Act which are Replaceable Rules.)*

### 13.7 Auditor entitled to notice and other communications

The Company must give the Company's auditor (if any):

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and

- (b) any other communications relating to the general meeting that a Member is entitled to receive.

*(This reflects section 249K of the Act.)*

### **13.8 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;
  - (ii) whether or not the proxy needs to be a Member;
  - (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise,

and the information included in the notice must be worded and presented in a clear, concise and effective manner.

*(This reflects section 249L of the Act.)*

### **13.9 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.

*(This reflects section 249M of the Act which is a Replaceable Rule.)*

### **13.10 Cancelled general meetings**

When a notice of a meeting has been given, the Board may, by notice given to all persons entitled to be given notice of the meeting, postpone or cancel the meeting. Notice under this clause 13.10 can be given in the same manner as set out in clause 13.5.

### **13.11 Accidental omission or non-receipt of notice**

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

*(This reflects sections 1322(3) and 1322 (3AA) of the Act.)*

## **14 Members' rights to put resolutions at general meetings**

---

### **14.1 Members' resolutions**

- (a) The following Members may give the Company notice of a resolution that they propose to move at a general meeting:
  - (i) Members with at least 5% of the votes that may be cast on the resolution; or
  - (ii) at least 100 Members (or some different number as may be prescribed by the regulations) who are entitled to vote 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.

*(This reflects section 249N(1) and (2) of the Act.)*

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

- (a) If the Company has been given notice of a resolution under clause 14.1, 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 Company does 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 are to bear the expenses of sending the notice out, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

*(This reflects section 249O of the Act.)*

## **15 Members' statements to be distributed**

---

### **15.1 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.

### **15.2 Who may request**

The request must be made by:

- (a) Members with at least 5% of the vote that may be cast on the resolution; or
- (b) at least 100 Members (or a different number as may be prescribed by the regulations) who are entitled to vote at the meeting.

### **15.3 How request to be made**

The request must be:

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

### **15.4 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.

### **15.5 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.

### **15.6 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.

### **15.7 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.

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

The Company need not comply with the request if:

- (a) the statement is more than 1,000 words long or defamatory; or
- (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.

*(This reflects section 249P of the Act.)*

## **16 Holding meetings of Members**

---

### **16.1 Purpose**

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

*(This reflects section 249Q of the Act.)*

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

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

*(This reflects section 249R of the Act.)*

### **16.3 Technology**

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.

*(This reflects section 249S of the Act.)*

### **16.4 Representation of Member**

A Member may be present and vote in person at any Members' meeting or may be represented by:

- (a) proxy;
- (b) an attorney; or
- (c) in the case of a body corporate which is a Member, a representative appointed in accordance with the Act.

## 16.5 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 Member, that Member; and
  - (ii) otherwise, 2 Members.
- (b) If within 15 minutes from the time appointed for the meeting, a quorum of Members is not present, the meeting:
  - (i) is dissolved if convened on the requisition of the Members; and
  - (ii) otherwise, is adjourned to the same day in the next week at the same time and place, or to another day, time and place as the Directors decide, and if at the adjourned meeting a quorum of Members is not present within 15 minutes after the time appointed for the meeting, the meeting is dissolved.
- (c) If a person has appointed more than 1 proxy, attorney or representative, only 1 of those proxies, attorneys or representatives is to be counted in deciding whether a quorum of Members is constituted.

*(This substitutes for section 249T of the Act which is a Replaceable Rule.)*

## 16.6 Chairing meetings of Members

- (a) The chairperson, if any, of the Board is to be the chairperson at every general meeting of the Company.
- (b) If the chairperson of the Board cannot or will not chair a general meeting (or part of it) 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 chairperson of the meeting but, if they do not do so, the Members present must elect the chairperson of the meeting.
- (c) The chairperson must adjourn a meeting of the Members if the Members present with a majority of votes at the meeting agree or direct that the chairperson do so.

*(This substitutes for section 249U of the Act which is a Replaceable Rule.)*

## 16.7 Auditor's right to be heard at Members' meetings

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

*(This reflects section 249V of the Act.)*

#### **16.8 Adjourned meetings**

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

*(This reflects section 249W(1) of the Act.)*

- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

*(This reflects section 249W(2) of the Act which is a Replaceable Rule.)*

#### **16.9 Annual general meetings**

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

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

*(See the requirements of section 250N of the Act.)*

- (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.

*(This reflects section 250R of the Act.)*

- (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 the auditor's representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

*(This reflects sections 250S and 250T of the Act.)*

## **17 Voting at Members' meetings**

---

### **17.1 Simple resolutions**

Subject to this constitution and the Act, resolutions of Members are to be decided by a simple majority of votes cast in respect of the relevant resolution.

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

At a Members' meeting:

- (a) on a show of hands, each Member has 1 vote;
- (b) on a poll, each Member has 1 vote; and
- (c) if there are more than two Members present and voting, the chairperson of the meeting does not have a casting vote in addition to any vote the chairperson has as a Member.

*(This substitutes for section 250E of the Act which is a Replaceable Rule.)*

### **17.3 Objections to right to vote at a meeting of the Members**

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

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

*(This substitutes for section 250G of the Act which is a Replaceable Rule.)*

### **17.4 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.

*(This reflects section 250H of the Act.)*

### **17.5 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 chairperson 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.

*(This substitutes for section 250J of the Act which is a Replaceable Rule.)*

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

- (a) A poll may be demanded on any resolution.
- (b) Without limiting clause 17.6(a), a poll cannot 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.

*(This reflects section 250K of the Act.)*

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

- (a) At a Members' meeting a poll may be demanded by:
  - (i) at least 5 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;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results are declared.

*(This reflects section 250L of the Act.)*

#### **17.8 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.

*(This substitutes for section 250M of the Act which is a Replaceable Rule.)*

### **17.9 Personal Representative's right to vote**

A Personal Representative of a Member may vote at any Members' meeting in the same manner as if the Personal Representative was the Member if:

- (a) at least 48 hours before the time of holding the meeting (or adjourned meeting), at which the Personal Representative proposes to vote, the Personal Representative has satisfied the Directors of the Personal Representative's entitlement; or
- (b) the Directors have previously admitted the Personal Representative's right to vote at such meeting.

## **18 Proxies**

---

### **18.1 Who can appoint a proxy**

Each Member who is entitled to attend and vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

*(This reflects section 249X of the Act.)*

### **18.2 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;
- (b) to vote (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

*(This reflects section 249Y(1) of the Act.)*

### **18.3 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.

*(This reflects section 249Z of the Act.)*

#### **18.4 Appointing a proxy**

- (a) An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the Corporations Regulations 2001 (Cth), 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

An appointment may be a standing one.

- (b) The chairperson of the Board may determine in the chairperson's absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 18.4(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 it does:
  - (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 held 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.

*(This reflects sections 250A and 250BB of the Act)*

### **18.5 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 in the Corporations Regulations 2001 (Cth), by the appointor's attorney, the authority under which the appointment was signed 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 a document referred to in clause 18.5(a) when it is received at any of the following:

- (i) the Company's registered office;
- (ii) a fax number at the Company's registered office; or
- (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting; and

if the notice of the meeting specifies other electronic means by which a Member may give the document, then the Company receives it when the document given by those means is received by the Company as prescribed by the regulations.

- (d) The Company may specify in the notice of meeting a shorter period than the 48 hours referred to in this clause.

*(This reflects section 250B of the Act.)*

### **18.6 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 the proxy's appointment specifies the way the proxy can vote on the resolution and the proxy votes that way.

*(This reflects section 250C(1) of the Act.)*

- (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.

*(This reflects section 250C(2) of the Act which is a Replaceable Rule.)*

## **19 Directors**

---

### **19.1 Number of Directors**

The Company must have at least 3 Directors (not counting alternate Directors) of which at least 2 must be ordinarily resident in Australia.

*(This reflects section 201A(2) of the Act.)*

### **19.2 Appointment and removal of Directors**

- (a) The Directors may appoint a person as a Director. A person can be appointed as a Director in order to make up a quorum for a Directors' meeting even if the total number of Directors of the Company is not enough to make up that quorum.

*(This reflects section 201H(1) of the Act which is a Replaceable Rule.)*

- (b) If a person is appointed by the other Directors as a Director, the appointment must be confirmed by resolution at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the annual general meeting.

*(This reflects section 201H(3) of the Act which is a Replaceable Rule.)*

- (c) The Company may by resolution:
  - (i) remove a Director from office despite anything in this constitution, any agreement between the Company and the Director or any agreement between any or all Members and the Director;

*(This reflects section 203D(1) of the Act. As to further provisions regarding removal see sections 203D(2) to (7) and section 203E of the Act.)*

- (ii) appoint a new Director.

*(This substitutes section 201G of the Act which is a Replaceable Rule.)*

- (d) A resolution passed by the Company in a general meeting appointing or confirming the appointment of 2 or more Directors will be void unless it was first unanimously resolved at the meeting that the appointments or confirmations may be voted on together.

*(This reflects section 201E of the Act.)*

### **19.3 Interests of Directors**

- (a) Subject to clause 19.4, a Director may not hold any office or position of profit under the Company or under any company promoted by the Company or in which the Company is a shareholder or otherwise interested.
- (b) Notwithstanding 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.
- (c) 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 unless section 191(2) of the Act says otherwise.

*(This reflects section 191(1) of the Act.)*

- (d) Subject to clauses 19.3(e) and (f) below, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting and must not vote on the matter, except if the interest does not need to be disclosed under section 191 of the Act.
- (e) 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 being present or voting,

then the Director may be present and/or vote as allowed in the resolution.

- (f) The Director may be present and/or vote if so entitled under a declaration or order made by ASIC under section 196 of the Act.
- (g) If there are not enough Directors to form a quorum for a Directors' meeting because of subclause 19.4(d), 1 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.

*(See sections 195 and 196 of the Act.)*

### **19.4 Remuneration of Directors**

- (a) The Directors are not entitled to be paid for their services.

- (b) Subject to the approval of the Directors in accordance with clause 21.6, the Directors may be reimbursed for all expenses properly incurred in attending or in connection with their attendance at any meeting of the Company or of the Board or any committee of Directors.
- (c) Any other payments by the Company to Directors, including payments for a service rendered to the Company by a Director in a professional or technical capacity or as an employee or by way of indemnification must be approved by the Directors in accordance with clause 21.6.

#### **19.5 Vacation of office of Director**

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

- (a) resigns by giving written notice to the Company at its registered office;
- (b) is removed pursuant to clause 19.2(c)(i) of this constitution;
- (c) is removed from office in accordance with this constitution or the Act; or
- (d) is disqualified from managing corporations under Part 2D.6 of the Act.

*(This reflects sections 203A and 203B of the Act.)*

#### **19.6 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.

#### **19.7 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.

*(See section 201M of the Act.)*

#### **19.8 Wholly owned subsidiary**

Each Director is expressly authorised to act in the best interests of any holding company of the Company.

*(See section 187 of the Act.)*

## **20 Powers and discretions of Directors**

---

### **20.1 Business of the company**

- (a) The business of the Company must be managed by or under the direction of the Directors.
- (b) The Directors 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.
- (c) No resolution made by the Company in general meeting invalidates any prior act of the Directors which would have been valid if the resolution had not been made.

*(This substitutes for section 198A of the Act which is a Replaceable Rule.)*

### **20.2 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 the conditions the Directors think fit.

### **20.3 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.

### **20.4 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.

*(This substitutes for section 198B of the Act which is a Replaceable Rule.)*

### **20.5 Directors' discretion**

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

### **20.6 Delegation**

- (a) The Directors may delegate any of their powers to:
  - (i) a committee of Directors;



- (ii) a Director;
- (iii) an employee of the Company; or
- (iv) any other person.

*(This reflects sections 198D(1) of the Act.)*

- (b) The delegate must exercise the powers delegated in accordance with any directions of the Directors.

*(This reflects section 198D(2) of the Act.)*

- (c) The exercise of the power by the delegate is as effective as if the Directors had exercised it.

*(This reflects section 198D(3) of the Act.)*

- (d) The meetings and proceedings of a committee must be carried out in accordance with the provisions in this constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.
- (e) If the Directors delegate a power under clause 20.6(a), the Directors are responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves unless exonerated under section 190(2) of the Act.

*(This reflects section 190(1) of the Act.)*

## **21 Directors resolutions and meetings**

---

### **21.1 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 resolution is passed when the last Director signs.

*(This reflects section 248A of the Act which is a Replaceable Rule.)*

### **21.2 Calling Directors' meetings**

A Directors' meeting may be called by a Director, or the Secretary on the request of a Director, giving reasonable notice individually to every other Director.

*(This adds to section 248C of the Act which is a Replaceable Rule.)*

### **21.3 Use of technology**

A Directors' meeting may be called or held by any technology consented to by all the Directors and such consent may only be withdrawn within a reasonable period before the meeting.

*(This reflects section 248D of the Act.)*

### **21.4 Chairing Directors' meetings**

The Directors may elect a Director to chair their meetings and determine the period for which the Director is to be the chairperson. If no chairperson is elected, or a previously elected chairperson is not available or declines to act for the meeting or a part of the meeting, the Directors must elect one of their number present to chair the meeting or the part of the meeting in respect of which the previous elected chairperson is unavailable or declines to act.

*(This substitutes for section 248E of the Act which is a Replaceable Rule.)*

### **21.5 Quorum at Directors' meetings**

- (a) A quorum for a meeting of the Board is constituted by 2 Directors or such other number determined by the Board.
- (b) The quorum must be present at all times during the meeting.

*(This substitutes for section 248F of the Act which is a Replaceable Rule.)*

### **21.6 Passing of Directors' resolutions**

Resolutions of the Directors must be passed by a majority of votes cast by Directors entitled to vote on the resolution. Each Director present at a Board meeting has 1 vote on each resolution of the Board upon which it is entitled to vote. In the case of an equality of votes, the chairperson does not have a second or casting vote.

*(This substitutes for section 248G of the Act which is a Replaceable Rule.)*

### **21.7 Deadlock**

- (a) If the Board is unable to make a decision on an issue resulting in a deadlock, the Board must confer to resolve a course of action.
- (b) If the Board does not make a decision on the relevant issue within 30 days then the issue must be put to a resolution of the Members at the next general meeting of the Company.

## **22 Alternate directors**

---

### **22.1 Appointment**

A Director may appoint an alternate director to exercise some or all of the Director's powers for a specified period.

### **22.2 Notice of Directors' meetings**

If the appointing Director requests the Company to give the alternate director notice of Directors' meetings, the Company must give reasonable notice to the alternate director.

### **22.3 Exercise of powers by alternate director**

The exercise of a Director's power by an alternate director has the same effect as would the exercise of the power by the Director.

### **22.4 Termination of appointment**

The appointing Director may terminate the alternate director's appointment at any time.

### **22.5 Procedures for appointment and termination**

An appointment or termination of an alternate director must be made in writing and submitted to the Company at its registered office.

### **22.6 Automatic vacation of office**

The office of an alternate director will immediately become vacant if:

- (a) the appointing Director terminates the appointment in accordance with clause 12.5; or
- (b) the appointing Director ceases to be a Director.

### **22.7 Entitlements**

An alternate director is entitled to be paid the expenses payable to a Director for acting as a Director as provided for in this constitution but is not entitled to receive Directors' fees.

*(This substitutes section 201K of the Act which is a Replaceable Rule.)*

## **23 Managing director**

---

### **23.1 Appointment**

The Directors may appoint 1 or more of themselves to the office of managing director of the Company for the period and on the terms (including as to remuneration) as the Directors see fit.

*(This reflects section 201J of the Act which is a Replaceable Rule.)*

## **23.2 Powers**

The Directors may confer on a managing director any of the powers that the Directors can exercise.

## **23.3 Effect of cessation of Directorship**

A person ceases to be managing director if the person ceases to be a Director.

*(This reflects section 203F(1) of the Act which is a Replaceable Rule.)*

## **23.4 Revocation or variation of appointment or powers**

The Directors may revoke or vary an appointment or any of the powers conferred on the managing director.

*(This substitutes section 203F(2) of the Act which is a Replaceable Rule.)*

## **24 Secretary**

---

### **24.1 Requirement for Secretary**

The Company must have at least 1 Secretary who ordinarily resides in Australia.

*(This reflects section 204A(2) of the Act.)*

### **24.2 Appointment of Secretary**

A Secretary must be appointed by the Directors.

*(This reflects section 204D of the Act.)*

### **24.3 Natural person not a minor as Secretary**

Only an individual who is at least 18 may be appointed as a Secretary.

*(This reflects section 204B(1) of the Act.)*

### **24.4 Defect in appointment**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person as a Secretary, an act done by the person as Secretary is valid as if the person had been duly appointed and was qualified to be a Secretary.

*(This is based on section 204E(1) of the Act.)*

### **24.5 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 of the Company may be authorised by the Directors to act as Secretary, either generally or in relation to the doing of that act or thing.

#### **24.6 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.

*(This reflects section 204(F) of the Act which is a Replaceable Rule.)*

- (b) The Directors may vary, terminate or suspend any appointment of a person as a Secretary.

#### **25 Appointment of auditor**

---

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

*(This reflects section 327A(1) of the Act. For other requirements see sections 327A-I, 328A-B and 329 of the Act.)*

#### **26 Minutes**

---

##### **26.1 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.

*(This reflects section 251A(1) of the Act.)*

##### **26.2 Minutes to be signed**

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

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

*(This reflects section 251A(2) of the Act.)*

### **26.3 Resolution without meeting**

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

*(This reflects section 251A(3) of the Act.)*

### **26.4 Location of minute books**

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

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

*(This reflects section 251A(5) of the Act.)*

### **26.5 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.

*(This reflects section 251B(1) of the Act.)*

### **26.6 Requests by Members**

- (a) A Member may ask the Company in writing for a copy of:
  - (i) any minutes of a meeting of the 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 within:
  - (i) 14 days after the Member asks for it; or
  - (ii) any longer period that ASIC approves.
- (c) If the Company requires payment for the copy, the Company must send it within:
  - (i) 14 days after the Company receives the payment; or
  - (ii) any longer period that ASIC approves.

*(This reflects section 251B of the Act.)*

## **27 Inspection of books**

---

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

*(This substitutes for section 247D of the Act which is a Replaceable Rule.)*

- (b) The Directors may determine whether and to what extent, and at what times and places, and under what conditions or regulations, the financial 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 to inspect any financial record of the Company, except as conferred by statute or specifically authorised by the Directors.

## **28 Notices**

---

### **28.1 Requirements**

Any notice or other communication required to be given by this constitution must be in writing.

### **28.2 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 nor the day on which the action is to be taken may be counted in calculating the period.

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

Each Member must notify the Company in writing of one or more of the following addresses for the purpose of notices:

- (a) postal address;
- (b) email address; and
- (c) fax number.

These addresses and details must be recorded in the Register.

### **28.4 How notices are given to Members**

Subject to the Act and this constitution, the Company may give notice to a Member:

- (a) by serving it on the Member personally;
- (b) by post or delivery to the postal address of the Member as recorded in the Register;
- (c) by sending it to the fax or email address of the Member as recorded in the Register; or

(d) by any other means consented to by the Member.

#### **28.5 How notices are given to the Company**

Notices are to be given to the Company by post or delivery to the registered office of the Company.

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

- (a) A notice sent by post is taken to be given 2 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.
- (c) 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.

#### **28.7 Notice to Members' attorney**

A Member may, by written notice to the Company, request that all notices to be given by the Company or the Directors to the Member be served on the Member's attorney at an address specified in the notice.

### **29 Liability of Members**

---

The liability of the Members of the Company is limited.

### **30 Winding up of the public fund**

---

#### **30.1 No distribution of remaining property**

If upon the winding-up or dissolution of the Public Fund, there remains after satisfaction of all its debts and liabilities, any property or funds, the property or funds shall not be paid to or distributed among its members

#### **30.2 Remaining property to be applied to particular institutions**

All remaining property under clause 30.1 shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this public fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B of the Income Tax Assessment Act 1997 and listed on the Register of Harm Prevention maintained under the Act.



## **31 Winding up**

---

### **31.1 Member contribution to assets**

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:

- (a) debts and liabilities of the Company contracted before the Member's membership ceases;
- (b) costs, charges and expenses of the winding up of the Company; and
- (c) adjustment of the rights of the contributories amongst themselves,

such amount as may be required but not exceeding \$10.00.

### **31.2 No distribution of remaining property**

- (a) 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, whether directly or indirectly, among the Members.
- (b) If the income tax exempt endorsement received from the Australian Taxation Office is revoked, any property must not be paid or distributed, whether directly or indirectly, amongst the Members of the Company.

### **31.3 Remaining property to be applied to particular institutions**

All remaining property of the Company under clause 31.2 must be paid and applied by the Company to any charitable entity or organisation in Australia.

### **31.4 Directors to select institution**

The Directors must before or at the time of dissolution or winding up of the Company select the institution or institutions to which property will be transferred under clause 31.2.

### **31.5 Institution chosen by independent third person**

If a selection cannot be made under clause 31.4, the selection will be determined by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.

## **32 Indemnity**

---

### **32.1 Indemnity against proceedings**

Subject to clause 32.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate 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.

*(See section 199A(3) of the Act.)*

### **32.2 Indemnity against liabilities**

Subject to clause 32.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate 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.

*(This reflects section 199A(2)(c) of the Act.)*

### **32.3 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 against:

- (a) any liability incurred by that person as such a Director, Secretary or executive officer 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

*(This reflects section 199B of the Act.)*

- (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.

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

- (a) The Company may confirm the indemnities in clauses 32.1 and 32.2 by separate contract with, or on behalf of, 1 or more of the persons indemnified.
- (b) The indemnities given by the Company in clauses 32.1 and 32.2 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, including any demand or action arising out of the negligence of that person.

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

The Directors may resolve that the indemnities in clauses 32.1 and 32.2:

- (a) are not to apply to a specified person or class of persons; or
- (b) will not apply unless the Company has confirmed the indemnity under clause 32.4(a) by a contract which is in force.

### **32.6 Interpretation**

Nothing in clauses 32.1 to 32.5 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.

### **32.7 Payments not remuneration**

Any payment made by the Company under clauses 32.1 to 32.3 does not constitute remuneration for the purposes of this constitution.

## **33 Branch Registers**

---

### **33.1 Keeping of branch Registers**

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

### **33.2 Directors to determine manner in which branch Registers are kept**

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

### **33.3 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.

## **34 Amending this constitution**

---

### **34.1 By Special Resolution**

Subject to the Act, the Company may modify or repeal this constitution or a provision of this constitution by Special Resolution.

*(This reflects section 136(2) of the Act.)*

### 34.2 Date effective

A Special Resolution modifying or repealing this constitution takes effect on the later of:

- (a) the date on which the resolution is passed; or
- (b) the date specified in or determined in accordance with the resolution.

*(This reflects section 137 of the Act.)*

### 35 Dispute Resolution

---

- (a) A dispute or disagreement arising between Members, between Directors, or between any of them, in connection with the activities of the Company (**Dispute**) must be notified to all parties affected by the Dispute and the Company and such parties will use their best endeavours to resolve the Dispute between themselves.
- (b) If the Dispute is not resolved within 10 Business Days of the Company being notified of the Dispute, the Dispute will be referred to the Board.
- (c) If the Board fails to resolve the Dispute within 10 Business Days of referral to the Board, the Dispute must then be submitted to mediation, or other dispute resolution process, provided the parties agree within a further 10 Business Days:
  - (i) a procedure and timetable for any exchange of documents or other information relating to the dispute;
  - (ii) the procedural rules and a timetable for the conduct of the mediation;
  - (iii) a procedure for selection and compensation of the mediator or other independent person; and
  - (iv) whether the parties should seek the assistance of a dispute resolution organisation in an administrative capacity or otherwise,and if so agreed, the parties must submit to the process and comply with the procedures, timetable, rules and other requirements.
- (d) A party must not refer a Dispute to litigation unless:
  - (i) the other party has failed to attempt to resolve the Dispute in accordance with this clause;
  - (ii) the parties have failed to agree any of the matters specified in clause 35(c); or
  - (iii) if the matter has been referred to mediation or other dispute resolution process, 14 days have elapsed after the process has

been completed or terminated earlier by either party in accordance with the agreed rules but the Dispute is not resolved.

- (e) Pending resolution of any Dispute, all parties must continue to adhere to and perform their duties and responsibilities as Member or Director of the Company to the extent possible unless otherwise resolved by the Company.