



Médecins Sans Frontières Australia Limited Constitution

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Constitution

Médecins Sans Frontières Australia Limited

A company limited by guarantee

1 Company's name

The name of the company is Médecins Sans Frontières Australia Limited.

2 Company's purposes

The company's purpose is to relieve sickness or suffering by, without limitation:

- (a) providing medical aid, supplies and personnel;
- (b) providing or supporting the provision of healthcare; and
- (c) supporting or providing healthcare related education, research and training.

3 Company's principles

The company will pursue its purposes in accordance with the principles espoused in the Charter, which states that:

- (a) Médecins Sans Frontières offers assistance to populations in distress, to victims of natural or man-made disasters, and to victims of armed conflict without discrimination and irrespective of race, religion, creed, or political affiliation.
- (b) Médecins Sans Frontières observes neutrality and impartiality in the name of universal medical ethics and the right to humanitarian assistance and demands full and unhindered freedom in the exercise of its functions.
- (c) Médecins Sans Frontières' volunteers undertake to respect their professional code of ethics and to maintain complete independence from all political, economic, and religious powers.
- (d) As volunteers, members are aware of the risks and dangers of the missions they undertake, and have no right to compensation for themselves or their beneficiaries other than that which Médecins Sans Frontières is able to afford them.

4 Relationship with Médecins Sans Frontières International

In order to protect the goodwill of Médecins Sans Frontières International, and to effectively promote its objects in Australia, the company records and acknowledges that:

- (a) it respects Article 8 of the International Statutes;
- (b) it is not the owner of either the Médecins Sans Frontières trademark or logo. The company's use of such trademark and logo is granted exclusively by Médecins Sans Frontières International by signing the Licence Agreement only;
- (c) any and all additional intellectual property registrations by the company in Australia are subject to prior approval from Médecins Sans Frontières International; and
- (d) any proposed modifications to this rule 4 are subject to prior approval from Médecins Sans Frontières International.

5 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.

6 Not for profit

6.1 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 member or director.
- (c) This rule 6 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.

6.2 Payments of directors fees

Directors fees may be paid to the directors provided they are reasonable.

6.3 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.

7 Membership

7.1 Members

- (a) The members are the persons who the directors admit or have admitted to membership in accordance with this constitution.
- (b) Every applicant for membership of the company must apply in the form and manner decided by the directors.
- (c) After receipt of an application for membership, the directors must consider the application and decide whether to admit or reject the applicant. The directors need not give any reason for rejecting an application.
- (d) Every member agrees to comply with this constitution and support the purposes of the company set out in rule 2.

7.2 Eligibility for membership

- (a) In order to become a member of the company, the applicant must have:
 - (1) international working experience in Operational Projects of overall not less than 6 months; or
 - (2) completed 2 separate contracts as International Staff in an Operational Project; or
 - (3) working experience of not less than 1 year in aggregate as a locally contracted employee of Médecins Sans Frontières International or any of its Institutional Members; or
 - (4) completed unpaid work, student assistance or an internship of not less than 2 years in aggregate within Médecins Sans Frontières International or any of its Institutional Members.
- (b) The directors will ensure that:
 - (1) at least one third of members have a Medical Background;
 - (2) at least one third of members have experience working internationally on Operational Projects; and
 - (3) the company has at least 50 members.

7.3 Life Members

- (a) All Life Members at the time of adoption of this constitution continue on the same terms.
- (b) Life Members are appointed for life by invitation at the discretion of the directors.
- (c) The Life Members have the same rights as members.

7.4 Subscription fee

- (a) An annual subscription fee may be decided by the directors, and notified to the members. No fees are payable by Life Members.
- (b) The directors must notify all persons entered on the register of members of the amount and time for payment of any annual subscription fee and of any alteration to the annual subscription fee.
- (c) Where the annual subscription fee is not received:
 - (1) after one month of the due date, the directors may issue a written reminder notice to the member; and
 - (2) after one month of the written reminder notice, the member's right to receive notices of general meetings and the right to attend and vote at general meetings will be suspended.
- (d) If a member who was suspended pursuant to rule 7.4(c) has not paid an annual subscription fee for more than 12 months after the written reminder notice, the person ceases to be a member.

7.5 Rights and obligations of members

- (a) Members have the following rights:
 - (1) to receive information on company's activities and finances in accordance with rule 13.1(b);
 - (2) to participate at the general meeting, vote, ask questions and express views and comments on the company's activities and finances, subject to the authority of the chairperson;
 - (3) to vote by special resolution on amending the constitution, changes to legal form, and winding up or dissolution of the company;
 - (4) to nominate a person to be considered for as a director, to be nominated and elected as a director (subject to meeting the eligibility requirements), and a right to vote on resolutions to elect or remove a director in accordance with this constitution;
 - (5) to request resolutions for consideration at a general meeting in accordance with rule 13.2(b);
 - (6) to lodge a complaint with the directors and to have the complaint responded to.
- (b) Members have the following obligations:
 - (1) to support the interests and activities of the company, and to respect the decisions of the company and the directors;
 - (2) to act in accordance with the policies of the company;
 - (3) to avoid abusing their status of a member of the company in particular with respect to personal benefits or advantages.

7.6 Register

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.

7.7 When membership ceases

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

- (a) dies;
- (b) resigns as a member by giving written notice to 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;
- (e) is expelled under rule 7.8;
- (f) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to respond or otherwise communicate with his or her address on the register of members; or
- (g) ceases to be a member under rule 7.4(d).

7.8 Expulsion

- (a) The directors may by resolution expel a member from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member.
- (b) If the directors intend to consider a resolution under rule 7.8(a), at least two weeks before the meeting at which the resolution is to be considered, they must give the member written notice:
 - (1) stating the date, place and time of the meeting;
 - (2) setting out the intended resolution and the grounds on which it is based; and
 - (3) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

8 Liability and guarantee of member

- (a) The liability of every member is limited to the amount of the guarantee given in rule 8(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) expenses of winding up.

9 Winding up

- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, and after application of rule 10 and rule 11, this property must only be given or transferred to an entity that is charitable at law.
- (b) The entity 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 New South Wales.

10 Public benevolent institution status

10.1 Application of this rule

This rule only applies if the company is endorsed as a deductible gift recipient under item 4.1.1 of the table in section 30-45 of the ITAA97.

10.2 Gift Account

- (a) The company must maintain a management account for its purposes (**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).

10.3 Winding up or revocation of deductible gift recipient endorsement

- (a) Upon:
 - (1) the winding up of the company; or
 - (2) the company ceasing to be endorsed as a 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 registered public benevolent institution as described in item 4.1.1 of the table in section 30-45.
- (b) The entity referred to in rule 10.3(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 members by ordinary resolution at or before the time of winding up of the company or, if the members do not decide, by the Supreme Court of New South Wales.

11 Overseas aid fund endorsement

11.1 Application of this rule

This rule only applies if the company is endorsed as a deductible gift recipient for the operation of a developing country relief fund under item 9.1.1 of section 30-80 ITAA97 and only to the extent required by relevant law, regulation or guideline applicable to the company, or any administrative requirement or practice of the Australian Taxation Office or any regulator.

11.2 Overseas Fund

- (a) The company must maintain a public fund for the relief of people in developing countries (as declared by the Government) to be known as Medecins Sans Frontieres Australia Overseas Fund (**Overseas Fund**):
 - (1) to identify and record Gifts and Deductible Contributions for these purposes;
 - (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) The company must invite the public to contribute to the Overseas Fund to support its purposes.
- (c) Receipts for Gifts or Deductible Contributions to the Overseas Fund must state the:
 - (1) name and ABN of the company;
 - (2) name of the Overseas Fund;
 - (3) the date and amount (or value, if property) of the Gift or Deductible Contribution;
 - (4) the name of the donor or contributors;
 - (5) 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).

11.3 Overseas Fund administration

- (a) The Overseas Fund must be administered by the directors. If there is not a majority of the directors who are individuals who have a degree of responsibility to the general community (**Responsible Persons**), the directors must delegate

the power to administer the Overseas Fund to a committee of at least 3 people, the majority of whom are Responsible Persons.

- (b) If at any time the requirement in rule 11.3(a) is required by law and is not met, the board or committee must not exercise any discretion or power in respect to the administration of the Overseas Fund until the requirement is met, except to protect the Overseas Fund or in the case of urgency.

11.4 Winding up or revocation of deductible gift recipient endorsement

- (a) Upon:
 - (1) the winding up of the company; or
 - (2) the company ceasing to be endorsed as a deductible gift recipient for the operation of the Overseas Fund under item 9.1.1 of section 30-80 ITAA 97,whichever is earlier, any surplus funds in the Overseas Fund must be transferred to an entity:
 - (3) which is charitable at law; and
 - (4) gifts to which are deductible under Division 30 of the ITAA 97.
- (b) The identity of the entity referred to in rule 11.4(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, by the members by ordinary resolution at or before the time of winding up of the company or, if the members do not decide, by the Supreme Court of New South Wales.

12 Altering this constitution

- (a) Subject to this rule 12, the company may amend the constitution by special resolution.
- (b) The company must not pass a special resolution altering the constitution, if, as a result, the company will cease to be a charity.
- (c) Any resolution purporting to alter or repeal the constitution so that the company would cease to be a charity will have no effect.

13 Accountability to members

13.1 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, activities and finances of the company.

13.2 Calling general meetings

- (a) The directors may convene a general meeting at such time and place as the directors think fit.
- (b) If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held for a proper purpose and with a valid resolution, the directors must:
 - (1) within 21 days of the members' request, give all members notice of a general meeting; and
 - (2) hold the meeting within 2 months of the members' request.
- (c) The members who make the request for a general meeting must:
 - (1) state in the request the resolution to be proposed at the meeting;
 - (2) sign the request; and
 - (3) give the request to the company.
- (d) The directors may not postpone or cancel a general meeting convened in response to a members requisition under rule 13.2(b) in accordance with rule 13.4 without the prior written consent of the persons who requisitioned or convened the meeting.

13.3 Notice of general meetings

- (a) At least 21 days' notice of every general meeting must be given in any manner authorised by rule 18 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, written 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.

13.4 Changing, postponing or adjourning general meetings

- (a) The directors may change the venue for, postpone, adjourn or cancel a general meeting if:
 - (1) they reasonably consider that the meeting has become unnecessary;
 - (2) the venue would be unreasonable or impractical;
 - (3) a change is necessary in the interests of conducting the meeting efficiently; or
 - (4) a quorum is not present under rule 13.5.
- (b) 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 13.4(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

13.5 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chair 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 20 members entitled to vote and be present at the meeting. A person may only be counted once even if a person is a proxy of more than one member.
- (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 13.5(c), a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

13.6 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 chair of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.

13.7 Chair of general meetings

- (a) The president must preside as chair 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 president or both the conditions in rule 13.7(a) have not been met, the members present must elect another person as chair of the meeting.
- (c) A chair elected under rule 13.7(b) must be:
 - (1) another director who is present and willing to act; or
 - (2) if no other directors present and willing to act.
- (d) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.
- (e) Where the votes on a proposed resolution are equal:
 - (1) the chair does not have a second or casting vote; and
 - (2) the proposed resolution is taken as lost.

13.8 Decisions of the members

- (a) Every member has one vote.
- (b) The directors may decide the manner in which voting is held at a meeting or, where a meeting is not required, by postal, electronic or any other means of voting.
- (c) Subject to this constitution, each member entitled to vote at a meeting of members may vote as decided by the directors:
 - (1) in person;
 - (2) by one proxy; or
 - (3) by written vote (if permitted).
- (d) A proxy (if any) is entitled to a separate vote for each member the person represents including in a vote by show of hands, in addition to any vote the person may have as a member in her or his own right.
- (e) If the directors decide, written voting may be permitted. The directors must decide the manner written votes are to be given.
- (f) 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 chair, whose decision is final.
- (g) A vote not disallowed by the chair under rule 13.8(f) is valid for all purposes.
- (h) Except where by law a resolution requires a special majority, resolutions must be decided by a majority of the votes cast by the members.

13.9 Voting by show of hands or ballot

- (a) 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 ballot (poll) is demanded by:
 - (1) the chair of the meeting;
 - (2) at least 2 members present and with the right to vote on the resolution.
- (b) A demand for a ballot does not prevent a general meeting continuing to transact any business except the question on which the ballot has been demanded.
- (c) Unless a ballot is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or 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.
- (d) If a ballot 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 chair of the meeting directs. The result of the ballot is the resolution of the meeting at which the ballot was demanded.
- (e) A ballot demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (f) The demand for a ballot may be withdrawn.

13.10 Voting by proxy

- (a) A member may appoint a proxy by written notice to the company to attend meetings and vote on behalf of the member. The directors may decide the rules relevant to the appointment and powers of the proxy.
- (b) Unless otherwise provided in the written appointment, the appointment of a proxy will give the proxy the power:
 - (1) to agree to a meeting being convened by shorter notice than is required by law or by this constitution;
 - (2) to vote on any amendment to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (3) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (4) to ask questions and other customary actions at a meeting.
- (c) The written appointment of a proxy may direct the proxy how to vote in respect of a particular resolution and, where this is provided, the proxy is not entitled to vote on the proposed resolution except as directed in the appointment.
- (d) Unless the directors otherwise agree, a proxy may not vote at a general meeting or adjourned meeting or on a ballot unless a written appointment is:
 - (1) received in the manner specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (2) in the case of an adjourned meeting, provided to the secretary at the adjourned meeting.

- (e) The appointment of a proxy is not revoked by the individual member appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy for the appointer is not entitled to vote as the appointer's proxy on the resolution.

13.11 Voting by written votes

- (a) The directors may decide that, at any general meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a written vote in respect of that resolution. A 'written vote' is a vote submitted by a member by giving notice to the company for or against the identified resolution.
- (b) The directors may decide the procedures in relation to written voting, including specifying the form, method and timing of giving a written vote at a meeting.
- (c) A person who has cast a written vote is entitled to attend a meeting. If a member attempts to cast more than one vote on a particular resolution, the vote cast in person prevails over the written vote.

14 Directors

14.1 Appointing and removing directors

- (a) The minimum number of directors is 6. The maximum number of directors is to be fixed by the directors, but may not be more than 11, 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) Before any individual is appointed as a director: Subject to 14.1(c)(2), , provided:
 - (1) the number of directors after the appointment must not exceed the maximum number fixed under rule 14.1(a) and there must be a majority of directors with a Medical Background;
 - (2) that individual must sign a consent to act as a director; and
 - (3) the individual must not be disqualified from managing a corporation under the Corporations Act nor disqualified from being a responsible entity under the ACNC Act.
- (c) Subject to rule 14.1(b)
 - (1) Médecins Sans Frontières France may appoint and remove one director by notice to the company (**Appointed Director**).
 - (2) The directors may appoint or re-appoint any individual with appropriate skills and experience, either to fill a casual vacancy or as an addition to the existing directors, for a set term not exceeding 3 years, up to a maximum term of 9 consecutive years (Board Appointee). There may be only one Board Appointee at any given time;
 - (3) The directors may appoint any member of the company as a director, either to fill a casual vacancy or as an addition to the existing directors
- (d) The directors will ensure there is a majority of people with a Medical Background on the board.

14.2 Retirement of directors by rotation

- (a) The directors must hold an election each financial year in accordance with this rule. Elections may take place at a general meeting or by ballot.
- (b) Other than the Appointed Director and the Board Appointee, a director appointed under rule 14.1(b) holds office only until the conclusion of the next election following her or his appointment.
- (c) At every election, after excluding the Appointed Director and the Board Appointee and any director appointed by the directors under rule 14.1 and standing for election, at least 2 of the remaining directors must retire from office.
- (d) No director, other than the Appointed Director and the Board Appointee, may hold office without re-election beyond the third election following the meeting at which the director was last elected or re-elected.
- (e) The directors to retire under rule 14.2(c) are those directors who wish to retire and not offer themselves for re-election, those directors required to retire under rule 14.2(d) and, so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment. As between directors who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be decided by lot.
- (f) The directors to retire under rule 14.2(c) (both as to number and identity) is decided having regard to the composition of the board of directors 21 days prior to the notice of the election being sent to members. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice but before the election closes.
- (g) A director retiring from office is eligible for re-election subject to rule 14.1(c)(2) and a maximum term of 9 consecutive years, unless the maximum term is varied for a particular director by the directors.
- (h) The retirement of a director from office and the re-election of the director or the election of another person to that office (as the case may be) takes effect on the date notified by the directors.

14.3 Nomination of directors

- (a) Nominations of candidates for election as directors will be received by the secretary at least 35 days prior to the election general meeting unless the directors agree to accept nominations after this time.
- (b) The nominations must be:
 - (1) made by a member in writing in accordance with requirements given by the directors;
 - (2) accompanied by a CV; and
 - (3) delivered to the secretary before the date notified.

14.4 Vacation of office

The office of a director becomes vacant:

- (a) if the director dies;
- (b) if the director, other than the Board Appointee, ceases to be a member;

- (c) if the director resigns by giving notice to the company;
- (d) if the director is removed from office by resolution of the members;
- (e) if the director is the Appointed Director, and is removed by Médecins Sans Frontières France;
- (f) if the director is appointed for a specific term of office and is not reappointed;
- (g) if the director is disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible entity under the ACNC Act;
- (h) 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;
- (i) in the circumstances outlined in the Corporations Act;
- (j) if a person is appointed to make decisions on behalf of the director under a law relating to mental health.

14.5 Powers and duties of directors

- (a) The directors are responsible for managing the company's affairs and carrying out the company's purposes set out in rule 2.
- (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.

14.6 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.

14.7 Committees

- (a) The directors may delegate their powers to one or more committees consisting of the number of directors and/or others.
- (b) A committee must exercise its powers within the terms of the delegation.
- (c) The procedures in rule 15 apply as far as possible to the decision-making of any committees.

14.8 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 directors 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.

15 Meetings of directors

15.1 Convening meetings

- (a) The directors may meet and adjourn and otherwise regulate their meetings as they think fit.
- (b) A director may call a meeting of the directors 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 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 any way authorised by rule 18.1.
- (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 before or after the meeting;
 - (3) the director has notified or notifies the company of her or his 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.

15.2 Directors' meetings using 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 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.
- (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 chair of the meeting, as long as at least one of the directors 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 chair may adjourn the meeting until the difficulty is remedied or may, if a quorum of directors remains present, continue with the meeting.

15.3 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 a majority of the directors, rounded up to the nearest whole number.
- (c) If the number of directors in 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.

15.4 President

- (a) The directors may elect one of the directors as president who will act as chair of directors and may decide the period for which that director is to be the president.
- (b) The president must be a person with a Medical Background.
- (c) If, in exceptional circumstances, a suitable person with a Medical Background cannot be appointed, a person without a Medical Background may be appointed. A president appointed under this rule 15.4(c) may hold office as president for a maximum of 1 year.
- (d) The president must preside as chair at each meeting of directors if present within 10 minutes after the time appointed for the meeting and willing to act.
- (e) If there is no president or the conditions in rule 15.4(d) have not been met, the directors present must elect one of the directors as chair of the meeting.

15.5 Decisions of directors

- (a) A directors' resolution at a directors' 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 president does not have a second or casting vote, and the vote is taken as lost.

15.6 Written resolutions of directors

- (a) A resolution is taken to have been passed by a meeting of directors 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;
 - (2) a majority of the directors sign or consent to the resolution within the time specified, or if no time is specified, within 14 days of the document being sent to the directors; and
 - (3) the directors who sign or consent to the resolution would have constituted a quorum at a 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 the company notice agreeing to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (3) telephoning the secretary or the president and signifying assent to the resolution and clearly identifying its terms.

- (c) The resolution is taken as passed when the last director required to constitute a majority of the directors signs or consents to that resolution within the time period specified in rule 15.6(a)(2).

15.7 Minutes and records

- (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 resolution passed.
- (b) The minutes of a meeting must be signed within a reasonable time by the president or, if the president was not the chair, the chair of that meeting or of the next meeting.

16 Secretary

- (a) The directors must appoint at least one secretary who ordinarily resides in Australia and who may also be a director.
- (b) The secretary must provide consent to the appointment.
- (c) The secretary can be removed by the directors.

17 Indemnity and insurance

17.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 17 applies to Indemnified Officers.

17.2 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.

17.3 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.

17.4 Savings

Nothing in this rule 17:

- (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 17; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 17 does not apply.

18 Notice

18.1 Notice by the company to members or directors

The company may give notice and any communication:

- (a) personally;
- (b) by post to the person's nominated address;
- (c) by email or other electronic means; or
- (d) by notifying the member by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

18.2 Notices by member or directors to the company

Notice may be given by a member or director to the company by:

- (a) personal service at its registered address;
- (b) post to its registered address; or
- (c) sending it to the company's principal email address, or if there is no principal email address, to the email address of the secretary.

18.3 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 three Business Days after the date it was posted.
- (b) Where the company sends a notice by email or other electronic means, the notice is taken as served on the Business Day after it was sent.
- (c) If service under rule 18.3(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 following Business Day.

18.4 Other communications and documents

Rules 18.1 to 18.3 apply, as far as they can, with any necessary changes, to the service of any communication or document.

19 Definitions and interpretation

19.1 Definitions

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

Term	Meaning
ACNC Act	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth).</i>
Business Day	Monday to Friday inclusive, excluding New Years' Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.
Charter	the charter adopted by the International Council of Médecins Sans Frontières in 1990
Commissioner	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97
Corporations Act	<i>Corporations Act 2001 (Cth).</i>
Deductible Contribution	a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
Financial Year	period of 12 months ending on 31 December.
Gift	a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage.
Indemnified Officer	1 each person who is or has been a director, secretary 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	<i>Income Tax Assessment Act 1997 (Cth).</i>
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Institutional Member	has the same meaning as set out in the International Statutes of Médecins Sans Frontières International.
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International Staff	has the same meaning as set out in the International Statutes of Médecins Sans Frontières International.
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Licence Agreement	the Trademark License Agreement entered by and between Médecins Sans Frontières International and Médecins Sans Frontières Australia.
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Medical Background	has the same meaning as set out in the International Statutes of Médecins Sans Frontières International.
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Operational Projects	has the same meaning as set out in the International Statutes of Médecins Sans Frontières International.
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Responsible Person	<p>an individual who:</p> <ol style="list-style-type: none">1 performs a significant public function;2 is a member of a professional body having a code of ethics or rules of conduct;3 is officially charged with spiritual functions by a religious institution;4 is a director of a company whose shares are listed on the Australian Securities Exchange;5 has received formal recognition from government for services to the community;6 is an individual before whom a statutory declaration may be made; or7 is approved as a Responsible Person by the Commissioner.
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19.2 Interpretation

In this constitution:

- (a) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;

- (b) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (c) 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;
- (d) 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.

20 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.