



CONSTITUTION

of

FOODBANK NSW & ACT LIMITED

A Public Company Limited by Guarantee

(Adopted on 22 November 2023)

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1 PRELIMINARY

Definitions

- 1.1 The following words have these meanings in this Constitution unless the contrary intention appears.

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

Article means an article of this Constitution.

Auditor means the auditor for the time being of the Company.

Chairperson means the Chairperson of the board of Directors of the Company and **Deputy Chairperson** means the deputy Chairperson of the board.

Company means Foodbank NSW & ACT Limited (ACN 056 422 407), a public company limited by guarantee.

Constitution means this constitution as it is amended from time to time.

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

Director means a director of the Company.

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

Executive Director means the appointment provided for under Article 8.8.

Member means a member of the Company.

Objects means the objects of the Company as provided for under Article 2.1.

Registered Office means the registered office for the time being of the Company.

Seal means the common seal of the Company and any official seal of the Company.

Secretary means a person appointed as a secretary of the Company under this Constitution.

Special resolution means a resolution that must be passed by at least 75% of the votes cast by members present and entitled to voice on the resolution.

Interpretation

- 1.2 In this Constitution unless the contrary intention appears:
- (a) the word person includes a firm, a body corporate, an unincorporated association or an authority;
 - (b) the singular includes the plural and vice versa;
 - (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - (d) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised from time to time and at any time.
- 1.3 Powers conferred on the Company, a Director or a Member may be exercised at any time and from time to time.

Corporations Act and ACNC Act

- 1.4 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.
- 1.5 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 This Constitution is designed for a public company limited by guarantee which is:
- (a) incorporated under the Corporations Act; and
 - (b) a charity registered under the ACNC Act.
- 1.7 If the Corporations Act and/or the ACNC Act is repealed or amended, then this Constitution may require amendment.
- 1.8 To the extent of any inconsistency between this Constitution and a mandatory requirement of a relevant law (including the Corporations Act and the ACNC Act), the relevant law takes priority.
- 1.9 A word or expression that is defined in the Corporations Act or the ACNC Act has the same meaning in this Constitution.

2 OBJECTS OF THE COMPANY

Objects

- 2.1 The object of the Company is to be a not-for-profit and secular corporate entity that delivers essential food and household items to the people of New South Wales and the Australian Capital Territory so that these food and household items can be accessed during times of need.
- 2.2 To achieve the Object, the Company may, without limitation:
- (a) collect surplus, salvaged and donated food and distribute them to people in need;
 - (b) help ensure that food achieves its optimal purpose and does not go as waste to landfill;
 - (c) procure, purchase, manufacture or otherwise obtain food and groceries, as well as procure funds and donations, from any available source including farmers, manufacturers, wholesalers, suppliers, retailers, corporates and individuals for distribution to organisations and people in need;
 - (d) store donated food on premises owned or leased by the Company;
 - (e) distribute food, or otherwise make food and groceries available to (amongst other, institutions or social service providers) social service agencies, community and crisis centres, shelters, hostels and homes throughout New South Wales and the Australian Capital Territory and elsewhere;
 - (f) assist organisations in other States of Australia that have stated charitable purposes by coordinating the collection, storage and distribution of food in order to promote relief for people in need in such other States;
 - (g) formulate and undertake such other charitable purposes as may be considered appropriate by the Company;
 - (h) make representations to the State Government and relevant departments and agencies;
 - (i) research and monitor the prevalence and impacts of, and solutions to, food insecurity;
 - (j) work with other organisations and the community to develop and strengthen the food relief sector;
 - (k) promote community awareness, engagement and volunteering in relation to the provision of food relief;

- (l) to take such other action as may be appropriate having regard to the Company's object;
- (m) to do all such things as may be incidental to the attainment of such objects.

Application of income for Objects only

- 2.3 The surplus (if any) or other income and the property of the Company, however derived, must be applied solely towards the promotion of the Object of the Company as set out in Article 2.1, and no part of that surplus or that income or property may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise, to the Members.
- 2.4 Subject to Article 10, Article 2.3 does not prevent payment in good faith to an officer or Member of the Company, or to a firm of which an officer or Member is a partner, of remuneration for services rendered to the Company, or for goods supplied in the ordinary course of business, nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purposes of this Article 2.4 by the Company in general meeting on money borrowed from a Member or reasonable rent for premises demised or let by an Member.

Application of property on winding up

- 2.5 Subject to the Corporations Act or any other applicable Act, or any court order, if on the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatever, that property may not be paid to or distributed among the Members, but must be distributed, given or transferred to another corporation or corporations (as defined in the Corporations Act):
 - (a) the objects of which, as stated in its constitution, are solely charitable, similar to or inclusive of, the Objects of the Company as set out in Article 2, and which by its constitution is required to apply its surplus (if any) or other income in promoting such charitable purposes and is prohibited from paying any dividend to its members; and
 - (b) being an institution accepted as a deductible gift recipient under subdivision 30-B, section 30-100 of the Income Tax Assessment Act 1997 by the Commissioner of Taxation or otherwise approved for these purposes by the Commissioner of Taxation,

such corporation or corporations to be determined by the Members by special resolution at or before the time of dissolution or, failing such a determination, by a judge who has or acquires jurisdiction in the matter.

3 MEMBERSHIP

Becoming a Member

- 3.1 A Director shall, on appointment, become a Member. For the avoidance of doubt, all existing Directors are Members.

Directors may create and vary classes and class rights

- 3.2 The Directors may, subject to this Constitution and the Corporations Act:
- (a) establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
 - (b) vary or cancel the rights, restrictions and obligations of Members in any new or existing class if
 - (i) 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 articles on general meetings apply so far as they are capable of application and with the necessary changes to every such separate meeting.

Ceasing to be a Member

- 3.3 Without limiting Article 3.4, a Member ceases to be a Member upon ceasing to be a Director.

Limited Liability

- 3.4 Members have no liability as members of the Company except as set out in Article 3.5.
- 3.5 Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member or within one year after they cease to be a Member, for payment of the Company's debts and liabilities contracted before they ceased to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required but always not exceeding \$10.00 in aggregate.

4 GENERAL MEETINGS

Annual general meeting

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

Power to convene general meeting

- 4.2 The Directors may convene a general meeting whenever they think fit and must do so if required under the Corporations Act.

General meeting by use of technology

- 4.3 Subject to the Corporations Act and any applicable law:
- (a) a meeting may be held at one or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate;
 - (b) a meeting may be hybrid (in-person and virtual) held at one or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate; or
 - (c) a meeting may be held virtually only using any technology that gives the Members as a whole a reasonable opportunity to participate; and
 - (d) any reference to a 'place' when used in the context of a meeting may be, but need not be, a physical place.
- 4.4 If, before or during a general meeting of Members any technical difficulty occurs, such that the Members as a whole do not have a reasonable opportunity to participate, the chair of the meeting may:
- (a) adjourn the meeting until the technical difficulty is remedied or;
 - (b) where a quorum remains present (or either at the place at which the chair is present or by technology contemplated by this Article 4) and able to participate, subject to the Corporations Act, continue the meeting (in which case no Member may object to the meeting being held or continuing).
- 4.5 Participation in a hybrid or virtual meeting using any technology that gives the Members as a whole a reasonable opportunity to participate shall constitute presence in person or 'personally' at such meeting (including for the purpose of any quorum requirements in this Constitution).

Notice of general meeting

- 4.6 Notice of a meeting of Members must be given in accordance with the provisions of the Corporations Act and Article 17 of this Constitution.
- 4.7 The non-receipt of notice of general meeting by, or the accidental omission to give notice of a general meeting to a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

Auditor's and Directors' rights to attend general meetings

- 4.8 The Auditor or an agent authorised by the Auditor in writing for this purpose is entitled to attend any general meeting, to receive all notices of and other communications relating to any general meeting which a Member is entitled to receive and to be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity, and is entitled to be heard notwithstanding that the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting.

Cancellation or postponement of general meeting

- 4.9 Where a general meeting (including an annual general meeting) is convened by the Directors, they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- 4.10 Written notice of cancellation or postponement of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company at least three days before the date for which the meeting is convened and must specify the reason for cancellation or postponement.
- 4.11 A notice postponing the holding of a general meeting must specify:
 - (a) a date and time for the holding of the postponed meeting; and
 - (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.
- 4.12 The number of 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 meeting may not be less than the number of days' notice of the meeting required to be given by this Constitution or the Corporations Act.
- 4.13 The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting.

4.14 The accidental omission to give notice of the cancellation or postponement of a meeting to, or the non-receipt of any such notice by, any person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.

4.15 If:

(a) by the terms of an instrument appointing a proxy or attorney, a proxy or attorney is authorised to attend and vote at a general meeting to be held on a specified date or 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 of proxy or power of attorney, 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.

4.16 Nothing in this Constitution shall limit the right of Members to convene a general meeting or procure that a general meeting be convened under the Corporations Act.

5 PROCEEDINGS AT GENERAL MEETINGS

Reference to a Member

5.1 Unless the contrary intention appears, a reference to a Member in this Article 5 means a person who is a Member, or:

(a) a proxy;

(b) an attorney; or

(c) a representative of that Member.

Quorum

5.2 Subject to Article 5.5, 3 Members present in person or by proxy, attorney or representative are a quorum at a general meeting.

5.3 An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it, but if a quorum is present at the beginning of a

meeting it is to be deemed present throughout the meeting unless the Chairperson of the meeting on the Chairperson's own motion or at the instance of a Member, proxy, attorney or representative who is present otherwise declares.

- 5.4 If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:
- (a) if convened by, or on requisition 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.
- 5.5 At any such adjourned meeting two persons each being a Member, proxy, attorney or representative present at the meeting are a quorum and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

Chairperson

- 5.6 The Chairperson is entitled to preside at general meetings, but if the Chairperson is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairperson, a Director chosen by a majority of the Directors present, the only Director present, a Member, proxy or attorney chosen by a majority of the Members, proxies and attorneys present.
- 5.7 If there is an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting is entitled to a casting vote in addition to any votes to which the Chairperson is entitled as a Member or proxy or attorney of a Member.

How questions decided

- 5.8 Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast by the Members on the resolution are in favour of it.
- 5.9 Every question submitted to a meeting is to be decided by a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by:
- (a) the Chairperson of the meeting; or
 - (b) at least one Member present in person or by proxy or attorney and having the right to vote at the meeting, and the demand for the poll is not withdrawn.

- 5.10 Unless a poll is so demanded and the demand is not withdrawn, a declaration by the Chairperson of the meeting that the motion has been carried or carried unanimously or without dissent or by a particular majority or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that and it is not necessary to prove the number or proportion of votes cast in favour of or against the motion.
- 5.11 If a poll is so demanded and the demand is not withdrawn, it must be taken in such manner and at such time and place and at once or after an interval or adjournment or otherwise as the Chairperson of the meeting then or subsequently determines and the result of the poll is to be deemed the resolution of the meeting at which the poll was demanded.
- 5.12 A poll may not be demanded on the election of a Chairperson of a meeting and a poll demanded on a question of adjournment is to be taken at the meeting and without adjournment.
- 5.13 A demand for a poll 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.

Objection to voting qualification

- 5.14 Objection may not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken, and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is valid.
- 5.15 If there is a dispute as to the admission or rejection of a vote, the Chairperson of the meeting must decide it and the Chairperson's decision made in good faith is final and conclusive.

Adjournment

- 5.16 The Chairperson of a meeting may with the consent of the meeting adjourn the meeting from time to time and place to place, but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- 5.17 If a meeting is adjourned for more than 14 days, notice of the adjournment must be given in accordance with Article 4.10.

6 VOTES OF MEMBERS

Voting rights

- 6.1 Subject to any restrictions in 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.

Right to appoint proxy

- 6.2 Subject to the Corporations Act, a Member entitled to attend at a meeting of the Company is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting and a proxy has the same right as the Member to speak and vote at the meeting.

Instrument of proxy

- 6.3 An instrument appointing a proxy must be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or the hand of its attorney so authorised and, if and to the extent that the Directors permit, may be in respect of more than one meeting.
- 6.4 An instrument appointing a proxy must be in a form acceptable to the Directors generally or in a particular case.

Right to appoint attorney

- 6.5 A Member may by power of attorney duly executed in the presence of at least one witness and (if necessary) duly stamped appoint an attorney to act on the Member's behalf at all or any meetings of the Company.

Receipt of proxy and other instruments

- 6.6 To be effective, an instrument appointing a proxy and any power of attorney under which it is executed or a copy (verified by statutory declaration as a true copy) of the power of attorney, or an instrument appointing an attorney under Article 6.5, in either case together with such evidence of due stamping (if necessary) and execution and non-revocation of the power of attorney as the Directors may require, must be received by the Company at the Registered Office or at such other place as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time appointed for the meeting or adjourned or postponed meeting or poll which the appointee proposes to attend or on which the appointee proposes to vote.

Validity of vote in certain circumstances

- 6.7 A vote cast by a proxy or attorney is valid notwithstanding the previous revocation of that person's authority by the death of the principal or otherwise, unless an intimation in writing of the revocation has been received at the Registered Office or by the Chairperson of the meeting before the vote is cast.

7 POWERS OF DIRECTORS

Management

- 7.1 The management of the affairs of the Company is vested in the Directors.
- 7.2 The Directors may exercise all such powers as the Company is authorised to exercise and which are not required by the Corporations Act or this Constitution to be exercised by the Members in general meeting.
- 7.3 Without limiting Article 7.1, the Directors shall have power to
- (a) borrow or raise money for the Company;
 - (b) to charge any business or property of the Company to give security for a debt, liability or obligation of the Company or of any other person;
 - (c) employ individuals;
 - (d) purchase and dispose of real property; and
 - (e) enter into leases.
- 7.4 The Directors may delegate any of their powers and functions to one or more of the Directors, a committee, an employee, or agent or other person as the Directors decide.

8 NUMBERS OF DIRECTORS

Restrictions of number

- 8.1 The number of Directors of the Company shall be not less than 3 and no more than 15.
- 8.2 The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

Casual vacancies and other appointments

- 8.3 The Directors may appoint a person as a Director either to fill a casual vacancy or as an additional Director, but so that the total

number of Directors is not at any time to exceed the maximum fixed by or under Article 8.1.

Change of number of Directors

- 8.4 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.

Alternate Directors

- 8.5 Subject to approval by the Directors, a Director may, by notice in writing to the Secretary, appoint an alternate Director to exercise some or all of that Director's powers.
- 8.6 An alternate Director is entitled to receive notice of meetings of Directors and attend such meetings.
- 8.7 An alternate Director's appointment shall immediately cease when the appointing Director:
- (a) by notice in writing to the Secretary, revokes such appointment; or
 - (b) ceases to be a Director.

Executive Director

- 8.8 The Directors may appoint one or more of their number to be an Executive Director with authority to exercise such powers of the Directors as the Directors may in writing confer on that person which appointment and powers may be revoked or varied by the Directors at anytime and made subject to such restrictions (if any) they think fit.

9 VACATION OF OFFICE OF DIRECTOR

Automatic vacation of office

- 9.1 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) dies;
 - (b) 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;
 - (c) resigns from office by notice in writing to the Company;
 - (d) becomes insolvent or bankrupt or compounds with

his/her creditors or assigns his/her estate for the benefit of his/her creditors;

- (e) retires at an annual general meeting by operation of Article 9.2;
- (f) refuses to act as a Director; or
- (g) is not present personally at the meetings of the Directors for a continuous period of three months without leave of absence from the Directors.

Term of appointment

- 9.2 At each annual general meeting one-third of the Directors, or, if the number is not three or a multiple of three, then the number nearest one-third, and any other Director who has held office for three years or more since last being elected, must retire from office.
- 9.3 The Directors to retire at any annual general meeting must be those who have been longest in office since their last election. As between those persons who were last elected as Directors on the same day, those to retire must be determined by lot (except that any Director appointed at that annual general meeting shall not be subject to selection).
- 9.4 The Chairperson shall be responsible to determine the manner in which lots are drawn under this Article 9.
- 9.5 The Executive Director is not subject to operation of Article 9.2.
- 9.6 Subject to this Constitution and Article 9.7, a person who retires as a Director under Article 9.2 is eligible to be re-elected for a further term of three years.
- 9.7 A Director must not hold office for more than 9 years, unless the maximum term for a particular Director is varied by Special Resolution of the remaining Directors. In no circumstances shall a Director hold office for more than 12 years.

10 REMUNERATION AND EXPENSES OF DIRECTORS

- 10.1 Except as provided for under Article 10.3, a Director may not be paid any remuneration for services as a Director but is to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the affairs of the Company.
- 10.2 Any payment to a Director must be approved by the Directors.

- 10.3 An Executive Director may be remunerated for services rendered on such terms and in such manner as the Directors think fit.

11 DIRECTOR'S INTERESTS

- 11.1 Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:
- (a) hold an office or place of profit (except that of Auditor) under the Company or under any body corporate in which the Company is a Member or otherwise interested;
 - (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 with the Company as vendor, purchaser or otherwise;
 - (d) participate in any association, Company, 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) 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) retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.
- 11.2 A contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.
- 11.3 An interested Director may attest the affixing of the Seal to a contract or any other document.
- 11.4 In this Article 11, where the context admits, "contract" includes an arrangement and a proposed contract or arrangement.

12 PROCEEDINGS OF DIRECTORS

Meetings

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

Quorum

- 12.2 Until otherwise determined by the Directors three Directors present in person or by proxy are a quorum.

Effect of vacancy

- 12.3 The continuing Directors may act notwithstanding a vacancy in their number but, if and so long as 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 of summoning a general meeting.

Convening meetings

- 12.4 A Director may, and the Secretary on the request of a Director must, convene a meeting of the Directors.
- 12.5 A Director who is not in Australia is not entitled to notice of a meeting of Directors.

Chairperson and Deputy Chairperson

- 12.6 The Chairperson is the Director appointed by the Directors as Chairperson. Subject to Article 12.8 the Chairperson holds office for the period determined by the Directors, but not for a period longer than the date of the Chairperson's required retirement under Article 9.2.
- 12.7 The Deputy Chairperson is the Director appointed as Deputy Chairperson by the Directors. The Deputy Chairperson holds office for the period determined by the Directors, but not for a period longer than the date of the Deputy Chairperson's required retirement under Article 9.2.
- 12.8 Subject to Articles 12.9 and 12.10, if re-elected as Directors of the Company, the Chairperson and Deputy Chairperson are eligible for reappointment.
- 12.9 A Director who is elected Chairperson must not hold the position of Chairperson for more than 6 years
- 12.10 A Director who is elected Deputy Chairperson must not hold the position of Deputy Chairperson for more than 6 years.

- 12.11 The Chairperson is entitled to preside at meetings of the Directors but, if the Chairperson is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairperson, a Director chosen by a majority of the Directors present.

How questions decided

- 12.12 Questions arising at a meeting of the Directors are to be decided by a majority of votes and in the event of an equality of votes the Chairperson of the meeting has a second or a casting vote.

Committees

- 12.13 The Directors may delegate any of their powers to committees consisting of such Director or Directors as they think fit and may revoke that delegation.
- 12.14 A Committee in the exercise of the powers so delegated must conform to any regulations imposed by the Directors.
- 12.15 Subject to Article 12.12, the meetings and proceedings of a Committee consisting of two or more Directors are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are applicable.

Written resolution

- 12.16 Subject to the Corporations Act, a resolution in writing signed by all the Directors who are for the time being in Australia or all the members of a Committee who are for the time being in Australia, in either case being at least a quorum, is as valid and effectual as if it had been passed at a meeting of the Directors or Committee duly called and constituted at the time the resolution was last signed and may consist of several documents in like form each signed by one or more of the Directors or members.

Meeting by use of technology

- 12.17 A Directors' meeting may be called or held using any technology consented to by each Director. The Consent may be a standing one. A Director may only withdraw consent a reasonable time before the meeting. A Director using technology to attend a meeting is taken to be present in person at the meeting.

Validity of acts of Directors

- 12.18 All acts of the Directors, a Committee or a person acting as a Director or Committee or Member of a Committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

Conflict of Interest

- 12.19 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Directors notice of the interest.
- 12.20 The notice required by Article 12.19 must:
- (a) include details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
 - (b) be given at a meeting of the Directors as soon as practicable after the Director becomes aware of his or her interest in the matter, the details of which must be recorded in the minutes of the meeting.
- 12.21 A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors shall not be present while the matter is being considered at the meeting or vote on the matter unless:
- (a) the other Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature of his or her interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- 12.22 A Director who votes when not otherwise authorised to do so under this Article shall have his or her vote discounted.
- 12.23 A Director with an interest in a matter may give the Directors standing notice of the nature and extent of this interest.

13 SECRETARY

- 13.1 There shall be at least one Secretary.
- 13.2 A Secretary holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

14 DISPUTE RESOLUTION

- 14.1 The dispute resolution procedure in this Article applies to disputes (disagreements) under this Constitution and in relation to charitable fundraising between a Member or Director and:
- (a) one or more Members
 - (b) one or more Directors, or
 - (c) the Company.
- 14.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure concerning a Member until the disciplinary procedure is completed.
- 14.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 14.4 If those involved in the dispute do not resolve it under Article 14.3 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.
- 14.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - (i) for disputes between Members, a person chosen by the Directors, or
 - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.
- 14.6 A mediator chosen by the Directors under Article 14.5(b)(i):
- (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.

- 14.7 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; and
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.
- 14.8 This Article shall not prohibit a Member from seeking urgent interlocutory relief from the Courts if that Member, Director or Company will incur irreparable harm if not permitted to do so .

Disciplining members

- 14.9 In accordance with this Article, the Directors may resolve to warn, suspend or expel a Member from the company if the Directors consider that:
- (a) the Member has breached this Constitution, or
 - (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the **Company**.
- 14.10 At least 14 days before the Directors' meeting at which a resolution under Article 14.9 will be considered, the secretary must notify the Member in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the Member
 - (b) that this resolution will be considered at a Directors' meeting and the date of that meeting
 - (c) what the Member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the Member may provide an explanation to the Directors, and details of how to do so.
- 14.11 Before the Directors pass any resolution under Article 14.9, the Member must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Directors' meeting, and/or
 - (b) speaking at the meeting.

- 14.12 After considering any explanation under Article 14.11, the Directors may:
- (a) take no further action
 - (b) warn the Member
 - (c) suspend the Member's rights as a Member for a period of no more than 12 months
 - (d) expel the Member
 - (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this Article), or
 - (f) require the matter to be determined at a general meeting.
- 14.13 The Directors cannot fine a Member.
- 14.14 The Secretary must give written notice to the Member of the decision under Article 14.12 as soon as possible.
- 14.15 Disciplinary procedures must be completed as soon as reasonably practical.
- 14.16 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this Article.

15 AUTHENTICATION OF DOCUMENTS

Seal

- 15.1 The Company may have a Seal and may have a Seal for use in any place outside New South Wales, which is a facsimile of the Seal with the addition on its face of the name of every place where it may be used.
- 15.2 The Directors must provide for the safe custody of all Seals in such manner as they think fit.

Use of Seal

- 15.3 The Seal may be affixed to a document only by the authority of the Directors or a Committee of Directors authorised by the Directors in that regard.
- 15.4 Every document to which the Seal is affixed must be signed by a Director and countersigned by the Secretary or a second Director or some other person appointed generally or in a particular case by the Directors for that purpose.

Negotiable instruments

- 15.5 Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or endorsed on behalf of the Company in such manner and by such persons (whether Directors or officers of the Company or not) as the Directors determine but not otherwise.

16 INSPECTION OF BOOKS

- 16.1 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 inspection by the Members (other than Directors).
- 16.2 A Member or other person, not being a Director, has no right to inspect any of the books or documents of the Company except as conferred by statute or authorised by the Directors or by a resolution of the Company in general meeting and is not entitled to require or receive any information concerning the affairs of the Company.

17 SERVICE OF DOCUMENTS

- 17.1 A notice or other document may be delivered or served by the Company either personally or by sending it:
- (a) in the case of a Member who does not have a registered address in Australia, by airmail post;
 - (b) in any other case, by ordinary post, or
 - (c) by sending it to a fax number or electronic address nominated by the Member.
- and is at the risk of the addressee as soon as it is given or posted.
- 17.2 A Member whose registered address is not in Australia may specify in writing an address in Australia to be deemed the Member's registered address within the meaning of Article 17.
- 17.3 A document sent by post is to be deemed received or served on the day next following that on which it was posted and in proving delivery or service it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped and was posted.
- 17.4 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was properly addressed and stamped and was posted is conclusive evidence of those facts.

- 17.5 A notice may be served by the Company on a Member or other person receiving notice under these Articles by sending it by facsimile to that person at the person's registered address. A notice so sent is to be deemed served on the day following production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the person's facsimile number.
- 17.6 Subject to the Corporations Act:
- (a) if a given number of days' notice or notice extending over any other period is required to be given, the day on which the notice is to be deemed served and in case of a notice convening a meeting the day on which the meeting is to be held are to be excluded in calculating the number of days or other period;
 - (b) if this Constitution requires or permits a notice to be given by the Company, the Directors, a Director or the Secretary, neither accidental omission to give the notice nor non-receipt of the notice invalidates the meeting, resolution, procedure or matter to which the notice relates;
 - (c) the signature to a written notice need not be handwritten; and
 - (d) all summonses, notices, process, judgments and orders in relation to any legal proceedings by the Company or its liquidator against a Member not in New South Wales may be served by certified or registered post (the foregoing provisions as to notices applying with necessary changes) and that service is to be deemed personal service.

Persons entitled to notice of general meeting

- 17.7 Notice of Annual General Meeting must be given in the manner authorised by Articles 17.1 to 17.5 (inclusive) and in accordance with the Corporations Act to:
- (a) every Member;
 - (b) the Auditor;
- 17.8 No other person is entitled to receive notices of General Meetings.

18 GIFT FUND REQUIREMENTS

Company may maintain a Gift Fund

- 18.1 The Company may maintain a Gift Fund in accordance with this Article 18 for so long as it seeks or has obtained endorsement as a Deductible Gift Recipient from the Australian Taxation Office, or the Company is named as a DGR in ITAA 97.

Rules applying to the Gift Fund

- 18.2 The following rules apply to any Gift Fund established and maintained by the Company:
- (a) The Gift Fund must have a name.
 - (b) The Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.
 - (c) The Company must maintain a separate bank account for the Gift Fund.
 - (d) The following must be credited to the Gift Fund:
 - (i) All gifts of money or property to the Company for the Purpose.
 - (ii) All money or property received by the Company because of those gifts.
- 18.3 No other money or property may be credited to the Gift Fund.
- 18.4 The Company must use any gifts, money or property of the kind referred to in Article 18.2(d) only for the Purpose.
- 18.5 The public will be invited to contribute to the Gift Fund.
- 18.6 The Gift Fund is controlled and administered by the Directors which only include persons or institutions which have a degree of responsibility to the community as a whole, unless delegated pursuant to the provisions contained in this Constitution.

Winding up of Gift Fund

- 18.7 Despite the above, if the Gift Fund or the Company is wound up or ceases to be a DGR for any reason, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made. For the avoidance of doubt, if a Gift Fund operated by the Company is wound up but the Company remains a DGR and operates any other gift fund in accordance with this Article 18, any surplus assets of the Gift Fund that is being wound up may be transferred to any other gift fund operated by the Company.

Definitions

- 18.8 In this Article 18 the following definitions apply:
- (a) **DGR** means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.
 - (b) **Gift Fund** means a fund that is maintained for the Purpose.
 - (c) **ITAA 97** means Income Tax Assessment Act 1997 (Cth).
 - (d) **Purpose** means the purposes of the Company as reflected in the objects of the Company specified in Article 2 or any of those purposes.

19 Financial Year

- 19.1 The financial year of the Company is from 1 July to 30 June.

20 Payments

- 20.1 All payments by the Company must be:
- (a) specifically authorised by the signatories approved by the Directors, and
 - (b) in the case of cheques - signed by, at least 2 persons nominated by the Directors in writing.
- 20.2 The Directors may nominate a list of individuals or positions to be signatories for the purpose of Article 20.1(a).

21 INDEMNITY AND INSURANCE

Indemnity of officers, Auditors and agents

21.1 Every person who is or has been a Director, Secretary or Executive Officer of the Company is indemnified (to the maximum extent permitted by law) 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 administration 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.

Insurance

21.2 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, 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.