

Constitution of the
Australian Foundation
for Disabled Children
and Youths Ltd

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PRELIMINARY

1 Definitions

- 1.1 The words and phrases used in this Constitution have the meanings set out at Schedule 1.
- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2 Interpretation

- 2.1 In this Constitution, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
 - (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

3 Replaceable rules

- 3.1 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

OBJECTS

4 Objects

- 4.1 The Company is established to be a not for profit charitable institution whose objects are to increase the quality of life of disabled children and youths by:
- (a) providing financial and non-financial support to them and their carers;
 - (b) providing equipment and facilities to support disabled children and youths and their carers;
 - (c) funding and supporting specialised medical treatment for disabled children and youths;

- (d) supporting specialised education for disabled children and youths;
- (e) consulting with, coordinating, representing and advocating on behalf of disabled children and youths;
- (f) developing and providing resources that promote understanding of the issues faced by disabled children, youths, their families and carers;
- (g) providing information resources and broad-based education to individuals, carers, the community, service providers and other organisations to enable them to appropriately support disabled children and youths;
- (h) promoting, funding and undertaking research that addresses issues relevant to the quality of life of disabled children and youths;
- (i) influencing public policy and legislation that affects disabled children and youths, their carers and the people and organisations that support them;
- (j) raising funds and engaging in fundraising activities to support the Objects;
- (k) carry on any business or activity which may seem to the organisation capable of being conveniently carried on in connection with the objects with which this organisation is established; and
- (l) do all such other things necessary, incidental or conducive to achieving the above objects.

4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

MEMBERSHIP

5 Admission

5.1 The number of Members of the Company is unlimited.

5.2 The Members of the Company are:

- (a) the persons who consented to become Members in the application for registration of the Company; and
- (b) any other person eligible under clause 5.3 who the Board or the Members admit to membership in accordance with this Constitution.

5.3 Any person is eligible to become a Member if the person:

- (a) is aged 18 years or over;
- (b) subscribes to the Objects; and
- (c) agrees to assume the liability to pay the Members guarantee set out in clause 57.1.

- 5.4 Applications for membership of the Company must be in a form approved by the Board and signed by the applicant.
- 5.5 The Board will consider each application for membership at the next Board meeting after the application is received. In considering an application for membership, the Board may:
- (a) accept or reject the application; or
 - (b) ask the applicant to give more evidence of eligibility for membership.
- 5.6 If the Board asks for more evidence under clause 5.5(b), its determination of the application for membership is deferred until the evidence is given.
- 5.7 The Board does not have to give any reason for rejecting an application for membership.
- 5.8 As soon as practicable following the acceptance or rejection of an application for membership, the Secretary will send the applicant written notice of the acceptance or rejection (as applicable).
- 5.9 Any person denied membership by the Board may require its application for membership to be submitted for consideration by the Members at the next general meeting if the person notifies the Secretary within 14 days of the issue of notice that the Board has rejected the application.
- 5.10 At the next general meeting of the Company held after notification is received under clause 5.9:
- (a) the applicant for membership will be given an opportunity at the general meeting to present the person's case fully, either in person or through a Member nominated for the purpose and a representative of the Board may present the Board's case in response; and
 - (b) the Members at the general meeting will vote to confirm or reject the decision of the Board on the application for membership and the decision of the Members at that general meeting is final.

6 Register of Members

- 6.1 Upon admission of a person as a Member, the person will be entered into the Register.
- 6.2 The Secretary must maintain the Register which must include:
- (a) the name and address of each Member;
 - (b) the date on which the Member was admitted as a member of the Company;
 - (c) the date (where applicable) when each Member resigns or ceases to be a Member; and
 - (d) where a Member is readmitted after previously resigning or having their membership terminated, this will be recorded in conjunction with the dates of their original admission, termination or resignation and readmission.

- 6.3 The Register must be kept at the Company's registered office where it will be made available for inspection by any Member for perusal at a time and date convenient to the Secretary and the Member concerned.
- 6.4 If a Member changes its address, it must notify the Secretary in writing of its new address as soon as reasonably practicable.

7 Rights of Members

- 7.1 Subject to this Constitution, Members are entitled to attend and speak at general meetings of the Company.
- 7.2 Subject to this Constitution, Members are entitled to vote at general meetings of the Company.
- 7.3 No Member may use the name of the Company in support of any political campaign, or in support of any candidate for public office, other than with written consent of the Board.
- 7.4 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

8 Suspension or Expulsion of a Member

- 8.1 The Board may suspend a Member's membership for a period of time or may expel the Member and cancel the Member's membership, if the Member:
- (a) does not comply with this Constitution or any policy or procedure set by the Board;
 - (b) has committed any act or omission that will, in the opinion of the Board be injurious to the reputation, interests or activities of the Company;
 - (c) has been convicted of an indictable offence;
 - (d) violates any of the Company's policies and procedures that apply to the Member;
 - (e) causes harm or threatens to cause harm to a Director, an officer, another Member or an employee of the Company;
 - (f) makes false representations to the Company;
 - (g) steals from the Company; or
 - (h) misuses, damages or destroys property belonging to the Company.
- 8.2 If the Board resolves to suspend or expel a Member, the Secretary must promptly give written notice of the suspension or expulsion to the Member.
- 8.3 A Member suspended or expelled by the Board may appeal the suspension by giving notice to the Secretary within 30 days of the issue of the notice of suspension.
- 8.4 At the next general meeting of the Company held after the Member gives notice under clause 8.3:
- (a) the Member appealing the suspension or expulsion will be given an opportunity at the general meeting to present the Member's case fully,

either in person or through another Member nominated for the purpose and a representative of the Board may present the Board's case in response; and

- (b) the Members at the general meeting will vote to either:
 - (i) lift the suspension;
 - (ii) affirm the suspension; or
 - (iii) terminate the Member's membership,and the decision of the Members at that general meeting is final.

8.5 A Member will remain suspended until the earlier of:

- (a) the date the Members resolve to lift the suspension or terminate the Members membership under clause 8.4(b);
- (b) if a period of suspension is imposed with no conditions, the date the period of suspension lapses;
- (c) if conditions must be satisfied to lift the suspension, the date that the conditions are satisfied; or
- (d) when the Member ceases to be a Member pursuant to clause 9.

8.6 Any Member suspended in accordance with this clause 8, during suspension is not permitted to:

- (a) vote at meeting of Members;
- (b) use the Company's premises;
- (c) use any of the Company's property; or
- (d) participate in any of the activities of the Company other than as a legitimate client of the Company.

9 Ceasing to be a Member

9.1 A Member's membership of the Company will cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if the Directors expel the Member in accordance with clause 8.1 and the Member does not appeal that decision within the timeframe under clause 8.3, on expiry of the appeal period;
- (c) where the Members have resolved to terminate a Member's membership under clause 8.4(b), on the date of the resolution;
- (d) if a suspended Member does not satisfy the conditions of suspension within the required timeframe, on the expiry of that timeframe;
- (e) if the Member:
 - (i) dies, on the date of their death; or
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health, on the date that the person becomes incapacitated.

9.2 Any Member ceasing to be a Member:

- (a) will not be entitled to have any claim upon any portion of the property or assets of the Company;
- (b) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member;
- (c) is not permitted to:
 - (i) use the Company's premises;
 - (ii) use any of the Company's property; or
 - (iii) participate in any of the activities of the Company other than as a legitimate client of the Company.

10 Powers of attorney

- 10.1 If a Member executes or proposes to execute any document or do any act by or through an attorney that affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Secretary for notation.
- 10.2 If the Secretary asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 10.3 The Secretary or the Board may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

GENERAL MEETINGS

11 Calling general meeting

- 11.1 Any two Directors may, at any time, call a general meeting.
- 11.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
 - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

12 Notice of general meeting

- 12.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days' written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) of a general meeting must be given to Members.
- 12.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;

- (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 12.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 12.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 11.2).
- 12.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 52.1 entitled to receive notices from the Company.
- 12.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

PROCEEDINGS AT GENERAL MEETINGS

13 Member

- 13.1 In clauses 13.2, 14, 16 and 20, **Member** includes a Member present in person or by proxy or attorney.
- 13.2 Quorum
- (a) No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
 - (b) A quorum for a meeting of Members is a majority of Members plus one.
 - (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (ii) subject to 13.2(c)(iii), in any other case:
 - A. it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - B. if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved;
 - (iii) if it is an annual general meeting:

- A. it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
- B. if at the adjourned annual general meeting a quorum is not present within 30 minutes after the time appointed for the annual general meeting, the members present will be deemed to constitute a quorum.

14 Chairperson

- 14.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 14.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no chairperson or deputy chairperson; or
 - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 14.3 If no election is made under clause 14.2, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 14.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

15 Adjournment

- 15.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 15.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 15.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 15.4 Notice of an adjourned general meeting must only be given in accordance with clause 12.1 if a general meeting has been adjourned for more than 21 days.

16 Decision on questions

- 16.1 Subject to the Corporations Act in relation to special resolutions and the requirements of this Constitution, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

- 16.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 16.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 16.4 The demand for a poll may be withdrawn.
- 16.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

17 Taking a poll

- 17.1 A poll will be taken when and in the manner that the chairperson directs.
- 17.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 17.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 17.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 17.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 17.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

18 Casting vote of chairperson

- 18.1 The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, a Member's representative, proxy or attorney.

19 Offensive material

- 19.1 A person may be refused admission to, or required to leave and not return to, a meeting if the person:
- (a) refuses to permit examination of any article in the person's possession; or
 - (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

VOTES OF MEMBERS

20 Entitlement to vote

20.1 A Member is entitled to one vote.

21 Objections

21.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

21.2 An objection must be referred to the chairperson of the general meeting whose decision is final.

21.3 A vote is valid for all purposes unless it is disqualified by the chairperson under clause 21.2.

22 Votes by proxy

22.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

22.2 A proxy need not be a Member.

22.3 A proxy may demand or join in demanding a poll.

22.4 A proxy or attorney may vote on a poll.

22.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

23 Document appointing proxy

23.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.

23.2 For the purposes of clause 23.1, an appointment received at an electronic address will be taken to be signed by the Member if:

- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
- (b) the appointment has been verified in another manner approved by the Directors.

23.3 A proxy's appointment is valid at an adjourned general meeting.

- 23.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 23.5 Subject to clause 38.1, unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on all motions before the general meeting.
- 23.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either exercise the proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

24 Lodgement of proxy

- 24.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the proxy or attorney proposes to vote; or
 - (b) the taking of a poll at which the proxy or attorney proposes to vote.
- 24.2 The Company receives an appointment of a proxy or a power of attorney when it is received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

25 Validity

- 25.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:
- (a) is wound up;
 - (b) is deregistered; or
 - (c) has revoked the proxy or power,
- unless any written notification of the wind up, deregistration or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

APPOINTMENT AND REMOVAL OF DIRECTORS

26 Composition of Board of Directors

- 26.1 There will not be less than three nor more than eight Directors unless the Company in general meeting by resolution changes the maximum number.
- 26.2 Subject to clause 26.3, the Board of Directors will consist of:
- (a) three Directors elected by the Members pursuant to clause 27; (collectively the **Elected Directors**), and
 - (b) up to five skills-based Directors appointed by the Board pursuant to clause 28 (**Skills-based Directors**).
- 26.3 At the date of registration of the Company the following persons will be the initial Board of the Company and each director will remain in place until expiry of his or her term of office as set out in the following table:

Director	Position	Term
Ross Burns	Elected Director (Chairperson)	3 years
Michelle Burns	Elected Director	3 years
Kevin Agar	Skills-Based Director	2 years

27 Appointment of Elected Directors

- 27.1 The Board will hold an election for the purpose of electing the Elected Directors in accordance with clause 31.
- 27.2 An Elected Director's term of office will be three years.
- 27.3 A retiring Elected Director is eligible for re-election.

28 Appointment of Skills-based Directors

- 28.1 Skills-based Directors will be appointed by a Special Resolution of the Board.
- 28.2 To be eligible for appointment as a Skills-based Director, the person must consent in writing to become a Director.
- 28.3 The term of a Skills-based Director's appointment is two years.
- 28.4 Skills-based Directors must retire from office at the conclusion of the term of their appointment.
- 28.5 A retiring Skills-based Director will be eligible for re-appointment.
- 28.6 The Board will determine the process for nominating, recruiting and subject to this clause 28, appointment of Skills-Based Directors.

29 Additional and casual Directors

29.1 If the Company does not have:

- (a) the number of Directors required under clause 26; or
- (b) the maximum number of Directors permitted under clause 26 and in the reasonable opinion of the Directors the Board requires or would benefit from the addition of one or more Directors;

the Directors may appoint one or more Directors up to the number permitted or required.

29.2 A Director, appointed under clause 29.1 in the vacant position of an Elected Director will hold office until the next general meeting of the Company when the Director will stand-down from office but may be re-elected.

30 Nomination of an Elected Director

30.1 The Secretary will call for nominations from the Members for the position of Elected Director at least 45 days prior to the date the election is to be held.

30.2 A person other than a retiring Elected Director is not eligible for election as an Elected Director at a general meeting unless the person, or the Member who is proposing the person, has left at the Company's registered office a written notice signed by the nominated person:

- (a) giving the person's consent to the nomination and the person's consent to be a Director if elected; and
- (b) signed by the Member who proposes the person's nomination; and
- (c) attaching a brief outline of the person's relevant skills, experience and qualifications for the position.

30.3 A nomination made in accordance with clause 30.1 must be left at the Company's registered office at least 30 days before the date of the relevant election.

30.4 A written notice referring to all Director vacancies and each candidate for election, must be sent to all Members at least seven days before the date on which an election of an Elected Director will take place.

31 Election of Elected Directors

31.1 An election for Elected Directors will be held at a general meeting of the Company.

31.2 Only current Members may vote in an election for Elected Directors and each such Member will have one vote.

31.3 Where the number of eligible persons nominated for the relevant positions of ordinary Elected Directors does not exceed the number of vacant positions, the eligible nominated persons will be confirmed as elected without the need to hold an election.

31.4 Where the number of eligible persons nominated for the relevant position of an ordinary Elected Director exceeds the number of vacant positions, an election

will be held and the number of persons, commensurate with the number of vacant positions, who receive the most votes will be elected. For example, where there are three vacant positions the three persons who receive the most votes will be elected.

- 31.5 Members may vote for as many nominees as there are positions to be filled and no more. Members may vote for fewer nominees than there are positions to be filled if they choose to do so.
- 31.6 If the result of the election for any position is a tie, the result will be decided by drawing of lots between the tied nominees.

32 Suspension of a Director

- 32.1 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a Special Resolution of the Board at a meeting of the Directors specifically called for that purpose may suspend that Director:
- (a) for a fixed period of time; or
 - (b) until reasonable conditions specified by the Directors have been met by the suspended Director within a reasonable time frame.
- 32.2 If a Director suspended under clause 32.1(b) fails to meet the conditions in the specified time frame the Directors may:
- (a) extend the time frame for meeting the conditions;
 - (b) remove the suspension; or
 - (c) expel the Director from office.
- 32.3 A suspended Director is entitled to attend meetings of the Directors as an observer but may not vote until such time as the suspension is removed.

33 Chairperson

- 33.1 The Directors will elect from within their number a chairperson provided that the first chairperson will be the person nominated as such in clause 26.3. The Director elected as chairperson will hold the office of chairperson of the Board from the date he or she is elected until the earlier:
- (a) the chairperson ceases to be a Director for any reason;
 - (b) the expiry of three years from the date he or she was elected as chairperson; or
 - (c) the chairperson is removed from that office by a Special Resolution of the Directors.
- 33.2 A retiring chairperson will be eligible for re-election.

34 Vacation of office

- 34.1 The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is absent from Directors' meetings for three consecutive meetings without leave of absence from the Directors;
- (e) is expelled as a Director under clause 32.2(c); or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

POWERS AND DUTIES

35 Powers and duties of Directors

- 35.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 35.2 Without limiting the generality of clause 35.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
 - (d) guarantee or become liable for the payment of money or the performance of any obligation by or of any other person; and
 - (e) commit to contracts or sub-contracts providing access to money, personnel, technology, equipment or other resources intended for implementation of the Objects.

PROCEEDINGS OF DIRECTORS

36 Directors' meetings

- 36.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 36.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.

- 36.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 36.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 36.5 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion provided that:
- (a) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other Directors taking part; and
 - (b) a Director may not leave the meeting by disconnecting his or her telephone or other means of communication and will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.
- 36.6 A Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting unless suspended.
- 36.7 Clauses 36.4 and 36.4 apply to meetings of Directors' committees as if all committee members were Directors.
- 36.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 36.9 A quorum is three Directors.
- 36.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 36.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

37 Decision on questions

- 37.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clauses 32.3 and 38.1, each Director has one vote.

PAYMENTS TO DIRECTORS

38 Payments to Directors

- 38.1 No payment will be made to any Director of the Company other than payment:
- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does

not exceed an amount previously approved by the Directors of the Company;

- (b) for any service rendered to the Company by the Director in a professional or technical capacity, (including in the capacity as Director), where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which would be a commercially reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

39 Directors' interests

- 39.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which a Director may be interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 39.2 No Director contracting with, or interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 39.3 A Director is not disqualified from contracting with the Company merely because of being a Director.
- 39.4 Any Director having a direct or indirect material personal interest in any contract or arrangement that the Company proposes to enter will declare his or her interest immediately by written notice to the chairperson.
- 39.5 Subject to clause 39.6, a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
 - (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,unless permitted by the Corporations Act to do so, in which case the Director may:
 - (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- 39.6 The prohibition on voting in clause 39.5 will not apply to any contract or arrangement:
- (a) in relation to a Member who employs a Director;
 - (b) to give the Director any security for advances;
 - (c) for an indemnity of the Director; or
 - (d) where the Director is interested merely as a shareholder or director of another company.
- 39.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- 39.8 A Director who has an interest described in clause 39.7 must provide written notice to the Secretary when the interest arises and when the Director no longer has the interest.

40 Remaining Directors

- 40.1 The Directors may act even if there are vacancies on the Board.
- 40.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
 - (b) call a general meeting.

41 Delegations

- 41.1 The Directors may establish such committees, and on such terms, as it deems appropriate.
- 41.2 At least one member of each committee must be a Director.
- 41.3 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each committee member was a Director.
- 41.4 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a Board, to an officer, an employee, a committee or committees (**Delegate**).
- 41.5 The Directors may at any time revoke any delegation of power to a Delegate.
- 41.6 A Delegate must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 41.7 A Delegate may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

42 Written resolutions

- 42.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 42.2 For the purposes of clause 42.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 42.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 42.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 42.5 This clause applies to meetings of Directors' committees as if all committee members were Directors.

43 Validity of acts of Directors

- 43.1 If it is discovered that:
- (a) there was a defect in the appointment of a person as a Director or member of a Directors' committee; or
 - (b) a person appointed to one of those positions was disqualified,
- all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

44 Minutes and Registers

- 44.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 42;
 - (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 38.1.
- 44.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 44.3 The Company must keep all registers required by this Constitution and the Corporations Act.

MANAGEMENT

45 Management

- 45.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 45.2 Without limiting clause 45.1, the Directors may appoint a managing Director, chief executive officer or a general manager who, subject to clause 45.4, will be responsible for:
- (a) the day-to-day management of the Company;
 - (b) delivering to the Directors within two months after the end of each Financial Year, the annual reports of the Company describing the level of activity, achievements and such other information as required in sufficient detail and containing the audited financial statements for the Financial Year as necessary to meet the financial and other reporting requirements of the Company under the Corporations Act; and
 - (c) carrying out such other activities for the Company,
- in accordance with the directions of the Directors and the position description for the CEO approved by the Board.
- 45.3 The Directors may appoint such other executives as it sees fit to provide support for the CEO on operational issues relating to the Company or delegate authority to the CEO to make such appointments, within the limits of continuing solvency and a balanced budget.
- 45.4 Without limiting clause 45.1 the Directors may:
- (a) establish local boards or agencies or joint committees with other corporations for managing any of the affairs of the Company and appoint any persons to be members of those local boards or agencies or joint committees; and
 - (b) delegate to any person appointed under clause 45.4(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution or the CEO under clause 45.2,
- on any terms and subject to any conditions determined by the Directors.
- 45.5 The Directors may at any time revoke or vary any delegation under this clause.

46 Appointment of attorneys and agents

- 46.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,

determined by the Directors.

46.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local board established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm;
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors; or
- (e) CEO or other executives of the Company.

46.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

46.4 The Directors may appoint attorneys or agents by facsimile or electronic transmission to act for and on behalf of the Company.

46.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers, authorities or discretions for the time being vested in it.

47 Secretary

47.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.

47.2 The Secretary may be a Director, or an outsourced provider.

47.3 The Secretary will be responsible for maintaining the company register, including:

- (a) the Register;
- (b) minutes and records of all appointments of Directors and officers;
- (c) the names of Directors present at Directors' meetings, committee meetings or general meetings; and
- (d) all proceedings at Director and general meetings.

47.4 The Secretary must keep ASIC informed of all notifiable information within the required timeframes.

47.5 The Secretary must ensure that the minutes of proceedings at a meeting are signed by the chairperson of the meeting or by the chairperson of the next meeting at which the minutes are accepted as a true and accurate record of the meeting.

47.6 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.

47.7 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

SEALS

48 Common Seal

48.1 If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

49 Duplicate Seal

49.1 If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face;
- (b) must not be used except with the authority of the Directors.

INSPECTION OF RECORDS

50 Inspection of records

50.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.

50.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

NOTICES

51 Service of notices

51.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:

- (a) by serving it on the person; or
- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

51.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and

- (b) on the third Business Day after the day on which it was posted.
- 51.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 51.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 51.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's address for the purposes of clause 51.
- 51.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 51.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 51.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

52 Persons entitled to notice

- 52.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director;
 - (c) the Secretary; and
 - (d) any Auditor.
- 52.2 No other person is entitled to receive notice of a general meeting.

INCOME AND PROPERTY OF THE COMPANY

53 Income and property of Company

- 53.1 The Income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- 53.2 No Income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

AUDIT AND ACCOUNTS

54 Audit and accounts

- 54.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 54.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.
- 54.3 The results of the audit must form part of the report provided to the Members at the next annual general meeting of the Company.

GIFT FUND

55 Operation of gift fund

- 55.1 Where the ITAA requires that a gift fund be established for the receipt of tax deductible donations, the Company must establish a separate gift fund account to which such donations must be credited.
- 55.2 The Gift Fund Account must only be used or applied for purposes that are consistent with the objects of the Company and separate records must be maintained as to the receipt and disbursement of moneys from that account.

56 Transfer of the gift fund in specified circumstances

- 56.1 On:
- (a) revocation of the endorsement of the Company under sub-division 30-B of the ITAA; or
 - (b) the winding up of the gift fund by the Company,
- any balance in the Gift Fund Account must be transferred to such other gift fund, gift funds, entity or entities having objects similar to the objects of the Company as will be determined by the Members at or before that time, provided that each recipient must be endorsed as a deductible gift recipient under sub-division 30-BA of the ITAA.

WINDING UP

57 Winding up

- 57.1 If the Company is wound up:
- (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to clause 57.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$10.

57.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another entity which is:

- (a) an organisation with similar purposes which is not carried on for profit or gain of its individual members;
- (b) required to apply its profits (if any) or other income in promoting objects similar to those of the Company; and
- (c) endorsed as a deductible gift recipient under sub-division 30-BA of the ITAA,

such entity to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Queensland for determination.

INDEMNITY

58 Indemnity

58.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

58.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

58.3 The amount of any indemnity payable under clauses 58.1 or 58.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a Tax Invoice.

58.4 For the purposes of this clause, **officer** means:

- (a) a Director; or
- (b) a Secretary.

AMENDMENTS TO CONSTITUTION

59 Amendments to Constitution

- 59.1 This Constitution must not be amended other than in accordance with the Corporations Act.
- 59.2 Subject to clause 59.1, the Company may revoke, add to or vary this Constitution provided that:
- (a) no part of the Gift Fund Account or the income of the Gift Fund Account is transferred to any institution, organisation, fund or authority that is not a charitable organisation endorsed to receive donations under sub-division 30-B of the ITAA; and
 - (b) no part of the Gift Fund Account or the income of the Gift Fund Account becomes able to be used or applied for purposes that are not consistent with the objects of the Company; and
 - (c) unless the Commissioner of Taxation or other relevant authority consents to the revocation, addition or variation:
 - (i) no amendment is allowed to be made to or affecting the Objects of the Company; and
 - (ii) no amendment is allowed to be made which authorises the Company to invest money of the Gift Fund Account other than in a manner in which trustees are permitted to invest under the laws of Australia or any Australian State or Territory.

Schedule 1 Definitions

Auditor	means the Company's auditor.
Board	means the board of Directors of the Company.
CEO	means the person appointed as managing director, chief executive officer or general manager under clause 45.1.
Company	means the Australian Foundation for Disabled Children and Youths Limited as constituted under this Constitution.
Constitution	means the constitution of the Company as amended from time to time.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.
Director	includes any person occupying the position of director of the Company.
Directors	means all or some of the Directors acting as a board.
Elected Directors	has the meaning given to that term under clause 26.2.
Financial Year	means the period of 12 months beginning on 1 July of any year and ending on 30 June of the succeeding year provided that the first financial year will include the period commencing on date of registration of the Company and ending on 30 June of the immediately following year.
Gift Fund Account	means the gift fund account established under clause 55.
GST	has the meaning given to that term by the GST Act.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or any replacement or other relevant legislation and regulations.
Income	means all income of the Company including self-generated income and income derived from the performance of services to clients.
Indemnified Officer	has the meaning given to that term by clause 58.3.
ITAA	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company
Member	means an organisation admitted as a member of the Company under clause 5.

Objects	means the objects of the Company set out in clause 4.
Register	means the register of Members of the Company.
Seal	means the Company's common seal (if any).
Secretary	means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.
Skills-Based Directors	has the meaning given to that term in clause 26.2(b).
Special Resolution	means a resolution passed by a majority of at least 75% of the eligible votes cast.
Tax Invoice	has the same meaning as in the GST Act, including any applicable legislative determinations and public rulings issued through the Australian Taxation Office.