

65.692477584

ECAJ Harm Prevention Fund Ltd  
(ACN 141 71



## Agreement by Members and Constitution

Ref: LDG:RP:NMD 01-1418586

**AGREEMENT AND UNDERTAKING**

— of —

**ECAJ HARM PREVENTION FUND LIMITED**

**✓**, the undersigned:

- 1** Agree to be bound by the terms and conditions of the Constitution in the form attached to this Agreement marked with the letter "A".
- 2** Undertake to pay the amount specified in clause 5.5(b) of the Constitution, being \$20.00, in the event of the Company being wound up while a Member, or within one year after ceasing to be a Member.

**SCHEDULE**

**Names of Members**

**Addresses of Members**

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# CONSTITUTION OF ECAJ HARM PREVENTION FUND LIMITED

## 1 Definitions

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1. 1 In this Constitution:

"**Alternate Director**" means any person appointed under clause 18.

"**Board**" means the Board of Directors of the Company from time to time established under clause 15.

"**Chairperson**" means the person elected from time to time pursuant to clause 15.

"**Commissioner**" means the Commissioner of Taxation, a second Commissioner of Taxation or a Deputy Commissioner of Taxation or other delegate of the Commissioner of Taxation for the purposes of the Tax Act.

"**Company**" means ECAJ Harm Prevention Fund Limited (or, subject to the Law, any other name as approved by the Members from time to time) as governed by this Constitution.

"**Constitution**" means this Constitution as supplemented, substituted or amended from time to time and includes any rules, regulations and by-laws of the Company for the time being in force.

"**Deputy Chairperson**" means the person elected from time to time pursuant to the provisions of clause 15.

"**Directors**" means the persons appointed as directors for the time being having authority, acting as a body, to act for the Company and includes, where applicable, a person appointed and acting as an Alternate Director.

"**Eligible Charity**" means a fund, authority or institution –

- (a) which is charitable at law; and
- (b) gifts or contributions to which are deductible under item 1 of the table in section 30-15 of the Tax Act; and
- (c) if required under the Tax Act, has objects and purposes similar to the objects and purposes of the Company.

"**First Resolution**" has the meaning in clause 9.3(a).

"**GST**" has the meaning given by Section 195-1 of the GST Act.

"**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999*.

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

"**Member**" means each person who is recorded as a Member in the Register.

"**Membership**" means the contractual rights of a person to membership of the Company, being the rights attaching to the class of Membership conferred on that person.

"**Membership Year**" means each period of 12 Months commencing on 1 July and ending on the next ensuing 30 June.

"Month" means calendar month.

"Nominee" means in respect of a Member who is not a natural person, the natural person nominated in accordance with the provisions of clause 5.4 who is authorised to exercise all the rights of that Member under this Constitution.

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

"Present" when used in relation to a Member at a meeting means present in person, or by proxy, or by attorney, or if a corporation by its representative.

"Register" means the register of members of the Company maintained pursuant to the Law and clause 7.

"Responsible Person" an individual who –

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics or rules of conduct;
- (c) is officially charged with spiritual functions by a religious institution;
- (d) is a director of a company whose shares are listed on the ASX Limited;
- (e) has received formal recognition from government for services to the community;  
or
- (f) is approved as a Responsible Person by the Commissioner.

"Seal" means the common seal of the Company.

"Secretary" means a person appointed from time to time pursuant to the provisions of clause 23.1.

"Subscription" means the annual subscription fee payable by Members pursuant to the provisions of clause 5.3.

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

"Trust" means the trust fund known as the ECAJ Harm Prevention Fund (or such other name as the Company may determine from time to time) constituted by the Trust Deed.

"Trust Deed" means the deed of trust (as varied by any modification or alteration lawfully made to the deed of trust from time to time) and includes any schedules to the deed of trust pursuant to which the Trust is established.

## 2 Interpretation

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2.1 In this Constitution:

- (a) references to any officer of the Company includes any person acting for the time being as such officer;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender shall mean and include all other genders;
- (d) words importing persons include companies, corporations, partnerships, associations, institutions, bodies and entities (whether incorporated or not) and vice versa;

- (e) words or expressions defined in the Law but not defined in this Constitution shall, if not inconsistent with the subject or context, bear the same meaning in this Constitution; and
- (f) all references in this Constitution to any statutory enactment or law shall mean and be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction and includes regulations and statutory instruments thereunder.

2.2 The headings to clauses or groups of clauses shall not affect the construction or interpretation of this Constitution.

2.3 The replaceable rules contained in the Law shall not, unless expressed in the Law to be mandatory in respect of the Company, apply to the Company.

### **3 Objects**

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#### **3.1 Act as Trustee**

The principal object for which the Company is established is to act as trustee of, and to administer, the Trust in accordance with the terms of the Trust Deed.

#### **3.2 Further and related Objects**

For the purpose of carrying out the principal object referred to in clause 3.1, the Company may:

- (a) promote and generally create greater community awareness in the knowledge and understanding of the purposes of the Trust;
- (b) raise funds to further the purposes of the Trust;
- (c) establish and maintain relationships and close communications with corporations, entities, associations, foundations, institutions, organisations and groups including Federal, State and Local Government instrumentalities, authorities and professionals that may have related interests to the Trust and utilise their resources and facilities to provide and achieve the purposes of the Trust;
- (d) seek and co-ordinate funding from Federal, State and Local Government and the private sector in the form of grants, gifts, donations and bequests committed to the purposes of the Trust; and
- (e) do all such other things as are incidental or conducive to the attainment of the purposes of the Trust.

#### **3.3 Not for Profit**

- (a) The Company shall not be carried on for the purposes of profit or gain to its Members and the income and property of the Company, from whatever source derived, shall be applied solely towards the promotion of the purposes of the Trust and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to the Members of the Company.
- (b) Notwithstanding anything contained in clause 3.3(a), nothing contained in that clause shall prevent the payment, in good faith, of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual way of business, nor prevent the payment of interest at a rate not exceeding the rate fixed for the purposes of this clause 3 by the Board on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company.

## **4 Powers of the Company**

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- 4.1 The Company has, subject to the Law, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.
- 4.2 Without limiting the generality of clause 4.1, the Company has all the rights, powers and privileges and the legal capacity of a natural person including, but not limited to, the powers to:
- (a) accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company for the Company on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;
  - (b) make available (whether in writing or in any other form and whether by sale or otherwise) information relating to the Company, and its functions;
  - (c) to occupy, use and control any land or building owned or held under lease by any other person made available to the Company;
  - (d) acquire, hold and dispose of real and personal property;
  - (e) lease the whole or any part of any land or building for the purpose of the Company;
  - (f) occupy, use and control any other land or building owned or held under lease by any other person and made available to the Company;
  - (g) enter into contracts;
  - (h) erect buildings;
  - (i) employ managers and other staff to implement the objects of the Company and pay such fees, salaries, emoluments and expenses as the Board consider reasonable to such persons;
  - (j) purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods;
  - (k) act as trustee of moneys or other property vested in the Company on trust; and
  - (l) do anything incidental to any of the Company's objects.
- 4.3 Notwithstanding anything contained in this Constitution, any money or other property held by the Company for the Company upon trust or accepted by the Company for the Company subject to a condition, shall not be dealt with except in accordance with the obligations of the Company as trustee or as the person who has accepted the money or other property subject to the condition, as the case may be.

## **5 Membership and eligibility**

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### **5.1 Number and classes of Membership**

- (a) The number of Members shall be not less than three nor more than the maximum number (if any) which the Board may from time to time prescribe.
- (b) The Members of the Company will consist of such persons as the Directors admit to Membership in accordance with this Constitution.
- (c) A person seeking admission to Membership who is not a natural person must nominate a natural person to be its Nominee in accordance with clause 5.4.
- (d) The Board may, at any time and from time to time subject to clauses 6.2 and 6.3, establish different classifications of Membership and may prescribe the

qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classifications of Membership but in the event that a new class of Membership is established, the qualifications, rights and privileges of that Membership must be approved in accordance with clause 6.3.

## **5.2 Admission to Membership**

- (a) Every person who, at the date of registration of the Company is a Member of the Company continues to be a Member of the Company.
- (b) A person who is not a Member of the Company at the time of registration of the Company shall not be admitted to Membership unless:
  - (i) he applies for Membership in accordance with clause 5.2(c); or
  - (ii) he is nominated for Membership by an existing Member of the Company; and
  - (iii) his admission as a Member is approved by the Directors.
- (c) Every person seeking admission to Membership of the Company must:
  - (i) sign a written application addressed to the Secretary, in the form prescribed by the Board;
  - (ii) specify the class of Membership sought and such other particulars as the Board may either generally or, in a particular case, require;
  - (iii) provide the undertaking referred to in clause 5.5 and
  - (iv) give or leave the application, undertaking and payment for the first year's Subscription with, or for, the Secretary of the Company.
- (d) As soon as practicable after receipt of an application referred to in clause 5.2(c) or, a nomination or notice referred to in clause 5.4, the Secretary must refer the application, nomination or notice to the Directors.
- (e) On an application, nomination or notice being referred to the Directors, the Directors shall determine, in their absolute discretion, whether to approve or to reject the application, nomination or notice.
- (f) The Directors may decline to accept an application for Membership or nomination or notice with respect to a Nominee, without assigning any reason.
- (g) Upon an application being approved by the Directors, the Secretary must, as soon as practicable:
  - (i) if the applicant is a natural person - notify the applicant in writing that he has been approved for Membership; and
  - (ii) if the applicant is not a natural person – notify the applicant and its Nominee in writing that the applicant has been approved for Membership and that the Nominee has been approved as its authorised representative.
- (h) An applicant for Membership becomes a Member and is entitled to exercise the rights of Membership when his name is entered into the Register.
- (i) The Secretary must, within 28 days after approval by the Directors and receipt of the amounts referred to in clause 5.3 enter the applicant's name in the Register and, if the applicant is not a natural person, the Nominee's name.
- (j) If an application, nomination or notice has been rejected by the Directors, the Secretary must, as soon as practicable:
  - (i) notify the applicant in writing that his application or nomination or notice has been rejected; and

- (ii) return to the applicant the first year's Subscription (if any) which accompanied the application.

### **5.3 Subscription**

- (a) Subject to following provisions of this clause 5.3, the Subscription per Membership Year shall be such amount as may be determined by the Directors from time to time.
- (b) If the first Membership Year applicable to the person seeking admission to Membership is comprised of less than 365 days, the first year's Subscription payable by that person shall be apportioned according to the number of days remaining in that Membership Year.
- (c) The Subscription shall be payable by each Member, in advance at the commencement of each financial year, addressed to the Secretary, or to such other person as the Board shall, from time to time, determine for that purpose.

### **5.4 Nominee**

- (a) A nomination for the purposes of clause 5.1(c) must:
  - (i) be in writing;
  - (ii) be signed or executed by the body corporate or entity seeking Membership;
  - (iii) be addressed to the Secretary, or to such other person as the Board shall, from time to time, determine for that purpose; and
  - (iv) accompany the application referred to in clause 5.2(c).
- (b) A Nominee, nominated pursuant to clause 5.1(c), may be removed or replaced by written notice to the Secretary, signed or executed by the body corporate or entity which nominated that Nominee.
- (c) If the body corporate or entity which nominated a Nominee gives notice to the Secretary that it wishes its Nominee to be removed or replaced (for whatever reason), the Secretary will, subject to approval of the Directors in accordance with the provisions of clause 5.2(e), as soon as practicable, make the appropriate entries in the Register to remove, replace or remove and replace that Nominee.

### **5.5 Undertaking**

- (a) Every Member shall provide an undertaking, in writing, in accordance with the provisions of clause 5.5(b).
- (b) Every Member of the Company undertakes to contribute to the property of the Company in the event of the Company being wound up while he is a Member, or within one year after he ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before he ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding, in any event, \$20.00 per Member.

### **5.6 GST**

- (a) All payments that are required to be made by a Member under this Constitution (including but not limited to Subscriptions) are exclusive of GST.
- (b) If any payment referred to in clause 5.6(a) is for, or is in connection with, a supply made by the Company under this Constitution on which the Company is liable to pay GST, then such payment shall be increased by the prevailing rate of that GST and the Member shall pay that increased amount to the Company at the same time and in the same manner as all other payments required to be made.

- (c) The Company must issue to the Member a tax invoice for the increased amount referred to in clause 5.6(b) within 14 days from the date that the increased amount is required to be paid by the Member.

## **6 Rights of members**

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### **6.1 Rights and privileges**

- (a) Subject to this Constitution, all Members are entitled to all the rights and privileges of Membership of the Company.
- (b) A right, privilege, or obligation of a person by reason of his Membership:
- (i) is not capable of being transferred or transmitted to another person; and
  - (ii) terminates upon the cessation of his Membership whether by death or resignation or otherwise as more particularly set out in clause 9.

### **6.2 Variation of Rights**

If at any time the Directors exercise the powers under clause 5.1(d), the rights, restrictions or obligations of Members or any class of Members may be varied with either:

- (a) the written consent of not less than 75% of the existing Members; or
- (b) the sanction of a special resolution passed at a separate general meeting of the existing Members.

### **6.3 Effect of new class of Membership**

If the Directors establish a new class of Membership that has the same rights, restrictions or obligations as an existing class of Membership, the establishment of that new class of Membership is not a variation of the rights attaching to that class.

## **7 Register of member**

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### **7.1 Information in Register**

- (a) The Secretary must keep and maintain a Register containing:
- (i) the name and address of each Member;
  - (ii) the date on which each Member's name was entered in the register;
  - (iii) in the case of a Member who is not a natural person, the name and address of the Nominee;
  - (iv) the class of Membership; and
  - (v) any other information which the Directors considers necessary.

### **7.2 Inspection and copies**

- (a) The Register shall be available for inspection, free of charge, by any Member upon request.
- (b) A Member may make a copy of entries in the Register.

## **8 Default by members**

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- (a) If a Member fails to pay the whole or any part of his Subscription in any Membership Year, for more than 60 days after the due date for payment then:
- (i) all of the rights and privileges of that Member shall be suspended until the Subscription, or such part thereof which is payable and remains

outstanding, is paid or until his Membership has been determined in accordance with the provisions of clause 8(b); and

- (ii) the Secretary shall give notice to that Member requiring payment of the Subscription, or such part of the Subscription which is payable and remains outstanding.
- (b) If any Member fails to pay his Subscription in accordance with clause 8(a), or any part thereof which is payable and remains outstanding for more than 60 days after service of the notice to the Member in accordance with clause 8(a)(ii), then the Member shall cease to be a Member pursuant to clause 9 and the Secretary must notify that Member accordingly.

## **9 Cessation of membership**

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### **9.1 Ceasing to be a Member**

A person ceases to be Member of the Company if:

- (a) he resigns his Membership as provided in clause 10.1; or
- (b) the provisions of clauses 8(a) and 8(b) or the succeeding provisions of this clause 9 become applicable to that Member.

### **9.2 Continuing liability**

A Member who resigns his Membership continues to be liable for any Subscription and all arrears due and unpaid at the date of his resignation and for all other moneys due by him to the Company and for any sum not exceeding \$20.00 for which he may become liable as a Member under clause 5.5(b).

### **9.3 Power to censure, fine, suspend or expel**

- (a) If any Member:
  - (i) fails to comply with the provisions of this Constitution; or
  - (ii) fails to comply with any of the rules, regulations or by-laws of the Company; or
  - (iii) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company or its Members,

the Directors may, subject to the provisions of clause 9.3(b), by resolution of the Directors ("the First Resolution") censure, fine, suspend or expel that Member from the Company.

- (b) A First Resolution of the Directors under clause 9.3(a):
  - (i) does not take effect unless the Directors, at a meeting held not earlier than 14 days and not later than 21 days after the service on the Member of a notice in accordance with the provisions of clause 9.3(c) confirms the First Resolution in accordance with that clause; and
  - (ii) where the Member exercises a right of appeal to the Company, does not take effect unless the Members confirm the First Resolution in accordance with clause 9.3(g).
- (c) Where the Directors pass a First Resolution under the provisions of clause 9.3(a), the Secretary must, as soon as practicable, cause to be served on the Member, a notice in writing:
  - (i) setting out the First Resolution of the Directors and the grounds on which it is based;

- (ii) stating that the Member may address the Board at a meeting to be held not earlier than 14 days and not later than 21 days after service of the notice;
  - (iii) stating the date, place and time of that meeting;
  - (iv) informing the Member that he may do one of the following:
    - (A) attend the meeting; or
    - (B) give to the Directors, before the date of the meeting, a written statement seeking revocation of the First Resolution.
- (d) At a meeting of the Directors held in accordance with clause 9.3(c), the Directors must:
- (i) give the Member, or his representative, an opportunity to be heard; and
  - (ii) give due consideration to any written statement submitted by, or on behalf of, the Member; and
  - (iii) by resolution, determine whether to confirm or to revoke the resolution.
  - (iv) If the Directors, by resolution, confirm the First Resolution, the Secretary must notify the Member of the confirmation, and the Member may not later than 48 hours after the date of the meeting of the Directors held in accordance with clause 9.3(c), lodge with the Secretary a notice to the effect that he wishes to appeal to the Company in general meeting against the First Resolution.
- (e) In the event that the Secretary receives a notice under clause 9.3(d)(iv), the Secretary must notify the Directors and the Directors must call a general meeting of Members within 21 days after the date on which the Secretary received that notice and the general meeting must be held not later than two calendar months after the Secretary received the notice.
- (f) At a general meeting of the Members called and held in accordance with clause 9.3(e):
- (i) no business other than the question of the appeal shall be transacted;
  - (ii) the Directors may place before the meeting details of the grounds for the resolution and the reasons for the passing of that resolution;
  - (iii) the Member, or his representative, must be given an opportunity to be heard; and
  - (iv) the Members Present shall vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- (g) If at the general meeting:
- (i) a majority of the Members Present and voting, vote in favour of the confirmation of the First Resolution, the First Resolution shall stand confirmed; and
  - (ii) in any other case, the First Resolution shall be revoked.
- (h) No Member will be entitled to vote at any general meeting called and held in accordance with clause 9.3(e) unless all moneys then due and payable to the Company by that Member have been paid.
- (i) If the First Resolution is confirmed by Members, the Member concerned shall immediately thereafter cease to be entitled to exercise any rights or privileges as a Member and, in the case of a resolution to expel the Member concerned, that Member shall be expelled.

## **10 Resignation of member**

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- 10.1 A Member who has paid all moneys due and payable by that Member to the Company may resign from the Company by first giving one month's notice in writing to the Secretary of his intention to resign and upon the expiration of that period of notice, the Member shall cease to be a Member.
- 10.2 Upon the expiration of a notice given under clause 10.1, the Secretary shall:
- (a) repay to the Member by whom the notice was given, the proportion of the Subscription received by the Company as is referable to the unexpired term of the Membership Year; and
  - (b) make an entry in the Register recording the date on which the Member by whom the notice was given, ceased to be a Member.

## **11 General meetings**

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### **11.1 Annual General Meeting**

- (a) The annual general meeting of the Company shall, subject to the Law, be held within five months after the end of the Company's financial year for the purpose of:
  - (i) the election of the Directors;
  - (ii) the consideration of the financial reports of the Company, the Directors' report and the auditor's report; and
  - (iii) such other business as may be properly transacted at the annual general meeting.
- (b) The annual general meeting of the Company must be held in accordance with the provisions of the Law and this Constitution.

### **11.2 General meetings**

All general meetings other than the annual general meeting will be called general meetings.

### **11.3 Calling and holding general meetings**

- (a) The Chairperson or Deputy Chairperson may in addition to the annual general meeting, whenever they think fit, call a general meeting and general meetings will be called on such requisition, or in default, may be convened by such requisitionists as provided by the Law.
- (b) Every requisition made by Members must:
  - (i) be in writing; and
  - (ii) state any resolution to be proposed at the general meeting; and
  - (iii) be signed by the Members making the request; and
  - (iv) be given to the Chairperson or Deputy Chairperson or, in their absence, be left at the Office.

#### **11.4 Notice of general meetings**

Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, written notice must be given of all annual general meetings and general meetings in accordance with the provisions of the Law, specifying:

- (a) the place, date and time for the meeting (and, if the general meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the general nature of the business of the meeting;
- (c) if a special resolution is to be proposed:
  - (i) an intention to propose the special resolution; and
  - (ii) the special resolution itself;
- (d) if a Member is entitled to appoint a proxy that:
  - (i) the Member has a right to appoint a proxy; and
  - (ii) that the proxy may (but need not) be another Member of the Company.

#### **11.5 Accidental omission**

The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any Member shall not invalidate the proceedings at any meeting.

#### **11.6 Business at annual general meeting and general meetings**

All business shall be deemed special that is transacted at a general meeting and all that is transacted at an annual general meeting shall also be deemed special with the exception of:

- (a) the consideration of the financial reports, Directors' reports and auditor's reports;
- (b) the appointment of the auditor and the fixing of his remuneration; and
- (c) the election of the Directors.

#### **11.7 Postponement or cancellation or change of general meeting**

Subject to the Law, the Board may at any time prior to the time at which a general meeting is to be held, postpone or cancel any general meeting or change the place of any general meeting. Any such postponement, cancellation or change must be communicated to each Member of the Company and each other person to whom notice was given, in any manner permitted under clause 27.

#### **11.8 Resolutions without general meetings**

- (a) Subject to the Law, any resolution of the Company determined on without any general meeting and evidenced in writing under the hand of each Member of the Company who for the time being is entitled to vote, or of his proxy, attorney or, if a corporation, the corporation's representative, appointed as provided in this Constitution shall be as valid and effectual as a resolution duly passed at a general meeting of the Company.
- (b) Any resolution passed in accordance with the provisions of clause 11.8(a) may consist of identical copies of the document recording the resolution and accompanying information, each signed by one or more Members or their respective proxies, attorneys or representatives.

## **12 Proceedings at general meetings**

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### **12.1 Quorum**

- (a) No business shall be transacted at any annual general meeting or any other general meeting unless a quorum of two of the Members is Present at the time when the meeting proceeds to business.
- (b) If within 15 minutes from the time appointed for a general meeting a quorum is not present:
  - (i) the meeting, if called on the requisition of Members, shall be dissolved; and
  - (ii) in any other case:
    - (A) it shall stand adjourned to the same day in the next week at the same time and place or to such other time and place as the Directors may determine; and
    - (B) if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Members Present (being not less than two) shall comprise a quorum.

### **12.2 Chairing meetings**

- (a) The Chairperson will preside at every meeting of the Members. If there is no Chairperson elected in accordance with clause 15.1, or if at any meeting of the Members he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chairperson will chair that meeting. If there is no Deputy Chairperson elected in accordance with clause 15.1 or the Deputy Chairperson is not present at the meeting or is unwilling to act, the Members Present must elect one of their number to chair the meeting.
- (b) The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but so that:
  - (i) no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
  - (ii) when a meeting is adjourned for 30 days or more at any one time notice of the adjourned meeting shall be given as in the case of an original meeting;
  - (iii) save as aforesaid it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting.

### **12.3 Decisions at meetings**

- (a) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the results of the show of hands) demanded:
  - (i) by the Chairperson; or
  - (ii) by at least three Members Present having the right to vote at the meeting; or
  - (iii) by any Member or Members Present and representing not less than 5% of the votes that may be cast on the resolution on a poll

and unless a poll is demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried, or carried unanimously, or by a particular

majority, or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (b) The demand for a poll may be withdrawn.
- (c) If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the matter in respect of which the poll was demanded but a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken forthwith.
- (d) In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

## **13 Votes of members**

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### **13.1 Voting at meetings of Members**

A Member may, subject to any special rights or restrictions imposed on or attaching to a class of Membership and subject to the provisions of clause 13.3, vote in person or by proxy or by attorney or, if a corporation, by its Nominee or other representative and on a show of hands or on a poll every such Member shall have one vote.

### **13.2 Voting by committee or trustee**

A Member who is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health may vote whether on a show of hands or on a poll by his committee or by the trustee or by such other person as properly has the management of his estate and any such committee trustee or other person may vote by proxy or attorney.

### **13.3 Entitlement to vote**

No Member shall be entitled to vote at any general meeting if any Subscription owing by that Member shall be more than one month in arrears at the date of the meeting.

### **13.4 Objection to right to vote**

No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairperson of the meeting, whose decision shall be final and conclusive.

## **14 Proxies**

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### **14.1 Member's entitlement to appoint proxy**

- (a) Each Member of the Company entitled to attend and cast a vote at a general meeting may appoint an individual or body corporate as his proxy to attend and vote for that Member at the general meeting.
- (b) If a Member is entitled to cast two or more votes at the meeting, that Member may appoint not more than two proxies.
- (c) A proxy may (but need not) be a Member of the Company.
- (d) A Member shall be entitled to instruct his proxy to vote in favour of or against any proposed resolutions and unless so instructed the proxy may vote as he thinks fit.

## **14.2 Instrument of appointment**

- (a) The instrument appointing a proxy shall, subject to clause 14.2(b), be in any written form approved by the Directors and -
  - (i) if the appointor is an individual, be signed by the appointor; or
  - (ii) if the appointor is a corporation, be signed in accordance with the constitution or other governing rules of that corporation; or
  - (iii) in either case, be signed by the duly authorised attorney of the Member.
- (b) Despite clause 14.2(a), an appointment of proxy is valid if it is authenticated in a manner prescribed by the Law.
- (c) The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or otherwise authenticated as prescribed by the Law or a notarially certified copy of that power or authority must be received by the Company not less than 48 hours before the time for holding the general meeting or adjourned general meeting at which the person named in the instrument proposes to vote (unless a shorter period is specified in the notice of general meeting to which the proxy relates). In default, the instrument of proxy shall not be treated as valid unless otherwise determined by the Chairperson.
- (d) For the purposes of clause 14.2(c), an instrument appointing a proxy must be received by the Company in any manner prescribed by the Law or as specified in the notice of meeting for that purpose.

## **14.3 Proportion or number of votes**

Where a Member appoints two proxies, the appointment may specify the proportion or number of votes that the proxy may exercise.

## **14.4 Authority to demand poll**

Any instrument appointing a proxy confers authority to demand or join in demanding a poll.

# **15 Board of Directors**

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## **15.1 Number of Directors**

Subject to the Law, the number of members of the Board will not be less than three, each of whom shall be elected by Members in accordance with clause 16.

## **15.2 Chairperson and Deputy Chairperson**

The Board will appoint one of its Members to hold the office of Chairperson and Deputy Chairperson of the Company from time to time.

## **15.3 Term of office**

Each member of the Board shall hold office for a period of 2 years from the date of appointment but is eligible for re-appointment by Members.

## **15.4 Casual vacancy or addition to Board**

- (a) In the event of a casual vacancy in any office referred to in clause 15.2, the Directors may appoint a person to the vacant office and the person appointed may continue in office up to and including the conclusion of the annual general meeting next following the date of the appointment.
- (b) The Directors may appoint a person as an addition to the Board but so that the total number of Directors shall not, at any time, exceed the total number (if any) fixed in accordance with this Constitution.

- (c) A Director appointed in accordance with clauses 15.4(a) or 15.4(b) shall hold office:
  - (i) in the case of an appointment to fill a casual vacancy – for the remainder of the term of office of the Director whose office has become vacant; and
  - (ii) in any other case – only until the next following annual general meeting, at which time they shall retire but shall be eligible for re-appointment by Members.

#### **15.5 Increase or reduction in number of Directors**

The Company may, from time to time, by resolution passed at a general meeting of Members:

- (a) increase or reduce the number of Directors; or
- (b) determine the qualifications or experience necessary for eligibility as a Director.

#### **15.6 Remuneration of Directors**

- (a) The Directors (excluding those who are salaried employees of the Company) shall be honorary.
- (b) No Directors (excluding those who are salaried employees of the Company) will be entitled to any remuneration for their services but will be entitled to be paid all travelling and other expenses properly incurred by them in attending, participating and returning from meetings of the Directors, or any committee established by the Directors, or annual general meetings, or general meetings of Members of the Company, or otherwise, in connection with the business of the Company.
- (c) All payments made to Directors under clause 15.6(b) must be approved by the Board.

#### **15.7 Removal of Director**

The Company may, by resolution of which notice in accordance with the Law has been given, remove any Director before the expiration of his term of office and may, by resolution, appoint another person in his place. The person so appointed will hold office in accordance with the provisions of clause 15.4(c).

### **16 Election of directors**

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The election of Directors, excluding Directors who are required to retire in accordance with clause 15.3 and 15.4 but are to be considered for re-appointment, will take place in the following manner:

- (a) any person wishing to serve as a Director must be nominated by any two other existing Members;
- (b) the written nomination, signed by the nominee and his proposer and seconder, must be lodged with the Secretary at least 14 days before the annual general meeting at which the election is to take place;
- (c) a list of the candidates' names in alphabetical order with the proposers' and seconders' names will be posted in a conspicuous place at the office of the Company for not less than seven days immediately preceding the annual general meeting at which the election is to take place;
- (d) if the number of candidates standing for election exceeds the number of vacancies, balloting lists shall be prepared containing the names of the candidates in alphabetical order and each Member Present (excluding the candidates) at the annual general meeting shall be entitled to vote for any number

of such candidates not exceeding however the number of vacancies to be filled on the Directors; and

- (e) in the event that there shall not be a sufficient number of candidates nominated, the Directors may fill the remaining vacancy or vacancies from the Members as they think fit.

## **17 Disqualification of directors**

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### **17.1 Vacation of office**

The office of Director shall be vacated if the Director:

- (a) ceases to be a Director pursuant to any provision of the Law;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes prohibited from being a Director by reason of any order made under the Law;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health;
- (e) resigns his office by notice in writing to the Company;
- (f) is removed from office pursuant to this Constitution;
- (g) is absent without permission of the Board from three consecutive meetings of the Board; or
- (h) is directly or indirectly interested in any contract or arrangement with the Company entered into without the prior approval of the Directors.

### **17.2 Exclusions and disclosure of certain interests**

Notwithstanding any rule of law or equity to the contrary but subject to the provisions of the Law:

- (a) a Director shall not be disqualified by his office from contracting with the Company either as vendor purchaser or otherwise or from being employed or acting in any capacity professionally or otherwise by or on behalf of the Company;
- (b) no contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company with any corporation or partnership of or in which any Director is a director member or otherwise in any way interested and no contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested shall be liable to be impeached affected or avoided by reason of the Director holding his office or of the fiduciary relation thereby established or by reason of the Director being a party thereto or otherwise interested therein;
- (c) no Director so contracting or being such Director member or so interested shall be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding his office or of the fiduciary relation thereby established or by reason of his interest;
- (d) subject to the provisions of clause 17.3 and the Law, a Director (including an Alternate director) may not be present at a meeting of Directors while a matter relating to a contract or arrangement in which the Director has (directly or indirectly) a material personal interest is being considered and may not vote on or in relation to the matter;
- (e) a Director may sign, or attest the affixing of the common seal, to any document relating to a contract or arrangement in which the Director has an interest;

- (f) a Director may hold any other office in conjunction with his directorship and may be appointed to that office on such terms as to remuneration tenure of office and otherwise as may be arranged by the Directors;
- (g) a Director of the Company may be or become a Director of any other company promoted by the Company and any subsidiary company or company having dealings with the Company and no such Director shall be accountable for any benefits received as director or member of or holder of any office or place of profit under that company; and
- (h) the Directors may exercise the voting power conferred by the shares in any companies held or owned by the Company in such manner in all respects as the Directors think fit (including the exercise thereof in favour of any resolution appointing the Directors or any of them to be directors of such companies or voting or providing for the payment of remuneration to directors of such companies) and any such Director of the Company may vote in favour of the exercise of such voting rights in the manner aforesaid notwithstanding that he may be or be about to be appointed a director of such other company.

### **17.3 Disclosure not required**

The provisions of clause 17.2(d) shall not apply to an interest that a Director has:

- (a) as a Member of the Company; and
- (b) in common with the other Members of the Company; or
- (c) in a matter relating to an existing or proposed contract of insurance merely because the contract insures or would insure that Director as an officer of the Company in accordance with clause 29; or
- (d) if the Board has at any time passed a resolution that identifies the Director, the interest of that Director and the matter and the Directors voting for the resolution are satisfied that the interest of that Director should not disqualify that Director from being present while the matter is being considered or voting on the matter; or
- (e) as otherwise permitted by the Law.

## **18 Alternate directors**

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### **18.1 Appointment of Alternate Directors**

A Director may, with the approval of the other Directors, appoint any person to be an Alternate Director in his place during such period as he thinks fit.

### **18.2 Rights of Alternate Director**

Any person while he holds office as an Alternate Director shall be entitled to notice of meetings of the Directors and to attend, vote and exercise all the powers of the appointor in his place.

### **18.3 Vacation of office**

An Alternate Director shall ipso facto vacate office if his appointor vacates office as a Director or removes the appointee from office.

### **18.4 Notice of appointment or removal**

Any appointment or removal under this clause 18 shall be effected by notice in writing to the Company and to the person concerned under the hand of the Director who makes the appointment or removal.

## **19 Powers and duties of the directors**

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### **19.1 Management of Company**

- (a) Subject to this Constitution and the Law, the affairs of the Company shall be managed by the Directors.
- (b) The Directors:
  - (i) shall control and manage the business and affairs of the Company;
  - (ii) may, subject to this Constitution and the Law, exercise all such powers and functions as may be exercised by the Company other than those powers and functions that are required by this Constitution or the Law to be exercised by general meetings of the Members; and
  - (iii) subject to this Constitution and the Law, has power to perform all such acts and things as appear to the Directors to be essential for the proper management of the business and affairs of the Company.

### **19.2 Validity of acts of Directors**

No regulation made by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

### **19.3 Powers of Directors**

Without limiting the generality of clauses 4 and 19.1, the Directors:

- (a) may make rules, regulations and by-laws for the conduct, administration and management of the Company and may from time to time alter, modify and revoke such rules, regulations and by-laws and make new or additional rules, regulations and by-laws but so that such rules, regulations and by-laws shall not be inconsistent with any of the provisions of this Constitution nor result in the Company ceasing to comply with any special conditions applicable to the Company under the Tax Act;
- (b) have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions;
- (c) may, in addition to all other general and special powers possessed by them from time to time, borrow in the name and for all or any of the purposes of the Company or in connection with its business any sum or sums of money for such period and at such rate or rates of interest and otherwise upon such terms and conditions as the Directors may think fit and so that:
  - (i) any sum or sums of money so borrowed may be raised or secured by mortgage charge pledge guarantee or indemnity of the whole or any part of the real or personal estate revenues property undertaking choses in action debts or effects of the Company including unpaid calls and uncalled capital or by deposit receipts debentures debenture stock bonds trusts deeds personal covenant or otherwise as the Directors may from time to time think fit without such security;
  - (ii) every such mortgage charge guarantee indemnity or other security may be in such form and contain such powers of sale and other powers trusts and provisions and may be accompanied by such collateral further and other security as the Directors may think fit; and
- (d) may invest any funds belonging to or vested in the Company;
- (e) may from time to time by power of attorney appoint any company, corporation, firm, person or body of persons (whether nominated directly or indirectly by the Directors) to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or

exercisable by the Directors under these regulations) and for such period and subject to such conditions as it may think fit any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him; and

- (f) may open any banking account and operate the bank account in the ordinary course of business.

#### **19.4 Negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by any two Directors or in such other manner as the Directors may from time to time determine.

### **20 Proceedings of the directors**

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#### **20.1 Directors' Meetings**

The Directors:

- (a) shall meet at least once in each year, unless otherwise determined by the Board, at such place and such time as the Directors may determine for the dispatch of business;
- (b) may adjourn and otherwise regulate their meetings as they think fit using any technology consented to from time to time by all the Directors; and
- (c) may from time to time invite any person they consider necessary or appropriate to attend at any meeting of the Directors but a person invited to attend any such meeting shall not be entitled to vote.

#### **20.2 Notice of meeting**

Written notice of each Directors' meeting must be given to each Director at least two business days before the date of the meeting.

#### **20.3 Decisions at Directors' Meetings**

- (a) Subject to this Constitution, questions arising at any meeting of the Directors shall be decided by a majority of votes.
- (b) The Chairperson shall have a deliberative vote and a second or casting vote.

#### **20.4 Calling Directors' Meetings**

- (a) A Director may, and the Secretary on the requisition of a Director must, at any time, summon a meeting of the Directors.
- (b) Additional and special meetings of the Directors may be called and held by the Chairperson or by any two Directors.

#### **20.5 Quorum**

The quorum necessary for transaction of the business of the Directors may be fixed by the Directors and, unless fixed, will be a majority of the total number of Directors for the time being, rounded up to the nearest whole number.

#### **20.6 Vacancy**

The continuing Directors may act notwithstanding any vacancy in their body but, if and so long as their number is reduced below the number fixed pursuant to this Constitution as

the specified number of Directors, the continuing Directors may act in the event of an emergency or for the purpose of increasing the number of members of the Directors to that number or of summoning a general meeting of the Company but for no other purpose.

#### **20.7 Chairperson**

The Chairperson shall preside at every meeting of the Directors. If there is no Chairperson elected in accordance with clause 15.1 or, if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chairperson will chair that meeting. If there is no Deputy Chairperson elected in accordance with clause 15.1 or the Deputy Chairperson is not present at the meeting or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

#### **20.8 Validity of actions**

All acts of the Directors undertaken at any meeting of the Directors, or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of that Director, or person so acting, or that they or any of them were disqualified, be as valid as if every member or other person had been duly appointed and was qualified to be a Director.

#### **20.9 Resolutions without meetings**

- (a) A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors and to vote, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.
- (b) Any resolution passed in accordance with clause 20.9(a) may consist of identical copies of the document recording the resolution and accompanying information, each signed by one or more Directors.

#### **20.10 Telephone and audio visual communications**

- (a) For the purpose of this Constitution the contemporaneous linking together by telephone or by such other method of audio or audio visual communication system of a number of the Directors, not less than the quorum specified in clause 20.5 (whether or not any one or more of the Directors is out of Australia) shall constitute a meeting of the Directors and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings subject to the following conditions namely:
  - (i) all the Directors for the time being entitled to receive notice of a meeting, shall be entitled to notice of a meeting by telephone or by such other method of audio or audio visual communication system and to be linked by telephone or such other audio or audio visual communication system;
  - (ii) each of the Directors taking part in the meeting by telephone or such other audio or audio visual communication system must be able to hear each of the other Directors taking part at the commencement of the meeting; and
  - (iii) at the commencement of the meeting each such Director must acknowledge his presence for the purpose of a meeting of the Directors to all other Directors taking part.
- (b) A notice of a meeting of the Directors may be given by telephone or by such other method of audio or audio visual communication system as the Directors may, from time to time, determine or as provided in clause 27.
- (c) For the purposes of clause 20.10(a) a Director may not leave the meeting by disconnecting his telephone or such other audio or audio visual communication

system unless he has previously obtained the express consent of the Chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he has previously obtained the express consent of the Chairperson to leave the meeting.

- (d) A minute of the proceedings at such meeting by telephone by such other method of audio or audio visual communication system shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified to be a correct minute by the Chairperson of the meeting.

## **21 Committees**

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### **21.1 Establishment**

The Directors may:

- (a) establish such committees as it considers necessary for the purposes of the Company;
- (b) delegate any of its powers and or functions to any such committee and define the powers, duties and functions of each committee so established;
- (c) determine the procedure of each committee and the appointment or election of its officers;
- (d) change any of the powers, duties and functions of a committee; and
- (e) remove any member of a committee or dissolve a committee.

### **21.2 Delegation of powers**

- (a) Any committee established by the Directors in accordance with clause 21.1, shall in the exercise of the powers delegated to that committee conform to any regulations that are imposed on it by the Directors.
- (b) The Directors may appoint one or more advisory boards consisting of such persons as the Directors thinks fit. Any such advisory boards shall act in an advisory capacity only and in the exercise of the powers so delegated, conform to any regulations that are imposed on them by the Directors.

### **21.3 Eligibility of members**

A member of a committee or advisory board established by the Directors in accordance with clauses 21.1 and 21.2(b), need not be a Director or a Member.

## **22 Proceedings of committees**

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### **22.1 Committee Meetings**

Each committee or advisory board established by the Directors shall meet at such times and places as determined by the members of those committees or advisory boards.

### **22.2 Chair and functions and powers**

Each committee or advisory board:

- (a) shall elect one of their number to chair its meetings and if no person is elected or, if at any meeting the person so elected is not present within 15 minutes after the time appointed for holding the meeting, the members present may choose one of their number to chair the meeting; and

- (b) may elect one of their number to undertake such functions, duties and responsibilities as may be delegated by that committee or advisory board to that person, subject always, to the approval by the Directors.

### **22.3 Decisions at committee or advisory board meetings**

Questions arising at any meeting shall be determined by a majority of votes of the members present and, in the case of an equality of votes at any such meeting, the person appointed to chair any such meeting shall have a deliberative vote and a second or casting vote.

### **22.4 Proceedings of committee or advisory board**

Without limiting the generality of clauses 22.1 to 22.3 (both inclusive), the provisions of clause 20 have effect, with such modifications as may be necessary, in relation to meetings of any committee or advisory board.

## **23 Secretary**

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### **23.1 Appointment**

- (a) If a Secretary is not appointed pursuant to clause 15.1, the Directors must appoint a Secretary in accordance with the Law for such period and on such terms as the Directors thinks fit and the Directors may revoke any such appointment.
- (b) The Secretary may (but need not) be a Director.

### **23.2 Minutes and books**

- (a) The Secretary shall keep minutes and books to record:
  - (i) all appointments of officers;
  - (ii) the names of the Directors present at each meeting of the Directors;
  - (iii) the names of the members of any committee of the Company present at each meeting of a committee;
  - (iv) all resolutions and proceedings at all meetings of the Members of the Company and of the Directors and each committee and of all resolutions determined on without meetings; and
  - (v) of all other matters required by the Law.
- (b) Except in the case of documents deemed to constitute minutes in accordance with the provisions of the Law and resolutions signed in accordance with the provisions of clause 20.9, all minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of any succeeding meeting.

## **24 The Seal and execution of documents**

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- (a) The Company may have a common seal.
- (b) If the Company has a common seal, the Directors shall provide for the safe custody of the common seal of the Company which shall only be used with the authority of the Directors and every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person or persons appointed by the Directors to attest the affixing of the common seal.
- (c) All documents which of legal necessity need not be under common seal and which the Company is capable in law of entering into shall be legally binding on

the Company if signed by the same persons specified in clause (b) of this Constitution.

## **25 Accounts**

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- 25.1 The books of account and other records of the Company shall be kept at the Office or at such other place or places as determined by the Directors.
- 25.2 The Directors shall keep or cause to be kept proper books of account and other records of the Company and shall distribute copies of financial reports as required by the Law and shall, from time to time, determine whether and to what extent and at what times and places and under what conditions or regulations the records, accounts and books of the Company, or any of them, shall be open to the inspection of Members not being Directors.
- 25.3 No Member shall have any right of inspecting any record, account or book or paper of the Company except as conferred by statute or as authorised by the Directors or by the Company in general meeting.
- 25.4 The financial year end of the Company shall be 30 June unless otherwise determined by the Members.

## **26 Audit**

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A properly qualified Auditor or Auditors shall be appointed and his or their duties shall be regulated in accordance with the provisions of the Law.

## **27 Notices**

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### **27.1 Method of giving notice**

A notice may be given by the Company to any Member or other person entitled to receive notice under this Constitution or the Law:

- (a) personally;
- (b) by sending it by post to him at his registered address or to the address (if any) supplied by him to the Company for the giving of notices to him; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the Member; or
- (d) by any other means agreed to with the Company.

### **27.2 Service of notice**

- (a) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) A notice of meeting sent by fax or other electronic means is taken to be given on the business day after it is sent.
- (c) Notwithstanding the provisions of clause 27.1, the Directors may, in their absolute discretion, give a notice by any other means as shall ensure expeditious receipt of the notice. Service of the notice shall be deemed to be effected if the mode of service of the notice is properly addressed and paid for and lodged for delivery or transmission with a competent person, authority or body and to have been

effected at the time at which in the ordinary course that mode of service of the notice would be delivered.

### **27.3 Notice to joint Members**

A notice may be given by the Company to joint Members by giving the notice to the joint Member first named in the Register.

### **27.4 Persons entitled to notice**

- (a) Notice of every general meeting shall be given in any manner hereinbefore authorised to:
  - (i) every Member except those Members who have not supplied to the Company an address for the giving of notices to them;
  - (ii) the Auditor for the time being of the Company; and
  - (iii) such other persons as required by the Law.
- (b) No person other than as referred to in clause 27.4 shall be entitled to receive notices of general meetings.

## **28 Winding up**

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### **28.1 At the first occurrence of:**

- (a) the winding up of the Trust; or
- (b) if the Trust is endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act, the Trust ceasing to be endorsed as a deductible gift recipient under subdivision 30-BA of the Tax Act; or
- (c) if the Trust is endorsed as an income tax exempt charity under subdivision 50-B of the Tax Act, the Trust ceasing to be endorsed as an income tax exempt charity under subdivision 50-B of the Tax Act,

any surplus assets of the Trust after satisfaction of all debts and liabilities of the Trust shall be dealt with by the Company in accordance with the terms of the Trust Deed.

### **28.2 If on the winding up or deregistration of the Company there remains, after satisfaction of all debts and liabilities of the Company any surplus assets of the Company, the remaining surplus assets shall not be paid to or distributed among the Members of the Company but will be transferred to:**

- (a) institutions having objects similar to the objects of the Company and which prohibit the distribution of the assets to an extent at least as great as that imposed on the Company; or
- (b) one or more Eligible Charities.

### **28.3 Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the Tax Act are satisfied, a transfer under this clause 28 must be made in accordance with those conditions.**

### **28.4 The identity of an Eligible Charity for the purposes of this clause 28 will be determined by the Board at or before the time of winding up or deregistration of the Company and (where applicable) approved by a Commissioner and, in default, will be determined by the Supreme Court of Victoria.**

## **29 Indemnity and insurance**

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### **29.1 Indemnification of officers**

- (a) The Company may indemnify a person who is, or has been, an officer of the Company, to the full extent permissible by law, out of the property of the Company, against:
- (i) any liability incurred by that person as an officer of the Company; and
  - (ii) legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company;
- except in respect of a liability or legal costs for which the Company is prohibited from indemnifying the officer pursuant to the Law.
- (b) For the avoidance of doubt, clause 29.1(a) will not apply so as to enable the Company to indemnify a person who is, or has been, an officer of the Company to the extent that the law precludes the giving of such an indemnity.

### **29.2 Insurance premium**

The Company may pay a premium for a contract insuring a person who is, or has been, an officer of the Company against:

- (a) any liability incurred by that person as an officer of the Company; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person acting as an officer of the Company, whether civil or criminal, and whatever their outcome,

except any liabilities in respect of which the Company is prohibited from doing so pursuant to the Law.

ECAJ Harm Prevention Fund Limited

and

**ECAJ Harm Prevention Fund**

**Deed of Variation**

Ref: JB 01-1423386  
ABL/1242916v2

THIS DEED is made on

25.2. 2011

## PARTIES

### ECAJ HARM PREVENTION FUND LIMITED

ACN 141 710 250

of Suite 205, 2nd Floor, 80 William Street, East Sydney, New South Wales  
("Trustee")

and

in his capacity as President of the ECAJ Executive  
("President")

in his capacity as Treasurer of the ECAJ Executive  
("Treasurer")

(The President and the Treasurer together the duly authorised representatives of the  
"ECAJ Executive")

## BACKGROUND

- A The Trustee is the trustee of the ECAJ Harm Prevention Fund (the "Trust") being a charitable trust established by a deed of trust dated 28 January 2010 (which deed of trust, as varied from time to time, is referred to as the "Principal Deed").
- B Clause 14.1 of the Principal Deed provides that the ECAJ Executive may, subject to clause 14, at any time at a duly convened meeting of the ECAJ Executive, vary or modify all or any part of the provisions of the Principal Deed.
- C The ECAJ Executive at a duly convened meeting on or about the date of this Deed resolved to exercise the powers available to and conferred upon it by clause 14 of the Principal Deed and vary the Principal Deed in the manner set out in this Deed and authorised the President and the Treasurer to enter into and execute this Deed on its behalf.

## AGREED TERMS

### 1 Interpretation

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- 1.1 In this Deed, including the Background, unless otherwise provided, words, expressions and phrases that are given a particular meaning in the Principal Deed have the same meaning when used in this Deed.

- 1.2 This Deed will be read and construed together with the Principal Deed and the Trust Fund constituted thereby remains in full force and effect subject to the modifications and amendments contained in this Deed.

## **2 Variation to Principal Deed**

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The ECAJ Executive, pursuant to the powers available to and conferred upon it by clause 14 of the Principal Deed and pursuant to all other powers whatsoever (whether contained in the Principal Deed or not) lawfully enabling it to do so, varies the trusts, terms and conditions contained in the Principal Deed and declares that, with effect on and from the date of this Deed, the Principal Deed is amended in the following manner:

### **Definitions**

- (a) By inserting the following new definition in clause 1.1 in alphabetical order:  
"ECAJ Public Fund" means the public fund established under clause 3.1.
- (b) By deleting the definition of "Harm Prevention Fund" in clause 1.1.
- (c) By deleting the definition of "Eligible Charity" in clause 1.1.
- (d) By deleting all references to "Harm Prevention Fund" throughout the Principal Deed and substituting "ECAJ Public Fund".

### **Objective of the Fund**

- (e) By deleting clause 2.1 and substituting:

#### **"2.1 Objective**

The Trust is established for public charitable purposes and the objective of the Trust is to promote the prevention or the control of behaviour that is harmful or abusive to human beings. Behaviour that is harmful or abusive means one or more of the following:

- (a) emotional abuse;
- (b) sexual abuse;
- (c) physical abuse;
- (d) suicide;
- (e) self harm (self injury, self mutilation);
- (f) substance abuse; and
- (g) harmful gambling."

### **Principal activity**

- (f) By inserting the following new clause 2.2 and renumbering accordingly:

#### **"2.2 Principal activity**

In order to achieve the objective of the Trust, the principal activity of the Trust is the promotion or the prevention or the control of behaviour that is harmful or abusive to human beings, specifically emotional abuse."

## **Purposes**

- (g) By inserting a new clause 2.3 as follows:

### **"2.3 Purposes:**

Without limiting the principal activity set out in clause 2.2, the purposes of the Trust include the promotion of the prevention, control and minimisation of harm to members of the Jewish and wider communities through acts of racism or antisemitism and exclusively for those purposes and the objective set out in clause 2.1 to:

- (a) promote interfaith and intercultural relationships;
- (b) prepare submissions, media releases and articles regarding racial, religious and ethnic intolerance and discrimination;
- (c) research, analyse and document the activities of individuals and organisations that promote antisemitism and all kinds of racism;
- (d) investigate and take action, including legal action in any court or tribunal in Australia, against individuals and organisations who are, or are alleged to be, involved in antisemitic or other racist activities or incidents, and to make and prosecute complaints to any statutory or government body in respect of such activities or incidents and to seek and obtain legal and any other advice about such matters;
- (e) provide all manner of support to individuals and organisations who are the victims of antisemitism and other forms of racial, religious and ethnic intolerance and discrimination;
- (f) conduct seminars, forums, lectures, conferences and educational programs for the public that encourages people to resist and oppose antisemitism and other forms of racism;
- (g) disseminate information including newsletters, papers, books, journals, bulletins, brochures, circulars and other publications that the Trustee considers necessary or desirable for the promotion of the objects and purposes of the Trust;
- (h) seek and coordinate funding from Federal, State and Local Government and the private sector in Australia and overseas in the form of grants, gifts, donations and bequests committed to the objectives of the Trust;
- (i) be actively involved in raising funds for the Trust to be applied in the pursuit of the objects of the Trust (including the procurement of government, corporate and individual contributions and donations and engaging in fund raising activities); and
- (j) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Trust.

## **Maintenance of Harm Prevention Fund**

- (h) By deleting the preamble to clause 3.1(a) and substituting:

"3.1(a) The Trustee must establish and maintain, for the specific purposes of the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings a public fund to be known as the ECAJ Public Fund (or such other name as the Trustee may determine from time to time):"

## **Public to make gifts**

- (i) By deleting clause 3.2 and substituting:

**"3.2 Public to make gifts**

Members of the public are to be invited to make gifts of money or property to the ECAJ Public Fund for the promotion of the prevention or the control of behaviour that is harmful or abusive to human beings."

**Receipts**

(j) By deleting clause 3.4 and substituting:

**"3.4 Receipts**

Receipts issued for a gift to the ECAJ Public Fund will state:

- (a) the name of the Trust;
- (b) the ABN of the Trust;
- (c) the name of the ECAJ Public Fund;
- (d) the signature of a person authorised to act on behalf of the ECAJ Public Fund;
- (e) the name of the donor;
- (f) an indication that the ECAJ Public Fund is listed on the Register; and
- (g) the fact that the receipt is for a gift,

and proper accounting records and procedures are to be kept and used for the ECAJ Public Fund."

**Public Fund Rules Management Committee**

(k) By deleting clause 3.6 and substituting:

**"3.6 Management Committee**

A committee of management of no fewer than three persons will administer the ECAJ Public Fund. The committee will be appointed by the Trustee. A majority of the members of the committee are required to be 'responsible persons' as defined by the Register of Harm Prevention Charities Guidelines."

**Public Fund Rules - Income**

(l) By inserting a new clause 3.7 as follows:

**"3.7 Income**

Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the ECAJ Public Fund."

**Notifying the Department**

(m) By deleting clause 17 and substituting:

**"17 Department to be informed**

The Trustee must inform the Department as soon as possible if:

- (a) the Trust changes its principal activity;
- (b) the Trust changes its name or the name of its public fund;
- (c) there is any change to the membership of the Management Committee of the public fund;

- (d) there has been any departure from the model rules for public funds set out in the Guidelines to the Register of Harm Prevention Charitable Institutions; or
- (e) the Trust, or its public fund, suffers any financial difficulties."

#### **Not for profit**

By deleting the words "the Trustees or to the members of the Management Committee" at the end of clause 18.1 and substituting "members, directors or trustees of the ECAJ Harm Prevention Fund."

#### **Conduit Policy**

- (n) By deleting clause 19 and substituting:

##### **"19 Conduit Policy**

The Trust must have a policy of not acting as a mere conduit for the donation of money or property to other organisations, bodies or persons."

#### **Statistical Information**

- (o) By deleting clause 20 and substituting:

##### **"20 Statistical Information**

- (a) The ECAJ Public Fund will provide statistical information on donations requested by the Department within four months of the end of the financial year.
- (b) An audited financial statement for the Trust and the ECAJ Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public monies and the management of the ECAJ Public Fund assets.

#### **Winding up**

- (p) By deleting clause 21.2 and substituting:

"21.2 If at the first occurrence of:

- (a) the winding up or dissolution of the Trust; or
- (b) the Trust ceasing to be entered on the Register of Harm Prevention Charities,

there remains, after satisfaction of all debts and liabilities of the Trust any surplus assets of the Trust, the remaining surplus assets will not be paid to or distributed among the Trustee, but will be transferred to one or more funds, charitable at law, which comply with the requirements Section 30-289A(2) of the *Income Tax Assessment Act 1997* with similar objectives and that is on the Register of Harm Prevention Charities."

- (q) By deleting the reference to "subdivision 30-BA of the Tax Act" in clause 21.3 and substituting "subdivision 30-EA of the *Income Tax Assessment Act 1997*".

### **3 Principal Deed**

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Nothing in this Deed will in any way prejudice or affect any of the provisions matters or things as set out in the Principal Deed except insofar as the same are expressly or otherwise necessarily altered or modified by this Deed, it being the intention of the

Trustee that subject to the alterations and modifications provided in this Deed the terms of the Principal Deed will remain in full force and effect.

#### **4 Governing law and jurisdiction**

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- (a) This Deed is governed by the laws of Victoria.
- (b) The Trustee submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Deed.