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Constitution of TEAR Australia

Corporations Act 2001

Company Limited by Guarantee

Contents

1.	Definitions and interpretation	1
1.1	Definitions.....	1
1.2	Interpretation	2
1.3	Replaceable rules displaced	2
2.	Name of the company	2
3.	Objects and powers	2
3.1	Objects	2
3.2	Powers	3
4.	Liability of Members	3
5.	Guarantee by Members	3
6.	Application of income and property	3
7.	Australian Gift Fund	4
7.1	Establishment and maintenance	4
7.2	Accounting procedures.....	4
7.3	Winding up of Gift Fund.....	5
8.	Developing Country Relief Fund	5
8.1	Establishment and maintenance	5
8.2	Accounting procedures.....	5
8.3	Receipts	5
8.4	Public fund.....	6
8.5	Management of Relief Fund	6
8.6	Non-profit.....	6
8.7	Winding up of Relief Fund	6
9.	Membership	6
9.1	General.....	6
9.2	Membership not transferable.....	7
9.3	Voting rights	7
10.	Cessation of Membership	7
10.1	Death, resignation and other events	7
10.2	Expulsion.....	7
10.3	Removal from the Register.....	8
10.4	Surviving liability	8
11.	Register	8
11.1	Register of Members	8
11.2	Disputes	8
12.	General Meetings.....	8
12.1	Annual General Meeting.....	8
12.2	Extraordinary Meeting	9
13.	Notice of General Meetings	9
13.1	General.....	9
13.2	Contents of notice	9
13.3	Alteration of procedure	9



13.4	Failure to receive notice	9
14.	Proceedings at General Meetings	9
14.1	Business	9
14.2	Meetings conducted by electronic means	10
14.3	Quorum	10
14.4	No quorum.....	10
14.5	Chairperson of General Meeting	10
14.6	Adjournment	10
14.7	Show of hands.....	11
14.8	Evidence of resolution	11
14.9	Poll	11
14.10	Demand for poll	11
14.11	Auditor	11
15.	Appointment of proxy	12
15.1	General.....	12
15.2	Instrument appointing proxy	12
16.	Form of proxy	12
16.1	Required information	12
16.2	Voting instructions	12
16.3	Authority	13
17.	Attorneys	13
17.1	Appointment by Member	13
17.2	Appointment by Directors	13
18.	Voting of attorney or proxy	13
18.1	Validity	13
18.2	Attendance of principal at meetings	13
19.	Directors	13
19.1	Composition of the Board	13
19.2	Associate Board Members	14
19.3	General eligibility	14
19.4	First Directors	14
19.5	Nomination and election of Elected Directors	14
19.6	Appointed Directors	14
19.7	Term of appointment	15
19.8	Officers on the Board	15
20.	Casual vacancies	15
21.	Disqualification of Directors	15
22.	Powers of the Board	16
23.	Borrowing	16
24.	Investment	16
25.	Negotiable instruments	16
26.	Proceedings of the Board	16
26.1	General.....	16
26.2	Convening and notice of Board meetings	17
26.3	Quorum	17
26.4	Chairperson and decisions.....	17



26.5	Written resolutions of the Board	18
26.6	Delegation by the Board	18
26.7	Defects in appointment.....	18
27.	Minutes	19
27.1	Minutes to be kept.....	19
27.2	Evidence of proceedings and resolutions.....	19
28.	National Director.....	19
29.	Secretary	19
30.	Accounts	20
30.1	Books of account to be kept	20
30.2	Location of books of account.....	20
31.	Auditor	20
32.	Indemnity.....	20
32.1	Definition of Liability and Officer.....	20
32.2	Indemnity of Officers	20
32.3	Indemnity for proceedings	20
32.4	Insurance.....	20
33.	Notices.....	21
34.	Distribution of property on winding-up.....	21
35.	Altering the Constitution	22

Constitution of TEAR Australia

Dated 22 / 02 / 2014

1. Definitions and interpretation

1.1 Definitions

In this Constitution:

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

Annual General Meeting means the annual general meeting of Members.

Associate Board Member means a person appointed in accordance with clause 19.2.

Auditor means the auditor or auditors of TEAR Australia.

Basis of Belief means the basis of belief adopted by TEAR Australia as at the date of adoption of this Constitution or as varied by resolution in accordance with clause 35.2.

Board means the board of directors of TEAR Australia.

Business Day means Monday to Friday excluding public holidays in Victoria.

Chairperson means the Director who is elected to this office in accordance with clause 19.8.

Charter means the charter adopted by TEAR Australia as at the date of adoption of this Constitution or as varied by resolution in accordance with clause 35.2.

Directors means the members individually or collectively of the Board.

Extraordinary Meeting means a meeting of Members other than an Annual General Meeting.

General Meeting means an Annual General Meeting or an Extraordinary Meeting.

Guidelines means any guidelines issued from time to time by the Commonwealth of Australia in relation to developing country relief funds.

Member means an individual admitted to membership of TEAR Australia in accordance with this Constitution.

National Director means the person from time to time occupying the position of National Director of TEAR Australia in accordance with clause 28.

Register means the register of Members kept in accordance with the Act.

Registered Address means the address of a Member shown in the Register.

Registered Office means the registered office of TEAR Australia.

Vice-Chairperson means the Director, who is elected to this office in accordance with clause 19.8.

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- 1.2.1 a person includes a corporate body, association, firm, partnership, or other unincorporated body;
- 1.2.2 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.2.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.2.4 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.2.5 a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- 1.2.6 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.2.7 the singular includes the plural and vice versa;
- 1.2.8 a gender includes all other genders;
- 1.2.9 where the expression **including** or **includes** is used, it means 'including but not limited to' or 'including without limitation'; and
- 1.2.10 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

1.3 Replaceable rules displaced

Each of the provisions of the Act that would apply to TEAR Australia as a replaceable rule but for this clause is expressly displaced and does not apply to TEAR Australia.

2. Name of the company

The name of the company is TEAR Australia.

3. Objects and powers

3.1 Objects

The objects of TEAR Australia are all or any of the following:

- 3.1.1 to provide direct relief of persons in necessitous circumstances in Australia and throughout the world by reason of poverty, sickness, destitution or helplessness whether in consequence of natural disaster or otherwise but in all circumstances in response to the love of our Lord Jesus Christ and to demonstrate His compassion;

- 3.1.2 to support community based Christian groups, churches and mission organisations around the world as they respond holistically to poverty through relief and development initiatives;
- 3.1.3 to inform, challenge and empower Australian Christians, in partnership with local Churches to make biblically-shaped responses to poverty and oppression; and
- 3.1.4 to do all such other lawful things as are incidental or conducive to the attainment of any or all of the above objects.

3.2 Powers

TEAR Australia has the legal capacity and powers of an individual and also all the powers of a body corporate but only to the extent necessary or convenient to carry out, or incidental to carrying out, TEAR Australia's objects.

4. Liability of Members

The liability of each Member is limited to the amount of the guarantee specified in clause 5.

5. Guarantee by Members

Every Member undertakes to contribute an amount not more than \$1.00 to the property of TEAR Australia if it is wound up:

- 5.1 while that person is a Member; or
- 5.2 within one year after that person ceases to be a Member,
for payment of:
 - 5.3 the debts and liabilities of TEAR Australia contracted before that person ceased to be a Member; and
 - 5.4 the costs, charges and expenses of winding-up.

6. Application of income and property

- 6.1 All of the income and property of TEAR Australia must be applied solely towards the promotion of the objects of TEAR Australia as set out in this Constitution.
- 6.2 No part of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or other profit distribution to any of the Members (in their capacity as Members) or Directors.
- 6.3 Clauses 6.1 - 6.2 do not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:
 - 6.3.1 of remuneration for services rendered to TEAR Australia by a director in a professional or technical capacity (other than in the capacity as a director) or for any salary or wages due to the National Director in the capacity as an employee of TEAR Australia;

- 6.3.2 of reimbursement for expenses properly incurred on behalf of or for the purposes of TEAR Australia;
- 6.3.3 for goods supplied to TEAR Australia in the ordinary course of business;
- 6.3.4 of interest on money borrowed by TEAR Australia or rent for premises let to TEAR Australia, where:
 - (a) the interest or rent of the service has the prior approval of the Board; and
 - (b) the amount payable is not more than an amount which commercially would be reasonably paid,

provided that any such payment to a Director must comply with clause 6.4.

- 6.4 TEAR Australia must not make any payment to a Director:
 - 6.4.1 for services rendered by that Director to TEAR Australia unless the provision of those services has the prior consent of the Board, the amount payable is on reasonable commercial terms; and
 - 6.4.2 the payment is approved by the Board.
- 6.5 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by law and this Constitution.

7. Australian Gift Fund

7.1 Establishment and maintenance

If TEAR Australia is endorsed as a deductible gift recipient under subdivision 30BA of the *Income Tax Assessment Act 1997* (Cwth), it must establish and maintain a gift fund called the TEAR In-Australia Gift Fund (**Australian Gift Fund**) to support the principal purposes of TEAR Australia in Australia and which complies with that Act and any other applicable Commonwealth taxation legislation.

7.2 Accounting procedures

- 7.2.1 TEAR Australia must establish and maintain a separate fund for the Australian Gift Fund.
- 7.2.2 All gifts of money or property for the principal purposes of TEAR Australia in Australia will be made to the Australian Gift Fund.
- 7.2.3 Money from interest on donations, income derived from donated property and money from the realisation of such property is to be credited to the Australian Gift Fund.
- 7.2.4 The Australian Gift Fund must not receive any other money or property.
- 7.2.5 The Australian Gift Fund must be used only for the principal purposes of the TEAR Australia in Australia.
- 7.2.6 Receipts must be issued in the name of the Australian Gift Fund and proper accounting records and procedures must be kept and used for the Australian Gift Fund.

7.3 Winding up of Gift Fund

If the Australian Gift Fund is wound up or if the endorsement of TEAR Australia as a deductible gift recipient is revoked, any surplus assets of the Australian Gift Fund remaining after satisfaction of the liabilities attributed to it must be transferred to a fund, authority or institution in Australia:

- 7.3.1 which has similar objects to those of TEAR Australia in relation to its operations in Australia;
- 7.3.2 which prohibits the distribution of profit, income and assets to its members to at least the same extent as this Constitution; and
- 7.3.3 to which income tax deductible gifts may be made.

8. Developing Country Relief Fund

8.1 Establishment and maintenance

- 8.1.1 For as long as TEAR Australia is approved by the Minister for Foreign Affairs as an approved organisation under the Overseas Aid Gift Deduction Scheme, it must maintain a developing country relief fund under the name TEAR Fund (Australia) Developing Countries Aid Fund or such other name as approved by the Treasurer (**Relief Fund**) which complies with *Income Tax Assessment Act 1997* (Cwth) and any other applicable Commonwealth taxation legislation and the Guidelines.
- 8.1.2 The object of the Relief Fund is to support the principal purposes of TEAR Australia in declared developing countries.

8.2 Accounting procedures

- 8.2.1 TEAR Australia must maintain a separate fund for the Relief Fund.
- 8.2.2 All gifts of money or property for the principal purposes of TEAR Australia in declared developing countries will be made to the Relief Fund.
- 8.2.3 Money from interest on donations, income derived from donated property and money from the realisation of such property is to be credited to the Relief Fund.
- 8.2.4 The Relief Fund must not receive any other money or property.
- 8.2.5 The Relief Fund must be used only for the principal purposes of TEAR Australia in declared developing countries.
- 8.2.6 Proper accounting records and procedures must be kept and used for the Relief Fund.

8.3 Receipts

Receipts for gifts to the Relief Fund must be made in the name of the Relief Fund and include:

- 8.3.1 the name and ABN of TEAR Australia;
- 8.3.2 the fact that it is a receipt for a gift; and
- 8.3.3 the amount of the gift (if money).

8.4 Public fund

The general public will be invited to make gifts to the Relief Fund to be used for the purpose of carrying out the object of the Relief Fund.

8.5 Management of Relief Fund

The Board must ensure that the Relief Fund is managed by a committee, the majority of whom are persons having a degree of responsibility to the general community by reason of their occupation or standing in the community.

8.6 Non-profit

The income and property of the Relief Fund must be applied solely towards the promotion of the object of the Relief Fund. No part of the income or property may otherwise be paid or transferred directly or indirectly to any individual except as bona fide compensation for services rendered or expended incurred on behalf of the Relief Fund.

8.7 Winding up of Relief Fund

If the Relief Fund is wound up or if the endorsement of TEAR Australia as a deductible gift recipient is revoked, any surplus assets of the Relief Fund remaining after satisfaction of the liabilities attributed to it must be transferred to a fund, authority or institution in Australia:

- 8.7.1 which has similar objects to those of TEAR Australia in relation to its operations in declared developing countries;
- 8.7.2 which prohibits the distribution of profit, income and assets to its members to at least the same extent as this Constitution; and
- 8.7.3 to which income tax deductible gifts may be made.

9. Membership

9.1 General

- 9.1.1 The following persons are Members:
 - (a) the individuals who are members at the date of adoption of this Constitution;
 - (b) the incumbents from time to time of the office of chairperson and one other board member of the EA Foundation ACN 004 431 083, an Australian public company limited by guarantee, subject to their written consent;
 - (c) each individual who is appointed as an Appointed Director under clause 19.6 immediately upon such appointment taking effect, for the duration of their tenure as a Director; and
 - (d) any other individual the Board admits to membership in accordance with this Constitution and any membership policy set by the Board from time to time.
- 9.1.2 Every applicant for membership of TEAR Australia must apply in the form and manner determined by the Board, including providing a signed consent to comply with this Constitution and a signed agreement to the Basis of Belief and Charter.

- 9.1.3 After receipt of an application for membership, the Board must consider the application and determine whether to admit or reject the admission of the applicant. The Board need not give any reason for rejecting an application.
- 9.1.4 If the Board approves the application, as soon as practicable thereafter, the secretary will notify the applicant and enter their name in the Register. The applicant becomes a Member upon entry of their name in the Register.
- 9.1.5 If the Board rejects the application, as soon as practicable thereafter the secretary will notify the applicant.

9.2 Membership not transferable

Membership may not be transferred to another person.

9.3 Voting rights

A Member is entitled to one vote at a General Meeting.

10. Cessation of Membership

10.1 Death, resignation and other events

A person immediately ceases to be a Member if the person:

- 10.1.1 attains the fifth anniversary of admission to membership, except where the person occupies the office of Member Elected Director; in which case membership ceases at the end of the term of appointment as director. However the person may reapply for admission as a Member;
- 10.1.2 dies;
- 10.1.3 resigns as Member by giving written notice to TEAR Australia;
- 10.1.4 is expelled under clause 10.2; or
- 10.1.5 becomes, if the Board determines in its absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with their registered address.

10.2 Expulsion

- 10.2.1 The Board, by a resolution passed by three-fourths of the Directors present and voting may expel a Member or implement appropriate disciplinary action if the Member:
- (a) has committed a breach of any obligation or duty under this Constitution; or
 - (b) has engaged in conduct detrimental to the interests of TEAR Australia.
- 10.2.2 At least 14 days before the meeting of the Board at which a resolution referred to in clause 10.2.1 is considered, the Member must be:
- (a) served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and

- (b) given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit

and the Board will take the explanation into consideration.

- 10.2.3 The Board will serve the Member with notice of any Board resolution made at the above meeting. If the Board resolves to expel the Member, that Member will cease to be a Member on the service of such notice.

10.3 Removal from the Register

- 10.3.1 Where a person ceases to be a Member, their name must be removed from the Register.

- 10.3.2 Upon the removal of a person's name from the Register:

- (a) the person will forfeit all rights and privileges attaching to membership and all rights which the person may have against TEAR Australia arising out of the membership; and
- (b) TEAR Australia will have no liability to such person in respect of the removal from the Register.

10.4 Surviving liability

Any person who ceases to be a Member remains liable for:

- 10.4.1 any moneys which may be owing to TEAR Australia; and
- 10.4.2 in the case of TEAR Australia being wound up within one year of the date of cessation of membership, the relevant contribution under clause 5.

11. Register

11.1 Register of Members

TEAR Australia must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.

11.2 Disputes

Any dispute that arises in relation to the Register must be referred to the Board, whose decision will be final and binding on all Members.

12. General Meetings

12.1 Annual General Meeting

TEAR Australia must hold an Annual General Meeting in every calendar year within five months of the end of its financial year at the time and place determined by the Board.

12.2 Extraordinary Meeting

The Board may convene an Extraordinary Meeting at such time and place as the Board thinks fit, but must be convened in accordance with the Act. Members may also convene an Extraordinary Meeting, but only in accordance with the Act.

13. Notice of General Meetings

13.1 General

The Board must give not less than 21 days' written notice of a General Meeting to the Members, the Directors and the Auditor.

13.2 Contents of notice

The notice referred to in clause 13.1 must specify the following information:

- 13.2.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- 13.2.2 the general nature of the business of the meeting;
- 13.2.3 the details of any special resolutions to be proposed at the meeting; and
- 13.2.4 that each Member is entitled to appoint a proxy who must be a Member.

13.3 Alteration of procedure

With the consent of all the Members entitled to vote at some particular meeting, that meeting may be convened by such shorter notice and in such manner as those Members may think fit provided that such action complies with the Act.

13.4 Failure to receive notice

- 13.4.1 The accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.
- 13.4.2 A person's attendance at a General Meeting waives any objection that the person may have to:
 - (a) a failure to give notice, to the giving of a defective notice, of a General Meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
 - (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

14. Proceedings at General Meetings

14.1 Business

The ordinary business of an Annual General Meeting may include:

- 14.1.1 the consideration of the annual financial report, the Directors' report and the Auditor's report;
- 14.1.2 the election and appointment of Directors; and
- 14.1.3 the appointment of the Auditor and the fixing of the Auditor's remuneration.

All other business transacted at an Annual General Meeting and all business transacted at an Extraordinary Meeting is deemed special business.

14.2 Meetings conducted by electronic means

- 14.2.1 All provisions of this Constitution relating to General Meetings apply, as far as they can and with any necessary changes, to General Meetings by telephone or other electronic means.
- 14.2.2 A Member who participates in a General Meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 14.2.3 A General Meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Members involved was at the place for the duration of the meeting.

14.3 Quorum

No business may be transacted at any General Meeting except the adjournment of the meeting unless a quorum is present. The quorum for a General Meeting is 20 per cent of the membership, present in person or by proxy or attorney.

14.4 No quorum

If a quorum is not present within 30 minutes from the time appointed for a General Meeting:

- 14.4.1 if convened on the requisition of Members, the meeting will be dissolved; and
- 14.4.2 in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned meeting a quorum is not present within 15 minutes from the time appointed for holding the meeting, the Members present will be a quorum.

14.5 Chairperson of General Meeting

- 14.5.1 The Chairperson or in his or her absence the Vice-Chairperson will preside as chairperson at every General Meeting.
- 14.5.2 If at any General Meeting neither is present within 15 minutes after the time appointed for holding the meeting or if neither is willing to preside, the Members present will choose a Director to preside. If no Director is present or if all Directors present decline to preside, then those persons present will choose a Member who is present to preside as chairperson.

14.6 Adjournment

- 14.6.1 The chairperson of a General Meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by the meeting adjourn the meeting to another time or place (or both).

- 14.6.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a General Meeting.
- 14.6.3 Where a General Meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

14.7 Show of hands

Every item of business submitted to a General Meeting will be determined in the first instance by a show of hands of the Members personally present and entitled to vote. The chairperson will have a casting vote.

14.8 Evidence of resolution

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of TEAR Australia, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

14.9 Poll

- 14.9.1 The chairperson or any Member present personally or by proxy or attorney may demand a poll before or on the declaration of the result of a show of hands.
- 14.9.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 14.9.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.9.4 The demand for a poll may be withdrawn.
- 14.9.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.
- 14.9.6 At a poll, the chairperson will have a casting vote.

14.10 Demand for poll

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

14.11 Auditor

The Auditor is entitled:

- 14.11.1 to attend any General Meeting;
- 14.11.2 to receive all notices of and other communications relating to any General Meeting which a Member is entitled to receive; and
- 14.11.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity and is entitled to be heard, despite the fact that the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting.

15. Appointment of proxy

15.1 General

15.1.1 Any Member may appoint an individual as a proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.

15.1.2 A proxy must be a Member.

15.2 Instrument appointing proxy

15.2.1 TEAR Australia must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

- (a) the Registered Office;
- (b) a fax number at the Registered Office;
- (c) a place, fax number or electronic address specified for such purpose in the notice of meeting

not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

15.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

15.2.3 An appointment of a proxy may be a standing one.

16. Form of proxy

16.1 Required information

An instrument appointing a proxy must contain the following information:

16.1.1 the Member's name and address;

16.1.2 the company name;

16.1.3 the type of membership held by the Member;

16.1.4 the proxy's name or the name of the office held by the proxy; and

16.1.5 the meetings at which the appointment may be used

and be signed by the appointor or their attorney.

16.2 Voting instructions

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

16.3 Authority

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

17. Attorneys

17.1 Appointment by Member

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of TEAR Australia. That power of attorney must be produced for inspection at the Registered Office or any other place the Board determines, together with evidence of the due execution of it the Board requires, before the attorney will be entitled to appoint a proxy for the Member granting the power of attorney.

17.2 Appointment by Directors

The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of TEAR Australia. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as the Directors think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

18. Voting of attorney or proxy

18.1 Validity

A vote given in accordance with the terms of an instrument of proxy or power of attorney will be valid despite the previous death of the principal or revocation of the proxy or power of attorney, provided no notice in writing of the death or revocation has been received at the Registered Office before the meeting.

18.2 Attendance of principal at meetings

The principal attending and taking part in the meeting will not revoke a proxy, unless that principal votes on the resolution to which the proxy applies.

19. Directors

19.1 Composition of the Board

The number of Directors comprising the Board will be no less than 8 and no more than 10 consisting of the following individuals:

- 19.1.1 at least 5 and no more than 6 Directors elected under clause 19.5 (**Elected Directors**);

- 19.1.2 no more than 3 Directors appointed under clause 19.6 (**Appointed Directors**); and
- 19.1.3 the National Director.

19.2 Associate Board Members

The Board may by resolution appoint Members who are under 25 years of age at the time of appointment to serve as Associate Board Members for a maximum of 2 years. An Associate Board Member may attend Board meetings as and when determined by the Board but will not be a director, included in the calculation of a quorum for a Board meeting or entitled to vote. The Board may not appoint more than 2 Associate Board Members at any time.

19.3 General eligibility

- 19.3.1 An individual must be a Member and eligible under the Act to be a Director.
- 19.3.2 Other than the National Director, an employee of TEAR Australia is not eligible to be a Director.

19.4 First Directors

Despite any other provision in this Constitution, the first Directors will be those persons who are listed as Directors in the application to the Australian Securities and Investments Commission for transfer of registration of a body corporate. The first Directors will hold office for the terms set out in the Board transition policy, which must reflect the general principles of clause 19.7.

19.5 Nomination and election of Elected Directors

The nomination and election of Elected Directors will take place in the following manner:

- 19.5.1 Any 2 Members may nominate any Member who meets the general criteria under clause 19.3 to serve as an Elected Director. The nomination must be in writing and signed by the nominated person and their proposer and seconder. The nomination must be lodged with the secretary at least 30 days before the Annual General Meeting at which the election is to take place.
- 19.5.2 If there is not a sufficient number of candidates nominated to meet the required minimum number of Elected Directors, the Board must nominate such number of eligible Members to serve as Elected Directors, subject to their consent, so that the Board consists of at least the minimum number of Elected Directors.
- 19.5.3 If there are more candidates nominated than there are vacancies for Elected Director positions, balloting lists will be prepared containing the names of the candidates in an order determined by lot. The Board may determine the method of the ballot. Each Member is entitled to vote for any number of candidates not exceeding the number of vacancies.
- 19.5.4 If there are no more candidates nominated for Elected Director positions than there are vacancies, the chairperson of the Annual General Meeting will declare those candidates elected as Directors.

19.6 Appointed Directors

Subject to clause 19.1.2 (maximum number of Appointed Directors), the Board may by resolution appoint individuals who:

- 19.6.1 are eligible under the Act to be a Director;

- 19.6.2 satisfy Board membership policies under clause 9.1.2; and
- 19.6.3 have skills and experience relevant to TEAR Australia including in any or all of the areas of community development, international aid, theology, governance, church engagement, communications, fundraising, law, accounting and business,

to serve as Appointed Directors.

19.7 Term of appointment

- 19.7.1 Except for individuals appointed under clause 20 to fill a casual vacancy and the National Director:
 - (a) each Elected Director will hold office for a term of approximately 4 years commencing at the end of the Annual General Meeting at which they were elected and expiring at the end of the fourth Annual General Meeting after their election, at which time they will retire; and
 - (b) each Appointed Director will hold office for a term of 4 years from the date of their appointment, subject to confirmation by Members at the first Annual General Meeting after the appointment. If the appointment is not confirmed, the individual will cease to be a Director at the end of that Annual General Meeting.
- 19.7.2 Subject to clauses 19.3 (general eligibility) and 19.7.3 (maximum terms), a retiring Director will be eligible for re-appointment.
- 19.7.3 No Director may serve more than 2 consecutive terms without a break of at least 4 years (which in the case of Elected Directors, is measured as the period between the first and fifth of 5 consecutive Annual General Meetings). Any time served as a replacement Director appointed to a casual vacancy under clause 20.1 is not counted for the purposes of this clause.

19.8 Officers on the Board

- 19.8.1 At the first meeting of the Board after the Annual General Meeting, the Directors will elect from among their number a Chairperson and a Vice-Chairperson, each of whom will hold office until the end of the next Annual General Meeting.
- 19.8.2 The Board may appoint a replacement to any casual vacancy arising in the office of Chairperson or Vice-Chairperson.

20. Casual vacancies

- 20.1 Despite clause 19, the Board may appoint a replacement Director to any casual vacancy arising in the office of a Director.
- 20.2 Any Director so appointed will hold office until the end of the next Annual General Meeting.

21. Disqualification of Directors

The office of a Director will be vacated if:

- 21.1 the Director becomes bankrupt or makes any arrangement or composition with his or her creditors or if being a director of a company which is a Member, a winding up order is made in respect of such company;
- 21.2 the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- 21.3 without leave of the Board the Director is absent from meetings of the Board for 3 consecutive Board Meetings, unless the Board makes a resolution to the contrary;
- 21.4 by notice in writing to TEAR Australia the Director resigns from office; or
- 21.5 the Director ceases to hold office by reason of any order made under the Act.

22. Powers of the Board

- 22.1 The control and direction of TEAR Australia and the management of its property and affairs is vested in the Board.
- 22.2 The Board may exercise all powers of TEAR Australia that are not required to be exercised or done by TEAR Australia in General Meeting.

23. Borrowing

The Board may raise money in any manner it thinks fit including the borrowing of money on the security of TEAR Australia's assets and the issuing of a security for any other purpose.

24. Investment

The Board may invest funds of TEAR Australia in any manner and for any period as it thinks fit.

25. Negotiable instruments

The Board may determine how cheques, promissory notes, drafts, bills of exchange and other negotiable instruments must be signed, drawn, accepted, endorsed and otherwise executed (as applicable) by and on behalf of TEAR Australia.

26. Proceedings of the Board

26.1 General

- 26.1.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 26.1.2 The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to a meeting of the Board by telephone or other electronic means.

- 26.1.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present at the meeting.
- 26.1.4 A meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

26.2 Convening and notice of Board meetings

- 26.2.1 The Board must meet at least 3 times a year.
- 26.2.2 The Chairperson may convene a meeting of the Board whenever he or she thinks fit.
- 26.2.3 The secretary must, on the request of any 2 Directors, convene a meeting of the Board.
- 26.2.4 Notice of a Board meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Board.
- 26.2.5 Notice of a Board meeting:
- (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting; and
 - (c) may be given in person or by post, telephone, fax or other electronic means.
- 26.2.6 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.
- 26.2.7 A Director's attendance at a Board meeting waives any objection that Director may have to a failure to give notice of the meeting.

26.3 Quorum

- 26.3.1 No business may be transacted at a Board meeting unless a quorum is present at the time the business is considered.
- 26.3.2 Unless otherwise determined by the Board, a quorum for meetings of the Board is half plus one of the Directors, or if the number of Directors is not a multiple of 2, then the odd number nearest to and greater than half of the Directors.
- 26.3.3 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:
- (a) must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and
 - (b) until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

26.4 Chairperson and decisions

- 26.4.1 The Chairperson will be the chairperson of the Board. If the Chairperson is not present within 15 minutes after the time appointed for holding that meeting (or

being present is unwilling to act), the Vice-Chairperson will preside at the meeting. If the Vice-Chairperson is not present (or being present is unwilling to act) then the Directors present will choose one of their number to be the chairperson of the meeting.

26.4.2 Except as provided by the Act and by clause 10.2.1, questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.

26.4.3 The chairperson will have a casting vote.

26.5 Written resolutions of the Board

26.5.1 If all the Directors (other than a Director on leave of absence approved by the Directors) have approved a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the resolution was approved and at that time at which the document was last approved by a Director or, if the Directors approved the document on different days, on the day on which, and at the time at which the document was last approved by a Director.

26.5.2 Any such resolution in writing may consist of several documents in identical terms, each approved by one or more Directors and must be entered in the relevant book of minutes of TEAR Australia.

26.5.3 In this clause 26.5, a Director gives approval by:

- (a) signing a document containing the resolution;
- (b) affixing an electronic signature to a document containing the resolution; or
- (c) using such other written means approved by the Directors.

26.5.4 A reference in clause 26.5.1 to all Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

26.6 Delegation by the Board

26.6.1 The Board may delegate any of its powers to individual Directors, Members or employees or to committees as the Board thinks fit. Any individual or committee so formed must conform to any direction given to it by the Board in the execution of the delegated powers.

26.6.2 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

26.7 Defects in appointment

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

26.7.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee; or

26.7.2 the disqualification of any of them.

27. Minutes

27.1 Minutes to be kept

The Board must cause:

27.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of TEAR Australia, the Board and committees formed by the Board;

27.1.2 the minutes to be entered in books kept for that purpose; and

27.1.3 the minutes to be signed within a reasonable time by the chairperson of the meeting or by the chairperson of the next meeting.

27.2 Evidence of proceedings and resolutions

A minute that is recorded and signed in accordance with clause 27.1 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

28. National Director

28.1 The Board may appoint a person to be National Director of TEAR Australia either for a fixed term or without limitation as to period of appointment but not for life and remove that person and appoint another in their place.

28.2 The person appointed as National Director occupies the office of Director for the period of their appointment as National Director.

28.3 The Board may determine the remuneration of the National Director.

28.4 The Board may confer upon the National Director such of the powers exercisable by the Directors, on such terms and conditions and with such restrictions as they think fit. Any such powers may be conferred concurrently with, but not to the exclusion of the powers of the Directors and may be revoked or varied by the Board.

29. Secretary

29.1 The Directors will appoint at least one secretary and may at any time suspend or remove a person from that office.

29.2 The secretary holds office on such terms and conditions and with the powers, duties and authorities as determined by the Directors.

29.3 Unless the Board determines otherwise, the secretary will be the National Director of TEAR Australia.

30. Accounts

30.1 Books of account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of TEAR Australia. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of TEAR Australia's affairs and explain its transactions.

30.2 Location of books of account

The books of account will be kept at the Registered Office or place or places as the Directors think fit and will be open to the inspection of the Directors during usual business hours.

31. Auditor

TEAR Australia will observe the provisions of the Act in relation to the appointment, removal and resignation of an Auditor.

32. Indemnity

32.1 Definition of Liability and Officer

In this clause 32:

32.1.1 **Liability** means costs, losses, liabilities and expenses.

32.1.2 **Officer** means a Director, secretary or other officer of TEAR Australia and includes a former Officer, but does not include an Auditor or agent of TEAR Australia.

32.1.3 A reference to Officer includes a reference to a former Officer.

32.2 Indemnity of Officers

Every Officer must be indemnified out of the assets of TEAR Australia against any Liability incurred by that Officer in the person's capacity as an Officer by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer, but excluding any Liability from or against which TEAR Australia is not permitted by the Act to exempt or indemnify the Officer.

32.3 Indemnity for proceedings

Without limiting clause 32.2, every Officer must be indemnified out of the assets of TEAR Australia against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer but excluding any Liability from or against which TEAR Australia is not permitted by the Act to exempt or indemnify the Officer.

32.4 Insurance

TEAR Australia may, to the extent permitted by law:

32.4.1 purchase and maintain insurance; or

32.4.2 pay or agree to pay a premium for insurance,

for any Officer against any Liability incurred by the person as an Officer where the Board considers it appropriate to do so.

33. Notices

33.1 TEAR Australia may serve notice on any Member either personally, or by sending it through the ordinary prepaid post to the Member's Registered Address, or by leaving at the Registered Address in an envelope addressed to the Member or by sending it to the fax number or electronic address (if any) nominated by the Member.

33.2 A notice sent by fax is taken to be served if the correct fax number appears on the fax transmission report or log report generated by the sender's fax machine confirming transmission was completed.

33.3 A notice sent by other electronic means is taken to be served:

33.3.1 in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry or other confirmation; or

33.3.2 in the case of email or other electronic messaging system (other than those referred to in clause 33.3.1), at the time the email containing the notice has left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient.

33.4 Any notice placed in a correctly addressed prepaid envelope and placed in the post is taken to be served:

33.4.1 in the case of a notice of a General Meeting, on the day after the date of its posting; and

33.4.2 in any other case, at the time it would be delivered in the ordinary course of post.

33.5 If service under this clause 33 is on a day that is not a Business Day or is after 5.00pm (addressee's time), the notice is regarded as having been received at 9.00am the next Business Day.

34. Distribution of property on winding-up

34.1 On the winding-up or dissolution of TEAR Australia any surplus assets remaining after the satisfaction of all TEAR Australia's debts and liabilities must not be paid to or distributed among the Members but must be transferred to some other institution or institutions:

34.1.1 which has objects similar to the objects of TEAR Australia;

34.1.2 which prohibits the distribution of its income and property among its members and directors to an extent at least as great as is imposed on TEAR Australia under clause 6 of this Constitution; and

34.1.3 to which income tax deductible gifts may be made.

34.2 This institution or institutions must be determined by:

- 34.2.1 a special resolution of the Members at or before the time of dissolution; or
- 34.2.2 if no such special resolution is passed, by a Judge of the Supreme Court of Victoria or other court of competent jurisdiction.

35. Altering the Constitution

- 35.1 TEAR Australia may only alter this Constitution by a special resolution passed in accordance with the Corporations Act.
- 35.2 TEAR Australia may only alter the Charter and / or the Basis of Belief by a resolution passed by at least 75% of Members present in person or by proxy at a General Meeting.