

# **Constitution**

## **FULCRUM AID**

**A not-for-profit charitable company limited by guarantee**

**ABN 31 605 454 671**

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## **1 Name and description of Company**

- 1.1 Fulcrum Aid is an Australian not-for-profit charitable company limited by guarantee.**
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## **2 Purpose and Objects of the Company**

### **2.1 Charitable Purpose of the Company**

- (1) Fulcrum Aid is a voluntary, non-profit relief and development organisation committed to working on projects that aim to address poverty and extreme inequality within Australia and internationally.
- (2) Fulcrum Aid values cultural diversity and respects the dignity of all people.
- (3) Fulcrum Aid is not affiliated with any political or religious organisations and seeks to work without ethnic or religious discrimination.
- (4) Fulcrum Aid seeks to address poverty and inequality by advancing health, education, the natural environment, social and public welfare, strengthening culture and protecting human rights.

### **2.2 Company Objects**

- (1) Fulcrum Aid exists to reduce poverty associated with extreme inequality and will:
  - (i) Resource and empower local leaders and organisations working within their own communities;
  - (ii) Advocate, upon the invitation and on behalf of local leaders and organisations, to external political and non-government organisations to recruit resources;
  - (iii) Develop networks between academic research institutions and local leaders and organisations that enable the sharing of resources and knowledge; and
  - (iv) Develop mutually respectful connections between disparate communities that restore holistic balance to both.
- (2) Carry out other such functions and purposes which are necessary or incidental to meet the objects of the company.

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### **3 Legal capacity and business of the company**

- 3.1 The Company has all the powers of a public company limited by guarantee set out in the Corporations Act 2001 (Cth), to the extent necessary, convenient, or incidental to carrying out the Company's purposes.**
- 3.2 The business of the Company is to be managed by or under the direction of the Company Board of Directors. The Directors may exercise all the powers of the Company within the guidelines of the Corporations Act.**

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### **4 Dissolution of company**

- 4.1 In the event of the Company being dissolved, any income or property that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.**
- 4.2 The identity of the fund, authority or institution must be decided by the Members by ordinary resolution at or before the time of winding up or dissolution of the Company.**
- 4.3 If the organisation is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation with similar objects, which is charitable at law, to which income tax deductible gifts can be made:**
- Gifts of money or property for the principal purpose of the organisation;**
  - Contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation;**
  - Money received by the organisation because of such gifts and contributions.**

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### **5 Not for profit Status**

- 5.1 The assets and income of the Company shall be applied solely to further its objects and no portion shall be distributed directly or indirectly to the Members, Directors or Officers of the Company provided that nothing herein shall prevent the payment in good faith of genuine compensation for services rendered, goods supplied for the ordinary course of business or expenses incurred on behalf of the Company.**
- 5.2 Clause 5.1 does not prevent the payment in good faith of:**
- (1) Remuneration to any Officers or employees of the Company for services rendered to the Company;**
  - (2) Travelling and reimbursement of other expenses incurred by officers in attending meetings and in conjunction with the Company's business;**
  - (3) An amount to any Member in return for any services actually rendered to the Company (whether by the individual Member or any corporation**

- or partnership in which the Member has an interest or is a member) or for the goods supplied in the ordinary and usual course of business;
- (4) Reasonable and proper interest on money borrowed from any Member;
  - (5) Reasonable and proper rent for premises leased by any Member to the Company;
  - (6) Other expenses incurred in the ordinary course of business or expenses incurred on behalf of the Company.

**5.3 Any sum permitted to be paid or proposed to be made to a Director, Member or Officer, requires approval by the Board in a Board meeting (in any generic or specific case) and is to be made in accordance with the Corporations Act.**

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## **6 Liability and Guarantee of Members**

**6.1 The liability of each Fulcrum Aid Member is limited.**

**6.2 Each Member undertakes to contribute to a maximum of \$5.00 to the assets of the Company if it is wound up while they are a Member or within one year after they cease to be a Member, and at the time of winding up the debts and liabilities of the Company exceeds its assets.**

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## **7 Membership**

**7.1 Company Members are any other persons the Directors admit as individual Members in accordance with this constitution.**

### **7.2 Classes of Membership**

- (1) Unless otherwise resolved by the Company in a General Meeting, the Membership of the Company will consist of individual ordinary Members.
- (2) Subject to the Corporations Act and in terms of a particular class of Membership, the Company may vary or cancel rights attached to being a Member of that class, or convert a Member from one class to another, by either:
  - (i) A special resolution passed at a meeting of the Members of that class; Or
  - (ii) The written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of Membership of that class.

### **7.3 Annual Membership Fee**

- (1) The annual Membership fee will be set by Directors but the total amount set must not exceed in any financial year \$25 or such other sum as may be determined by the Directors from time to time.

## **7.4 Admission as a Member**

- (1) The ordinary Members of the Company are the individual Members at the date of incorporation of the Company and subsequent new Members who:
  - (i) Have been admitted by the Board to Membership of the Company as Members after making a written application for Membership and satisfying any eligibility criteria adopted by the Board subject to Clause 7.4.3; and
  - (ii) Have paid the annual Membership fee for the relevant year.
- (2) An individual ordinary Member shall hold Membership as an ordinary Member of the Company for a term of 12 months and is eligible to re-apply for Membership after the term of 12 months expires subject to Clause 7.4.1.
- (3) Every new application for individual ordinary Membership of the Company must be proposed by one and seconded by another individual ordinary Member. New applications for Membership must:
  - (i) Be made in writing and signed by the applicant and his or her proposer and seconder;
  - (ii) Include an undertaking by the applicant to be bound by the Company's objects and this Constitution;
  - (iii) Be submitted on a form prescribed by the Directors.
- (4) Every renewal application for individual ordinary Membership of the Company must:
  - (i) Be in writing and signed by the applicant;
  - (ii) Include an undertaking by the applicant to be bound by the Company's objects and this Constitution;
  - (iii) Be submitted on a form prescribed by the Directors.
- (5) Where an applicant's application is approved by the Board, the applicant becomes a Member on the date that the individual is registered in the Company's Register of Members in accordance with the Corporations Act.
- (6) The Company may issue to each Member, free of charge, a certificate evidencing that person is a Member of the Company.
- (7) Company Directors must be ordinary Members of the Company.

## **7.5 Consideration of Membership**

- (1) An application for Membership that complies with Clause 7.4 must be considered by the Directors at the next Directors meeting or as reasonably practical.
- (2) The Directors must determine, in their discretion, the acceptance or rejection of that application of Membership.
- (3) Where an application for Membership is accepted by the Board of Directors, they must notify the applicant of admission within 20 business days.

- (4) Where an application for Membership is not approved by the Directors, the Directors must advise the applicant of that decision within 20 Business days.
- (5) The decision of the Board is final. The Board does not need to give reasons for the rejecting or accepting of an application for Membership.

## **7.6 Members rights**

- (1) Members have the right to:
  - (i) Receive notices of, attend, and be heard at any general meeting of the company;
  - (ii) Vote at any general meeting of the company.
- (2) Membership interests and rights of any member are not transferable to another individual in any manner.

## **7.7 Directors may create and vary classes and class rights**

- (1) The Directors may, through a special resolution in a general meeting of members where 75% of the members of the class agree with a decision:
  - (i) Establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
  - (ii) Vary or cancel the rights, restrictions and obligations of Members in any new or existing class.

## **7.8 Ceasing to be a Member**

- (1) A person ceases to be a Member on:
  - (i) Death;
  - (ii) Becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
  - (iii) The termination of the person's membership by the Directors in accordance with Clause 7.9 of this Constitution;
  - (iv) Failure to pay the annual Membership fee for the relevant year by the Annual General Meeting. A Member whose annual Membership fee remains unpaid at the time of a General Meeting of Members shall not be entitled to vote at that meeting;
  - (v) Failing to comply with this Constitution;
  - (vi) Resignation.
- (2) A Member may by written notice to the Company resign their Membership with immediate effect or with effect from a specified date occurring not more than 30 days after the service of the notice.

## **7.9 Expulsion of Members**

- (1) The Board may by resolution expel an individual Member from the Company if, in the Board's absolute discretion:
  - (i) They decide it is not in the interests of the Company for the person to remain a Member; Or
  - (ii) The Member does not pay a fee payable by the Member pursuant to this Constitution.
- (2) Where a resolution is passed to expel a Member, the Company must give that Member notice of the decision in writing within 20 business days of the resolution.

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## **8 General Meetings**

### **8.1 Convening of General Meetings**

- (1) A General Meeting can be called in accordance with the Corporations Act by:
  - (i) The directors by resolution of the board;
  - (ii) Members, according to section 24.9.D&F of the Corporations Act;
  - (iii) The court in accordance with the Corporations Act.
- (2) Subject to this Constitution, notice of a General Meeting must be given within the time limits prescribed by the Corporations Act to each person who is at the date of the notice:
  - (i) A Member;
  - (ii) A Director;
  - (iii) An Auditor of the Company.
- (3) Annual General Meetings of the Company are to be held in accordance with the Corporations Act. The business of an Annual General Meeting shall include but is not limited to:
  - (i) Consideration of the annual financial report, Director's report and Auditor's report (if required to be prepared under the Law);
  - (ii) The election of Directors to the Board;
  - (iii) Appointment of the auditor (when relevant) and fixing of the auditor's remuneration; and
  - (iv) Any other business which under this constitution or the Law may be transacted at a general meeting.
- (4) The Directors may resolve to hold a meeting of Members at one or more places using a technology that gives the Members as a whole a reasonable opportunity to participate.

- (i) The Directors may determine rules for the efficient and orderly conduct of meetings of Members which are to occur at more than one place.
- (5) A notice of meetings must specify the date, time and place of the meeting (and if the meeting is to be held in one or more places, the technology that will be used to facilitate this) and state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.
- (6) The non-receipt of notice of a General Meeting or a proxy form by, or a failure to give notice of a General Meeting or a proxy form to, any person entitled to receive notice of a General Meeting does not invalidate any act, matter or resolution passed at the General Meeting if:
  - (i) The non-receipt or failure occurred by accident or error;
  - (ii) Before or after the meeting the person waived or waives notice of that meeting or has notified or notifies the Company of the person's agreement to that act, matter or resolution by notice in writing to the Company.

## **8.2 Voting rights at meetings**

- (1) Subject to this Constitution and to any rights or restrictions attached to any class of Membership, at a General Meeting every Member present in person or by proxy who is not in breach of clause 7.8.1 by reason of non-payment of the annual Membership fee has one vote.

## **8.3 Right to appoint a proxy**

- (1) Subject to the Corporations Act, a Member entitled to vote at a General Meeting, or at a meeting of any class of Members in accordance with Clause 7.7, is entitled to appoint another individual (whether a Member or not) as proxy to attend, in the Member's place at the meeting. A proxy has the same rights as the Member to participate in and vote at the meeting, and may be appointed in respect of more than one meeting.
- (2) A proxy is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member in his or her own right.
- (3) Every very Member appointing a proxy must make the appointment in writing on a form approved by the Board which is signed by the Member and proxy at least 30 minutes before the scheduled commencement of the meeting.
- (4) Appointment of proxy form must be submitted to the meeting Chairperson before the commencement of the meeting by the Company Secretary.
- (5) An objection to the qualification of a person to vote at a General Meeting must be:
  - (i) Raised at the meeting at which the vote objected to is given or tendered;
  - (ii) Referred to the Chairperson of the meeting, whose decision is final and valid for all purposes.

#### **8.4 Cancellation or postponement of Company meetings**

- (1) A General Meeting (including an Annual General Meeting) convened by the Directors may be postponed, cancelled or the venue changed by giving notice not later than 5 business days before the time at which the General Meeting was to be held.
- (2) A notice postponing or changing the venue for a meeting must specify the date, time and place of the General Meeting and be given to each person who is at the date of the notice:
  - (i) A Member;
  - (ii) A Director;
  - (iii) An auditor of the Company.
- (3) A meeting convened under section 249D of the Corporation Act, called by Directors when requested by Members, who have at least 5% of the votes or at least 100 Members who are entitled to vote, may not be postponed beyond the date by which section 249d requires it to be held and may not be cancelled without the consent of the persons who convened the meeting.
- (4) The only business that may be transacted at a meeting which is postponed is the business specified in the original notice convening the General Meeting.
- (5) A person who is entitled to receive a notice of a meeting and fails to receive a notice because of an accidental omission, will not invalidate any resolutions passed in the meeting.
- (6) A proxy authorised to attend and vote at a General Meeting to be held on a specified date which is postponed to a date later than the date specified in the proxy form, will be considered valid for the postponed meeting unless the Member appointing the proxy gives to the Company Secretary written notice to the contrary at least 30 minutes before the commencement of the postponed meeting.

#### **8.5 Admission to General Meeting**

- (1) The chair of a General Meeting may refuse admission to a person, or require that person to leave and remain out of that meeting if that person:
  - (i) Has an audio or visual recording device other than a person who has been authorised by the Company to provide such services;
  - (ii) Behaves or threatens to behave in a dangerous, offensive or disruptive manner or is liable to cause disruption;
  - (iii) Is not entitled to receive a notice for the General Meeting.
- (2) A person who is entitled to receive notice of a meeting or who is requested by the Directors or the Chair to attend a General Meeting is entitled to be present, whether the person is a Member or not.

## **8.6 Requirement for a quorum**

- (1) No business may be transacted at any General Meeting, except the election of a chair and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to business and remains present throughout the meeting.
- (2) A quorum consists of simple majority of 51% of Members as declared by the Chairperson of the meeting.
- (3) If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the Chairperson of the meeting on his or her own motion or at the request of a Member who is present in person, declares otherwise.
- (4) If within thirty minutes after the time appointed for a general meeting a quorum is not present, the meeting:
  - (i) if convened by a Director, or on requisition of Members, is dissolved; and
  - (ii) in any other case stands adjourned to the same day, time and place in the next week, or to such other day, time and place as the Directors present decide.

## **8.7 Chairperson of General Meeting**

- (1) The Chair of Directors will be elected from Company Directors and that person is entitled to preside as Chairperson at a General Meeting. The Directors may determine the period for which the Director is to be the Chair.
- (2) The Chair of Directors must preside as Chair and present within 15 minutes after the time appointed for the meeting and be willing to act.
- (3) If the Chair of Directors is not present within 15 minutes after the time appointed for the meeting, or is not willing to act as Chair for the meeting:
  - (i) A Director chosen by a majority of the Directors present will be appointed; or
  - (ii) The only Director present will be appointed; or
  - (iii) A Member chosen by a majority of the Members will be appointed.

## **8.8 Conduct of the Chair at General Meetings**

- (1) The Chair of a General Meeting:
  - (i) Is responsible for the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) May require the adoption of any procedure in accordance with the Corporations Act which is in the Chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
  - (iii) May, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter or require a matter be put to a vote, whenever the Chair

considers it necessary or desirable for the proper conduct of the meeting, and a decision by the Chair under this Clause is final.

## **8.9 Adjournment of General Meeting**

- (1) The Chair of a General Meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting. The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
  - (i) Unless required by the Chairperson, a vote may not be taken or demanded by the Members present in respect of any adjournment; and
  - (ii) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (2) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

## **8.10 Voting, poll and declaration of results**

- (1) Members have the following voting rights:
  - (i) On a show of hands, every person present who is a Member has one vote;
  - (ii) On a poll, every Member present in person or by proxy has one vote.
- (2) Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution by the Members present at the meeting and that decision is for all purposes a decision of the Members.
- (3) Subject to the requirements of the Corporations Act, if there is a tie in votes, the Chair of the General Meeting is not entitled to a second or casting vote. The proposed resolution is taken as lost.
- (4) Unless a poll is duly demanded by Members at a General Meeting, a declaration by the Chair of a resolution of hands is conclusive evidence of the final result of a vote of Members and an entry to that effect is recorded in the meeting minutes.
- (5) If a poll is properly demanded and is not withdrawn, it must be taken in the manner and at the date and time directed by the Chair and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (6) If there is a dispute as to the admission or rejection of a vote, the Chair of the meeting must decide it and the Chair's decision is final.

## **8.11 Postal Ballots**

- (1) Subject to the provisions of the Corporations Act and this Clause, the Directors may submit resolutions to the vote of entitled Members,

including an election of Directors, by means of a postal ballot in such form and returnable in such manner as the Directors decide.

- (2) A resolution approved by the requisite majority of the Members voting in such Postal Ballot will have the same force and effect as if the resolution had been carried by duly constituted general meeting of the Company. For all purposes the closing date of a Postal Ballot is deemed to be 48 hours prior to the date of a General Meeting.
- (3) The Secretary will collect all votes received from voting Members in respect of a Postal Ballot and must promptly advise the Directors of the result of the Postal Ballot. Any votes received by the Secretary after the closing date of a Postal Ballot are deemed to be invalid and shall not be counted.
- (4) In the event of any dispute by a Member in relation to the validity or conduct of any Postal Ballot, the Member may within thirty days of the closing date of the Postal Ballot, give notice in writing to the Directors stating the grounds of the complaint. The Directors may either investigate the complaint themselves, or appoint a committee for that purpose. After considering the complaint or considering the report of the committee (as the case may be), the Directors will determine the matter and their decision will be final.

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## **9 Board of Directors**

### **9.1 Eligibility**

- (1) To be eligible to be appointed, elected or re-elected as a Director and to be eligible to continue to hold office, as the case may be, a person must:
  - (i) Be a Member; not be an employee of the Company or any of its subsidiaries; and
  - (ii) In the case of eligibility to be elected or re-elected, satisfy any applicable requirements in Clause 9 of this Constitution.
- (2) A Director must be an ordinary Member to qualify for election as a Company Director.
- (3) Directors will be appointed for a 3 year term and must retire or stand for re-election at the Annual General Meeting in their third term of office.

### **9.2 Role of Directors**

- (1) Directors are obligated to act in the best interests of the Company as provided for under the Law.
- (2) The Directors are responsible for governance and strategic control of the Company, including:
  - (i) Appointment of Company officers, agents or attorneys and employees;
  - (ii) Approval of business and strategic plans of the Company; and

- (iii) May exercise all the Company's powers which are not required, by the Law or by this Constitution, to be exercised by the Members in a General Meeting.

### **9.3 Number of directors**

- (1) The minimum number of Company Directors is three. Two Directors must reside in Australia.
- (2) The maximum number of Directors is to be fixed by the Directors, but must not be more than nine unless the Company in General Meeting decide otherwise.
- (3) The Directors must not determine a maximum number of Directors in office if it is less than the current number of Directors at the time the determination takes effect.

### **9.4 Appointing directors**

- (1) The Directors in office on the date that this Constitution was adopted by the Company shall continue in office but on the terms and conditions set out in this Constitution.
- (2) The Directors may at any time appoint any eligible person to be a Director, either to fill a casual vacancy or as an additional Director, provided that the total number of Directors does not exceed the maximum number determined in accordance with Clause 9.3.
  - (i) A Director appointed under this Clause holds office only until the conclusion of the next Annual General Meeting but is eligible for re-election at that meeting.

### **9.5 Electing Directors**

- (1) The Company may, at a General Meeting at which a Director retires or otherwise vacates office, or where there is an unfilled casual vacancy by resolution fill the vacated office by electing an eligible person to that office of Director. A person (other than an employee of the Company or a Subsidiary) is eligible for election to the office of a Director at a General Meeting only if:
  - (i) The person is in office as a Director immediately before that meeting; or
  - (ii) The person has been nominated by the Directors for election at that meeting; or
  - (iii) The person has in not less than 30 Business days before the date of the General Meeting:
    - (i) Given the Company a written notice signed by him or her stating his or her desire to be a candidate for election at that meeting on a form approved by the Board addressed to the Secretary or Chairperson (including by fax, email or other electronic means) endorsing the member nomination;
    - (ii) The notice has also been signed by not less than two Members nominating the person to be a Director.

- (2) In relation to an election of Directors, if the number of candidates is:
  - (i) More than the number of positions to be filled – the election will be conducted in such a manner as the Chairman determines;
  - (ii) The same number as the number of positions to be filled – all candidates are deemed elected without the need for a vote; or
  - (iii) Less than the number of positions to be filled – all candidates are deemed elected without need for a vote and the unfilled positions are deemed casual vacancies.

## **9.6 Composition of the Board**

- (1) The board shall exercise discretion in appointing directors subject to clause 9.3, 9.4 and 9.5.
- (2) The Board shall appoint at least one person to the position of Company Secretary who may, but need not, be a Director.
  - (i) A Secretary holds office on the terms and conditions that the Directors determine.
  - (ii) The Directors may appoint one or more assistant secretaries who may, but need not, be a Director.
- (3) The Board may appoint one or more Directors to the office of Managing Director of the Company and confer on a Managing Director any of the powers that the Directors can exercise.
  - (i) The Directors may revoke or vary a conferral of powers on the managing director.
  - (ii) The Directors of the Company may exercise discretion to determine the period, and the terms of the appointment, including as to remuneration.
  - (iii) A person ceases to be Managing Director if they cease to be a Director. The Directors may revoke or vary an appointment of a Managing Director.
- (4) The Board may from time to time, elect Directors to the position of Chairperson, Deputy Chairperson, Treasurer and any other position the Board deems appropriate.

## **9.7 Vacating the office of Director**

- (1) In addition to the circumstances prescribed by the Corporations Act, unless the Board otherwise resolve to confirm the Directors appointment, the office of a Director becomes vacant if the Director:
  - (i) Becomes of unsound mind;
  - (ii) Becomes bankrupt;
  - (iii) Is convicted on indictment of an offence;
  - (iv) Resigns by written notice to the Company;

- (v) Fails to attend more than three consecutive meetings of the Directors without leave of absence for the Directors;
  - (vi) Dies.
- (2) A Director of the Company may resign as a Director of the Company by giving a written notice of resignation to the Company at its registered office.

## **9.8 Conflicts of Interest**

- (1) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director is obligated to disclose the nature and extent of the interests and its relation to the affairs of the Company to the other Directors.
- (2) Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:
- (i) Hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
  - (ii) Enter into any contract or arrangement with the Company;
  - (iii) Act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as Auditor; and
  - (iv) Participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors, and may be present at any meeting where any matter is being considered by the Directors.

## **9.9 Confidentiality obligations**

- (1) Every Director and other agent or officer of the Company must maintain confidentiality on all aspects of all transactions of the Company, except:
- (i) To the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) As required by law;
  - (iii) When requested to disclose information by the Board to the Auditor;
  - (iv) At a General Meeting of the Company;
  - (v) As otherwise permitted by the Board.

## **9.10 Proceedings of Directors**

- (1) The Directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they see fit.
- (2) Subject to the Corporations Act, the contemporaneous linking together by telephone or other electronic means of a sufficient number of the Directors to constitute a quorum constitutes a meeting of the Directors.

All the provisions in this Constitution relating to meetings of the Directors apply, so far as they can and with any necessary changes, to meetings of the Directors by telephone or other electronic means.

- (3) A Director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (4) A meeting by telephone or other electronic means is taken as held at the place decided by the Chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.
- (5) The Directors of the Company may pass a resolution without a Directors' 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. 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. The resolution is passed when the last Director signs.
- (6) The Directors must direct minutes of meetings to be made and kept in accordance with the Corporations Act.

#### **9.11 Convening meetings of Directors**

- (1) A Director may, whenever the Director thinks fit, convene a meeting of the Directors.
- (2) The Secretary must, on the requisition of a Director, convene a meeting of the Directors.

#### **9.12 Notice of meeting of Directors**

- (1) Subject to this Constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice a Director, other than a Director on leave of absence approved by the Directors.
- (2) A notice of a meeting of Directors:
  - (i) Must specify the time and place of the meeting;
  - (ii) Need not state the nature of the business to be transacted at the meeting;
  - (iii) May be given immediately before the meeting; and
  - (iv) May be given in person, by post, by telephone, by facsimile, by email, by text message or by other electronic means.
- (3) A Director may waive notice of any meeting of Directors by notifying the Company to that effect in person, by post, by telephone, by facsimile, by email, by text message or by other electronic means.
- (4) The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (i) The non-receipt or failure occurred by accident or error;Or

- (ii) Before or after the meeting, the Director:
  - (i) Has waived or waives notice of that meeting under Clause 9.12(3); Or
  - (ii) Has notified or notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post or by telephone, fax or other electronic means; Or
- (iii) The Director attended the meeting.

### **9.13 Voting in meetings**

- (1) A question arising at a meeting of Directors is to be decided by a majority of votes cast by Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.
- (2) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of Directors:
  - (i) The Chairperson has no casting vote of the meeting;
  - (ii) The proposed resolution is to be taken as lost.

### **9.14 Quorum**

- (1) An item of business may not be transacted at a meeting of Directors unless a quorum is present when the meeting proceeds to consider it.
- (2) Until otherwise determined by the Directors, a simple majority of 51% Directors present in person are a quorum who is entitled to vote on any motion that may be moved at the meeting in relation to that matter.

### **9.15 Voting by proxy**

- (1) A Director may attend and vote by proxy at a meeting of the Directors if the proxy:
  - (i) Is another Director; and
  - (ii) Has been appointed in writing signed by the appointer and the proxy.
- (2) The appointment may be general or for one or more particular meetings.

### **9.16 Directors' committees**

- (1) The Directors may delegate any of their powers to committees consisting of at least one Director and any other persons that they think fit. The Directors may revoke that delegation.
- (2) Any such committee shall have power to co-opt persons, and such co-opted persons will be entitled to vote on matters to be determined by the committee.
- (3) A committee to which any powers have been delegated under Clause 9.16 must exercise those powers in accordance with any directions of the Directors and the terms of the committee's charter (if any). These powers are then taken to have been exercised by the Directors.

- (4) The meetings and proceedings of a committee consisting of two or more persons are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are applicable.

#### **9.17 Delegation to a Director or other persons**

- (1) With the exception of those powers required by law to be dealt with by the Directors as a board, the Directors may delegate any of their powers to a Director or to an employee of the Company or to any other person.
- (2) A person to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors.

#### **9.18 Circulating resolutions**

- (1) The Directors may pass a resolution without a Directors' meeting being held if a simple majority of 51% or more of the Directors (other than those on leave of absence approved by Directors and any Director who disqualifies himself or herself from considering the resolution in question and any Director who would be prohibited by law from voting on the resolution in question) provided such number of Directors would have constituted a quorum sign or consent to a document containing a statement that they are in favour of the resolution set out in the document.
- (2) A Director may consent to a document for the purposes of Clause 9.18 by:
  - (i) Signing the document; or
  - (ii) Giving to the Company written notice (including by fax, email or other electronic means) addressed to the Secretary or the Chairperson signifying assent to the resolution set out in the document.
- (3) 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.
- (4) The resolution is taken to be passed when the last Director signs or consents as provided above.

#### **9.19 Meeting by use of technology**

- (1) A Directors' meeting may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent a reasonable time before the meeting.

#### **9.20 Validity of acts of Directors**

- (1) Certain acts done at a meeting of the Directors or of a committee, or by a person acting as a Director are valid even if it is afterwards discovered that there was some defect in the appointment, election or qualification of any of them or that any of them were disqualified or were not entitled to vote or had vacated office.

- (i) These acts will include calling meetings, signing documents to be lodged with ASIC, and recording minutes of meetings.
- (ii) These acts will not include any decision that binds the company and its dealings with other people or makes the company liable to other people, or any act that is illegal.

### **9.21 Inspection of records**

- (1) Subject to the Corporations Act and any resolution of the Company in General Meeting, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Members (other than Directors) and other persons.
- (2) A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

### **9.22 Arrangements with Directors and former Directors**

- (1) The Company may enter in to an agreement with a Director or former Director agreeing to provide continuing access for a specified period after the Director ceases to be a Director to board papers, books, records and documents of the Company which relate to the period during which the Director or former Director was a Director, on such terms and conditions as the Directors think fit and which are not inconsistent with this clause.

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## **10 Minutes and Records**

- (1) Minutes of all meetings must be signed by the Chairperson, recorded and entered in books kept for that purpose, within one month after the meeting is held or the resolution is passed. This includes:
  - (i) All proceedings and resolutions of General Meetings;
  - (ii) All proceedings and resolutions of meetings of Directors and of committees of the Directors;
  - (iii) Resolutions passed by Directors without a meeting.
- (2) Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or if any of them will be open to the inspection of Members other than Directors.
- (3) The Company shall keep such accounting and financial records as comply with the Law (where applicable) and the ACNC (if applicable).
- (4) The first financial year of the company shall be the period ending on the 30<sup>th</sup> day of June 2015 and thereafter a period of 12 months ending on the 30<sup>th</sup> day of June in each year.

- (5) The Directors must cause the accounts of the Company to be audited (if required) in accordance with the requirements of the Corporations Act and other relevant Commonwealth, State and Territory legislation.
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## **11 Indemnity**

**11.1** The Company may indemnify, to the extent permitted by law, each person to whom this clause applies for all losses or liabilities incurred by the person as an officer and, if the Directors so determine, an auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

- (1) This clause applies to each person who is or has been a:
  - (i) Director;
  - (ii) Secretary, or
  - (iii) Chief Executive Officer.
- (2) This indemnity clause:
  - (i) Is a continuing obligation and is enforceable by a person to whom clause 11.1 applies even though that person may have ceased to be an officer or auditor of the Company;
  - (ii) Applies to losses or liabilities incurred both before and after the date of adoption of that clause; and
  - (iii) Operates only to the extent that the loss or liability is not paid by insurance.
- (3) The Company may, to the extent permitted by law purchase and maintain insurance, or pay or agree to pay a premium for insurance, for any person to whom this clause 11 applies, against any liability incurred by the person as an officer or auditor of the Company including, but not limited to, a liability for negligence or for legal costs.
- (4) Nothing in clause 11 affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules or limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

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## **12 Altering this constitution**

**12.1** This constitution shall be altered by a special resolution of the members of the company, by a 75% majority. Such alteration shall be notified to the relevant statutory bodies in accordance with the law.

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## 13 Definitions and interpretation

In this Constitution unless the contrary intention appears:

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

**Chairperson** means the Chairperson of the board of Directors of the Company

**Clause** means a clause of this Constitution.

**Company** means Fulcrum Aid.

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

**Corporations Act** means the Corporations Act 2001 (Clth) as amended or re-enacted from time to time.

**Director** means a Director of the Company.

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

**Eligible** means eligible to be appointed, elected or re-elected as a Director, and to be eligible to continue to hold that office, within the meaning of clause 9.1.

**Executive Officer** means a Chief Executive Officer, Chief Financial Officer, Secretary or assistant secretary appointed under this Constitution.

**Member** means a person admitted as a Member of the Company.

**Officer** means:

- i. A Director or Secretary of the Company;
- ii. A person:
  1. Who makes, or participates in making decisions that affect the whole, or a substantial part, of the business of the Company, or
  2. Who has the capacity to affect significantly the Company's financial standing;
  3. In accordance with whose instructions or wishes the Directors are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors);
- iii. A receiver, or receiver and manager, of the property of the Company;
- iv. An administrator of the Company;
- v. An administrator of a deed of company arrangement executed by the Company;
- vi. A liquidator of the Company; or
- vii. A trustee or other person administering a compromise or arrangement made between the Company and someone else.

**Postal Ballot** means the submission of a resolution (including a special resolution) to Members under clause 8.1.1

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

### b. Interpretation

In this Constitution, unless the contrary intention appears:

- i. The singular includes the plural and vice versa;
- ii. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- iii. A reference to writing includes typewriting, printing, telex, telegram, facsimile and other modes of representing or reproducing words in an electronic, visible or tactile form;
- iv. A reference to a resolution includes a special resolution; and
- v. A Member is to be taken to be present in person at a General Meeting if in the case of a Member who is a natural person – the Member is present in person or by proxy or attorney.

**c. Inclusive expressions**

Specifying anything in this Constitution after the words ‘including’, ‘includes’ or ‘for example’ or similar expressions does not limit what else is included unless there is express wording to the contrary.

**d. Corporations Act**

In this Constitution, unless the contrary intention appears, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

**e. Headings**

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

**f. Powers**

Powers conferred on the Company, the Directors, a committee, a Director, other person or a Member may be exercised at any time and from time to time.