

Constitution

CARE Australia ABN 46 003 380 890 "Company"

A company limited by guarantee

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Constitution

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Constitution

1 Definitions and interpretation

1.1 Definitions

In this Constitution unless the contrary intention appears:

Chief Executive means a person appointed as a chief executive under Part 13.

Chairman means the Director elected as chairman of the Company under article 8.5(a)(i).

Committee means a committee of Directors constituted under article 11.6.

Company means CARE Australia ABN 46 003 380 890.

Constitution means this constitution as amended from time to time, and a reference to an article is a reference to an article in this Constitution.

Contents means the contents pages at the beginning of this Constitution.

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

Director means a person holding office as a director of the Company.

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.

Registered Office means the registered office of the Company.

Secretary¹ means a person appointed under Part 14 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).

Treasurer means the Director elected as treasurer of the Company under article 8.5(a)(ii).

1.2 Interpretation

In this Constitution unless the contrary intention appears:

(a) **(gender)** words importing any gender include all other genders;

¹ The CA requires you to have a company secretary, and it would be a strange constitution which did not vest the power to appoint one in the Board.

- (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) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (e) **(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;
- (f) **(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;
- (g) **(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;
- (h) **(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
- (i) **(currency)** a reference to \$ 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 Headings and Parts

Headings and the Contents 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.

1.5 Include etc

In this Constitution, the words “include”, “includes”, “including”, “for example” or “such as” are not to be construed as words of limitation.

1.6 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.

2 Objects of Company

The objects of the Company are:

- (a) to provide resources, disaster and emergency relief, technical assistance, training and self-help programs (as the Board considers appropriate to the needs and priorities of particular locations and communities):
 - (i) to relieve poverty, malnutrition, hunger, illness, illiteracy and discrimination; and
 - (ii) to strengthen the capacity for self-help and to provide economic opportunity;
- (b) to work with other autonomous national and international organisations having (or having objectives which include) similar objectives to those in article 2(a); and
- (c) to do all other things as may be incidental or ancillary to the attainment of these objects.

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 set out in Part 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 articles 9.1, 9.2 and 9.3, article 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 or a Member is a partner:

- (a) of remuneration for services 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 article by the Company in general meeting on money borrowed from an officer or a Member; or
- (d) of reasonable rent for premises let by an officer or a Member.

3.4 Charitable Fundraising Act

Funds raised by means of a collection within the meaning of the *Charitable Fundraising Act 1991* (NSW) and corresponding legislation in other jurisdictions (as applicable) must be maintained in accordance with the applicable legislation.

4 Membership

4.1 Application for Membership

Subject to article 4.2, any natural person² may apply to become a Member by submitting to the Secretary a properly completed application in the form prescribed by the Directors, together with their consent to being appointed as a Director.

The form of application approved by the Directors may include consent by the applicant to being appointed as a Director.

4.2 Effect of application

By completing an application form, the applicant:

- (a) agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors (not inconsistent with this Constitution) from time to time; and
- (b) consents to being appointed as a Director, if:
 - (i) the application form, by its terms, includes their consent to their appointment; and
 - (ii) their application for membership is accepted and they are admitted as a Member.

A consent to appointment as a Director which is included in an application for membership remains in effect for a period of 90 days after the applicant is admitted to membership.³

² The constitution is structured to preclude bodies corporate being Members, because a Member must be a Director, and a Director can only be a natural person. Therefore, only a natural person can be a Member.

³ There needs to be some limit in time to the effectiveness of a consent to act as a director. 90 days seems reasonable.

4.3 Decision

The Directors must consider and resolve whether to accept or reject each application for membership. The Secretary must notify the applicant of the Directors' decision promptly after the decision is made. The Directors are not required to give reasons for rejecting an application for membership of the Company.

4.4 Admission to Membership

Except for a person who was a Member at the time when this Constitution was adopted, a person is admitted as a Member when their application is accepted under article 4.3.

4.5 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.

4.6 Resignation of membership

A Member may by written notice to the Company resign their membership:

- (a) with immediate effect; or
- (b) with effect from a specified date not more than 30 days after notice of the resignation is served on the Company.

A Member who resigns their membership of the Company remains liable after resignation 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 article 18.1.

4.7 Termination

A person's membership of the Company may be terminated:

- (a) by the Directors by written notice to the Member. A notice give under this article 4.7(a) takes effect immediately or from the date (if any) specified in the notice not more than 30 days after that notice is served on the Member; or
- (b) by the Members by ordinary resolution. A person whose membership is terminated under this article 4.7(b) ceases to be a Member immediately the resolution is passed or from any later date specified in the resolution.

4.8 Effect of termination of directorship

A Director whose membership of the Company is terminated under article 4.7 ceases at the same time to be a Director of the Company.

4.9 Ceasing to be a Member

A person ceases to be a Member on:

- (a) resignation according to article 4.6;
- (b) the termination of their membership according to article 4.7;
- (c) death;
- (d) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (e) 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
- (f) if they are also a Director, ceasing for any reason to be a Director.

4.10 Patrons and honorary members etc

The Directors may appoint and remove any person as a patron, honorary member or other honorary title-holder of the Company on any terms the Directors think fit. A patron, honorary member or other honorary title-holder may, at the discretion of the Directors, be given the right to be given notice of general meetings of the Company as if they were a Member, attend and speak (but not vote) at those general meetings and receive accounts of the Company when available to Members.

However, a patron, honorary member or other honorary title-holder is not a Member for the purposes of this Constitution or the Corporations Act.

4.11 Liability

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

A patron, honorary member or other honorary title-holder has no liability in that capacity.

5 General meetings

5.1 Annual general meeting

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 by 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 16 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 a 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 electronic means they have nominated 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.

Subject to section 249H, not less than 21 days' notice must be given of the annual general meeting.

5.5 Calculation of period of notice

In calculating the period of notice under article 5.4, the day of the meeting convened by the notice is to be disregarded.⁴

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 all separate meetings of any class of Members 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.

⁴ Although CA section 105 deals with this issue, it is an important "machinery" provision and should be kept.

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

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

Notice of cancellation or postponement, or of a 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 prior to 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 at which the meeting is to be held.

5.9 Contents of notice postponing general meeting

A notice postponing a general meeting must specify:

- (a) the date and time to which the meeting is postponed;
- (b) the place at which the meeting is to be held, 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 meeting being held in that manner.

5.10 Business at postponed general meeting

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

5.11 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:

- (a) the general meeting; or
 - (b) a postponed general meeting; or
 - (c) a general meeting at a changed place,
- or the cancellation or postponement of a meeting.

5.12 Proxy or attorney at postponed general meeting⁵

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

⁵ I note that you do not require the usual provision allowing corporations to appoint representatives, and assume you are satisfied that proxies will, in CARE's circumstances, suffice.

- (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 or power of attorney,

then, by force of this article, that later date is substituted for, and applies to the exclusion of, the date specified in the instrument unless the Member appointing the proxy or attorney 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.

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; or
- (b) an attorney,

of that Member.

6.2 Number for a quorum

Subject to article 6.5, three Members present in person or by proxy or attorney are a quorum at a general meeting of the Company. In determining whether a quorum is present, each individual attending as a proxy or attorney is to be counted, except that:

- (a) where a Member has appointed more than one proxy or attorney, only one is to be counted; and
- (b) where an individual is attending both as a Member and as a proxy or attorney, that individual is to be counted only once.

6.3 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy or attorney who is present) declares otherwise.

6.4 If quorum not present

If a quorum is not present within half an hour after the time appointed for a general meeting, 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.

6.5 Adjourned meeting

At a meeting adjourned under article 6.4(b), two persons each being a Member, proxy or attorney present at the meeting are a quorum. If a quorum is not present within half an hour after the time appointed for the adjourned meeting, the meeting is dissolved.

6.6 Appointment of chairman of general meeting

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

6.7 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,

a Director chosen by a majority of the Directors present may preside as chairman of the meeting.

6.8 Conduct of general meetings

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which, in the chairman's opinion, is necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the 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 article is final.

6.9 Adjournment of general meeting

The chairman of a general meeting at which a quorum is present may at any time during the meeting (and must if so directed by 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 place, but:

- (a) in exercising this discretion, the chairman must seek the approval of the Members present in person or by proxy or attorney; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

6.10 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 which case notice of the adjourned meeting must be given as in the case of an original meeting.

6.11 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.

6.12 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.

6.13 Demanding a poll

At a general meeting of the Company, a poll may be demanded by:

- (a) at least two Members entitled to vote on the resolution; or
- (b) the chairman of the meeting.

6.14 Poll

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;

- (b) on the election of a chairman or on a question of adjournment it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

6.15 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 or attorney 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 or attorney of a Member has one vote for each Member that the person represents.

6.16 Objection to voting qualification

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

- (a) may not be raised except at that meeting or adjourned meeting or when that poll is taken ; 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.

6.17 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.

6.18 Circulating resolutions of Members

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all ⁶of 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

⁶ There is no provision of the CA which permits Members of a public company to pass circulating resolutions. Indeed, the use of "meeting" contemplates a physical gathering of persons. This article relies for its effectiveness on the doctrine of unanimous consent (commonly called the "Duomatic principle"), which (if valid, and this issue is not settled in Australia) requires all Members vote in favour!

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.

6.19 Right to appoint attorney⁷

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 article, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

7 Advisory council

7.1 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.

7.2 Directors' discretion

The Directors have complete discretion as to the composition, functions and rules for proceedings (including frequency of meetings) of any advisory council set up under article 7.1.

8 Directors

8.1 Number of Directors

Unless otherwise determined by the Company in general meeting, the number of Directors may not be:

- (a) less than three; nor
- (b) more than the maximum number (if any) determined by the Directors, not being a number less than the number of Directors in office at the time of the determination.⁸

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution, whether or not they are also Members.

⁷ This is required as, without it, a Member does not have power to appoint an attorney which the Company is bound to recognise.

⁸ The draft proceeds on the basis that (new) Members consent to being appointed to the Board, should the Directors then in office decide to appoint them. Note that their consent remains open for acceptance for 90 days from their admission to membership

8.2 Change of number of Directors

The Company in general meeting may by resolution increase or reduce the number of Directors.

8.3 Appointment by Directors

A resolution by the Directors accepting an application for membership which includes a consent to act as a Director is effective for the time it is passed to appoint the applicant as a Director of the Company, as well as admitting the applicant to membership.

8.4 Casual vacancy and additional Director

The Company in general meeting, or the Directors, may at any time appoint any person who is, or has applied to become, a Member of the Company, who has consented to act as a Director and whose consent remains current, 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 article 8.1.

A consent to act as a Director is “current” for the purposes of this article if:

- (a) it has not be revoked by the Member who gave it; and
- (b) the period during which it remains open for acceptance has not expired. If no period is fixed by this Constitution or the terms of the consent itself, it remains current for the purposes of this article for a period of 90 days calculated from (but excluding) the date it is received by the Company.

8.5 Chairman and Treasurer

The Directors:

- (a) may elect:
 - (i) one of the Directors as chairman of meetings of the Directors; and
 - (ii) another of the Directors as treasurer of the Company,and may also determine the period for which the person elected is to hold the relevant office; and
- (b) may at any time remove from the office of Chairman or Treasurer a person previously elected to that office.⁹
- (c) replace (from amongst the Directors) a Chairman or Treasurer who:
 - (i) dies;

⁹ I assume they do not cease to be a Director or a Member.

- (ii) ceases to be a Director;
- (iii) resigns the office of Chairman or Treasurer (respectively); or
- (iv) is removed from the office of Chairman or Treasurer (respectively).

9 Remuneration and expenses

9.1 Remuneration of Directors

A Director must not be paid any remuneration for their services as a Director.

9.2 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.

9.3 Payments to Director

Any payment to a Director which is not prohibited under article 9.1 (including a payment permitted under article 9.2) must be approved by the Directors.

10 Conflict of interest and vacation of office

10.1 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 the 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 article is also a reference to each related body corporate of the Company.

10.2 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;
- (c) is not present at four consecutive meetings of the Directors without leave of absence from the Directors; or
- (d) ceases to be a Member.

11 Powers and duties of Directors

11.1 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.

11.2 Specific powers of Directors

Without limiting article 11.1, 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 and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

11.3 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.

11.4 Provisions in power of attorney

A power of attorney granted under article 11.3 may contain any provisions for the protection and convenience of persons dealing with the attorney or attorneys that the Directors think fit and may also authorise the attorney or attorneys to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in them.

11.5 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.

11.6 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 the Directors as a board, to a Committee or Committees consisting of one or more of their number, and such others (if any), as they think fit.

11.7 Powers delegated to Committees

A Committee to which any powers have been delegated under article 11.6 must exercise those powers in accordance with any directions of the Directors.

11.8 Powers of delegation

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

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.

12 Proceedings of Directors

12.1 Directors' meetings

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

12.2 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.

12.3 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.

12.4 Chairman of Directors' meetings

The Chairman will preside as the chairman of each meeting of the Directors.

12.5 Absence of Chairman at Directors' meeting

If a Directors' meeting is held and:

- (a) a Chairman has not been elected under article 8.5(a)(i); 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 chairman of the meeting.

12.6 Quorum for Directors' meeting¹⁰

Two Directors present in person are a quorum at a Directors' meeting.

12.7 Continuing Directors may act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 8.1, 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.

12.8 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 Committee members present may elect one of their number to be chairman of the meeting.

12.9 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

¹⁰ If a quorum for a Members meeting is 3, should it not be the same for a Directors meeting, given that it is possible that all Members will be Directors?

12.10 Determination of questions

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

The chairman of the meeting does not have a casting vote.

12.11 Circulating resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors¹¹ 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 the Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

12.12 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, 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,

are as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

13 ¹²Chief Executive

The Directors may appoint a Chief Executive.

The Directors may give a Chief Executive 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 from time to time.

¹¹ Section 248A CA requires all the Directors to sign. While it is a replaceable rule, it is the accepted measure of good corporate governance. Absent a statutory basis for this method of voting, you are relying on the doctrine of unanimous assent (sometimes called the "Duomatic principle"), which (if valid, and in Australia that has not been settled as regards Members, let alone Directors) requires all Directors to agree.

¹² Deletion may lead to questions of validity if all Directors are not present throughout the whole of a teleconference.

14 Secretary¹³

14.1 Appointment of Secretary

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

14.2 Suspension and removal of Secretary

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

14.3 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.

15 Inspection of records

15.1 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).

15.2 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.

16 Service of documents

16.1 Document includes notice

In this Part 16, a reference to a document includes a notice.

16.2 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

¹³ Required by s.204A(2) CA.

- (d) by sending it to the Member by other electronic means nominated by the Member.

16.3 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,

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

16.4 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.

16.5 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.

17 Indemnity and insurance

17.1 Indemnity

To the maximum extent permitted by law, the Company may indemnify any current or former Director or Secretary or officer or senior manager of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) 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, and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary of the Company, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

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

17.2 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 officer senior manager of the Company or of a subsidiary 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 law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

17.3 Contract

The Company may enter into an agreement with a person referred to in articles 17.1 and 17.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

18 Winding up

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 \$100.

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) being an institution accepted as a deductible gift recipient under subdivision 30 of the Tax Act by the Commissioner of Taxation or otherwise approved for these purposes by the Commissioner of Taxation.

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

19 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 the *Charitable Fundraising Act 1991* (NSW).

