

# Constitution of CDH Australia

comprising:

Constitution adopted on registration 28 May 2008 as CHERUBS Australia Organisation

as amended by:

- Special Resolution dated 22 August 2008
- Special Resolution dated 15 March 2010

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# 1 Name of Corporation

The name of the Company is **CDH Australia**.

# 2 Status of the Constitution

This is the Constitution of the Company. This Constitution displaces the Replaceable Rules, accordingly, none of the Replaceable Rules apply.

# 3 Interpretation

## 3.1 Definitions

In this Constitution:

**Auditor** means the person appointed for the time being as the auditor of the Company.

**Board** means the Directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present.

**Company** means **CDH Australia**.

**Corporate Member** means a Member which is a body corporate.

**CDH** means congenital diaphragmatic hernia.

**Constitution** means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.

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

**Director** means a person who is a director for the time being of the Company and **Directors** means more than one Director, and in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include alternates.

**Member** means a person who is, or who is registered as, a member of the Company and **Members** means more than one Member.

**Member's Guarantee Amount** means \$10.00.

**Membership** means being a Member of the Company.

**Register of Members** means the register of Members maintained pursuant to the Corporations Act.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

**Seal** means the common seal for the time being of the Company.

**Secretary** means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

**Tax Act** means the *Income Tax Assessment Act 1997*.

## **3.2 Interpretation**

In this Constitution:

- (a) the words “including”, “include” and “includes” are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a “person” includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act when used in this Constitution.

## **4 Objects and purpose**

### **4.1 Objects and purpose**

- (a) The objects of the Company are:
  - (i) to conduct research into CDH, and to support and fund research programmes in relation to CDH;
  - (ii) to conduct, support and fund education programmes in relation to CDH, for example:
    - (A) educational booklets and brochures about CDH for hospitals and communities;
    - (B) education and supervision for volunteer parent supporters;
    - (C) community education for health professionals, interested groups and individuals;
    - (D) a referral network to programmes helping with care and treatment of children with CDH;
  - (iii) to provide assistance and support for families affected by CDH, for example:
    - (A) 24 hour outreach services;
    - (B) specialised family support programs;
    - (C) a referral network of professional counselling services for bereaved families of CDH;
    - (D) access to peer support for bereaved families of CDH;
  - (iv) to receive gifts and donations, and otherwise raise funds or participate in fundraising:
    - (A) for research into CDH;

- (B) for development of the Company's services and maintenance of the Company's programmes.
- (b) In relation to these objects, the Company will do all other lawful things as are incidental or conducive to the attainment of these objects or any of them or which may be calculated to advance directly or indirectly the interests of the Company.

#### **4.2 Income and property to be applied for objects**

- (a) The income and property of the Company, however derived, must be applied solely towards the promotion of the objects of the Company.
- (b) The Company must:
  - (i) apply the income and property of the Company solely in Australia; and
  - (ii) incur expenditure principally in Australia.

#### **4.3 No profit to Members**

No part of the income or property of the Company shall be transferred directly or indirectly by way of profit to or amongst the Members.

#### **4.4 Remuneration and reimbursement**

Nothing in this constitution prevents:

- (a) the repayment to any Member of money lent to the Company by that Member, or the payment in good faith of interest at reasonable rates on moneys lent to the Company by a Member;
- (b) the payment of remuneration to any officers, agents, employees or other servants of the Company, in return for services rendered to the Company by that person;
- (c) the payment of remuneration to any Member or to any person in return for services rendered to the Company by that Member or other person;
- (d) the reimbursement or repayment to any Member of out-of-pocket expenses, reasonable and proper charges for plant, equipment or other goods hired by the Company from a Member, payment for goods supplied by a Member in the ordinary and usual course of business, or reasonable and proper rent for premises leased to the Company by a Member.

#### **4.5 Gift Fund**

- (a) The Company must, if required under the Tax Act, establish and maintain a gift fund which meets the requirements of the Tax Act.
- (b) Without limiting **clause 4.5(a)**:
  - (i) all gifts and donations, and income derived from them and accretions to them, must be paid in to or credited to the gift fund, and the gift fund must not receive any other property;
  - (ii) a separate bank account shall be opened and maintained for the gift fund, and only gifts and donations and income derived from

them and accretions to them, shall be received or credited to the gift fund; and

- (iii) receipts for gifts and donations shall be issued in the name of the Company and the name of the gift fund is not required, but proper accounting records and procedures must be kept and used to properly identify the gift fund and record its transactions.

## 5 Powers of the Company

Under section 124 of the Corporations Act, a company has the legal capacity and powers of an individual.

## 6 Member's liability

### 6.1 Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

### 6.2 Limited liability

The amount that each Member or past Member is liable to contribute is limited to the amount of the Member's Guarantee Amount.

## 7 Members

### 7.1 Number of Members

The Company must have at least one Member.

### 7.2 Eligibility

An individual or organisation is eligible to apply to the Company to become a Member:

- (a) in the case of an individual, if the individual:
  - (i) has CDH;
  - (ii) has a child with CDH;
  - (iii) has had a child with CDH;
  - (iv) is expecting to have a child with CDH;
  - (v) works with CDH patients;
  - (vi) is an extended family member of a person with CDH; or
  - (vii) is a friend of a person with CDH; or

- (b) in the case of an organisation, if the organisation provides medical or other support services for people with CDH,

and that individual or organisation agrees to assume the liability to pay the Member's Guarantee Amount.

### **7.3 Categories of Membership**

- (a) The Company has three categories of Membership:
  - (i) Parent/Carers and Adult Survivor Member (**Ordinary Member**) – Membership of this category is for a person who:
    - (A) has CDH;
    - (B) has a child with CDH;
    - (C) has had a child with CDH; or
    - (D) is expecting to have a child with CDH.
  - (ii) Support Member – Membership of this category is for:
    - (A) an individual who works with people with CDH or their families; or
    - (B) an organisation that provides medical or other support services for people with CDH or their families.
  - (iii) Extended Family and Friends Member – Membership of this category is for a person who:
    - (A) is an extended family member of a person with CDH; or
    - (B) is a friend of a person with CDH.
- (b) The Board may from time to time:
  - (i) increase or decrease the number of categories of Membership;
  - (ii) change the description of, or eligibility for, the categories of Membership.

### **7.4 Becoming a Member**

- (a) Subject to the Corporations Act, a person becomes a Member on the registration of that person's name in the Register of Members.
- (b) The persons specified in the application for registration as the persons who consent to become Members are the first Members, and they become Members on the date of the Company's registration.

### **7.5 Application for Membership**

- (a) The Board may prescribe the form of the application for Membership.
- (b) An application for Membership must be:
  - (i) in writing signed by the applicant;
  - (ii) if the Board has prescribed the form of the application for Membership, in that prescribed form; and
  - (iii) accompanied by the applicable entrance fee.

## **7.6 Consideration for application for Membership**

The Board has an absolute discretion as to whether or not an applicant is admitted to Membership and, subject to the Constitution, as to which category of Membership.

## **7.7 Registration as Member**

If an application for Membership is accepted, the name of the applicant must be registered in the Register of Members.

## **7.8 Membership fees**

- (a) The Board may determine, from time to time the annual Membership fee and entrance fee for each category of Membership. In determining the amount of annual Membership fees and entrance fees, the Board may differentiate between:
  - (i) categories of Membership;
  - (ii) individual Members and Corporate Members,or on such other basis as the Board determines.
- (b) The Company will provide a valid tax invoice to each Member for the payment of the annual Membership fee.

## **7.9 Non-financial Member**

- (a) A Member who fails to pay any amount payable to the Company within 60 days of being required to becomes a non-financial Member of the Company.
- (b) A non-financial Member does not receive any rights or benefits of Membership of the Company.
- (c) The Board may reinstate a non-financial Member to a financial member:
  - (i) on payment of all arrears; or
  - (ii) at the Board's discretion, on payment of the prescribed annual Membership fee (even if arrears are not paid).

## **8 Rights of Members are non-transferable**

The rights and obligations of a Member are personal and are not transferable.

## **9 Cessation of Membership**

### **9.1 Cessation of Membership of an individual**

An individual ceases to be a Member:

- (a) if the person resigns as a Member in accordance with this Constitution;
- (b) if the person ceases to satisfy the eligibility requirements for Membership under this Constitution;
- (c) if the person is expelled as a Member in accordance with this Constitution;

- (d) if the person dies;
- (e) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Member;
- (f) if the person's whereabouts are unknown for more than six months and the Board resolves that the person should cease to be a Member; or
- (g) if the person becomes a bankrupt.

## **9.2 Cessation of Membership of a body corporate**

A body corporate ceases to be a Member:

- (a) if the body corporate resigns as a Member in accordance with this Constitution;
- (b) if the body corporate ceases to satisfy the eligibility requirements for Membership under this Constitution;
- (c) if the body corporate is expelled as a Member in accordance with this Constitution;
- (d) if the body corporate is placed under external administration or makes any composition or arrangement with its creditors; or
- (e) if the body corporate is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

## **9.3 Resignation of Member**

A Member may resign from the Company by giving the Board at least 30 days' notice.

## **9.4 Expulsion of a Member**

- (a) The Board may expel a Member by resolution, where the Board forms the opinion that it is not in the best interests of the Company for that person to remain as a Member.
- (b) Prior to the meeting of the Board at which it is proposed to consider a resolution to expel a Member, the Board must serve on the Member a written notice, one week before the meeting of the Board, which sets out:
  - (i) the details of the conduct of which complaint is made;
  - (ii) the date, place and time of the meeting of the Board at which it is proposed to consider and if thought fit, pass the resolution to expel the Member;
  - (iii) the intended resolution; and
  - (iv) that the Member may at the meeting of the Board and before the passing of the resolution have an opportunity of giving an explanation or defence orally or in writing.

## 10 Maintenance of Register

### 10.1 Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member; and
- (c) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

## 11 General meetings

### 11.1 Director convening a general meeting

Any Director or the Directors may convene a general meeting.

### 11.2 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

### 11.3 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

### 11.4 General meetings at two or more places

A general meeting may be held in one place or two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

### 11.5 Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

### 11.6 Notice of change, postponement or cancellation of meeting

- (a) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.

- (b) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (c) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

### **11.7 Omission to give notice relating to general meeting**

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

## **12 Proceedings at general meetings**

### **12.1 Quorum**

- (a) A quorum at a general meeting is one or more Members present in person or by proxy. The quorum must be present at all times during the general meeting.
- (b) If a Member has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.

### **12.2 Lack of quorum**

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
  - (i) if convened on the request of Members, is dissolved; or
  - (ii) in any other case:
    - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
    - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
      - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
      - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and

- (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

### **12.3 Chairing general meetings**

- (a) The chair of the general meeting will be the President of the Company from time to time.
- (b) If there is no President or if the President is not present within 10 minutes after the time appointed for a general meeting, the Directors present may elect a Director present to chair that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

### **12.4 Conduct of general meetings**

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

### **12.5 Adjournment**

- (a) The chair of a general meeting at which a quorum is present may adjourn the general meeting.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of the adjourned general meeting other than the business left unfinished at the adjourned general meeting.

## **13 Proxies and representatives**

### **13.1 Appointment of proxy**

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy does not have to be a Member.
- (c) An appointment of a proxy may be a standing one.

### **13.2 Proxy instruments**

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
  - (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 general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

### **13.3 Proxy to be received by Company**

The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 24 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office;
- (b) a facsimile number at the registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

### **13.4 Power to demand poll**

A proxy may demand, or join in demanding, a poll.

### **13.5 Revocation of proxy**

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

### **13.6 Validity of votes of proxy**

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned general meeting, before the resumption of the adjourned general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
  - (i) the revocation of the instrument appointing the proxy;

- (ii) the appointment of a new proxy; or
- (iii) the revocation of any power of attorney under which the proxy was appointed.

### **13.7 No liability**

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

### **13.8 Corporate Member representative**

- (a) A Corporate Member may appoint an individual as the Member's corporate representative to exercise on the Member's behalf any or all of the powers the Member may exercise at general meetings.
- (b) An appointment of a corporate representative must be in writing and signed on behalf of the Member.
- (c) The appointment of a corporate representative may be a standing one and may appoint a representative by reference to the name of an office or position.
- (d) An instrument appointing a corporate representative must be received by the Secretary before the commencement of the meeting.
- (e) The appointment of a corporate representative may be revoked by the Member by notice in writing to the Company, and is automatically revoked by lodgement of a new instrument of appointment.

## **14 Voting**

### **14.1 Entitlement to vote**

- (a) Subject to this Constitution, each Member entitled to vote at a general meeting may vote in person or by proxy. Each Member has one vote, whether on a show of hands, or on a poll.
- (b) A non-financial Member is not entitled to vote at general meetings of the Company or to attend or receive notice of general meetings.

### **14.2 No casting vote**

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair is not entitled to a casting vote and the motion is not passed.

### **14.3 Proxy vote to be identified**

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

### **14.4 Voting on resolution**

At any general meeting, a resolution put to a vote must be decided by a show of hands unless a poll is demanded in accordance with this Constitution.

## **14.5 Objection to right to vote**

- (a) A challenge to a right to vote at a general meeting:
  - (i) may only be made at that general meeting; and
  - (ii) must be determined by the chair.
- (b) A decision made by the chair in relation to a challenge to a right to vote is final.

## **14.6 Written resolutions**

Members 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. For this purpose, signatures of the Members may be contained in more than one document.

## **14.7 Minutes**

Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:

- (a) carried;
- (b) carried unanimously;
- (c) carried by a particular majority; or
- (d) lost or not carried by a particular majority,

is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.

# **15 Poll**

## **15.1 Chair may determine to take a poll**

The chair of a general meeting may determine that a poll be taken on any resolution.

## **15.2 Right to demand poll**

A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least five percent of the votes that may be cast on the resolution on a poll.

## **15.3 Procedure for demanding poll**

- (a) A poll may be demanded:
  - (i) before a vote on a show of hands is taken;
  - (ii) before the result of a vote on a show of hands is declared; or
  - (iii) immediately after the result of a vote on a show of hands is declared.

- (b) If a poll is demanded, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) A demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) A demand for a poll does not prevent the general meeting continuing for the transaction of any business other than the question on which a poll has been duly demanded.

## 16 Appointment and removal of Directors

### 16.1 Minimum number of Directors

The Company must have at least three Directors (not counting alternate Directors). At least two Directors must ordinarily reside in Australia.

### 16.2 Appointment of Directors

- (a) The appointment of the first Directors takes effect in accordance with the Corporations Act on the date of the Company's registration.
- (b) The Company may appoint a person as a Director in accordance with **clause 16.6**.
- (c) The Board may by resolution at a Board meeting appoint a person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.
- (d) A Director appointed as an additional Director:
  - (i) holds office for a term determined by the Board;
  - (ii) may be, but need not be, a Member.
- (e) A Director appointed to fill a vacancy:
  - (i) holds office for the remainder of the term of office of the Director they replaced;
  - (ii) must be a Member, or an employee or associate of a Corporate Member.
- (f) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

### 16.3 Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.

- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, a Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed that the Director may:
  - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
  - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

#### **16.4 Cessation of Directorship**

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act;
- (f) the person is an elected Director (or a first Director), or was appointed to fill a vacancy in the office of an elected Director (or a first Director), and the person:
  - (i) ceases to be a Member; or
  - (ii) where the person was nominated by a Corporate Member:
    - (A) the Corporate Member ceases to be a Member; or
    - (B) the person ceases to be an employee or associate of a Corporate Member.

#### **16.5 Term of office**

- (a) Each Director elected to the Board is appointed for a term:
  - (i) commencing at the closure of the annual general meeting in the year in which his or her election occurred; and
  - (ii) expiring at the closure of the annual general meeting in the following year.
- (b) A retiring Director is eligible for re-appointment.

## 16.6 Nomination and election procedure

- (a) An Member who is an individual is entitled to nominate himself or herself as a candidate for election as a Director. A Corporate Member is entitled to nominate a person employed by or associated with the Member for election as a Director. A person who is not a Member, or employee or associate of a Corporate Member, is not eligible for election as a Director.
- (b) A nomination for election as a Director must:
  - (i) be in writing and signed by the candidate; and
  - (ii) contain details of the candidate's qualifications and position.
- (c) Nominations must be lodged at the registered office of the Company no later than 5.00 pm on the day which is 14 days before the annual general meeting.
- (d) If an election is required to fill vacant positions, the Secretary must forward to each Member entitled to vote a list of candidates.
- (e) An election is required if the number of nominations exceeds the total number of vacant positions on the Board.
- (f) Each Member may vote for such of the candidates as the Member thinks fit, not exceeding the number of vacant positions, but cannot cast more than one vote in favour of any candidate.
- (g) The candidates receiving the greatest number of votes in their favour shall be declared elected to the vacant positions by the chairman of the annual general meeting.
- (h) In the case of an equality of votes the chairman of the annual general meeting, in addition to their deliberative vote, if any, has a casting vote. However if the chairman:
  - (i) does not exercise the casting vote; or
  - (ii) is one of the persons in respect of whom there is an equality of votes,then a further ballot must be held among those persons in respect of who there is an equality of votes, immediately after the declaration of the result of the election.
- (i) If the number of nominations received is less than the number of the vacant positions on the Board, the chairman may call for nominations from the floor at the annual general meeting. A nomination from the floor must be proposed by a Member (other than the candidate) and accepted by the candidate. The process for election of candidates nominated from the floor will be determined by the chairman.

## 16.7 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

## **16.8 Remuneration and reimbursement for expenses**

A Director is not entitled to any fee (or other remuneration) for services performed as a Director. However a Director is entitled (with the approval of the Board) to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

# **17 Board**

## **17.1 Powers and duties of Board**

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the Board include the power to:
  - (i) borrow or otherwise raise money;
  - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
  - (iii) issue debentures and other securities, and any instrument (including any bond).
- (d) The Board may delegate any of its powers to:
  - (i) a Director;
  - (ii) a committee of Directors;
  - (iii) an employee of the Company; or
  - (iv) any other person.

A Director, committee of Directors, employee of the Company or any other person, will in the exercise of its powers comply with any restrictions that may be imposed upon it by the Board.

## **17.2 Office bearers**

- (a) The office bearers of the Company consist of a President, a Treasurer and the Secretary.
- (b) The Company must have a Secretary appointed by the Board, on the terms and for such period as the Board determines. The Secretary may be, but need not be, a Director. The Secretary may be removed from that position at any time by the Board.
- (c) The Board must determine from time to time which of the Directors are to hold the offices of President and Treasurer, and the terms on which and period for which each office is held.
- (d) The Company may from time to time by ordinary resolution:
  - (i) increase or reduce the number of office bearers;

- (ii) change the descriptions of the office bearers (other than the Secretary).

### **17.3 Chief Executive Officer**

- (a) The Board may from time to time appoint a chief executive officer of the Company and may enter into contracts for the provision of the services of the chief executive officer to the Company.
- (b) The appointment of the chief executive officer will be at such remuneration and with such responsibilities and powers as is determined by the Board.
- (c) The chief executive officer will report to and be responsible to the Board or as otherwise determined from time to time by the Board.

## **18 Negotiable instruments**

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

## **19 Alternate Directors**

### **19.1 Appointment and terms of appointment**

- (a) A Director may appoint an alternate, with the written consent of the Member which appointed the Director. If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
  - (i) the name of the person;
  - (ii) the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms of the appointment; and
  - (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend,

and attaching the written consent of the Member.

- (b) Where the alternate is not a Director, an appointment of a person as an alternate is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.
- (c) An alternate is not an agent of the Director appointing the alternate.

### **19.2 No liability**

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

### **19.3 Remuneration of alternate**

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate. However an alternate is entitled (with the approval of the Board) to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

### **19.4 Notice and attendance at Board meetings**

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate.

### **19.5 Voting of alternate**

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

### **19.6 Termination of appointment of alternate**

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

### **19.7 Cessation of appointment of alternate**

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

## **20 Board meetings**

### **20.1 Convening meetings**

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

### **20.2 Notice of meetings**

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
  - (i) the date, time and place (or places) of the Board meeting;
  - (ii) the general nature of the business to be conducted at the Board meeting; and

- (iii) any proposed resolutions.

### **20.3 Omission to give notice**

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

### **20.4 Use of technology**

A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.

### **20.5 Quorum at meetings**

A quorum at a Board meeting is the majority of the total number of the Directors. The quorum must be present at all times during the Board meeting.

### **20.6 Chair of meetings**

The President shall preside as chair at every meeting of the Board, or if there is no President or if the President is not present within 10 minutes after the time appointed for a Board meeting, Directors present may elect a Director present to chair that Board meeting.

### **20.7 Passing resolutions at meetings**

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person or by alternate is entitled to vote and has one vote.

### **20.8 No casting vote**

If on any resolution an equal number of votes is cast for and against a resolution, the chair is not entitled to a casting vote and the motion is not passed.

### **20.9 Conduct of meetings**

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

### **20.10 Written resolutions**

The Board may pass a resolution without a Board 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. For this purpose, signatures can be contained in more than one document.

## **20.11 Minutes of meetings**

- (a) The minute books must be kept at the registered office.
- (b) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any business day. No amount may be charged for inspection.

## **20.12 Committee meetings**

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

# **21 Director's interests**

## **21.1 Declaration of interest**

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
  - (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

## **21.2 Voting by interested Directors**

A Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (a) must not vote on the matter at a meeting; and
- (b) must not be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

# **22 Removal and remuneration of Auditor**

## **22.1 Remuneration of Auditor**

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

## **22.2 Removal of Auditor**

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.

- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
  - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
  - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

### **22.3 Auditor's attendance at general meetings**

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

## **23 Seal**

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).
- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.

## **24 Financial records**

### **24.1 Member's access to financial records**

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company may be inspected by Members.

### **24.2 Directors' access to financial records**

Any Director may at any time access and inspect any financial and any other record of the Company.

### **24.3 Access to financial records after ceasing to be a Director**

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

## **25 Notices**

### **25.1 General**

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

## **25.2 How to give a communication**

In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the person's current fax number for notices; or
- (e) sent by email to the person's current email address for notices.

## **25.3 Communications by post**

A communication is given if posted:

- (a) within Australia to an Australian address, three business days after posting;
- (b) outside Australia to an address outside Australia, ten business days after posting.

## **25.4 Communications by fax**

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

## **25.5 Communications by email**

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

## **25.6 After hours communications**

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

# **26 Indemnity and insurance**

## **26.1 Indemnity**

To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each officer, Director and

Secretary of the Company in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, Director or Secretary in or arising out of the conduct of any activity of the Company or the proper performance of any duty of that officer, Director or Secretary.

## **26.2 Documenting indemnity**

The Company may enter into an agreement containing an indemnity in favour of any officer, Director or Secretary. The Board will determine the terms of the indemnity contained in the agreement.

## **26.3 Insurance**

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer, Director or Secretary or any person who has been an officer, Director or Secretary of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the officer, Director or Secretary of any duty.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

## **27 Winding up**

If the Company is wound up, or if the Company's endorsement as a deductible gift recipient is revoked (whichever first occurs), any property that remains after satisfaction of all debts and liabilities of the Company, the payment of the costs, charges and expenses of winding up and any adjustment of the rights of the contributories, must be given or transferred to:

- (a) an organisation which is carried on for purposes which are similar to or consistent with the objects of the Company; or
- (b) if a suitable organisation is not identified, any public benevolent institution,

and which is a deductible gift recipient under the Tax Act.