

**A COMPANY LIMITED BY GUARANTEE**

**CONSTITUTION  
OF  
BAPTCARE LTD**

## TABLE OF CONTENTS

<i>Article No</i>	<i>Heading</i>	<i>Page No</i>
1	EXCLUSION OF REPLACEABLE RULES .....	3
2	DEFINITIONS AND INTERPRETATION .....	3
3	OBJECTS .....	4
4	APPLICATION OF INCOME AND PROPERTY .....	4
5	LIABILITY OF MEMBERS .....	4
6	CONTRIBUTION OF MEMBERS ON WINDING UP .....	4
7	DISTRIBUTION OF PROPERTY ON WINDING UP .....	4
8-10	ELIGIBILITY, APPLICATION AND ADMISSION .....	5
11-12	REGISTER OF MEMBERS .....	5
13-16	CESSATION OF MEMBERSHIP .....	5
17	ANNUAL GENERAL MEETING .....	6
18	CONVENING GENERAL MEETINGS .....	6
19-22	NOTICE OF GENERAL MEETINGS .....	6
23	CHAIRPERSON OF GENERAL MEETINGS .....	7
24	QUORUM FOR GENERAL MEETINGS .....	7
25-26	ADJOURNMENT OF GENERAL MEETINGS .....	7
27-32	VOTING AT GENERAL MEETINGS .....	9
33	USE OF TECHNOLOGY FOR GENERAL MEETINGS .....	10
34-39	APPOINTMENT AND REMOVAL OF DIRECTORS .....	11
40	DEFECTS IN APPOINTMENT OF DIRECTORS .....	12
41	REMUNERATION OF DIRECTORS .....	12
42-43	POWERS AND DUTIES OF DIRECTORS .....	12
44	MEETINGS OF DIRECTORS .....	13
45	CONVENING MEETINGS OF DIRECTORS .....	13
46	QUORUM FOR DIRECTORS' MEETINGS .....	13
47-49	CHAIRPERSON AND OFFICERS .....	13
50	VOTING AT DIRECTORS' MEETINGS .....	14
51	DELEGATION OF POWERS .....	14
52	ELECTRONIC MEETINGS OF DIRECTORS .....	14
53	CIRCULATING RESOLUTIONS .....	15
54	DIRECTORS' CONFLICTS OF INTEREST .....	16
55-57	MINUTES .....	16
58	ACCOUNTS .....	17
59	AUDIT .....	17
60	DIVIDENDS AND RESERVES .....	17
61	EXECUTION OF DOCUMENTS .....	17
62	ALTERATION OF CONSTITUTION .....	18
63	NOTICES .....	18
64-66	OFFICERS: INDEMNITIES AND INSURANCE .....	19
67	WINDING UP .....	19
68	GIFT FUND .....	19
69	THE UNION .....	20

**CORPORATIONS LAW  
A COMPANY LIMITED BY GUARANTEE  
CONSTITUTION OF  
BAPTCARE LTD**

**PRELIMINARY**

**EXCLUSION OF REPLACEABLE RULES**

1. The replaceable rules contained in the Act do not apply to the Company.

**DEFINITIONS AND INTERPRETATION**

2. In this Constitution:

- (i) "ACNC Act" means the Australian Charities and Not-for-profits Commission Act 2012 (Cth);
- (ii) "ACNC Regulation" means Australian Charities and Not-for-profits Commission Regulation 2013 (Cth);
- (iii) "Act" means the Corporations Act 2001 or any statutory modification or re-enactment thereof for the time being in force.
- (iv) "BaptistCare" means BaptistCare NSW & ACT.
- (v) "Board" means the board of directors for the time being of the Company.
- (vi) "the Company" means **Baptcare Ltd**.
- (vii) "Directors" means the directors for the time being of the Company.
- (viii) "Member(s)" means persons or entities admitted to membership of the Company pursuant to Rule 9.
- (ix) "Program" means any service or activity operated by the Company for the fulfilment of any of its objectives.
- (x) "Seal" means the common seal of the Company (if any).
- (xi) "Secretary" means the secretary for the time being of the Company and if there are joint secretaries, any one or more of such joint secretaries.
- (xii) "Union" means The Baptist Union of Victoria, a Body Corporate by virtue of the *Baptist Union Incorporation Act 1930* of the State of Victoria.
- (xiii) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

- (xiv) Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.

## **OBJECTS**

3. (i) The Principal Object for which the Company is established is:
- to provide and support welfare, health and community services to people who are disadvantaged by reason of their physical, emotional, economic and social circumstances; and
  - to provide relief to and co-operate with individuals, families and children who are in necessitous circumstances because of poverty, destitution, suffering or helplessness.
- (ii) Solely for the purpose of furthering the Principal Object, the additional objects of the Company are to undertake to carry out other charitable purposes including co-operating with other organisations which are conducive to the furtherance of the objects of the Company.

## **APPLICATION OF INCOME AND PROPERTY**

4. The assets and income of the Company shall be applied solely in furtherance of its abovementioned objects and no portion shall be distributed directly or indirectly to the Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company or as a distribution, payment or donation of income or assets to the Members which is consistent with Rule 3.

## **LIABILITY OF MEMBERS**

5. The liability of the Members is limited.

## **CONTRIBUTION OF MEMBERS ON WINDING UP**

6. Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member, such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member of the Company, and the costs charges and expenses of winding up and for the adjustment of the rights of the contributors or Members amongst themselves.

## **DISTRIBUTION OF PROPERTY ON WINDING UP**

7. Where on the winding up of the Company or dissolution of the Company, there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will be given or transferred to such other institution or company having similar objects to those of the Company as described in this Constitution, and which is an institution or body which prohibits the distribution of income, profit or assets to its members and which is also recognised by the Australian Taxation Office as a Deductible Gift Recipient for the

purposes of the *Income Tax Assessment Act 1997* (Cth). Such institution or company will be determined by the Members on or before the time of such winding up or dissolution. In default of such determination or approval as aforesaid, the institution or company shall be determined by application to the Supreme Court in the State of incorporation.

## **MEMBERSHIP**

### **ELIGIBILITY, APPLICATION AND ADMISSION**

8. The sole Member of the Company is BaptistCare.
9. Any new Member must be approved by:
  - (i) the Board of Directors; and
  - (ii) the sole Member or, in the event there is more than one Member, a special resolution passed at a general meeting of the Members.
10. The rights of a Member are not transferable.

### **REGISTER OF MEMBERS**

11.
  - (i) The Company Secretary will maintain a Register of Members of the Company at the Company's registered office.
  - (i) When an applicant has been accepted for membership the Secretary will cause the Member's name to be entered in the Register of Members and will send to the Member written notice of the acceptance.
12. The address of a Member in the Register will be the address of the Member for the purpose of service of any notices to Members.

### **CESSATION OF MEMBERSHIP**

13. Membership of the Company will terminate upon:
  - (i) The Secretary receiving from a Member a letter of resignation; or
  - (ii) The Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally.
14. A Member whose membership of the Company is terminated will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding ten dollars (\$10.00) for which the Member is liable under Rule 6 of this Constitution.
15. A Member whose membership is terminated will not make any claim, monetary or otherwise, on the Company, its funds or property except as a creditor thereof.
16. Any person or entity who for any reason ceases to be a Member shall no longer represent themselves in any manner as being a Member.

## MEETINGS OF MEMBERS

### ANNUAL GENERAL MEETING

17. (i) Subject to the Act, a general meeting shall be held at least once in every calendar year, and within the period of five (5) months after the end of the financial year, at such time and place as may be determined by the Directors. The abovementioned general meeting shall be called the "Annual General Meeting" and all other meetings of the Company shall be called "general meetings".
- (ii) The business of the Annual General Meeting may include any of the following, even if not referred to in the notice of meeting:
- (a) the consideration of the Annual Financial Statements, Directors' Declaration and Directors' Report and Auditor's Report; and
  - (b) the appointment of the auditor.

### CONVENING GENERAL MEETINGS

18. (i) The Board may whenever it thinks fit convene a meeting of the Members.
- (ii) The Board must convene a meeting of the Members on the request of Members in accordance with section 2490 of the Act.
- (iii) The Members may convene a meeting of the Company's Members in accordance with section 249E and 249F of the Act.

### NOTICE OF GENERAL MEETINGS

19. A notice of meeting of the Members shall specify:
- (i) the place, the day and the 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);
  - (ii) the general nature of the business to be transacted at the meeting; and
  - (iii) such other information as is required by section 249L of the Act.
20. The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
21. Subject to the provisions of the Act relating to agreements for shorter notice, at least twenty-one (21) days notice must be given of a meeting of Members.
22. (i) Notice of every general meeting of Members shall be given in the manner authorised by Rule 63 to every Member.
- (ii) No other person is entitled to receive notices of meetings of the Company's Members.

## **CHAIRPERSON OF GENERAL MEETINGS**

23. (i) The Chairperson shall preside as chairperson at every General Meeting.
- (ii) If there is no Chairperson or the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting, the Deputy Chairperson will be the chairperson.
- (iii) If the Deputy Chairperson is not present or is present but is unwilling to act for all or part of the meeting, the Members present shall elect one of their number to be chairperson of the meeting (or part of it).

## **QUORUM FOR GENERAL MEETINGS**

24. (i) No business shall be transacted at any meeting of the Members unless a quorum of Members is present at the time when the meeting proceeds to business.
- (ii) At a meeting of Members, the number of Members whose presence is necessary to constitute a quorum is the sole Member or, in the event there is more than one Member, such number as is the nearest whole number above one half of the total number of registered Members.
- (iii) For the purpose of determining whether a quorum is present, a person attending as a proxy shall be deemed to be a Member.

## **ADJOURNMENT OF GENERAL MEETINGS**

25. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting:
- (i) where the meeting was convened upon the request of Members - the meeting shall be dissolved; or
- (ii) in any other case:
- (a) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
- (b) if at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, then the meeting shall be dissolved.
26. (i) The Chairperson shall adjourn a meeting of Members from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the Chairperson to do so. 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 of Members is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (iii) Except as provided by the preceding paragraph, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## **VOTING AT GENERAL MEETINGS**

- 27. (i) At any meeting of Members a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded (before a vote is taken or immediately after the declaration of the result of the show of hands) by at least three (3) of the Members present in person or by proxy or by the Chairperson.
- (ii) Unless a poll is so 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, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (iii) The demand for a poll may be withdrawn.
- 28. (i) If a poll is duly demanded, it shall be taken in such a manner as the Chairperson directs and unless the meeting is adjourned, the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- (ii) A poll demanded on the election of a Chairperson or on a question of adjournment shall be taken immediately.
- 29. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting of the Company's Members at which the show of hands takes place or at which the poll is demanded will have a casting vote in addition to any vote the Chairperson may have in the capacity of a Member.
- 30. Subject to any rights or restrictions for the time being attached to any Member:
  - (i) at meetings of the Members each Member entitled to vote may vote in person or by proxy; and
  - (ii) on a show of hands every person present who is a Member or a proxy has one vote, and on a poll every person present in person who is a Member or a proxy has one vote.
- 31. (i) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (ii) Any such objection shall be referred to the Chairperson of the meeting whose decision is final.
- (iii) A vote not disallowed pursuant to such an objection is valid for all purposes.



## 32. Proxies

A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person (whether or not a Member) as the Member's proxy to attend and vote for the Member at the meeting.

- (i) (a) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or, if the appointor is a corporation, either under seal or executed in accordance with the Act or under the hand of an officer or attorney duly authorised.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.
- (c) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- (ii) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

(Name of Company)

I/We ..... being a member/members of the  
abovenamed Company hereby appoint ..... of  
..... or, in his or her absence, .....  
of..... as my/our proxy to vote for me/us on my/our behalf at the  
meeting of Members of the Company to be held on the ..... day of  
....., 20.. and at any adjournment of that meeting. #

This form is to be used \* in favour of/\* against the resolution

SIGNED this ..... day of ....., 20..

\* Strike out whichever is not desired # To be inserted if desired

(c) An instrument appointing a proxy shall not be treated as valid unless the instrument and the power of attorney or other authority (if any) under which the instrument is signed or a copy of that power or authority certified by a solicitor or a notary public, is or are deposited not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four (24) hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

(d) A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, providing no intimation in writing of the death, unsoundness of mind or revocation was made before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## USE OF TECHNOLOGY FOR GENERAL MEETINGS

33. (i) A general meeting may be called or held using any technology consented to by a majority of Members. Consent of a Member for the purposes of this Rule 33 may be a standing one. A Member may only withdraw his or her consent within a reasonable time before such a general meeting.
- (ii) For the purposes of this Constitution, the contemporaneous linking together by an instantaneous communication device of a number of Members not less than the quorum, whether or not any one (1) or more of the Members is out of Australia, shall be deemed to constitute a general meeting and all the provisions of this Constitution as to general meeting shall apply to any such meeting held by instantaneous communication device so long as the following conditions are met:
- (a) All the Members for the time being entitled to receive notices of a general meeting shall be entitled to notice of such meeting by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other matter permitted by this Constitution; and
- (b) Each of the Members taking part in the meeting by an instantaneous communication device must be able to hear each other of the Members taking part at the commencement of the meeting.
- (iii) A Member may not leave a meeting held by an instantaneous communication device by disconnecting his or her instantaneous communication device unless he or she has previously expressly notified the Chairperson of the meeting of his or her intention to leave the meeting and a Member shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his or her leaving the meeting.
- (iv) (a) A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.
- (b) Without limit to the foregoing, where a vote is to be decided on a show of hands at a meeting at which some or all Members take part by audio-only device, those Members will be required to make an appropriate audible response.
- (v) For the purpose of this Rule 33, "instantaneous communication device" shall include telephone, television or any other audio and/or visual device which permits instantaneous communication.

## DIRECTORS

### APPOINTMENT AND REMOVAL OF DIRECTORS

34. The number of the Directors shall be not less than three (3).
35. The Company may from time to time by resolution passed at a general meeting fix the number of Directors or increase or reduce the number of Directors (but so that the number shall be not less than three (3)).
36. The Board of Directors shall consist of:
  - (i) the Chairperson; and
  - (ii) such number being not less than six (6) nor more than fourteen (14) persons in total (including the Chairperson).
37. Subject to Rule 38, in the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act.
38.
  - (i) If the number of Directors is not sufficient to constitute a quorum at a meeting of Directors, the Directors may appoint a new Director to fill any casual vacancy.
  - (ii) Any Director so appointed shall hold office only until the next following Annual General Meeting of the Company and shall then be eligible for reappointment.
39. In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:
  - (i) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) resigns his or her office by notice in writing to the Company;
  - (iii) is absent without the consent of the Directors from three (3) consecutive meetings of the Board;
  - (iv) without the consent of the Company in general meeting holds any other office of profit under the Company;
  - (v) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his or her interest as required by Rule 54;
  - (vi) is removed by a resolution of Members;
  - (vii) becomes bankrupt or otherwise prohibited from acting as a Director;
  - (viii) no longer satisfies any applicable eligibility requirements of a Board Member; or
  - (ix) ceases to be eligible to be a director under the ACNC Act or ACNC Regulations.

## **DEFECTS IN APPOINTMENT OF DIRECTORS**

40. All acts done by any meeting of the Directors, or a committee of Directors, or by any person acting as a Director, are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or member of such committee, or to act as a Director, or the person so appointed was disqualified, are valid as if the person had been duly appointed and was qualified to be a Director, to be a member of such committee, or to act as a Director.

## **REMUNERATION OF DIRECTORS**

41. (i) Each Director is entitled to such remuneration out of the funds of the Company for his or her services as a Director as the Board determines but the total in aggregate in any year must not exceed such amount as the Company in general meeting determines from time to time by resolution;
- (ii) The remuneration of a Director must not include a commission on, or percentage of, profits or operating revenue;
- (iii) In addition to remuneration under subrule (i) of this Rule 41, the Directors are entitled upon approval by the Board to be paid all expenses they properly incur concerning the affairs of the Company, including attending and returning from meetings of the Company or the Board or Committees of the Board;
- (iv) Any Director of the Company may receive payment for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

## **POWERS AND DUTIES OF DIRECTORS**

42. (i) Subject to the Act and to any other provision of this Constitution, the business of the Company shall be managed by the Directors, who may pay all expenses incurred.
- (ii) Without limiting the generality of the preceding paragraph, the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or give any other security for a debt, liability or obligation of the Company or of any other person.
43. All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed, executed, as the case may be in such manner as the Directors determine.

## **MEETINGS OF DIRECTORS**

44. The Board of Directors may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

## **CONVENING MEETINGS OF DIRECTORS**

45. The Board of Directors may at any time, and the Secretary shall on the requisition of a Director, convene a meeting of the Directors.

## **QUORUM FOR DIRECTORS' MEETINGS**

46. At a meeting of the Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is the nearest whole number above one half of the total number of Directors or such greater number as may be fixed by the Directors.

## **CHAIRPERSON AND OFFICERS**

47. The Officers of the Company shall be:
- (i) the Chairperson;
  - (ii) the Deputy Chairperson; and
  - (iii) the Secretary,
- each of whom, with the exception of the Secretary must be drawn from the Board.
48. (i) The Chairperson shall be appointed from among the Board for such term as the Board determines.
- (ii) Officers of the Company other than the Chairperson and the Secretary will be elected by the Board from among the Board by a simple majority for an annual term of office.
- (iii) The Secretary shall be appointed by the Board and need not be a Director (or Member) of the Company.
- (iv) The duties of the Officers shall be determined by the Board from time to time.
- (v) An Officer, including the Chairperson and the Secretary, may be appointed or elected for more than one (1) successive term.
49. Where a meeting of the Directors is held and:
- (i) the Chairperson or Deputy Chairperson has not been appointed as provided in Rule 48 above; or

- (ii) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting -

the Directors present shall elect one (1) of their number to be chairperson of such meeting or part of it.

## **VOTING AT DIRECTORS' MEETINGS**

- 50. (i) Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.
- (ii) In a case of an equality of votes, the Chairperson of the meeting shall have a casting vote in addition to any vote the Chairperson may have in the capacity as a Director.

## **DELEGATION OF POWERS**

- 51. (i) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (ii) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- (iii) The members of such a committee may elect one of their number as chairperson of their meetings.
- (iv) A committee may meet and adjourn as it thinks proper.
- (v) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- (vi) In the case of an equality of votes, the chairperson shall have a casting vote in addition to any vote the chairperson may have in the capacity as a committee member.

## **ELECTRONIC MEETINGS OF DIRECTORS**

- 52. (i) A meeting of Directors may be called or held using any technology consented to by all the Directors. Consent of a Director for the purposes of this Rule 52 may be a standing one. A Director may only withdraw his or her consent within a reasonable time before the meeting of Directors.

- (ii) For the purposes of this Constitution, the contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to meetings of the Directors shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:
  - (a) All the Directors for the time being entitled to receive notice of the meeting of Directors (including any alternate for any Director) shall be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution; and
  - (b) Each of the Directors taking part in the meeting by an instantaneous communication device must be able to hear each other of the Directors taking part at the commencement of the meeting.
- (iii) A Director may not leave a meeting held by an instantaneous communication device by disconnecting his or her instantaneous communication device unless he or she has previously expressly notified the Chairperson of the meeting of his or her intention to leave 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 such a meeting until such notified time of his or her leaving the meeting.
- (iv) A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.
- (v) For the purpose of this Rule 52, "instantaneous communication device" shall include telephone, television or any other audio and/or visual device which permits instantaneous communication.

## **CIRCULATING RESOLUTIONS**

- 53. (i) If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
- (ii) For the purposes of the preceding sub-rule, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate document.

## **DIRECTORS' CONFLICTS OF INTEREST**

54. (i) Subject to the Act no Director shall be disqualified by his or her office from contracting or entering into any arrangement with the Company either as vendor, purchaser, or otherwise, nor shall any such contract or arrangement or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or agreement, by reason of such Director holding that office or of the fiduciary relation thereby established, but every Director shall observe the provisions of Section 191 of the Act relating to the disclosure of the interest of Directors which might create duties or interests in conflict with their duties or interests as Directors as if the Company were a proprietary company.
- (ii) Subject to the Act, a Director shall not as a Director be present at a meeting of Directors or vote in respect of any contract or arrangement in which such Director is interested in the manner described in the preceding sub-rule being considered at that meeting.
- (iii) A Director who is interested in any contract or arrangement as aforesaid may notwithstanding such interest attest the affixing of the Seal of the Company to any document evidencing or otherwise connected with such contract or arrangement.

## **ADMINISTRATION**

### **MINUTES**

55. The Directors will cause minutes of:
- (i) all proceedings and resolutions of meetings of the Company's Members;
  - (ii) all proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors;
  - (iii) resolutions passed by Members without a meeting;
  - (iv) resolutions passed by Directors without a meeting,
- to be duly entered into the books kept for that purpose in accordance with the Law.
56. A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.
57. Books containing the minutes of meetings of the Company's Members and resolutions passed by Members without a meeting will be open for inspection by any Member free of charge.



## **ACCOUNTS**

58. (i) The Directors will cause to be kept proper books of accounts in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.
- (ii) The Financial Year will begin on the first day of July and end on the thirtieth day of June.
- (iii) The accounts will be held at the registered office or any other place as the Directors think fit.
- (iv) The accounts and other documents of the Company will always be open to inspection by the Directors.
- (v) The Directors will arrange for the financial report, the Directors' report and the Auditors' report as required by the Act to be made out and laid before the Annual General Meeting.

## **AUDIT**

59. (i) A registered company auditor must be appointed.
- (ii) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

## **DIVIDENDS AND RESERVES**

60. No payment of dividends or other distributions to Members shall be made.

## **EXECUTION OF DOCUMENTS**

61. (i) The Company may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words "Common Seal" are engraved.
- (ii) If the Company has a Seal the Directors shall provide for the safe custody of the Seal.
- (iii) The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.
- (iv) The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:
- (a) two Directors; or
  - (b) one Director and one Secretary; or
  - (c) one Director and another person appointed by the Directors for that purpose.

The signature of such persons may be affixed to the document by manual,

autographic or mechanical means.

- (v) The Company may execute a document without using a seal if the document is signed by:
  - (a) two (2) Directors; or
  - (b) one (1) Director and one (1) Secretary; or
  - (c) one (1) Director and another person appointed by the Directors for that purpose; or
  - (d) an authorized representative of the Company for and on behalf of the Company with the authority of the Board.
- (vi) A facsimile signature may not be affixed to a document unless the auditors, internal auditors or bankers of the Company have reported to the Board in writing that the document may be sealed in that manner.

## **ALTERATION OF CONSTITUTION**

62. Subject always to the Act, this Constitution may not be altered unless the proposed alteration has been approved by the sole Member or, in the event there is more than one Member, by a special resolution passed at a general meeting of the Members.

## **NOTICES**

63. (i) A notice may be given by the Company to any Member either:
- (a) by serving it on him or her personally;
  - (b) by sending it by post to him or her at his or her address, including any email address, as shown in the Register of Members or the address supplied by him or her to the Company for the giving of notices to him or her;
  - (c) by sending it by facsimile transmission to a facsimile number supplied by the Member to the Company for the giving of notices to the Member.
- (ii) Where a notice is sent by post, service of the notice shall be deemed to be effective by properly addressing prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice to a Member, 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.
- (iii) Where a notice is sent by facsimile, service of the notice shall be deemed to be effected on receipt by the Company of a transmission report confirming successful transmission.
- (iv) Where a notice is sent by email, service of the notice shall be deemed to be effected twenty-four (24) hours after the transmission of the email unless the person transmitting the email is notified at any time that the email was undelivered or undeliverable.

## OFFICERS: INDEMNITIES AND INSURANCE

64. To the extent permitted by the Act:
- (i) the Company indemnifies every person who is or has been an Officer of the Company against any liability for costs and expenses incurred by that person in defending any proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the Law; and
  - (ii) the Company indemnifies every person who is or has been an Officer of the Company against any liability incurred by that person, as an Officer of the Company, to another person (other than the Company) unless the liability arises out of conduct involving a lack of good faith.
65. The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company against a liability:
- (i) incurred by the person in his or her capacity as an Officer of the Company or in the course of acting in connection with the affairs of the Company or otherwise arising out of the Officer's holding such office PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of Sections 182 and 183 of the Act; or
  - (ii) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.
66. In the two preceding Rules:
- (i) the term "proceedings" means any proceedings whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as such an Officer or in the course of acting in connection with the affairs of the Company or otherwise arising out of the Officer's holding such office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company ); and
  - (ii) the term "Officer" has the meaning given to that term in Section 9 of the Act.

## WINDING UP

67. Subject to Rule 7, the Company may be dissolved by a special resolution of Members at a meeting of the Company Members.

## GIFT FUND

68. (i) The company may maintain a Fund (**Gift Fund**) for its Principal object:
- (a) to which gifts or money of property for that object are to be made;
  - (b) to which any money received by the company because of those gifts is to be credited; and
  - (c) that does not receive any other money or property.

- (ii) The company must use the following only for its Principal object:
  - (a) gifts made to the Gift Fund;
  - (b) any money received because of those gifts.
- (iii) At the first occurrence of:
  - (a) the winding up of the Gift Fund; or
  - (b) the Company and the Gift Fund it maintains ceasing to have endorsement as a deductible gift recipient pursuant to the *Income Tax Assessment Act 1997* (Cth).

any surplus assets of the Gift Fund must be transferred as the directors decide to one or more Funds charitable at law which comply with the relevant requirements of the *Income Tax Assessment Act 1997* (Cth).

- (iv) The Company may maintain a separate bank account for the Gift Fund.

## **INTERESTS OF HOLDING COMPANY**

69. At any time when the Company is a wholly-owned subsidiary of a body corporate (**Holding Company**), each Director is authorised to act in the best interests of the Holding Company except to the extent otherwise required by law.

Dated: [insert date]