

# Constitution

**Dr Steve Burroughs Foundation Limited**

ACN 619 212 633

A company limited by guarantee

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## Background

*Dr Steve Burroughs Foundation Limited provides support to improve the social, economic and wellbeing of Australian indigenous people whilst acknowledging their culture and spiritual connection to the land.*

*The company achieves this by:*

- *Providing appropriate training and life skills to gain sustainable employment, economic development and life outcomes.*
- *Supporting remote indigenous construction by:*
  - *Providing designs and construction insights that apply resilience and sustainability;*
  - *Providing appropriate designs which meet building requirements while acknowledging indigenous culture and social needs; and*
  - *Involving individuals, groups and communities through consultation and respect.*
- *Fostering better cultural acknowledgement and economic relationships between Aboriginal people and the rest of the community;*
- *Supporting research which provides innovative, sustainable solutions;*
- *Operating within a Natural Resource Management framework to advance land, sea and waterway management, conservation protection and restoration; and*
- *Developing links with other non-profit community organisations, with a view to improving the scope and quality of services and assistance available to Australian Indigenous people;*
- *Enlisting the support of the private sector to facilitate local development of individuals, families and communities; and*
- *Working with Governments at the local, State and National levels to support and sponsor projects initiated by the foundation.*

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under clause 9.8.

**Annual Subscription Fee** means the amount (if any) fixed from time to time under clause 4.4.

**Approved Institution** means a fund, authority or institution which falls within the description of an item in any of the tables in Subdivision 30-B of the Tax Act, which has been established for charitable purposes, and which is endorsed as a deductible gift recipient under the Tax Act.

**Charitable Fundraising Legislation** means the *Charitable Collections Act 2003* (ACT) and the *Charitable Collections Regulations* (ACT) and corresponding legislation in other Australian States and Territories.

**Chief Executive Officer** means a person appointed as an executive director under Part 10.

**Committee** means a committee of Directors constituted under clause 8.6.

**Company** means Foundation for Dr Steve Burroughs Limited.

**Constitution** means this constitution as amended from time to time, and a reference to a clause is a reference to a clause of this Constitution.

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

**Director** means a person holding office as a director, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Member** means a person entered in the register of Members as a member of the Company.

**Part** means a Part of this Constitution.

**Principal Object** has the meaning given in clause 2.2.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under clause 11 as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

## 1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(meaning not limited)** a reference to the words “include”, “including” “for example” or “such as”, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (e) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (f) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (g) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (j) **(currency)** a reference to dollars or \$ is a reference to the lawful currency of Australia.

## 1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

## 1.4 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

## 1.6 Headings and Parts

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into Parts as indicated by its Contents.

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## 2. OBJECTS AND PURPOSES OF COMPANY

### 2.1 Charitable purpose

The Company may only pursue charitable purposes associated with its objects, and must do so predominantly in Australia.

### 2.2 Objects

The Primary Objective of the Company is to advance the social and public welfare of disadvantaged Indigenous Australians whilst protecting Indigenous culture and being respectful to the environment. The Company will pursue its activities principally within Australia. The additional objectives listed below will assist in the achievement of this objective.

- (a) To support Indigenous Australian communities, organisations, groups and individuals by providing pathways to improve the standard of living for disadvantaged Indigenous Australians.
- (b) To advocate commercial innovation that is applicable to community support and involvement within disadvantaged Indigenous communities.
- (c) To enhance, wherever practicable, joint ventures and partnering between Indigenous and mainstream enterprises that lead to positive community-based business development, employment and training outcomes for Indigenous Australians.
- (d) To enable the Foundation to become a conduit for philanthropic funding to benefit disadvantaged Indigenous Australians ambition in terms of progress in:
  - (i) commercial development of essential services such as electricity and infrastructure in remote or disadvantaged areas;
  - (ii) the construction of additional and improved housing;
  - (iii) improving the welfare of Indigenous Australians by community involvement in land, sea and waterway natural resource research and practical management;
  - (iv) supporting families and community advancement including supporting children, young people, the elderly and the unemployed;
  - (v) improving life outcomes through facilitating better access to education and learning opportunities;
  - (vi) improving access to government services such as health and other government support services;
  - (vii) facilitating entrance to the work-force and the provision of opportunities for self-employment including regional-based community garden, agricultural and other natural resource management projects.

- (e) To work with emerging Indigenous entrepreneurs to develop sustainable economies within communities, encouraging training and employment for local residents.
- (f) To influence decision-makers within government and private enterprise to place greater emphasis on and to facilitate community-led solutions to community-level issues affecting the welfare of Indigenous Australians living in poverty or disadvantaged circumstances.
- (g) To attract national and international support, including funding, for projects and initiatives that lead to measurable improvement in the standards of living in disadvantaged Indigenous communities throughout Australia.
- (h) To promote Indigenous advancement through the Foundation's multi-media website and in partnership with government, commercial and mainstream media communications vehicles.
- (i) To continually improve the Foundation's reach into government agency, commerce and industry group and community organisation decision-making processes for the purpose of improving the welfare of disadvantaged Indigenous Australians.

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### **3. INCOME AND PROPERTY OF COMPANY**

#### **3.1 Application of income and property for objects only**

The profits (if any), other income and property of the Company, however derived, must be applied solely towards the promotion of the objects of the Company as set out in clause 2.

#### **3.2 No dividend, bonus or profit paid to Members**

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise.

#### **3.3 Payments by Company in good faith**

Subject to clauses 7.7, 7.8 and 7.9, clause 3.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner:

- (a) of remuneration for services provided by that officer or Member to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of interest at a rate not exceeding the rate fixed for the purposes of this clause by the Company in general meeting on money borrowed from an officer of the Company or a Member; or
- (d) of reasonable rent for premises let by an officer of the Company or a Member.

#### **3.4 Provision of Services**

Clause 3.2 does not prevent an officer of the Company or a Member being the recipient of services from the Company in furtherance of the Company's objects.

#### **3.5 Charitable Fundraising Legislation**

Funds raised by means of a collection within the meaning of the Charitable Fundraising Legislation must be maintained in accordance with those Acts.

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#### **4. MEMBERSHIP**

##### **4.1 Becoming a Member**

Except for a person who agreed in writing to the terms of this Constitution before the application for the Company's registration was lodged, a person may only become a Member under clause 4.2.

##### **4.2 Admission as a Member**

The Directors may admit as a Member any person who agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.

##### **4.3 Member to notify changes**

A Member must promptly notify the Company of any change in the details with respect to that Member which are recorded in the register of Members.

##### **4.4 Annual Subscription Fee**

The Company in general meeting may determine from time to time the amount of the Annual Subscription Fee (if any) for each year, for each Member or any class of Member.

##### **4.5 Payment of Annual Subscription Fee**

Subject to any contrary notice by the Directors specifying a date and manner of payment, each Member must pay any applicable Annual Subscription Fee in advance by 30 June in each year.

##### **4.6 Waiver of Annual Subscription Fee**

The Directors may waive the payment of all or any part of an Annual Subscription Fee for a Member or any class of Member.

##### **4.7 Directors may create and vary classes and class rights**

The Directors may, subject to this Constitution and the Corporations Act:

- (a) prescribe (and revoke or amend) the criteria for membership (including for any classes of membership) but, by doing so, do not become obliged to accept persons fulfilling those criteria as Members or Members of a class;
- (b) establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
- (c) vary or cancel the rights, restrictions and obligations of Members in any new or existing class, if:
  - (i) at least 75% of the Members of that class give their written consent; or



- (ii) a special resolution to that effect is passed at a separate meeting of those Members.

The clauses on general meetings apply to meetings of a class of Members so far as they are capable of application and with the necessary changes to every separate meeting.

#### 4.8 Ceasing to be a Member

A person ceases to be a Member on:

- (a) resignation; or
- (b) in the case of a natural person:
  - (i) death;
  - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
  - (iii) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
  - (iv) the termination of the person's membership by the Directors or by the Company in general meeting in accordance with this Constitution; and
- (c) in the case of a body corporate:
  - (i) being dissolved or otherwise ceasing to exist;
  - (ii) having a liquidator or provisional liquidator appointed to it; or
  - (iii) being insolvent.

#### 4.9 Resignation

A Member may by written notice to the Company resign from membership with immediate effect or with effect from a specified date occurring not more than three months after the service of the notice. A Member remains liable after resignation for any Annual Subscription Fee due and unpaid at the date of the Member's resignation and for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under clause 18.1.

#### 4.10 Non-payment of Annual Subscription Fee

If an Annual Subscription Fee for a Member remains unpaid for a period of 12 calendar months after it becomes due, the membership of the Member automatically terminates, in which case the Member ceases to be a Member. The Directors may, but are not obliged to, reinstate a Member whose membership is terminated under this clause if that Member pays all overdue Annual Subscription Fee amounts.

#### 4.11 Censuring, suspension or expulsion of Member

If any Member wilfully refuses or neglects to comply with the provisions of this Constitution, or acts in a manner which in the opinion of the Directors is prejudicial to the interests of the Company, the Directors may by resolution censure, suspend or expel the Member from the Company, provided that the following procedure is observed:

- (a) at least one week before the Directors' meeting at which the resolution is passed, the Member must be given notice of the meeting setting out:
  - (i) what is alleged against the Member; and
  - (ii) the intended resolution;
- (b) (at the Directors' meeting, and before the passing of the resolution, the Member must be given an opportunity of giving, orally or in writing, any explanation the Member thinks fit;
- (c) the Member may elect to have the question dealt with by the Company in general meeting, by notice in writing lodged with the Secretary at least 24 hours before the time for holding of the Directors' meeting at which the resolution is to be considered by the Directors;
- (d) if the Member gives a notice under this clause:
  - (i) no resolution of the Directors on that matter is effective;
  - (ii) a general meeting of the Company must be called for the purpose of considering the resolution set out in the notice originally given to the Member under this clause; and
  - (iii) if, at the general meeting, a resolution is passed by a majority of at least two-thirds of those present and voting (the vote to be taken by ballot), the Member concerned must be dealt with in accordance with the resolution; and
- (e) in the case of a resolution passed by the Directors or in general meeting for the Member's expulsion under this clause, the membership of the Member automatically terminates, in which case the Member ceases to be a Member.

#### 4.12 Termination

The Directors may by written notice to the Member terminate the Member's membership with immediate effect or with effect from a specified date occurring not more than 10 days after service of the notice.

#### 4.13 Representative Members

If a person is admitted as a Member as a representative of an unincorporated association or body, the name of the Member, the name of the unincorporated association or body and the fact that the member is its representative must be entered in the register of Members. Subject to the Directors' right to decline to

accept any person as a Member, the unincorporated association or body may replace

the Member who is its representative with another person by notice in writing to the Company signed by any officer of the association or body concerned and setting out the details of the new representative, without it being necessary for the outgoing Member to resign or the incoming Member to apply to become a Member.

#### 4.14 Honorary members

The Directors may admit any persons to, and remove any persons from, honorary membership of the Company. The Directors may not give an honorary member the right to vote on a matter concerning the Company, but may otherwise determine the rights and obligations of an honorary member. An honorary member is not a Member for the purposes of this Constitution or the Corporations Act.

#### 4.15 Patrons

The Directors may appoint and remove any persons as a patron or any other honorary title-holder of the Company on any terms the Directors think fit. A patron (or other honorary title-holder) may, in the discretion of the Directors, be given the right to:

- (a) attend and speak (but not vote) at any general meeting of the Company and be given notice of the meeting as if a Member; and
- (b) receive accounts of the Company when available to Members.

#### 4.16 Limited liability

A Member has no liability as a Member except as set out in this Part 4 and clause 18.1.

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### 5. GENERAL MEETINGS

#### 5.1 Annual general meetings

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

#### 5.2 Convening a general meeting

The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.

#### 5.3 Members have power to convene general meeting

If there are not sufficient Directors for a quorum, a Director or any two or more Members may convene a general meeting of the Company at the cost of the Company.

#### 5.4 Notice of general meeting

Notice of a general meeting must be given in accordance with Part 15 and the Corporations Act and may be given as set out below.

If a Member nominates:

- (a) an electronic means by which the Member may be notified that notices of meeting are available; and
- (b) an electronic means the Member may use to access notices of meeting, the Company may give the Member notice of the meeting by notifying the Member (using the notification means nominated by the Member);
- (c) that the notice of meeting is available; and
- (d) how the Member may use the access means nominated by the Member to access the notice of meeting.

A notice of meeting given to a Member by this electronic means is taken to be given on the day after the day on which the Member is notified that the notice of meeting is available.

#### 5.5 Calculation of period of notice

In computing the period of notice under clause 5.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

**5.6 Directors entitled to notice of general meeting**

A Director is entitled to receive notice of and to attend all general meetings of the Company and is entitled to speak at those meetings.

**5.7 Cancellation or postponement of general meeting**

Where a general meeting (including an annual general meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This clause does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

**5.8 Notice of cancellation, postponement or change of place of general meeting**

Written notice of cancellation or postponement or change of place of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. The notice must be given at least five days before the date for which the meeting is convened and must specify the reason for the cancellation, postponement or change of place. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

**5.9 Contents of notice postponing general meeting**

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

**5.10 Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

**5.11 Business at postponed general meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

**5.12 Non-receipt of notice**

The non-receipt of, or accidental omission to give, a notice of a general meeting or cancellation, postponement or change of place of a general meeting by, or to, a person entitled to receive notice does not invalidate any resolution passed at the general

meeting or at a postponed or changed place meeting or the cancellation or postponement of a meeting.

#### 5.13 Proxy, attorney or Representative at postponed general meeting

Where by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

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## 6. PROCEEDINGS AT GENERAL MEETINGS

### 6.1 Reference to a Member

Unless the contrary intention appears, a reference to a Member in this Part 6 means a person who is a Member, or:

- (a) a proxy;
- (b) an attorney; or
- (c) a Representative of that Member.

### 6.2 Number for a quorum

Subject to clause 6.4, two Members present in person or by proxy, attorney or Representative are a quorum at a general meeting of the Company.

### 6.3 If quorum not present

If within 15 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

### 6.4 Adjourned meeting

At a meeting adjourned under clause 6.3(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## 6.5 Appointment of chairman of general meeting

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting of the Company.

## 6.6 Absence of chairman at general meeting

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (a) the deputy chairman (if any);
- (b) a Director chosen by a majority of the Directors present;
- (c) the only Director present;
- (d) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

## 6.7 Conduct of general meetings

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this clause is final.

## 6.8 Adjournment of general meeting

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- (a) in exercising this discretion, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

6.9 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

6.10 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

6.11 Equality of votes - casting vote for chairman

If there is an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy, attorney or Representative of a Member.

#### 6.13 Voting on show of hands

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

#### 6.14 Entitlement to vote

Subject to the rights and any restrictions attached to any class of Members and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as proxy, attorney or Representative of a Member has one vote for each Member that the person represents.

#### 6.15 Objection to voting qualification

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final. A vote not disallowed under the objection is valid for all purposes.

#### 6.16 Chairman to determine voting dispute

If there is a dispute as to the admission or rejection of a vote, the chairman of the general meeting must decide it and the chairman's decision made in good faith is final and conclusive.

#### 6.17 Circulating resolutions of Members

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all of the Members who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is taken to be passed (and if it is required to be a special resolution to be effective, passed as a special resolution), as if it had been passed unanimously at a duly convened general meeting, at the time the Secretary has evidence that the last Member has signed it.

#### 6.18 Right to appoint attorney

A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.



To be effective, an instrument appointing an attorney under this clause, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

6.19 **Suspension if Annual Subscription Fee not paid**

In addition to any other rights of the Company, and unless otherwise determined by the Directors, for as long as an Annual Subscription Fee is due and payable by a Member and is not paid, or if a Member is suspended, that Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy, attorney or Representative, at a general meeting of the Company.

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**7. DIRECTORS**

7.1 **Number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors may not be less than three, and may not be greater than nine. If at any time the number of Directors is equal to or greater than six, at least one third of those Directors must be Indigenous.

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

7.2 **Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

7.3 **Eligibility for election as Director**

Except for:

- (a) a person who is eligible for election or re-election under clause 7.4; or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least 30 business days before the general meeting or any other period permitted under the Corporations Act.

7.4 **Retirement and election of Directors**

- (a) A Director must not hold office without re-election:

- (i) past the third annual general meeting following the Director's appointment or last election; or
  - (ii) for more than three years, whichever is the longer.

- (b) There must be an election of Directors at each annual general meeting of the Company. This can be satisfied by one or more of the following so long as the maximum number of Directors under clause 7.1 is not exceeded:

- (i) a person standing for election as a new Director having nominated in accordance with clause 7.3;

- (ii) (any Director who was appointed under clause 7.6 standing for election as a Director;
- (iii) any Director who is retiring at the end of the annual general meeting due to the tenure limitation in clause 7.4(a), standing for re-election; or
- (iv) if no person or Director is standing for election or re-election in accordance with paragraphs (i), (ii) or (iii), then the Director who has been a Director the longest without re-election must retire and stand for re-election. If two or more Directors have been a Director the longest and an equal time without re-election, then in default of agreement, the Director to retire will be determined by ballot.

#### 7.5 Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

#### 7.6 Casual vacancy

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number, if any, determined in accordance with clause 7.1.

A Director appointed under this clause holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

#### 7.7 Reimbursement of expenses

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

#### 7.8 Payments to Director

Any payment to a Director which is not prohibited under clause 7.9 must be approved by the Directors.

#### 7.9 Director's interests

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor unless being or becoming a Director would breach any law by reason of holding that office;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;

- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) if the other Directors determine that the Director's interest should not disqualify the Director from considering or voting on a matter, participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this clause is also a reference to each related body corporate of the Company.

#### 7.10 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (b) resigns office by notice in writing to the Company; or
- (c) is not present personally or by Alternate Director at meetings of the Directors for a continuous period of four months without leave of absence from the Directors.

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## 8. POWERS AND DUTIES OF DIRECTORS

### 8.1 Directors to manage Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### 8.2 Specific powers of Directors

Without limiting the generality of clause 8.1, the Directors may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

#### Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

### 8.3 Provisions in power of attorney

A power of attorney granted under clause 8.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### 8.4 Signing of cheques

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

### 8.5 Committees

The Directors may delegate (and revoke the delegation of) any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

### 8.6 Powers delegated to Committees

A Committee to which any powers have been delegated under clause 8.6 must exercise those powers in accordance with any directions of the Directors.

### 8.7 Powers of delegation

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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## 9. PROCEEDINGS OF DIRECTORS

### 9.1 Directors' meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

### 9.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### 9.3 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### 9.4 Alternate Director or proxy and voting

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy. If that person is also a Director, they have one vote as a Director in that capacity.

9.5 Chairman of Directors' meetings

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person remains as chairman.

9.6 Absence of chairman at Directors' meeting

If a Directors' meeting is held and:

- (a) a chairman has not been elected under clause 9.5; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

9.7 Chairman's casting vote at Directors' meetings

In the event of an equality of votes cast for and against a question, the chairman of a Directors' meeting has a second or casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

9.8 Appointment of Alternate Director

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period that the Director thinks fit.

9.9 Alternate Director and meetings

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

9.10 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

9.11 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an alternate Director is:

- (a) an officer of the Company and not the agent of the appointor; and
- (b) responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

9.12 Alternate Director and remuneration

Clauses 3.3, 7.7, 7.8 and 7.9 apply to an Alternate Director as if they were a Director.

9.13 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

9.14 Appointment or termination in writing

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

9.15 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

9.16 Director attending and voting by proxy

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as proxy of another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

9.17 Quorum for Directors' meeting

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is that number which constitutes a majority of the Directors.

9.18 Remaining Directors may act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 7.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

9.19 Chairman of Committee

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

9.20 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

#### 9.21 Determination of questions

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote at the meeting on the question.

#### 9.22 Circulating resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs. The document may be sent or circulated by facsimile or electronic transmission.

#### 9.23 Validity of acts of Directors

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote, as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

#### 9.24 Use of technology for Directors' meetings

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

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### 10. CHIEF EXECUTIVE OFFICER

The Directors may appoint a Chief Executive Officer. The Directors may give a Chief Executive Officer any of the powers conferred on them by this Constitution, subject, at the Directors' discretion, to:

- (a) any time period;
- (b) specific purposes; and
- (c) any other terms and restrictions.

All or any of those powers may be given collaterally with or to the exclusion of the powers of the Directors and may be revoked or varied by the Directors. The Chief Executive Officer may be or become a Director, but if the Chief Executive Officer then ceases to be a Director, for any reason, that does not of itself affect the appointment, or terms of appointment, of the Chief Executive Officer.

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## **11. SECRETARY**

### **11.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Directors.

### **11.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **11.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **12. SEALS**

### **12.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **12.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **13. ADVISORY COUNCIL**

### **13.1 Setting up an advisory council**

The Directors may set up (and disband) an advisory council for the purposes of providing guidance and advice to the Directors (which advice will not be binding on the Directors) and for any other informal purposes as the Directors may decide from time to time.

### **13.2 Directors' discretion**

The Directors have complete discretion as to the composition, functions, rules for proceedings (including frequency of meetings) and remuneration of any advisory council set up under clause 13.1.

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## **14. INSPECTION OF RECORDS**

### **14.1 Inspection by Members**



Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

#### 14.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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### 15. DOCUMENT INCLUDES NOTICE

In this Part 15, a reference to a document includes a notice.

#### 15.1 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by sending it to the Member by other electronic means nominated by the Member.

#### 15.2 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

in either case is taken to have been received on the day after the date of its posting.

#### 15.3 Fax or electronic transmission

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

#### 15.4 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

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### 16. INDEMNITY AND INSURANCE

#### 16.1 Indemnity

The Company may indemnify any current or former Director, Secretary or executive officer of the Company out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

#### 16.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

#### 16.3 Contract

The Company may enter into an agreement with a person referred to in clauses 16.1 and 16.2 with respect to the matters covered by those clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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### 17. ACCOUNTS

The Directors must cause the accounts of the Company to be maintained and audited in accordance with the requirements of the Corporations Act and any applicable Charitable Fundraising Legislation.

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### 18. WINDING UP AND REVOCATION OF DGR ENDORSEMENT

#### 18.1 Contributions on winding up

Each Member undertakes to contribute to the Company's property if the Company is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves, an amount not to exceed \$20.

## 18.2 Application of property on winding up

If any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:

- (a) having objects and/or purposes similar to those of the Company;
- (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution; and
- (c) which is an Approved Institution.

The institution is to be determined by the Members at or before the time of dissolution and in default by application to the court.

## 18.3 Revocation of endorsement as a deductible gift recipient (DGR)

Notwithstanding any other provision in this Constitution, if the endorsement of the Company as a deductible gift recipient under Division 30 of the Tax Act is revoked, all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions must be transferred to an Approved Institution.