



Constitution

Parties CARITAS AUSTRALIA LTD (ACN 639 801 380)
A Company Limited by Guarantee

Date 17 MARCH 2020

Certificate of Registration of a Company

This is to certify that

CARITAS AUSTRALIA LIMITED

Australian Company Number 639 801 380

is a registered company under the Corporations Act 2001 and
is taken to be registered in New South Wales.

The company **is limited by guarantee.**

The company is a **public** company.

The day of commencement of registration is
the seventeenth day of March 2020.



ASIC

Australian Securities & Investments Commission

Issued by the
Australian Securities and Investments Commission
on this seventeenth day of March, 2020.

A handwritten signature in black ink that reads 'James Shipton'.

James Shipton
Chair

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THIS Constitution dated

2020

PREAMBLE

Fulfilling its mission as a Catholic organisation, Caritas Australia aspires to live the Gospel message through service to those who are most vulnerable to extreme poverty and injustice. Caritas Australia, inspired by Luke 4:16-20, undertakes humanitarian relief and development and seeks to transform hearts and minds in the Australian community.

Caritas Australia is committed to:

- Respect and care of the total needs of a person through the lens of Integral Human Development;
- Working in partnership with others, especially the poor and marginalised within the limits of human frailty but trusting in God; and
- Respect to the uniqueness in each person and to awaken in all people a realisation of their inherent dignity.

1. Name of Company

The name of the Company is Caritas Australia Ltd (ACN 639 801 380).

2. Type of Company

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited Liability of Members

Each Member must contribute an amount not more than \$10.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

4. Definitions

4.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

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

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

Board means the Board of Directors.

Board Chairperson means the person appointed by the Member to preside at a Board meeting in accordance with **clause 38**.

Business Day means a day on which banks are open for business in Sydney.

CEO means the person appointed in accordance with **clause 27(b)** from time to time, who reports to the Board and is responsible for managing the Company as delegated by the Board from time to time.

Chairperson means the person appointed by the Member to preside at a general meeting in accordance with **clause 18**.

Church means the Roman Catholic Church.

Committee means a committee established in accordance with **clause 29.2**.

Company means Caritas Australia Ltd.

Constitution means this Constitution as amended by the Member from time to time.

Director means any person holding the position of a director of the Company and **Directors** means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Financial Year means the financial year of the Company ending on 30 June.

ITAA 97 means *Income Tax Assessment Act 1997* (Cth).

Management Committee means the committee established to manage the Relief Fund in accordance with **clause 29.8**.

Member means the member of the Company.

Office means the registered office for the time being of the Company which must always be located in Australia.

Officer has the same meaning as given to that term in section 9 of the Act.

Relief Fund means the developing country relief fund that is established and operated by the Company pursuant to **clause 29**

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate that is the Member.

Responsible Person means an individual who is a responsible person in accordance with the meaning of Taxation Ruling TR 95/27 or any subsequent taxation ruling or legislation redefining such expression.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Special Resolution means a resolution:

- (a) of which notice has been given in accordance with the Act; and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

Strategic Plan means a plan setting the strategic goals for the Company and determining actions to achieve the goals.

4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Constitution; and
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.

4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.

4.4 The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.

4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5. Objects and Powers

- 5.1 The object for which the Company is established is to provide benevolent relief to the poor, vulnerable, and marginalised by:
- (a) delivering benevolent financial and technical development and humanitarian assistance that enables the Church's mission for justice, peace and integral human development in accordance with Catholic social teachings;
 - (b) assisting in development processes and humanitarian responses that will meet the needs of people who are suffering from hunger, poverty, disease, ignorance, economic exploitation or the effects of environmental degradation;
 - (c) raising and distributing funds for programmes of justice, peace and integral human development to both overseas and in Australia and generally to support the Company in its work;
 - (d) for the purpose of furthering the object and activities above,
 - (i) to work in partnerships with individuals, organisations and governments and affiliate with appropriate national and international organisations;
 - (ii) to analyse issues of injustice, identify root causes and construct appropriate responses;
 - (iii) to educate people living in Australia about injustice and encourage their participation in this mission and to "make a preferential option for the poor";
 - (iv) to be a voice for the Church on matters of justice, peace and development; and
 - (v) to do anything that is ancillary or incidental to the Company's main benevolent object and activities.
- 5.2 The Company can only exercise the powers in section 124(1) of the Act to:
- (a) carry out the objects of the Company set out in **clause 5.1**; and
 - (b) do all things incidental or convenient in relation to the attainment of an object under **clause 5.1**.

6. Not-For-Profit

- 6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 5.1**.
- 6.2 No income or assets of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to the Member unless it is paid, transferred or distributed in carrying out the Company's business. However nothing in this Constitution will prevent payment in good faith to the Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to the Company; or
- (c) of reasonable and proper rent for premises leased by the Member to the Company,

for carrying out the Company's charitable purposes.

7. Amending the Constitution

The Member may amend this Constitution by passing a Special Resolution.

8. Membership

The Member of the Company is Australian Episcopal Conference of the Roman Catholic Church (ABN 76 000 665 958).

9. Membership Entitlements Not Transferable

A right privilege or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

10. No Entrance Fee and Subscriptions

There shall be no entrance fee, annual fee or subscription payable by the Member to the Company.

11. Member's Rights

11.1 The Member of the Company will be entitled to:

- (a) receive notice of and attend and vote at general meetings of the Company; and
- (b) receive annual reports of the Company including financial reports in relation to each Financial Year.

11.2 All other rights, privileges and obligations of the Member are in accordance with the Act.

12. Dispute Resolution

12.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between the Member or a Director and:

- (a) one or more Directors; or
 - (b) the Company.
- 12.2 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 12.3 If those involved in the dispute do not resolve it under **clause 12.2**, they must within 10 days:
- (a) tell the Directors about the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.
- 12.4 The mediator must:
- (a) be chosen by agreement of those involved; or
 - (b) where those involved do not agree, a person chosen by the President of the Australian Catholic Bishops Conference .
- 12.5 A mediator chosen by the President of the Australian Catholic Bishops Conference under **clause 12.4(b)**:
- (a) may be a Member or former Member of the Company;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 12.6 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.
- 12.7 Each party involved in a dispute under this **clause 12** shall be responsible for:
- (a) their own costs of resolving the dispute; and
 - (b) their equal share of the costs for the mediator (if any) .

13. Convening of General Meetings

- 13.1 The Member or any 2 Directors may whenever those Directors think fit convene a general meeting of the Company in accordance with the provisions of the Act.
- 13.2 A general meeting of the Company may be convened at 2 or more venues using any technology that gives the Member a reasonable opportunity to participate in the meeting, including to hear and be heard.

14. Annual General Meeting

- 14.1 Unless otherwise exempted by the Act, a general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of the Company; and
 - (b) after the first annual general meeting, at least once in every calendar year and within 5 months of the end of the Company's Financial Year.
- 14.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting shall include:
- (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) an auditor's report; and
 - (d) the appointment of auditors.
- 14.3 Before or at the annual general meeting, the Directors must give information to the Member on the Company's activities and finances during the period since the last annual general meeting.
- 14.4 The Chairperson of the annual general meeting must give the Member a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

15. Notice of General Meetings

- 15.1 Notice of a general meeting must be given to:
- (a) the Member;
 - (b) each Director; and
 - (c) the auditor (if any).
- 15.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 15.3 Notice of a meeting may be provided less than 21 days before the meeting if the Member agrees to a shorter notice
- 15.4 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
 - (d) any other information required under the Act.

- 15.5 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- 15.6 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

16. Right of Non-Members to Attend General Meeting

The Chairperson of a general meeting may invite any person who is not the Member to attend and/or address a meeting.

17. Quorum

A Quorum consists of the Member. No business may be transacted at a general meeting unless the Quorum is present.

18. Chairperson at General Meetings

- 18.1 The Member may appoint or remove a person as the Chairperson by giving a written notice to the Company at its Office from time to time.
- 18.2 The Chairperson shall be entitled to preside as chairperson at every general meeting.
- 18.3 The rulings of the Chairperson on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

19. Adjournment of General Meetings

- 19.1 The Chairperson of a general meeting at which a quorum is present:
- (a) may adjourn a meeting with the consent of the meeting; and
 - (b) must adjourn the meeting if the meeting so directs,
- to a time and place as determined by the Chairperson.
- 19.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

- 19.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 19.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

20. Resolution of Member without a General Meeting

- 20.1 Except where the Act or this Constitution requires a general meeting to be held, the Directors may put a resolution to the Member to pass as a resolution without a general meeting being held.
- 20.2 The Member may pass a resolution by the Member recording it and signing the record.

21. Voting Rights

The Member has one vote. No person other than the Member will be entitled to vote at a general meeting.

22. Number of Directors

The Company must have at least 3 Directors and a maximum of 9 Directors.

23. Appointment of Directors

- 23.1 The Member may appoint a Director at any time by giving written notice to the Company at its Office for such term as may be specified by the Member.
- 23.2 A person is eligible for election as a Director of the Company if they:
- (a) give the Company their signed consent to act as a Director of the Company; and
 - (b) are not ineligible to be a Director under the Act or the ACNC Act.
- 23.3 If the number of Directors is reduced to fewer than 3 or is less than the number required for a quorum of Board meetings, the continuing Directors must, immediately after they become aware of the situation, notify the Member of the same. The Member will appoint new Directors to increase the number of Directors to 3 (or higher if required for a quorum) as soon as practicable. For the avoidance of doubt, the continuing Directors are not entitled to appoint persons to fill the vacancies.

24. When a Director Stops Being a Director

A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to Company at its Office and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company);
- (b) die;
- (c) are removed as a Director by the Member by giving written notice to the Company at its Office;
- (d) are absent for 3 consecutive Board meetings without approval from the Directors and the Directors resolve that his or her office be vacated;
- (e) become ineligible to be a Director of the Company under the Act or the ACNC Act;
- (f) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health; or
- (g) have served their term as a Director (unless they are reappointed).

25. Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least 2 Directors. The Directors may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.

26. Power of Directors

All day-to-day control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.

27. Reserve Powers

Notwithstanding **clause 26**, the Board's decisions in relation to any of the following matters will not be effective without the consent of the Member:

- (a) change the philosophy, mission, vision or values of the Company;
- (b) appoint a person who is recommended by the Board to be the CEO;
- (c) adopt a Strategic Plan which is recommended by the Board;
- (d) authorise the sale, transfer, lease, sub-lease, licence, alienation, assignment or encumbrance of any assets of the Company that exceed the amount set by the Member from time to time;
- (e) borrow in excess of the amount set by the Member from time to time;

- (f) acquire or purchase any assets that exceed the amount set by the Member from time to time; and
- (g) resolve to do any act or thing, if the Member gives a written notice to the Board stating that in the Member's opinion the resolution is not in accordance with the objects or philosophy of the Company.

28. Delegation of Directors' Powers

- 28.1 The Directors may delegate any of their powers and functions to a Committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate, on such terms and conditions and with such restrictions as it may think expedient.
- 28.2 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- 28.3 The delegation must be recorded in the Company's minute book.

29. Relief Fund

- 29.1 To further the objects of the Company as set out in **clause 5.1**, the Board may resolve to establish and maintain the Relief Fund in accordance with **clause 29**.
- 29.2 The sole purpose of the Relief Fund is to provide relief to people in declared developing countries.
- 29.3 The Relief Fund is to solicit and receive gifts of money or property towards the carrying out of the purpose of the Relief Fund.
- 29.4 The Relief Fund must invite the public to contribute to the Relief Fund.
- 29.5 The Relief Fund must be not-for-profit. The assets and income of the Relief Fund shall be applied solely in furtherance of the purpose of the Relief Fund and no portion shall be distributed directly or indirectly to any individual except as bona fide compensation for services rendered or expenses incurred on behalf of the Relief Fund.
- 29.6 The Company must maintain an account, separate from the other accounts of the Company, which:
 - (a) must only receive gifts of money or property made to the Relief Fund or any money received because of such gifts; and
 - (b) does not receive any other money or property.
- 29.7 The Relief Fund must issue receipts in the name of the Relief Fund which must state:
 - (a) the name of the Relief Fund;
 - (b) that the receipt is for a gift made to the Relief Fund;
 - (c) the Australian Business Number of the Company; and
 - (d) any other matters required to be included on the receipt pursuant to the requirements of the ITAA 97.

- 29.8 The Fund must be managed by a Management Committee of no less than 3 persons, a majority of whom must be deemed to be Responsible Persons. The Board may form the Management Committee in accordance with **clause 30**. The release of money from the Relief Fund and the management of, and sale of the Relief Fund's assets, must be authorised by the Management Committee.
- 29.9 Notwithstanding any other provisions in this Constitution, if the Relief Fund is wound up or its endorsement as under item 9.1.1 of subsection 30-80(1) of the ITAA 97 is revoked, all surplus assets of the Relief Fund remaining after the payment of liabilities attributable to it must be transferred to another organisation or fund with similar purposes to which income tax deductible gifts can be made and which is endorsed under the overseas aid gift deduction scheme.
- 29.10 The Management Committee must notify the Australian Taxation Office of any alterations made to the rules of the Relief Fund as set out in this clause.

30. Committee of Directors

- 30.1 The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- 30.2 A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 30.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- 30.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

31. Payments to Directors

- 31.1 The Company must not pay fees to a Director for acting as a Director.
- 31.2 Despite **clause 31.1**, the Company may:
- (a) pay a Director for any services rendered to the Company in a professional or technical capacity, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- 31.3 Any payment made under **clause 31.2** must be approved by the Directors.
- 31.4 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this Constitution.

32. Conflicts of Interest

- 32.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a Circular Resolution):
- (a) to the other Directors; or
 - (b) if all of the Directors have the same conflict of interest, to the Member at the next general meeting, or at an earlier time if reasonable to do so.
- 32.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 32.3 A general notice given to the Board by a Director that the Director is an Officer, a member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.
- 32.4 Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a Circular Resolution) must not, except as provided under **clause 32.5**:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 32.5 A Director may still be present and vote if:
- (a) their interest relates to an indemnity payment by the Company, or any contract relating to an indemnity that is allowed under this Constitution and the Act;
 - (b) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
 - (c) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

33. Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 5.1;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in **clause 33**;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

34. When the Directors Meet

The Directors may decide how often, where and when they meet, provided that they shall meet together not less than 4 times each calendar year.

35. Calling Board Meetings

- 35.1 A Director may at any time and the Secretary upon the request of a Director shall convene a Board meeting by giving at least 24 hours' notice of the meeting to all Directors.
- 35.2 Notice of a Board meeting need not be in writing.

36. Using Technology to Hold Board Meetings

- 36.1 The Directors may hold Board meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 36.2 The Directors' agreement may be a standing one.
- 36.3 A Director may only withdraw their consent within a reasonable period before the meeting.

37. Quorum at Board Meetings

- 37.1 Unless the Directors determine otherwise, the quorum for a Board meeting is a majority (more than 50%) of Directors.
- 37.2 No business may be transacted at any Board meeting unless a quorum of Directors is present at all times during the meeting.
- 37.3 Directors who are personally present (or in conference in accordance with **clause 36**) form a quorum. A Director who is disqualified from voting on a matter pursuant to **clause 32** shall be counted in the quorum despite that disqualification.

- 37.4 All resolutions of the Directors passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Directors.

38. Board Chairperson

- 38.1 The Member may appoint one of the Directors to be the Board Chairperson by giving written notice to the Company at its Office from time to time.
- 38.2 The Member may remove a person from the position of Board Chairperson by giving written notice to the Company at its Office from time to time.
- 38.3 The Board Chairperson shall, if present, preside as the chairperson of every Board meeting.
- 38.4 If a Board meeting is held and the Board Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be the chairperson of the meeting.

39. Voting

- 39.1 A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- 39.2 Each Director shall have one vote.
- 39.3 In case of an equality of votes at a Board meeting, the Board Chairperson does not have a casting vote in addition to a deliberative vote.

40. Circular Resolutions by Directors

- 40.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if all 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. For this purpose, signatures can be contained in more than 1 document.
- 40.2 The resolution is passed when the last Director signs.
- 40.3 A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.
- 40.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

41. Validation of Acts of Directors

All acts done:

- (a) at any Board meeting; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

42. Minutes and Records

42.1 The Company must make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings;
- (b) the Member's resolution without a general meeting;
- (c) a copy of a notice of each general meeting.

42.2 The Company must make and keep the following records:

- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees); and
- (b) circular resolutions of Directors.

42.3 The Company must give the Member access to the Company's records for inspection, including records referred to in **clauses 42.1, 42.2 and 45.**

42.4 The Directors must ensure that minutes of a general meeting or a Board meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

42.5 The Directors must ensure that minutes of the passing of a circular resolution of Directors are signed by the Board Chairperson within a reasonable time after the resolution is passed.

43. Appointment and Role of Secretary

43.1 The Company must have at least one Secretary, who may also be a Director.

43.2 A Secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed from that role by the Directors.

43.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.

43.4 The role of the Secretary includes:

- (a) maintaining a Register of the Members; and
- (b) maintaining the minutes and other records of general meetings (including notices of meetings), Board meetings and circular resolutions.

44. Execution of Documents

44.1 Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute a document without using a common seal if the document is signed by:

- (a) 2 Directors of the Company, or
- (b) a Director and the Secretary.

44.2 Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

45. Financial and Related Records

45.1 The Company must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

45.2 The Company must also keep written records that correctly record its operations.

45.3 The Company must retain its records for at least 7 years.

45.4 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

46. Directors' Access to Documents

46.1 A Director has a right of access to the financial records of the Company at all reasonable times.

46.2 If the Directors agree, the Company must give a Director or former Director access to:

- (a) certain documents, including documents provided for or available to the Directors; and
- (b) any other documents referred to in those documents.

47. By-Laws

- 47.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution. By-laws may not be inconsistent with this Constitution and, in the event of any inconsistency, the provisions of the Constitution will prevail.
- 47.2 The Member and Directors must comply with by-laws as if they were part of this Constitution.
- 47.3 The Member may set aside any by-laws made under **clause 47.1** by resolution.

48. When Notice is Taken to be Given

Written notice under this Constitution may be:

- (a) delivered in person, or left at a the recipient's address, and is taken to be given on the day it is delivered;
- (b) sent by post, and is taken to be given on the third day after it is posted with the correct payment of postage costs; or
- (c) sent by email, fax or other electronic method as agreed to by the recipient, and is taken to be given on the Business Day after it is sent.

49. Winding Up

- 49.1 The Company may be wound up by a Special Resolution of the Member;
- 49.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed to the Member unless the Member satisfies the criteria in **subclauses (a) to (d)** inclusive. The surplus will be given or transferred to one or more corporation(s) or institution(s) which:
 - (a) has charitable objects which are similar to, or inclusive of, the objects of the Company as set out in **clause 5.1**;
 - (b) is a deductible gift recipient within the meaning of the ITAA 97;
 - (c) has a governing document which requires its income and property to be applied in promoting its objects; and
 - (d) has a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 6**.
- 49.3 On the winding up of the Company, the Relief Fund will be wound up and distributed in accordance with **clause 29.9**.
- 49.4 In the event that the Company ever has its endorsement as a deductible gift recipient revoked (whether or not the company is to be wound up), any surplus gift funds must be transferred to one or more corporation(s) or institution(s) which meet the requirements set out at **clause 49.2** and which may include the Member.
- 49.5 The identity of the other corporation or institution is to be determined by a Special Resolution of the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of Australian

Capital Territory or any Federal Court of Australia that has the jurisdiction for determination.

50. Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer (or former Officer). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

51. Payment of Indemnity Policy Premium

51.1 To the extent permitted by law, the Company may at the discretion of the Board enter into and pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of sections 182 or 183 of the Act.

51.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

51.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under **clause 50** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

52. Indemnity to Continue

The indemnity granted by the Company, contained in **clause 50**, shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

