



HERBERT  
SMITH  
FREEHILLS

## Constitution

# Constitution

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Adopt Change Ltd



# Contents

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# Constitution

## **Adopt Change Ltd**

ACN 133 921 614

### **A company limited by guarantee**

## 1 Company's name

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The name of the company is Adopt Change Ltd.

## 2 Company's purposes

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The company's principal purpose is the prevention and control of the emotional and physical abuse to children in government care, foster care, orphans or children without families, and preventing and controlling abusive behaviours of those children as they become adults, in particular substance abuse, self-harm and suicide, by, without limitation, the following activities:

- (a) raising community awareness and education of the risks faced by those children and issues surrounding adoption;
- (b) promoting reform of Australia adoption laws and practices to facilitate a pro-adoption community;
- (c) conducting research to contribute to the understanding of adoption and permanency; and
- (d) assisting people seeking to adopt or arrange for the adoption of those children, and providing support throughout all stages of the adoption process;

The company's secondary purpose is working with government and other organisations to foster relationships with other countries to enable safe and fair intercountry adoption.

## 3 Company's powers

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Solely for carrying out the company's purposes, the company may:

- (a) raise funds or encourage contributions by way of gifts (by will or otherwise), grants, sponsorships, personal or public appeals or in any other manner;
- (b) provide funds, facilities or other material benefits;
- (c) accept and hold funds or property of any kind on or for any charitable objects or purposes specified or to be specified by any person or to be selected by the directors from a class of trusts, objects or purposes specified by any person;
- (d) engage or dismiss any employee, agent, contractor or professional person;



- (e) accept and undertake trusteeships, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration for doing so;
- (f) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges;
- (g) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
- (h) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (i) construct, improve, maintain, develop, work, manage and control real or personal property;
- (j) enter into contracts and deeds;
- (k) appoint an attorney or agent with powers (including the power to sub-delegate) and on terms the company thinks fit, and procure registration or recognition of the company in any other country or place;
- (l) enter into arrangements with any government or authority;
- (m) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the company's property (both present and future) and purchase, redeem or pay off those securities;
- (n) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
- (o) print and publish information in hard copy or by electronic means;
- (p) accept any gift of real or personal property, whether subject to any special trust or not and decline to accept any gift;
- (q) appoint patrons of the company;
- (r) make donations for charitable purposes;
- (s) arrange conferences, meetings and other forums; and
- (t) do all other things that are incidental or conducive to carrying out the company's purposes.

## 4 Not for profit

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### 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.



- (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**

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- (a) The members are the directors of the company.

## **6 When membership ceases**

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### **6.1 Death, resignation and other events**

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) ceases to be a director of the company;
- (c) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;

## **7 Liability of member**

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The liability of the members is limited to the amount of the guarantee given in rule 8.



## 8 Guarantee by member

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Every member must contribute an amount not more than \$100 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:

- (a) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member; and
- (b) costs, charges and expenses of winding up.

## 9 Winding up

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- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution:
  - (1) that is charitable at law;
  - (2) whose constitution prohibits distributions and payments to its members and directors to an extent at least as great as in rule 4; and
  - (3) which is on the Register.
- (b) The identity of the institution referred to in rule 9(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 members by ordinary resolution at or before the time of winding up of the company and, if the members do not decide, by the Supreme Court of the state or territory in which the company is registered.

## 10 Inclusion on the Register

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### 10.1 Application of this rule

If the company is on the Register it must comply with this rule 10.

### 10.2 Ministerial Rules

The company must comply with any rules that the Treasurer of the Commonwealth of Australia, the Commissioner or the Minister responsible for the Register make to ensure that Gifts or Deductible Contributions made to the Public Fund (established under rule 10.6) will only be used for the company's principal purpose as set out in rule 2.

### 10.3 Statistical information

The company must provide to the Department within 4 months of the end of the financial year or other time as permitted or required by the Department:

- (a) statistical information on the Gifts and Deductible Contributions made to the Public Fund during that financial year and other information required by the Department on the annual statistical return form;
- (b) audited financial statements for the company including the Public Fund;



- (c) information as requested by the Department as to expenditure of Public Fund money and the management of Public Fund assets; and
- (d) any other information reasonably requested by the Department.

#### 10.4 Notifying the Department

The company must notify the Department, as soon as practicable, of:

- (a) any change to its principal purposes and principal activity;
- (b) any change to the name of the company or its Public Fund;
- (c) any change to the membership of the committee administering the Public Fund under rule 10.8;
- (d) any departure from this rule 10;
- (e) any departure from the model rules for public funds located in the Guidelines
- (f) if the company becomes insolvent, or commences any process for the winding up of the company or experiences other financial difficulties;
- (g) any amendment to rule 2 or rule 10; or
- (h) any other issues reasonably required by the Department.

#### 10.5 Conduit policy

The company must not act as a mere conduit for a donor by passing a donation of money or property to other charities, institutions, bodies or persons. It must not act as a collection agency for donations intended by a donor for another charity, institution, entity or person.

#### 10.6 Establishment and operation of Public Fund

- (a) The company must establish and maintain for its principal purpose a fund to be called Adopt Change Public Fund (or such other name as decided by the directors and notified to the Department) (**Public Fund**):
  - (1) to which Gifts or Deductible Contributions of money or property for those purposes and activity are to be made;
  - (2) to which any money received by the company because of those Gifts or Deductible Contributions is to be credited; and
  - (3) that does not receive any other money or property.
- (b) The purpose of the Public Fund is the same as the principal purpose of the company.
- (c) The company must seek donations from the public to the Public Fund.
- (d) The company must use the following only for its principal purpose and the provisions of rule 4.1(b) apply to:
  - (1) Gifts or Deductible Contributions made to the Public Fund; and
  - (2) any money received because of those Gifts or Deductible Contributions.
- (e) The company must ensure that the Public Fund complies with Subdivision 30-EA of the ITAA 97.



- (f) The Public Fund must be maintained as a not-for-profit and the provisions of rule 4 apply to the Public Fund.

### **10.7 Bank Account**

- (a) The company must maintain for the Public Fund:
  - (1) a separate bank account; and
  - (2) proper accounting records.
- (b) The bank account signatories must be Australian resident members of the committee in charge of the Public Fund.

### **10.8 Management of the Public Fund**

At a particular time, the directors may administer the Public Fund if the majority of the directors are the Responsible Persons. If at that time the majority of directors are not Responsible Persons, the directors must delegate the power to administer the Public Fund to a committee of at least 3 persons, a majority of whom are Responsible Persons.

### **10.9 Receipts**

Receipts for Gifts or Deductible Contributions to the Public Fund must be made in the name of the Public Fund and state:

- (a) the name of the Public Fund and a reference to it being on the Register;
- (b) the number of the receipt;
- (c) the name and ABN of the company;
- (d) the name of the donor or contributors;
- (e) the date the donation or contribution was received;
- (f) the type of donation (money or property) and value;
- (g) 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); and
- (h) include the signature of a person authorised to act on behalf of the Public Fund.

### **10.10 Winding up of the Public Fund or revocation of status**

At the first occurrence of:

- (a) the winding up of the Public Fund;
- (b) the company ceasing to be endorsed as a deductible gift recipient under the ITAA 97; or
- (c) the company and the Public Fund ceasing to be on the Register,

any surplus assets of the Public Fund must be transferred to a fund on the Register, the identity of which must be decided by the directors.



## 11 Altering this constitution

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The company must not pass a special resolution altering the constitution, if, as a result, the company will cease to be a charity.

## 12 Accountability to members

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### 12.1 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 and the manner in which they will provide an adequate opportunity for members to raise any concerns about the governance of the company.

### 12.2 Calling general meetings

- (a) A general meeting may only be called:
  - (1) by a directors' resolution; or
  - (2) as provided or required under any applicable law or under any policy adopted by the directors.
- (b) The directors may change the venue for, postpone or cancel a general meeting if:
  - (1) they reasonably consider that the meeting has become unnecessary;
  - (2) the venue would be unreasonable or impractical; or
  - (3) a change is necessary in the interests of conducting the meeting efficiently.

### 12.3 Notice of general meetings

- (a) At least 21 days' notice of every general meeting must be given in any manner authorised by rule 16 to each person who is at the date of the notice:
  - (1) a member;
  - (2) a director;
  - (3) the auditor of the company, if applicable.
- (b) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting;
  - (2) state the general nature of the business to be transacted at the meeting and if a special resolution is proposed, state the full terms of the special resolution; and
  - (3) specify any details of voting such as proxies, direct voting or other methods, if any, as decided by the directors.



- (c) A person may waive notice of a general meeting or consent to shorter notice by written notice to the company.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting does not invalidate anything done or resolution passed at the general meeting if:
  - (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person has notified or notifies the company of that person's agreement to that thing or resolution.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
  - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

#### **12.4 Quorum at general meetings**

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of at least 3 members entitled to vote and be present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place.
- (d) If at the adjourned meeting under rule 12.4(c), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **12.5 General meetings by technology**

- (a) The simultaneous linking together by telephone or other electronic means of a sufficient number of the members in person, to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- (b) All the provisions in this constitution relating to meetings of the members apply, as far as they can, with any necessary changes, to meetings of the members by telephone or other electronic means.
- (c) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) 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 of the members involved was at that place for the duration of the meeting.



## 12.6 Chairperson of general meetings

- (a) The chairperson of directors must preside as chairperson at a general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If there is no chairperson of directors or both the conditions in rule 12.6(a) have not been met, the members present must elect another chairperson of the meeting.
- (c) A chairperson elected under rule 12.6(b) must be:
  - (1) another director who is present and willing to act; or
  - (2) if no other director present at the meeting is willing to act, a member who is present and willing to act.

## 12.7 Conducting and adjourning general meetings

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by rule 12.7(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## 12.8 Decisions of the members

- (a) The directors may decide the manner voting is held at a meeting or, where a meeting is not required, by postal, electronic or any other means of voting.
- (b) Except where by law a resolution requires a special majority, resolutions must be decided by a majority of the votes cast by the members. Such a decision is for all purposes a decision of the members.
- (c) Where the votes on a proposed resolution are equal:
  - (1) the chairperson does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.
- (d) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (1) the chairperson of the meeting;
  - (2) at least 2 members present and with the right to vote on the resolution.
- (e) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll has been demanded.
- (f) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been:



- (1) carried;
- (2) carried unanimously;
- (3) carried by a particular majority; or
- (4) lost,

and an entry to that effect in the book containing the minutes of the company's proceedings, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (g) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (h) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (i) The demand for a poll may be withdrawn.
- (j) If the company has only one member, the company may pass a resolution by the member recording it and signing the record.

## 12.9 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, every member has one vote.
- (b) A proxy (if any), attorney or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in his or her own right.
- (c) If the directors decide, direct voting may be permitted in addition to or instead of proxy voting. The directors must decide the manner direct votes are to be given.
- (d) An objection to the qualification of a person to vote must be:
  - (1) raised before the vote objected to is counted; and
  - (2) referred to the chairperson, whose decision is final.
- (e) A vote not disallowed by the chairperson under rule 12.9(d) is valid for all purposes.

## 12.10 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote as decided by the directors:
  - (1) in person or, where a member is a body corporate, by its representatives;
  - (2) by one proxy (if permitted);
  - (3) by one attorney; or
  - (4) by direct vote (if permitted).
- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.



## 12.11 Authority of a proxy, attorney or representative

- (a) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative is to be taken to confer authority:
  - (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution; and
  - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given.
- (b) Even though the instrument (appointing a proxy, attorney or representative) may refer to specific resolutions and may direct the proxy, attorney or representative on how to vote on those resolutions, unless otherwise provided, it is taken to confer authority:
  - (1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (2) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
  - (3) to act generally at the meeting.
- (c) An instrument appointing a proxy, attorney or representative may direct the manner in which the proxy, attorney or representative is to vote in respect of a particular resolution and, where an instrument so provides, the proxy, attorney or representative is not entitled to vote on the proposed resolution except as directed in the instrument.
- (d) Subject to rule 12.11(e), an instrument appointing a proxy, attorney or representative need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (e) A proxy, attorney or representative may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, attorney or representative, and the authority under which the instrument is signed, or a certified copy of the authority, are:
  - (1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
  - (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (3) in the case of a poll, produced when the poll is taken.
- (f) The directors may waive all or any of the requirements of rules 12.11(d) and 12.10(e) and in particular, may, on production of other evidence to prove the valid appointment or a proxy, attorney or representative required by the directors, accept:
  - (1) an oral appointment of a proxy, attorney or representative;
  - (2) an appointment of a proxy, attorney or representative which is not signed in the manner required by rule 12.11(d); and



- (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy, attorney or representative or a power of attorney or other authority under which the instrument is signed.
- (g) A vote given in accordance with the terms of an instrument appointing a proxy, attorney or representative is valid despite the revocation of the instrument or the authority under which the instrument was executed, if no written notice of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy, attorney or representative must be deposited, tabled or produced under rule 12.11(e).
- (h) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

## 13 Directors

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### 13.1 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, either to fill a casual vacancy or as an addition to the existing directors, provided:
  - (1) the number of directors does not exceed the maximum number fixed under rule 13.1(a); and
  - (2) before appointing the director, that individual signs a consent to act as a director; and
  - (3) the director is not disqualified from managing a corporation under the Corporations Act nor disqualified from being a responsible entity under the ACNC Act.

### 13.2 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; or



- (f) if the director resigns by written notice to the company.

### **13.3 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 but no act, transaction, agreement, instrument, resolution or other thing with a third party is 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.

### **13.4 Powers and duties of directors**

- (a) The directors are responsible for carrying out the company's purposes and for managing the company's affairs in order to further the purposes.
- (b) The directors may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Corporations Act or by this constitution, to be exercised by the company in 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) deciding how payments are to be approved or executed by or on behalf of the company; and



- (2) ensuring the company does not continue to operate while insolvent.
- (e) The directors may:
  - (1) appoint or employ an officer, agent or attorney of the company with the powers, discretions and duties vested in or exercisable by the directors, on the terms the directors decide;
  - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (f) A power of attorney may contain provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors think fit.

### **13.5 Proceedings of directors**

- (a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The simultaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) 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 of the directors involved was at that place for the duration of the meeting.
- (e) 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 of directors remains present, continue with the meeting.

### **13.6 Convening meetings of directors**

- (a) A director may convene a meeting of the directors whenever he or she thinks fit.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

### **13.7 Notice of meetings of directors**

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, except a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
  - (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 or by post, telephone, fax or other electronic means.
- (c) A director may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director 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 under rule 13.7(c) 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, fax or other electronic means before or after the meeting; or
  - (4) the director attended the meeting.
- (e) Attendance by a person at a meeting of directors waives any objection which that person may have to a failure to give notice of the meeting.

### **13.8 Quorum at meetings of directors**

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:
  - (1) if the directors have fixed a number for the quorum greater than 3, that number of directors present at the meeting; and
  - (2) in any other case, 3 directors present at the meeting.
- (c) If there is a vacancy in the office of a director then, subject to rule 13.8(d), the remaining directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum, or 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.

### **13.9 Chairperson of directors**

- (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 of directors must preside as chairperson at each meeting of directors 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 13.9(b) have not been met, the directors present must elect one of the directors as chairperson of the meeting.



### 13.10 Decisions of directors

- (a) A meeting of directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors 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.
- (c) Where the votes on a proposed resolution are equal:
  - (1) the chairperson of the meeting does not have a second or casting vote; and
  - (2) the proposed resolution is taken as lost.

### 13.11 Written resolutions of directors

- (a) A resolution is taken to have been passed by a meeting of directors if:
  - (1) all the directors (except any director on leave of absence approved by the directors, any director who disqualifies himself or herself from considering the resolution in question and any director who would be prohibited by the Corporations Act from voting on the resolution in question) sign or consent to a written resolution; and
  - (2) the directors who sign or consent to the resolution would have constituted a quorum at a directors' meeting held to consider that 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 at its registered office a written notice (including by fax or other electronic means) addressed to the secretary or to the chairperson of directors signifying assent 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.

### 13.12 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.



### **13.13 Committees of directors**

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors and 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 of directors.

### **13.14 Delegation to individual directors**

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom powers have been delegated must exercise those powers delegated in accordance with directions given by the directors.

### **13.15 Validity of acts**

An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as 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;
- (b) the person being disqualified as a director or having vacated office; or
- (c) the person not being entitled to vote.

## **14 Executive officers**

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### **14.1 Executive director**

- (a) The directors may appoint one or more of the directors as executive directors.
- (b) A director's appointment as an executive director automatically terminates if they cease to be a director.
- (c) The directors may confer on an executive director any title they think fit.

### **14.2 Provisions that apply to all executive officers**

- (a) A reference in this rule 14.2 to an executive officer is a reference to an executive director and the secretary of the company.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions that the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:



- (1) confer on an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An act done by a person acting as an executive officer is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person when the act was done:
- (1) a defect in the person's appointment as an executive officer; or
  - (2) the person being disqualified to be an executive officer.

## 15 Indemnity and insurance

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### 15.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 15 apply to Indemnified Officers.

### 15.2 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; and
  - (2) operates only to the extent that the loss or liability in question is not covered by insurance.

### 15.3 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.

### 15.4 Savings

Nothing in this rule 15:

- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this indemnity or insurance; or



- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 15 does not apply.

## 16 Notices

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### 16.1 Notices by the company to members

The company may give notices, including a notice of general meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member.

### 16.2 Notices by the company to directors

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

- (a) serving it personally at the director's usual residential or business address;
- (b) sending it by post in a prepaid envelope to the director's usual residential or business address; or
- (c) sending it to the fax number or electronic address supplied by the director to the company for giving notices.

### 16.3 Notices by member or directors to the company

Subject to this constitution, a notice may be given by a member or director 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 fax number or the principal electronic address of the company at its registered office.

### 16.4 Time of service

- (a) A notice properly addressed and posted is taken to be served:
  - (1) in the case of a notice of a general meeting, at 10.00am on the day after the date it was posted; or
  - (2) in any other case, at the time the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the fax report produced by the sender's fax machine.
- (c) Where a notice is sent by an electronic messaging system with a delivery verification function, the notice is taken as served on generation of a delivery



verification notice, log entry, or other confirmation by the electronic messaging system.

- (d) Where a notice is sent by email or other electronic messaging system (not covered by rule 16.4(c)), the notice is served on delivery to:
  - (1) the addressee’s email or electronic messaging system account if the addressee is a natural person; or
  - (2) the corporation’s computer systems if the addressee is a corporation.
- (e) If service under rules 16.4(b), 16.4(c) and 16.4(d) 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.

### 16.5 Other communications and documents

Rules 16.1 to 16.4 (inclusive) apply, as far as they can, with any necessary changes, to the service of any communication or document.

### 16.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by fax or electronic transmission or any other form of written communication.

## 17 Definitions and interpretation

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### 17.1 Definitions

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

<b>Term</b>	<b>Meaning</b>
<b>ACNC Act</b>	the <i>Australian Charities and Not for Profit Commission Act 2012</i> (Cth) and all regulations.
<b>Business Day</b>	a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or a public holiday in that city.
<b>Commissioner</b>	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Department</b>	the Department of the Commonwealth responsible for the Register.



<b>Term</b>	<b>Meaning</b>
<b>Deductible Contribution</b>	a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the principal purpose of the company.
<b>Gift</b>	a contribution of money or property as described in item 1 of the table in section 30-15 of the ITAA 97.
<b>Guidelines</b>	the Register's guidelines issued from time to time by the Department.
<b>Indemnified Officer</b>	<ol style="list-style-type: none"><li>1 each person who is or has been a director or executive officer (within the meaning of rule 14.2(a)) of the company; and</li><li>2 any other officers or former officers of the company as the directors in each case decide.</li></ol>
<b>ITAA 97</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Register</b>	the register of Harm Prevention Charitable Institutions maintained by the Department under section 30-287 of ITAA 97.
<b>Registered Address</b>	a member's address as notified to the company by the member and recorded in the company's records.
<b>Responsible Person</b>	an individual who has a degree of responsibility to the wider Australian community as set out in the Guidelines.

## 17.2 Interpretation

In this constitution:

- references to notices include formal notices of meeting, all documents and other communications from the company to its members;
- a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- 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;
- 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;



- (e) the singular includes the plural and the plural includes the singular; and
- (f) headings and bold type are used for convenience only and do not affect the interpretation of this constitution.

## 18 Replaceable Rules

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The provisions of this constitution displace each provision of a section or subsection of the Corporations Act that applies (or would apply but for this rule) to the company.