
Constitution

Aged Care Services Nine (George Vowell) Pty Ltd
ACN 117 021 708

A proprietary company limited by shares

5 November 2021

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Part A – Preliminary matters

1 Defined terms and interpretation

The Dictionary and Interpretation provisions in Schedule 1:

- (a) define some of the terms used in this constitution;
 - (b) set out the rules of interpretation which apply to this constitution; and
 - (c) clarify the effect of the Corporations Act on this constitution.
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2 Name, nature of the company

- (a) The name of the company is Aged Care Services Nine (George Vowell) Pty Ltd or, if the name is lawfully changed in accordance with the Corporations Act and this constitution, that name.
 - (b) The company is a proprietary company limited by shares which is intended to operate as a charity.
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Part B – Purpose

3 Purpose and activities of the company

3.1 Purpose

The purpose of the company is to assist people requiring aged care facilities and services through the provision of health, aged, community care and outreach and related services in compliance with the Health Service Philosophy (**Charitable Purpose**).

3.2 Activities

The activities of the company must be conducted in furtherance of its Charitable Purpose and may include:

- (a) providing care for older Australians, including respite care, permanent aged care, dementia care and palliative care;
- (b) assisting older Australians with day-to-day responsibilities, including cooking, gardening, laundry and cleaning;
- (c) organising and facilitating activities for older Australians to promote exercise and social and mental stimulation;
- (d) carrying on (or assist in the carrying on) and promotion of the charitable activities of Calvary Ministries in its mission in health care;
- (e) collaborating with the other services in LCM Health Care in the broader interests of the LCM Health Care group and to provide money or other support to any of those services that are exempt from income tax;

- (f) co-operating and consulting with other health care institutions and community organisations; and
- (g) any other activities ancillary to or necessary for the fulfillment of the Charitable Purpose.

3.3 Philosophy

- (a) The governance, management and operation of the company and the conduct of its activities will be carried out in accordance with the philosophy of Calvary Ministries and the teachings and practices of the Catholic Church.
- (b) The company will carry out its functions with special cognisance of the charism, spirit and mission of the Sisters of the Little Company of Mary as the founder of LCM Health Care and the founding participating entity of Calvary Ministries.
- (c) In carrying out its role, the company must seek to promote and provide health care which values respect for human dignity, is person-centred, has a special concern for the marginalised, the common good, and the appropriate stewardship of resources, and delivers social justice.
- (d) The company must strive to achieve its vision in accordance with its mission and values.

3.4 Mission

The mission of the company is to bring the healing ministry of Jesus to those who are sick, dying, and in need through “being for others”:

- (a) in the Spirit of Mary standing by her Son on Calvary;
- (b) through the provision of quality, responsive and compassionate health and aged care services;
- (c) based on Gospel values; and
- (d) in celebration of the rich heritage and story of the Sisters of the Little Company of Mary.

3.5 Vision

The vision of the company is, as a Catholic health, community and aged care provider, to excel, and to be recognised, as a continuing source of healing, hope and nurturing to the people and communities we serve.

3.6 Values

The values of the company are:

- (a) hospitality;
- (b) healing;
- (c) stewardship; and
- (d) respect.

Part B – Shares and membership

4 Share capital

4.1 Sole member of the company

Calvary Holdings Pty Ltd (formerly Japara Holdings Pty Ltd) (ACN 110 466 889) as sole member will hold 100% of the share capital of the company.

4.2 Shares

The directors must not dispose of shares, issue shares or grant options over shares to any person unless:

- (a) first approved in writing by Calvary Ministries Limited; and
- (b) the recipient of existing shares, issued shares or an option over shares under this rule 4.2 is an Eligible Recipient.

4.3 Certificates

The member is entitled without payment to receive a certificate for shares issued as required under the Corporations Act.

4.4 Equitable interests in shares

- (a) The company may treat the registered holder of a share as the absolute owner of that share.
- (b) The company is not bound by or compelled in any way to recognise an equitable, contingent, future, partial or other right or interest in a share or unit of a share, even if the company has notice of that right or interest.
- (c) Without in any way limiting rule 4.4(a), with the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.

5 Resolutions of sole member company

The company may pass a resolution by the sole member recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

Part D – Not-for-profit

6 No profits for member

- (a) Subject to rule 6(b), the assets and income of the company must be applied solely in furtherance of the Charitable Purpose and no portion of the income or assets of the company may be paid or transferred, directly or indirectly (including by way of dividend, bonus or otherwise), to any member.

- (b) The company may, with the approval of the directors, make payment in good faith to a member of the company:
 - (i) by way of reasonable and proper payment for any goods supplied or services rendered to the company (including payment as a consultant);
 - (ii) by way of interest on money lent to the company by the member at a reasonable and proper rate per annum not exceeding the rate for the time being charged by the company's bankers on overdrawn accounts;
 - (iii) by way of reasonable and proper rent for premises let by the member to the company;
 - (iv) as a result of the member's participation in a social bond or similar program of the company;
 - (v) by way of distribution to a member, but only if the member is an Eligible Recipient; and
 - (vi) for authorised out-of-pocket expenses reasonably and properly incurred by the member in connection with the affairs of the company.

Part E – Directors and secretary

7 Directors

7.1 Becoming and ceasing to be a director

- (a) Provided a consent to act as a director has been received by the company, a person may become a director of the company by appointment by the National Board.
- (b) The term of office of a director commences on the date that person is appointed as a director and continues for the period determined by the National Board at the time of appointment or until removal from office by the National Board.
- (c) Nothing in this rule 7.1 prevents a director from vacating office by providing a written notice of resignation to the company. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

7.2 Payments to directors

- (a) Subject to rule 7.2(b), each director is entitled to:
 - (i) the reasonable remuneration out of the funds of the company as the directors determine, but if the member has fixed a limit on the amount of remuneration payable to the directors, the aggregate remuneration of directors must not exceed that limit;
 - (ii) be reimbursed for all reasonable authorised travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from meetings of the directors and meetings of committees; and

- (iii) receive payment for any goods supplied or services rendered to the company (other than as a director), as long as the amount is proper and reasonable in the circumstances.
- (b) Notwithstanding anything else in this constitution, no payment of any kind can be made by the company to a director unless that payment is approved by:
 - (i) the directors; or
 - (ii) such other person or persons to whom the directors may have delegated such authority in a way consistent with rule 7.12 or rule 7.13.

7.3 Interested directors

- (a) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is voided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (b) Each director must disclose all personal interests and other matters that could, or do, give rise to a conflict of interest in relation to a matter or decision being considered by the directors.
- (c) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with the Corporations Act which permits that director to do so.
- (d) If rule 7.3(c) operates to the effect that there are not enough directors to form a quorum for a directors' meeting, the provisions of the Corporations Act will apply in relation to that matter.
- (e) Subject to rule 7.3(f), a director who is in any way interested in a contract or arrangement (other than by having a material personal interest which is to be dealt with in accordance with rule 7.3(c)) may, despite that interest:
 - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement;
 - (ii) sign or countersign any document relating to that contract or arrangement; and
 - (iii) remain present in the meeting and vote in relation to that contract or arrangement or any matter arising out of those things.
- (f) Rule 7.3(e) does not apply if, and to the extent that, it would be contrary to law.

7.4 Powers and duties of directors

- (a) The directors are responsible for the governance, business and affairs of the company and may exercise all the powers of the company which are not required by the law or this constitution to be exercised by the sole member.
- (b) The directors must comply with their duties as directors under legislation and common law. For as long as the company is registered as a charity with the Australian Charities and Not-for-profits Commission or its successor, the company

must also ensure the directors comply with the requirements described in Governance Standard 5 of the regulations made under the ACNC Act which are to ensure the directors:

- (i) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
 - (ii) act in good faith in the best interests of the company and to further the Charitable Purpose;
 - (iii) do not misuse their position as a director;
 - (iv) do not misuse information that they gain in their role as a director;
 - (v) disclose any perceived or material conflicts of interest;
 - (vi) ensure that the financial affairs of the company are managed responsibly; and
 - (vii) do not allow the company to operate while insolvent.
- (c) Where permitted by the Corporations Act, if the company has only one member, and is a wholly-owned subsidiary of that member, a director may act in the best interests of the member.
- (d) Notwithstanding rule 7.4(a), the directors must not without the consent of Calvary Ministries Limited:
- (i) change the philosophy, mission, vision or values of the company from those set out in rule 3;
 - (ii) authorise the opening or closure or a change in the principal role and services or name of the service including any joint venture or agreement having that effect;
 - (iii) sell any real property having a value in excess of a value to be determined from time to time by Calvary Ministries Limited;
 - (iv) buy any real property having a value in excess of a value to be determined from time to time by Calvary Ministries Limited;
 - (v) grant or take a lease of real property for a period (including options) in excess of a period to be determined from time to time by Calvary Ministries Limited, other than to entities within LCM Health Care;
 - (vi) borrow money in the name of the company from entities not forming part of LCM Health Care in excess of an amount from time to time specified by Calvary Ministries Limited;
 - (vii) lend money to entities not forming part of LCM Health Care;
 - (viii) authorise the spending of capital moneys in excess of an amount that may be specified from time to time by Calvary Ministries Limited;

- (ix) invest any money, other than with entities within LCM Health Care, or in investments of any kind specified in guidelines published from time to time by Calvary Ministries Limited;
- (x) take any action in relation to any bequests or donations, that is outside processes approved by Calvary Ministries Limited to ensure compliance with canon law requirements; or
- (i) change the use or location of religious or historical items that are part of the heritage of the Sisters of the Little Company of Mary.

7.5 Directors' meetings

- (a) The directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.
- (b) The directors should meet as often as required for the proper discharge of their directors' duties.

7.6 Convening of meetings of directors

A meeting of directors may be convened by the member, the chair or any two of the directors.

7.7 Notice of directors' meetings

- (a) Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the directors.
- (b) A notice of a directors' meeting must:
 - (i) be given in a way permitted by rule 13;
 - (ii) specify the time and place of and, if relevant, the form of technology for, the meeting;
 - (iii) state the nature of the business to be transacted at the meeting; and
 - (iv) be provided with sufficient time for the directors to properly consider the subject matter contained within the notice and any accompanying materials.
- (c) A resolution passed at a directors' meeting is valid even in circumstances where a director did not receive notice of the meeting, but only if:
 - (i) the notice was not received because of accident or error;
 - (ii) before or after the meeting, that director notifies the company of a decision on the resolution; or
 - (iii) the director attended the meeting.

7.8 Quorum for directors' meetings

- (a) No business may be transacted at a directors' meeting unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of a majority of current directors.

- (c) For the avoidance of doubt, a director is present at a meeting if participating by technological means such as by telephone.
- (d) If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then, without prejudice to the right of those present to discuss but not to vote on any matter, the meeting will be dissolved or stand adjourned to such time, date and place as those present at the meeting decide and as notified to all directors in accordance with rule 7.7(a).

7.9 Chairperson

- (a) The directors may appoint a director to the office of chairperson of directors (**Chairperson**) and, subject to rule 7.1, determine the period for which that director is to hold such office.
- (b) A person may only fill the office of Chairperson for as long as that person is a director of the company.
- (c) Subject to rule 7.9(d), the Chairperson must preside as chair at each directors' meeting.
- (d) If at a meeting of directors:
 - (i) there is no Chairperson;
 - (ii) the Chairperson is absent from the meeting (or part of the meeting); or
 - (iii) the Chairperson is present but is prevented from acting or not willing to act as chair of the meeting or of part of the meeting,

the directors present may elect one of themselves to be chair of the meeting or part of the meeting until such time as the Chairperson joins the meeting or can resume the role of chair (as applicable).

7.10 Decisions of directors

- (a) A directors' meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under the law and this constitution.
- (b) Questions arising at a directors' meeting are, unless a higher number or threshold is required under this constitution or by law, to be decided by a majority of votes cast by the directors present and a decision of a kind made in accordance with this rule is for all purposes a determination of the directors.
- (c) If there are an equal number of votes cast for and against a resolution at a directors' meeting, then the chair may exercise a second or casting vote in addition to any vote the chair may have as a director of the company.

7.11 Decisions without meetings

Directors may pass resolutions outside of a directors' meeting in any manner (including through the use of technology) provided:

- (a) all directors other than a director on an approved leave of absence are sent a copy of the resolutions and are given a reasonable time to respond considering the urgency and nature of the matters under consideration;

- (b) any such resolution is passed by at least a majority of all current directors (unless a higher threshold is required by law or this constitution); and
- (c) such manner complies with:
 - (i) the law; and
 - (ii) any policies and procedures relating to the passing of director resolutions as determined by the directors from time to time.

7.12 Resolutions of single director company

- (a) If the company has only one director, the director may:
 - (i) pass a resolution by recording it and signing the record; and
 - (ii) make a declaration by recording it and signing the record.
- (b) The record of the decision is to be taken as a minute of the passing of that resolution.
- (c) The record of the declaration:
 - (i) satisfies any requirement in the Corporations Act that the declaration be made at a directors' meeting; and
 - (ii) is to be taken as a minute of the making of the declaration.

7.13 Delegation to individuals

- (a) The directors may resolve to delegate any of their powers to such individual or individuals as they so determine including:
 - (i) to one or more directors; or
 - (ii) to one or more employees.
- (b) The directors may delegate their powers for such time as they determine and may revoke or vary any power so delegated.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (d) The directors may continue to exercise all of their powers despite any delegation.
- (e) A delegation under this rule need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.

7.14 Validity of acts

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalid just because:

- (a) of a defect in the appointment of the director;
- (b) the person is disqualified from being a director or has vacated office; or

- (c) the person is not entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

8 Secretaries

- (a) The National Board may appoint at least one secretary who may be, but does not need to be, a director.
- (b) The appointment of a secretary may be for the period, on the conditions and at the remuneration as the National Board determines.
- (c) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the National Board at any time, with or without cause. If that person is a director, such removal or dismissal does not in and of itself remove that person from office as a director.
- (d) An act done by a person acting as a secretary is not invalid just because:
 - (i) of a defect in the person's appointment as a secretary; or
 - (ii) the person is disqualified from being a secretary,
 - (iii) if that circumstance was not known by the person or the directors when the act was done.

Part F – Winding up and loss of endorsement

9 Winding up

- (a) Before the company is wound up, it must first wind up each of the deductible gift recipient endorsed funds it operates (if any), in accordance with each fund's winding up requirements.
- (b) If upon the winding up or dissolution of the company there remains after satisfaction of all of its debts and liabilities, any property or moneys whatsoever (**Surplus Assets**), such Surplus Assets must only be given or distributed to one or more Eligible Recipients. For the avoidance of doubt, Surplus Assets may be given or distributed to a member that is also an Eligible Recipient.
- (c) The decision as to which Eligible Recipient is (or which Eligible Recipients are) to be given the Surplus Assets under rule 9(b) is to be determined:
 - (i) by a resolution of the member at or before the winding up or dissolution of the company; or
 - (ii) if no such resolution is passed, by the Supreme Court.

10 Loss of deductible gift recipient endorsement

- (a) If the company is endorsed as a deductible gift recipient as a whole and this endorsement is revoked, then the company must ensure that the following assets

remaining after the payment of all liabilities are distributed to one or more Eligible Recipients:

- (i) deductible gifts of money or property received for the Charitable Purpose;
 - (ii) deductible contributions made in relation to an eligible fundraising event held to raise funds for the Charitable Purpose; and
 - (iii) money received by the company because of such deductible gifts and contributions.
- (b) The decision as to which Eligible Recipient (or Eligible Recipients) receive the funds distributed in accordance with rule 10(a) is to be determined by the National Board.

Part G – Administrative matters

11 Minutes, records and negotiable instruments

11.1 Minutes

The directors must ensure that the following minutes are recorded, approved and kept in accordance with the law:

- (a) resolutions of the member;
- (b) meetings and resolutions of directors (including those made without meetings under rule 7.11); and
- (c) meetings and resolutions of committees.

11.2 Inspection of records

- (a) Subject to the law and rule 11.2(b), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open for inspection.
- (b) The member may, upon reasonable notice to the directors, inspect any books, records or documents of the company, provided the information obtained is only used for a proper purpose in connection with membership of the company.
- (c) The company must establish and administer all registers required to be kept by law and the member must provide the company with such information as is required for the company to comply with this rule. If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the member becoming aware that such change has occurred.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep all financial and other records required by law.

11.3 Negotiable instruments

How cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments or other documents are to be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) is to be determined by any policies and procedures imposed by Little Company of Mary Health Care Limited from time to time.

12 Indemnity and insurance

- (a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- (b) This indemnity:
 - (i) may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule);
 - (ii) does not cover any loss or liability of an officer seeking to be indemnified under this rule if that loss or liability arises from that person's wilful misconduct or fraud; and
 - (iii) operates only to the extent that the loss or liability is not paid by insurance.
- (c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs.
- (d) To the extent permitted by law, the company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the company on any terms and conditions that the directors think fit to give effect to the rights of that person under this rule 12. Any such agreement may also give the person rights to inspect and obtain copies of the books of the company for the purposes, and on such other terms and conditions, as the directors decide.

13 Notices

13.1 Giving of notices

Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) provided such manner complies with:

- (a) the law; and
- (b) any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the directors from time to time.

13.2 Timing of services

- (a) Where a notice is served personally, service of the notice is taken to be effected when delivered.

- (b) Where a notice is sent by post, service of the notice is taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected at the time at which the letter would be delivered in the ordinary course of post.
 - (c) Where a notice is sent by electronic means, including email, service of the notice is taken to be effected:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the notice has not been delivered,whichever happens first.
 - (d) If the delivery or receipt is on a day which is not a Business Day or is after 5.00pm on a Business Day it is deemed to be received at 9.00am on the following Business Day.
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14 General

- (a) **Common seal:** The company may, but is not required to, have and use a common seal. If the directors determine that the company have a common seal, then it must be kept and used in accordance with the law.
- (b) **Submission to jurisdiction:** The member submits to the non-exclusive jurisdiction of the Supreme Court of the State of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

1 Dictionary

In this constitution:

ACNC Act means the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth).

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the company's registered office is located.

Calvary Ministries means the public juridical person established under the Code of Canon Law of the Roman Catholic Church, known as Calvary Ministries.

Calvary Ministries Limited means the company known as Calvary Ministries Limited that acts as trustee for Calvary Ministries.

Charitable Purpose has the meaning given at rule 3.1.

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

Eligible Recipient means an organisation that:

- (a) has charitable objects or purposes similar to the Charitable Purpose;
- (b) has a governing document which requires its income and property to be applied in promoting its objects and agrees to use any distribution provided to it by the company to further such objects or purposes;
- (c) is registered as a charity with the Australian Charities and Not-for-profits Commission;
- (d) by law or its constituent rules, is prohibited from distributing, and does not distribute, its income and property amongst its members (either while it is operating or upon winding up) to an extent at least as great as is imposed upon the company; and
- (e) if the company is endorsed as a deductible gift recipient for the purpose of any Australian federal tax law, is similarly endorsed as a deductible gift recipient.

Health Services Philosophy means the philosophy of the Health services under the care of Calvary Ministries and the Code of Ethical Standards of Catholic Health Australia as determined from time to time by Calvary Ministries in fidelity to the teachings and example of Christ and the teaching of the Catholic Church.

Little Company of Mary Health Care Limited means Little Company of Mary Health Care Limited (ACN 079 815 697).

LCM Health Care means the health, aged, and community care and related services governed by the National Board.

National Board means the Board of Directors of Little Company of Mary Health Care Limited.

Surplus Assets has the meaning given at rule 9(b).

2 Interpretation

2.1 General

- (a) In this constitution the words 'constitution', 'chairperson', 'director', 'secretary', 'member' and the like are, and should be interpreted to be, references to the constitution, chairperson, director, secretary, member and the like (as the case may be) of the company named on the cover page.
- (b) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (c) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution.
- (d) Unless the contrary intention appears, in this constitution:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) words used to denote persons generally include any individual, company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (v) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
 - (vi) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) A requirement in this constitution for something to be carried out in writing will be satisfied if the matter in question is carried out in some other lawful manner that is approved by the directors.
- (f) In this constitution, where communication from the member to the company must be 'signed' by the member, in addition to any other methods permitted by law, the member may sign in any manner that allows the directors to be satisfied, acting reasonably, that the communication is from the member, including by using an electronic signature.
- (g) 'Writing' or 'written' includes modes of representing or reproducing words, figures, drawings or symbols in a visible or tactile form which renders the message retrievable by people who know the language in question.

2.2 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.