



HERBERT
SMITH
FREEHILLS

Constitution

Constitution

Adopt Change Limited

ABN 28 133 921 614



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Constitution

Adopt Change Limited ABN 28 133 921 614

A company limited by guarantee

1 Company's name

The name of the company is Adopt Change Limited.

2 Company's purposes

The company's purpose is to support vulnerable children in need, particularly those in government care, foster care, orphans or children without families, and their carers, families and guardians, by without limitation:

- (a) providing resources to support these children including in times of crisis such as entering the foster care or out of home care system;
- (b) providing support and resources to carers, families and guardians of these children with particular emphasis on understanding trauma and informed practices and parenting for these children;
- (c) providing information to schools and the community on supporting these children and trauma support; and
- (d) encouraging people to provide all children in need with access to a safe, nurturing and stable family environment to grow up in.

3 Company's powers

Solely for carrying out the company's purposes, the company may exercise all of the powers of a company limited by guarantee under the Corporations Act.

4 Not for profit

4.1 Application of the company's income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any member or director in their capacity as a member or director.



- (c) This rule 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

4.2 Payments of directors fees

No directors fees may be paid to the directors.

4.3 Other payments to directors

All other payments to directors must be approved by the directors including, but not limited to:

- (a) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
- (b) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
- (1) the provision of the service has the prior approval of the directors; and
 - (2) the amount payable is not more than an amount that commercially would be reasonable payment for the service.

5 Membership

- (a) The members are the directors.
- (b) Every member agrees to comply with this constitution and supports the purposes of the company set out in rule 2.
- (c) The company must maintain a register of members setting out the name, address, alternate electronic or other address (if any) for receipt of notices and date membership starts and ceases.
- (d) A person immediately ceases to be a member if the person ceases to be a director.

6 Liability and guarantee of members

- (a) The liability of the members is limited to the amount of the guarantee given in rule 6(b).
- (b) Every member must contribute an amount not more than \$10 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:
- (1) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member; and
 - (2) costs, charges and expenses of winding up.



7 Winding up

- (a) If, on the winding up or dissolution of the company, and after application of rule 8, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution that is charitable at law.
- (b) The institution referred to in rule 7(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the Supreme Court of New South Wales.

8 Deductible Gift Recipient status

8.1 Application of this rule

This rule only applies if the company is a deductible gift recipient under ITAA97.

8.2 Gift Account

- (a) The company must maintain a management account for its principal purposes only (**Gift Account**):
 - (1) to identify and record Gifts and Deductible Contributions;
 - (2) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
 - (3) that does not record any other money or property.
- (b) Receipts for Gifts or Deductible Contributions must state the:
 - (1) name and ABN of the company;
 - (2) the date and amount (or value, if property) of the Gift or Deductible Contribution;
 - (3) the name of the donor or contributors;
 - (4) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).

8.3 Winding up or revocation of deductible gift recipient

- (a) Upon:
 - (1) the winding up of the company; or
 - (2) the company ceasing to be deductible gift recipient under the ITAA 97, whichever is earlier, any surplus funds in the Gift Account must be transferred to an entity:
 - (3) which is charitable at law; and
 - (4) gifts to which are deductible under the ITAA 97 on the basis that it is characterised as a public benevolent institution as described in item 4.1.1 of the table in section 30-45.



- (b) The identity of the institution referred to in rule 8.3(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the Supreme Court of New South Wales.

9 Altering this constitution

- (a) The company must not pass a special resolution altering the constitution, if, as a result, the company will cease to be a charity.
- (b) A resolution purporting to alter or repeal the constitution so that the company would cease to be a charity will have no effect.

10 Accountability to members

10.1 Accountability to members

- (a) The company must be accountable to the members within the terms of the law, including, as applicable, the Corporations Act, the ACNC Act and this constitution.
- (b) The directors may decide the manner in which the company will be accountable to the members. As the members are the directors, they have the opportunity to raise any concerns about the governance, activities and finances of the company at any time.

10.2 General meetings

- (a) The directors may convene a general meeting at such time and place as the directors think fit.
- (b) General meetings must be conducted in accordance with the rule 12, with the following modifications:
 - (1) A member may appoint a proxy on behalf of the member. The directors may decide on the rules relevant to the appointment and powers of the proxy.
 - (2) A members' resolution may be passed by written resolution in accordance with rule 12.6 unless a meeting is required by the Corporations Act, such as a resolution to remove an auditor or a director, or a resolution that by law requires a special resolution.

11 Directors

11.1 Appointing and removing directors

- (a) The minimum number of directors is 3. The maximum number of directors is to be fixed by the directors, but may not be more than 12, unless the company in general meeting resolves otherwise. The directors must not fix a maximum which is less than the number of directors in office at the time.



- (b) The directors may appoint any individual as a director, provided:
 - (1) the number of directors does not exceed the maximum number fixed under rule 11.1(a);
 - (2) before appointing the director, that individual signs a consent to act as a director; and
 - (3) the individual is not disqualified from managing a corporation under the Corporations Act nor disqualified from being a responsible entity under the ACNC Act.
- (c) Subject to rule 11.4, a director holds office for a maximum of 9 years from the date of appointment, unless the directors otherwise decide for any particular director.

11.2 Powers and duties of directors

- (a) The directors are responsible for carrying out the company's purposes set out in rule 2 and for managing the company's affairs to further the purposes.
- (b) The directors may exercise all the company's powers which are not required, by the Corporations Act or by this constitution, to be exercised by the members in a general meeting.
- (c) The directors must ensure they are aware of, and comply with their duties as directors.
- (d) The directors must ensure the company's financial affairs are managed in a responsible manner, including:
 - (1) maintaining financial records that correctly record and explain its transactions and financial performance, and enable true and fair financial statements to be prepared annually;
 - (2) deciding how payments are to be approved or executed by or on behalf of the company; and
 - (3) ensuring the company does not continue to operate while insolvent.
- (e) The directors may delegate any of their powers and functions to one or more of the directors, a committee, an employee, or agent or other person as the directors decide.

11.3 Directors conflict of interest

- (a) A director must disclose a perceived or actual material conflict of interest to the other directors.
- (b) Unless the directors otherwise decide and where permitted by law, a director who has a material personal interest in a matter that is being considered at a directors' meeting must not:
 - (1) be present while the matter is being considered at the meeting; or
 - (2) vote on the matter.
- (c) The directors may make a policy or rules relating to disclosure of interests and subsequent requirements of the directors. Any policy or rules will bind all directors. An act, transaction, agreement, instrument, resolution or other thing with a third party is not invalid or voidable only because a director fails to comply with the policy or rules.



- (d) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity, merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (e) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (f) A director who is interested in an arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with applicable disclosure requirements under this constitution, any policy or rules adopted by the directors, and under the Corporations Act and ACNC Act regarding that interest.
- (g) A director may hold any other office or position (except auditor) in the company or related body corporate in conjunction with his or her directorship and may be appointed to that office or position on terms (including remuneration and tenure) that the directors decide.

11.4 Vacation of office

The office of a director becomes vacant:

- (a) in the circumstances outlined in the Corporations Act;
- (b) if the director becomes of unsound mind or a director is, or their estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) if the director is removed from office by resolution of the members;
- (d) if the director is disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible entity under the ACNC Act;
- (e) except to the extent of a leave of absence granted by the directors, if the director fails to attend at least 3 consecutive meetings of the directors or at least 4 meetings over a period of 365 days;
- (f) if the director resigns by written notice to the company; or
- (g) if the director is appointed for a specific term of office and is not reappointed.

11.5 Committees

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors and/or others as they think fit.
- (b) A committee to which powers have been delegated must exercise those powers delegated in accordance with directions given by the directors.
- (c) Provisions of this constitution that apply to meetings and resolutions of directors apply, as far as they can, with any necessary changes, to meetings and resolutions of a committee established under this rule.



11.6 Validity of acts

An act done by a person acting as a director, a meeting of directors, or a person exercising a power or function delegated to them by a director is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the directors or the committee (as applicable) when the act was done:

- (a) a defect in the appointment of the person as a director or delegate;
- (b) the person being disqualified as a director or having vacated office; or
- (c) the person not being entitled to vote.

12 Meetings

12.1 Convening meetings

- (a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) A director may call a meeting by giving reasonable notice to the other directors, or by the secretary giving notice of the meeting to all directors.
- (c) A notice of a meeting:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;
 - (3) may be given immediately before the meeting; and
 - (4) may be given in person in any way authorised by rule 15.1.
- (d) The non-receipt of notice of a meeting, or a failure to give notice of a meeting, does not invalidate any thing done or resolution passed at the meeting if:
 - (1) the non-receipt or failure occurred by accident or error;
 - (2) the director has waived or waives notice of that meeting before or after the meeting;
 - (3) the director has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, email or other electronic means before or after the meeting; or
 - (4) the director attended the meeting.

12.2 Use of technology

- (a) The simultaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting. All the provisions in this constitution relating to meetings apply, as far as they can and with any necessary changes, to meetings by telephone or other electronic means.
- (b) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.



- (c) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one person involved was at that place for the duration of the meeting.
- (d) If, before or during the meeting, a technical difficulty occurs which means that one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, if a quorum remains present, continue with the meeting.

12.3 Quorum

- (a) No business may be transacted at a meeting unless a quorum is present at the time the business is dealt with.
- (b) A quorum consists of a majority of directors.
- (c) If the number of directors in office at any time is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

12.4 Chairperson

- (a) The directors may elect one of the directors as chairperson of directors and may decide the period for which that director is to be the chairperson.
- (b) The chairperson must preside as chairperson at each meeting if present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If there is no chairperson of directors or the conditions in rule 12.4(b) have not been met, the directors present must elect one of the directors as chairperson of the meeting.

12.5 Decisions at meetings

- (a) Except where by law a resolution requires a special majority, a resolution at a meeting must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.
- (b) Where the votes on a proposed resolution are equal, the chairperson of the meeting does not have a second or casting vote, and the vote is taken as lost.

12.6 Decisions without a meeting

- (a) A resolution is taken to have been passed if:
 - (1) all the directors who would be entitled to receive notice of a meeting and to vote on a resolution are given a document setting out that resolution; and
 - (2) all the directors sign or consent to the resolution.
- (b) A director may consent to a resolution by:
 - (1) signing the document containing the resolution (or a copy of that document);
 - (2) giving to the company written notice (including by email or other electronic means) addressed to the secretary or to the chairperson



- agreeing to the resolution and either setting out its terms or otherwise clearly identifying them; or
- (3) telephoning the secretary or the chairperson of directors and signifying assent to the resolution and clearly identifying its terms.
- (c) The resolution is taken as passed when the last director signs or consents to that resolution.

12.7 Minutes of meetings and minutes of resolutions

- (a) The directors must ensure:
- (1) minutes of general meetings, directors' meetings and committee meetings (including all resolutions proposed); and
- (2) records of resolutions passed by members, directors and committees, without a meeting,
- are recorded and kept as part of the company's records. The records must be made within one month after the relevant meeting is held or written resolution passed.
- (b) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

13 Secretary

- (a) The directors must appoint at least one secretary, who may also be a director.
- (b) The secretary must provide written consent to the appointment.
- (c) The secretary can be removed by the directors, and another person appointed as secretary, at any time.

14 Indemnity and insurance

14.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 14 applies to Indemnified Officers.

14.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
- (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the company;
- (2) is enforceable without that person having first to incur any expense or make any payment; and



- (3) operates only to the extent that the loss or liability in question is not covered by insurance.

14.3 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

14.4 Savings

Nothing in this rule 14:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this rule 14; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 14 does not apply.

15 Notices

15.1 Notices from the company

The company may give notices and any communication:

- (a) personally;
- (b) by sending it by post to the residential or business address for the member and director; or
- (c) by sending it to the email or other electronic address (if any) (including providing a URL link to any document or attachment) supplied by the member and director; or
- (d) by notifying the member and director in writing by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

15.2 Notices to the company

Subject to this constitution, a notice may be given to the company by:

- (a) serving it on the company at the registered office of the company;
- (b) sending it by post in a prepaid envelope to the registered office of the company; or
- (c) sending it to the principal electronic address of the company at its registered office, or if there is no principal electronic address, to the email or other electronic address of the secretary.



15.3 Time of service

- (a) A notice from the company properly addressed and posted is taken to be served at 10.00am on the day that is five Business Days after the date it was posted.
- (b) Where the company sends a notice by email or other electronic transmission, the notice is taken as served at the time the email or electronic transmission is sent.
- (c) If service under rule 15.3(b) is on a day which is not a Business Day or is after 4.00pm (addressee’s time), the notice is regarded as having been received at 9.00am on the next following Business Day.

15.4 Other communications and documents

Rules 15.1 to 15.3 (inclusive) apply, as far as they can, with any necessary changes, to the service of any communication or document.

15.5 Notices in writing

A reference in this constitution to a written notice includes a notice given by electronic transmission or any other form of written communication. A signature to a written notice need not be handwritten.

16 Definitions and interpretation

16.1 Definitions

The meanings of the terms used in this constitution are set out below.

Term	Meaning
ACNC Act	the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
Business Day	Monday to Friday inclusive, excluding New Years’ Day, Good Friday, Easter Monday, Christmas Day and Boxing Day.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Deductible Contribution	a voluntary transfer of money or property in relation to a fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
Gift	a voluntary transfer of money or property where the donor receives



no material benefit or advantage.

- Indemnified Officer**
- 1 each person who is or has been a director or executive officer of the company; and
 - 2 any other officers or former officers of the company as the directors in each case decide.
-

ITAA 97 the *Income Tax Assessment Act 1997* (Cth).

16.2 Interpretation

In this constitution:

- (a) references to notices include formal notices of meeting, all documents and other communications from the company to its members;
- (b) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (c) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (d) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative;
- (e) a reference to writing and written includes printing, lithography, electronic means of writing (eg fax, email) and other ways of representing or reproducing words in a visible form;
- (f) the singular includes the plural and the plural includes the singular; and
- (g) headings and bold type are used for convenience only and do not affect the interpretation of this constitution.

17 Corporations Act and ACNC Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the company.
- (b) If at any time, the company is not a registered charity under the ACNC Act, the Corporations Act applies and (unless it is a replaceable rule) overrides any part of this constitution, or policy of the company, which is inconsistent with the Corporations Act.