

## **Constitution**

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# Constitution

**Make-A-Wish Foundation of Australia Ltd**  
**ACN 006 497 632**  
**("Company")**

## 1 Definitions and interpretation

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### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**"ACNC Act"** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**"AGM"** means Annual General Meeting.

**"Applicable Act"** means:

- (a) while the Company is a Registered Charity, the ACNC Act and the Corporations Act; or
- (b) if the Company is not, or ceases to be, a Registered Charity, even if it is still a charity, the Corporations Act.

**"Board"** means the board of Directors of the Company.

**"Chairperson"** means the person appointed from time to time pursuant to clause 16.

**"Chief Executive Officer"** means the person appointed from time to time pursuant to clause 16.

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

**"Company"** means the company defined at the beginning of this Constitution.

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

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

**"Director"** means a person occupying the position of director of the Company.

**"Deputy Chairperson"** means the person appointed or elected from time to time pursuant to clause 16.

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

- (a) which is charitable at law; and
- (b) gifts or contributions to which are deductible under item 1 of the table in section 30-15 of the Tax Act; and
- (c) which has objects and purposes similar to the objects and purposes of the Company and which is not carried on for the profit or gain of its members.

**“First Resolution”** has the meaning given to that term in clause 8.3(a).

**“Gift Fund”** means the Make-a-Wish Australia Gift Fund established or to be established for the purposes of the Tax Act in accordance with clause 4.

**“GST”** has the meaning given to that term by Section 195-1 of the GST Act.

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

**“Member”** means a person who is entered in the Register and includes all classes of Member.

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

**“Membership Year”** means each period of 12 Months commencing on 1 January and ending on the next ensuing 31 December.

**“Month”** means calendar month.

**“Office”** means the Company’s registered office.

**“Present”** means, when used in relation to a Member at a meeting, present in person or by proxy, attorney, or representative or guardian.

**“Register”** means the register of members of the Company.

**“Registered Charity”** means a charity that is registered under the ACNC Act.

**“Secretary”** means a person appointed from time to time pursuant to clause 21.1.

**“Security Interest”** means any mortgage, lien, charge (whether fixed or floating), bill of sale, caveat, pledge, claim, trust arrangement, preferential right, right of set-off, title retention or other form of encumbrance and includes any “security interest” within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth).

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

## 1.2 Words and expressions

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words denoting any gender include all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Constitution;
- (e) a reference to this Constitution includes any schedules or annexures;
- (f) headings are for convenience and do not affect interpretation;
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;

- (i) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (j) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (k) a reference to writing includes any method of representing words, figures or symbols in a permanent and visible form;
- (l) words and expressions denoting natural persons include bodies corporate, partnerships, associations, firms, governments and governmental authorities and agencies and vice versa;
- (m) a reference to any legislation or to any provision of any legislation includes:
  - (i) any modification or re-enactment of the legislation;
  - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
  - (iii) where relevant, corresponding legislation in any Australian State or Territory;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Constitution or any part of it;
- (o) the words “including”, “for example”, “such as” or other similar expressions (in any form) are not words of limitation; and
- (p) words or expressions defined in the Corporations Act but not in this Constitution have the same meaning in this Constitution.

### **1.3 Replaceable rules and interaction with the Applicable Act**

- (a) To the extent permitted by law, the replaceable rules contained in the Corporations Act do not apply to the Company.
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this Constitution which are inconsistent with those Acts as they apply to a Registered Charity;
- (c) If the Company is not a Registered Charity (even if it remains a charity) the Corporations Act overrides any clauses in this Constitution which are inconsistent with that Act.

## **2 Objects**

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### **2.1 Principal objects**

- (a) The principal objects of the Company are to:
  - (i) grant wishes to children who suffer with a life threatening illness where such wishes have been submitted in writing to the Company prior to the 18th birthday of such children;
  - (ii) solicit donations and gifts, to attract and encourage bequests devises and all forms of deferred gifts, and to otherwise raise monies for the objects of the Company;
  - (iii) further and or develop the aims of the Make-A-Wish Foundation internationally, its affiliates or potential affiliates by way of financial contribution, provision of assistance through support of the Board or staff of the Company or any other manner the Board may deem appropriate;
  - (iv) develop and maintain a volunteer based organisation supported by professional staff, consultants, trainers and other services; and

- (v) do any other thing which the Board of the Company considers will further the principal objects set out in clauses 2.1(a)(i) to 2.1(a)(iv) (inclusive) above.
- (b) For the purposes of clause 2.1(a)(i):
  - (i) reference to "wishes" means wishes which in the absolute discretion of the Directors of the Company and after considering such information and evidence as they think fit; and
  - (ii) reference to "children who suffer with a life threatening illness" is a reference to children diagnosed as suffering from an illness, infirmity, disease, condition or deformity which is, in the absolute discretion of the Directors and after considering such information and evidence as they think fit, of a type and of such severity as has the potential to result in death within a period which the Directors may from time to time determine (from the time of exercising their discretion).

## 2.2 Ancillary objects

For the purpose of achieving the principal objects set out in clause 2.1, the Company has and will continue to –

- (a) hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith;
- (b) organise functions, events or entertainment of any kind to raise funds for the Company;
- (c) implement and market materials to promote awareness and knowledge of the purposes and activities of the Company;
- (d) administer one or more funds into which all gifts, contributions, donations and bequests to the Company for the purposes of the Company will be credited;
- (e) conduct public programs including education programs, social and community programs and research programs;
- (f) disseminate information relating to education and community programs and to produce, edit, publish, issue, sell, circulate and preserve such papers, periodicals, books, circulars and other literary matters as are conducive to these objects;
- (g) establish and maintain relationships and close communications with corporations, entities, associations, foundations, institutions, organisations and groups including Federal, State and Local Government instrumentalities, authorities and professionals that may have related interests to the Company and utilise their resources and facilities to provide and achieve the objects of the Company;
- (h) seek and co-ordinate funding from Federal, State and Local Government and the private sector in the form of grants, gifts, donations and bequests committed to the objects of the Company;
- (i) encourage and promote and generally to create greater community awareness in the knowledge and understanding of the objects of the Company;
- (j) provide or attract funds for the facilitation of any of the objects of the Company; and
- (k) do all such other things as are incidental or conducive to the attainment of the objects and aims of the Company and its Members.

The Company will be established and operated in Australia and the objects of the Company will be pursued principally in Australia.



### 2.3 Not for profit

- (a) The objects of the Company will not be carried on for the purpose of profit or gain to its Members and the income and property of the Company, from whatever sources derived, will be applied solely towards the promotion of the objects of the Company.
- (b) No income or property of the Company will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (c) Nothing in clause 2.3(a) and 2.3(b), will prevent:
  - (i) the payment, in good faith, of remuneration to any officers or servants of the Company or to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary or usual way of business;
  - (ii) the payment of interest at a rate not exceeding the rate fixed for the purposes of this clause 2.3(c) by the Board on money borrowed from any Member or reasonable and proper rent for premises demised or let by any Member to the Company; or
  - (iii) making a payment to a Member in carrying out the Company's charitable objects.

## 3 Powers of the Company

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- 3.1 The Company has, subject to the Applicable Act, power to do all things necessary or convenient to be done for, or in connection with, the performance of its objects.
- 3.2 Without limiting the generality of clause 3.1, the Company has all the rights, powers and privileges and the legal capacity of a natural person including, but not limited to, the powers to:
  - (a) accept gifts, devises, bequests or assignments made to the Company, whether on trust or otherwise, and whether unconditionally or subject to a condition and, if a gift, devise, bequest or assignment is accepted by the Company for the Company on trust or subject to a condition, to act as trustee or to comply with the condition, as the case may be;
  - (b) make available (whether in writing or in any other form and whether by sale or otherwise) information relating to the Company and its functions;
  - (c) to occupy, use and control any land or building owned or held under lease by any other person made available to the Company;
  - (d) acquire, hold and dispose of real and personal property;
  - (e) lease the whole or any part of any land or building for the purpose of the Company;
  - (f) occupy, use and control any other land or building owned or held under lease by any other person and made available to the Company;
  - (g) enter into contracts;
  - (h) erect buildings;
  - (i) employ managers and other staff to implement the objects of the Company and pay such fees, salaries, emoluments and expenses as the Board considers reasonable to such persons;
  - (j) purchase or take on hire, or to accept as a gift or on deposit or loan, and to dispose of or otherwise deal with furnishings, equipment and other goods;
  - (k) act as trustee of moneys or other property vested in the Company on trust; and

- (l) do anything incidental to any of the Company's objects.
- 3.3 Notwithstanding anything contained in this Constitution, any money or other property held by the Company on trust or accepted by the Company subject to a condition, will not be dealt with except in accordance with the obligations of the Company as trustee or as the person who has accepted the money or other property subject to the condition, as the case may be.
- 3.4 It is intended that the public will contribute to the Gift Fund and the Company will invite the general public to make gifts to the Gift Fund for the purpose of carrying out the objects of the Company.

## **4 Gift Fund**

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- (a) The Company must, if required under the Tax Act, establish and maintain, for the specific purposes set out in clause 2, the Gift Fund:
  - (i) to which gifts of money, contributions or property for those purposes must be made;
  - (ii) to which any money received by the Company because of those gifts, contributions or property must be credited; and
  - (iii) that does not receive any other money, contributions or property.
- (b) The Gift Fund will not be maintained for the purpose of profit or gain to the Members of the Company.
- (c) All gifts or contributions made to the Gift Fund and any money received because of those gifts or contributions will be applied solely towards the promotion of the objects of the Company set out in clause 2 and no portion of the Gift Fund will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members of the Company.
- (d) The Company will maintain a separate bank account for the Gift Fund and must comply with subdivision 30-BA of the Tax Act with respect to the administration of the Gift Fund.
- (e) In accordance with the Tax Act, receipts issued for gifts must state:
  - (i) the name of the Company and Gift Fund;
  - (ii) the ABN applicable to the Company; and
  - (iii) the date the gift is received;
  - (iv) the fact that the receipt is for a gift;
  - (v) the name of the donor; and
  - (vi) the amount of the gift.
- (f) Clauses 4(b) to 4(e) (both inclusive) apply only if the Company is required to establish a Gift Fund by the Tax Act or if determined by the Board.

## **5 Membership and eligibility**

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### **5.1 Continuing Members**

Every person who, at the date of adoption of this Constitution, is a Member of the Company continues to be a Member.

## **5.2 Number and classes of Membership**

- (a) Subject to this Constitution and the Corporations Act, there must be at least one Member.
- (b) The Board may, from time to time, prescribe a maximum number of Members.
- (c) The Members will comprise:
  - (i) Directors who are appointed or elected in accordance with this Constitution;
  - (ii) branch presidents; and
  - (iii) such other class or classes of Membership established by the Board, from time to time, in accordance with clause 5.2(d).
- (d) The Board may, from time to time but subject to clauses 6.2 and 6.3, establish different classes of Membership and may prescribe the qualifications, rights and privileges of persons admitted to Membership in, or transferred into, such classes of Membership.

## **5.3 Undertaking**

Every Member undertakes to contribute to the property of the Company if the Company is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before the Member ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding, in any event, \$20.00 per Member.

# **6 Rights of members**

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## **6.1 Rights and privileges**

- (a) Subject to this Constitution, the Members are entitled to all the rights and privileges of Membership of the Company.
- (b) A right, privilege, or obligation of a person by reason of the person's Membership:
  - (i) is not capable of being transferred or transmitted to another person; and
  - (ii) terminates on cessation of Membership whether by death or resignation or otherwise as set out in clause 8.

## **6.2 Variation of Rights**

If at any time the Directors exercise the powers under clause 5.2(d), the rights, restrictions or obligations of Members or any class of Members may be varied with either:

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

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

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

## 7 Register of Members

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### 7.1 Information in Register

The Secretary must keep and maintain a Register containing:

- (a) the name and address of each Member;
- (b) the date on which each Member's name was entered in the register;
- (c) the class of Membership; and
- (d) any other information which the Board considers necessary.

### 7.2 Inspection and copies

Subject to the Corporations Act:

- (a) the Register will be made available for inspection, free of charge, to any Member on request;
- (b) a Member may make a copy of entries in the Register; and
- (c) information that is accessed from the Register must only be used in a manner relevant to the interests or rights of Members.

## 8 Cessation of membership

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### 8.1 Ceasing to be a Member

A person ceases to be Member of the Company if:

- (a) the person resigns as provided in clause 9.1;
- (b) the person ceases to be a Director of the Company or ceases to be a branch president;
- (c) the person dies; or
- (d) the succeeding provisions of this clause 8 become applicable to that Member.

### 8.2 Continuing liability

A Member who resigns continues to be liable for any sum not exceeding \$20.00 for which the Member may become liable as a Member under clause 5.3.

### 8.3 Power to censure, fine, suspend or expel

- (a) If any Member:
  - (i) fails to comply with this Constitution; or
  - (ii) fails to comply with any of the rules, regulations or by-laws of the Company; or
  - (iii) engages in conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests of the Company or its Members,the Board may, subject to clause 8.3(b), by resolution of the Directors (the "**First Resolution**") censure, fine, suspend or expel that Member.
- (b) A First Resolution under clause 8.3(a) does not take effect unless the Board, at a meeting held not earlier than 14 days and not later than 21 days after the service on the Member of a notice in accordance with clause 8.3(c), confirms the First Resolution in accordance with clause 8.3(d); and
- (c) Where the Directors pass a First Resolution in accordance with clause 8.3(a), the Secretary must, as soon as practicable, serve on the Member, a notice in writing:

- (i) setting out the First Resolution and the grounds on which it is based;
  - (ii) stating that the Member may address the Board at a meeting to be held not earlier than 14 days and not later than 21 days after service of the notice;
  - (iii) stating the date, place and time of that meeting;
  - (iv) informing the Member that the Member may:
    - (A) attend the meeting; or
    - (B) give to the Board, before the date of the meeting, a written statement seeking revocation of the First Resolution.
- (d) At a meeting of the Directors held in accordance with clause 8.3(c), the Board must:
- (i) give the Member, or a person nominated by the Member, an opportunity to be heard; and
  - (ii) give due consideration to any written statement submitted by, or on behalf of, the Member; and
  - (iii) by resolution, determine whether to:
    - (A) confirm the First Resolution;
    - (B) revoke the First Resolution with or without a warning;
    - (C) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the independent person can only make a decision that the Directors could have made under this clause); or
    - (D) require the matter to be determined at a general meeting of Members.
- (e) If the Directors confirm the First Resolution it will be effective immediately and the Secretary must notify the Member of the confirmation as soon as possible after the date of the meeting of the Directors.
- (f) At a general meeting of the Members called in accordance with clause 8.3(d)(iii)(D):
- (i) no business other than the question of the appeal shall be transacted;
  - (ii) the Directors may place before the meeting details of the grounds for the First Resolution and the reasons for the passing of the First Resolution;
  - (iii) the Member, or a person nominated by the Member, must be given an opportunity to be heard; and
  - (iv) the Members Present must vote by secret ballot on the question whether the First Resolution should be confirmed or revoked.
- (g) If at a general meeting called in accordance with clause 8.3(d)(iii)(D):
- (i) a majority of the Members Present and voting, vote in favour of the confirmation of the First Resolution, the First Resolution will stand confirmed and will be effective immediately; and
  - (ii) in any other case, the First Resolution will be revoked.
- (h) No Member is entitled to vote at any general meeting called in accordance with clause 8.3(d)(iii)(D) unless all amounts then due and payable to the Company by that Member have been paid.

## **9 Resignation of member**

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- 9.1 A Member may resign from the Company by first giving the Secretary written notice of one month, or such other notice period as is agreed by the Board, of the Member's intention to resign and on the expiration of that period of notice, the Member will cease to be a Member.
- 9.2 On expiry of notice under clause 9.1, the Secretary will make an entry in the Register recording the date on which the Member ceased to be a Member.

## **10 General meetings**

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### **10.1 General meetings**

A general meeting is a meeting of the Members of the Company held in accordance with this Constitution and the Applicable Act and includes the AGM.

### **10.2 AGM**

- (a) The Company will hold an AGM in accordance with this Constitution and the Applicable Act at least once in every calendar year.
- (b) To the extent applicable to the Company, the business of the AGM may include:
- (i) the election of Directors;
  - (ii) the consideration of the financial reports of the Company, the Directors' report and the auditor's report; and
  - (iii) such other business as may be properly transacted at the AGM.
- (c) The Chairperson of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

### **10.3 Calling**

- (a) The Board may call a general meeting at any time.
- (b) The Board must call and arrange to hold a general meeting on the written request of Members with at least 5% of the votes that may be cast at the general meeting and must:
- (i) within 21 days of the Members' request being given to the Company, give notice of a general meeting; and
  - (ii) hold the general meeting within two months of the Members' request.
- (c) The percentage of votes that Members have is to be worked out as at midnight before the Members request the meeting.
- (d) The Members who make the request for a general meeting must:
- (i) provide the request in writing;
  - (ii) state in the request any resolution to be proposed at the meeting;
  - (iii) sign the request; and
  - (iv) give the request to the Company.
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

#### **10.4 General meetings called by members**

- (a) If the Directors do not call a meeting within 21 days of being requested under clause 10.3, 50% or more of the Members who made the request may call and arrange to hold a general meeting.
- (b) To call and hold a meeting the Members must:
  - (i) as far as possible, follow the procedures for general meetings set out in this Constitution;
  - (ii) call the meeting using the list of members of the Company's Register; and
  - (iii) hold the general meeting within three months after the request was given to the Company.
- (c) The Company must pay the Members who request the general meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

#### **10.5 Notice**

- (a) At least 21 days written notice of a general meeting must be given to:
  - (i) each Member who is entitled to vote;
  - (ii) each Director;
  - (iii) any auditor of the Company; and
  - (iv) any other person required by law.No other person is entitled to receive notice of a general meeting.
- (b) Subject to clause 10.5(c) and the Applicable Act, notice of a meeting may be provided less than 21 days before the meeting if:
  - (i) for an AGM, all the Members entitled to attend and vote at the AGM agree beforehand; and
  - (ii) for any other general meeting, Members within at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) Subject to the Applicable Act, notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
  - (i) remove a Director;
  - (ii) appoint a Director in order to replace a Director who was removed; or
  - (iii) remove an auditor.

#### **10.6 Content of notice**

A notice of a general meeting must:

- (a) set out the place, date and time for 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) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and the special resolution itself; and
- (d) contain a statement specifying that:
  - (i) the Member has a right to appoint a proxy; and
  - (ii) the proxy must be a Member.

### **10.7 Failure to give notice**

The failure or accidental omission to send notice of a general meeting to, or the non-receipt of a notice by, any person entitled to notice does not invalidate the proceedings or any resolution passed at the meeting.

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

Subject to the Applicable Act, the Board may at any time prior to the time at which a general meeting is to be held, postpone or cancel any general meeting or change the place of any general meeting. Any such postponement, cancellation or change must be communicated to each Member of the Company and each other person to whom notice was given, in any manner permitted under clause 26.

## **11 Proceedings at general meetings**

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### **11.1 Quorum**

- (a) No business may be transacted at an AGM or any other general meeting unless a quorum is Present at the time when the meeting proceeds to business.
- (b) A quorum consists of 10 Members entitled to vote at the meeting.
- (c) Each individual present at a general meeting may only be counted once toward a quorum. If a Member has appointed more than one proxy, attorney or representative, only one of them may be counted towards a quorum.

### **11.2 Use of technology**

- (a) General meetings can be held using audio or audio-visual technology.
- (b) If a general meeting is held by audio or audio-visual technology:
  - (i) a Member is treated as Present if the Member is able to hear and be heard by all others attending; and
  - (ii) unless the Chairperson is notified that a Member is leaving the meeting, the Member will be assumed to have been Present for the duration of the meeting.

### **11.3 Quorum not present**

If a quorum is not present within 15 minutes after the time appointed for a general meeting:

- (a) if the meeting was convened at the request of Members, it is automatically dissolved; and
- (b) in any other case:
  - (i) it will stand adjourned to the same time and place on the fifth business day after the meeting; and
  - (ii) if a quorum is not present within 15 minutes from the time appointed for the adjourned meeting, the Members Present (being not less than two) will comprise a quorum.

### **11.4 Chairing meetings**

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Members. If:

- (a) there is no Chairperson or Deputy Chairperson; or
- (b) neither the Chairperson nor the Deputy Chairperson is present within 15 minutes after the time appointed for holding the meeting; or



- (c) the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Members Present will elect a Member to chair the meeting.

### **11.5 Function of Chairperson**

The Chairperson of a general meeting is responsible for the general conduct and procedures to be adopted at the meeting.

### **11.6 Adjournment by Chairperson**

The Chairperson of a general meeting at which a quorum is present

- (a) may, with the consent of the meeting; and
- (b) must, if directed by resolution of the meeting,

adjourn the meeting to another time and place.

### **11.7 Adjourned meeting**

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting. Notice of the adjourned meeting must be given if the meeting is adjourned for one month or more.

### **11.8 Show of hands**

Unless a poll is demanded under clause 11.10:

- (a) a resolution put to a vote at a general meeting must be decided on a show of hands; and
- (b) a declaration by the Chairperson that a resolution has been carried, carried by a particular majority or lost and an entry to that effect in the minutes of the meeting will be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour or against the resolution.

### **11.9 Majority vote**

A resolution of Members must be passed by a majority of the votes cast by Members entitled to vote on the resolution unless otherwise required under the Applicable Act or this Constitution.

### **11.10 Demanding a poll**

Either before or on declaration of the result of a show of hands, a poll may be demanded by:

- (a) the Chairperson;
- (b) at least five Members entitled to vote on the resolution; or
- (c) Members with at least 5% of the votes that may be cast on the resolution on a poll.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

### **11.11 When and how polls must be taken**

A poll will be taken when and in the manner the Chairperson directs, except for:

- (a) a poll demanded on the election of a Chairperson; or
- (b) a poll demanded on the adjournment of a meeting,

which must be taken immediately. The result of the poll will be the resolution of the meeting at which the poll was demanded.

### **11.12 Equal number of votes**

If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson does not have a casting vote in addition to the Chairperson's vote as a Member, proxy, attorney or representative; and
- (b) the resolution is not passed.

## **12 Voting at general meetings**

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### **12.1 Number of votes**

Subject to this Constitution and any rights or restrictions imposed on or attached to a class of Membership, every Member who is Present at a general meeting and entitled to vote on a show of hands and on a poll, has one vote.

### **12.2 Objections**

An objection to the qualification of any voter:

- (a) may only be raised at the meeting or adjourned meeting at which the voter tendered its vote; and
- (b) must be determined by the Chairperson, whose decision, if made in good faith, will be final and conclusive.

A vote that the Chairperson does not disallow pursuant to an objection is valid for all purposes.

## **13 Proxies, attorneys and representatives**

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### **13.1 Proxies**

A Member entitled to attend and vote at a general meeting may appoint a proxy to attend and vote for the Member at the meeting. A proxy must be an individual.

### **13.2 Number of proxies**

A Member entitled to one vote at a general meeting may appoint one proxy. A Member entitled to more than one vote may appoint no more than two proxies.

### **13.3 Proportion of votes exercisable by proxies**

If a Member appoints two proxies, the appointment may specify the proportion or number of the Member's votes each proxy may exercise. If the appointment does not specify this, each proxy may exercise half of the votes and any fractions of votes will be disregarded.

### **13.4 Rights of proxies**

Subject to this Constitution and the proxy's terms of appointment, a proxy has the same rights as the appointing Member to speak at a general meeting, to vote and to join in and demand a poll.

### **13.5 Voting rights of proxies**

A proxy may vote either on a show of hands or a poll. If a proxy's appointment specifies the way in which the proxy must vote, the proxy must follow those instructions.

### **13.6 Attorneys**

A Member may appoint an attorney to act for the Member at general meetings or to appoint a proxy to act for the Member at general meetings.

### **13.7 Rights of attorneys**

Unless restricted by the terms of appointment or the Applicable Act, an attorney may exercise the same powers on the Member's behalf that the Member could exercise at a general meeting or in voting on a resolution.

### **13.8 No membership requirement**

A proxy, attorney or representative may be, but need not be, a Member.

### **13.9 Standing appointments**

A Member may appoint a proxy or attorney to act at a particular general meeting or make a standing appointment. A Member may revoke any appointment.

### **13.10 Instrument of appointment of proxies**

The instrument of appointment of a proxy must be in a written form approved by the Board and must be signed or executed:

- (a) if the appointing Member is an individual, by the appointing Member or that Member's attorney; and
- (b) if the appointing Member is a body corporate, by the body corporate's representative or attorney.

### **13.11 Instrument of appointment of attorneys and representatives**

The instrument of appointment of an attorney must be in a written form and must consist of a valid power of attorney signed by the appointing Member in the presence of at least one witness.

### **13.12 Company must receive appointments**

The appointment of a proxy, attorney or representative is only effective in relation to a general meeting if the Company receives the instrument effecting the appointment and any additional documents required by clause 13.14:

- (a) in the case of a proxy or attorney, at least 48 hours before the time for holding the meeting or adjourned meeting (unless the notice of meeting specifies a shorter time period); and
- (b) in the case of a representative, before the commencement of the meeting or adjourned meeting.

### **13.13 Definition of receipt**

The Company receives the documents referred to in clause 13.12 when they are received:

- (a) at the Office;
- (b) at a place or electronic address specified in the notice of meeting; or
- (c) if the notice of meeting specifies other electronic means by which a Member may give the documents, by those means in accordance with the Applicable Act.

### **13.14 Additional documents**

If an appointment purports to be executed under a power of attorney or other authority, the original power or authority or a certified copy of it must be received by the Company along with the appointment.

### **13.15 Chairperson may declare appointment valid**

If:

- (a) the instrument of appointment of a proxy, attorney or representative does not comply with the terms of this Constitution; or
- (b) the appointment and any additional documents are not received by the Company in accordance with the terms of this Constitution,

the appointment will be treated as invalid unless the Chairperson declares otherwise.

### **13.16 Adjourned meetings**

An appointment of a proxy, attorney or representative for a particular general meeting is valid at the adjourned meeting.

### **13.17 Rights of proxies and attorneys if Member present**

A proxy or attorney has no power to act for a Member at a general meeting at which the Member is present in person or, in the case of a body corporate, by representative. A proxy has no power to act for a Member at a general meeting at which the Member is present by attorney.

### **13.18 Priority of conflicting appointments**

The following rules govern conflicting appointments:

- (a) an appointment of a proxy is revoked (or suspended for the particular general meeting if a standing appointment) if the Company receives a further proxy appointment that would result in the Member having more proxies than the Member is entitled to under clause 13.2;
- (b) the proxy appointment made first in time under clause 13.18(a) is the first to be treated as revoked or suspended under that clause; and
- (c) if more than one attorney or representative appointed by a Member is present at a general meeting and the Company has not received notice of revocation of any of the appointments:
  - (i) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
  - (ii) subject to clause 13.18(c)(i), the more recently appointed attorney or representative may act to the exclusion of an attorney or representative appointed earlier in time.

### **13.19 Continuing authority**

A vote cast by a proxy, attorney or representative at a general meeting will be valid even if, before the vote, the appointing Member:

- (a) dies or becomes mentally incapacitated; or
- (b) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notification of the matter before the start or resumption of the meeting.

## **14 Directors**

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### **14.1 Number**

- (a) The Company will have at least six Directors, unless otherwise provided by the Corporations Act, made up of:
  - (i) a maximum of two Directors elected and appointed by the Members in accordance with clause 15.1; and
  - (ii) a minimum of four Directors appointed by the Board.

### **14.2 Other positions**

A Director may simultaneously hold any other office or position in the Company on terms determined by the Board.

### **14.3 Meetings of Members**

A Director is entitled to notice of, and to attend, all general meetings.

## **15 Appointment and removal of Directors**

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### **15.1 Appointment by Members**

Subject to clause 14.1:

- (a) The Members may appoint a Director by resolution passed in general meeting.
- (b) Each of the Directors must be appointed by a separate resolution, unless:
  - (i) the Members present have first passed a resolution that the appointments may be voted on together; and
  - (ii) no votes were cast against that resolution.
- (c) A person is eligible for appointment as a Director of the Company if they:
  - (i) are nominated by an existing Member of the Company;
  - (ii) meet any eligibility requirements identified by the Board prior to the nomination of the candidate;
  - (iii) give the Board their signed consent to act as a Director of the Company; and
  - (iv) are not ineligible to be a Director under an Applicable Act.
- (d) The Members can make further rules in relation to the appointment of Directors, provided those rules are not inconsistent with this Constitution.

### **15.2 Removal and rotation of Directors**

Subject to clause 14.1, the Company may by resolution passed in general meeting:

- (a) remove a Director from office;
- (b) determine any rotation and retirement policies for Directors.

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

- (a) The Board may appoint a person to be a Director at any time either to fill a casual vacancy or as an addition to the existing Directors, but the total number of Directors must not exceed any maximum number.
- (b) A Director appointed to fill a casual vacancy in accordance with clause 15.3(a) will hold office for the remainder of the term of office of the Director whose office has

become vacant and will be eligible for re-appointment in accordance with clause 15.4 at the end of that term.

#### **15.4 Term of office**

Subject to clause 15.5 and the terms of any agreement between the Company and the relevant Director:

- (a) a Director appointed by the Board other than the Chief Executive Officer holds office for a period of 3 years but is eligible for re-appointment by a two-third majority vote of the Board provided that any Director elected and appointed by the Board must retire from office after 2 continuous terms (6 years) commencing from the date of appointment or re-election and shall not be eligible for re-election until the AGM in the calendar year next succeeding the expiration of that 6 year term; and
- (b) a Director elected by Members holds office for a period of 3 years but is eligible for re-election by Members provided that any Director elected and appointed by Members must retire from office after 2 continuous terms (six years) commencing from the date of appointment or re-election and shall not be eligible for re-election until the AGM in the calendar year next succeeding the expiration of that 6 year term.s

#### **15.5 Cessation of appointment**

A person automatically ceases to be a Director if:

- (a) the person is not permitted or eligible under the Applicable Act (or an order made under the Applicable Act) to be a Director;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under clause 15.2;
- (f) the person dies;
- (g) the person is not re-elected as a Director by Members or re-appointed as a Director by the Board under clause 14.1;
- (h) the person ceases to be the Chief Executive Officer; or
- (i) the term for which the person was appointed expires.

## **16 Executive**

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### **16.1 Chairperson and Chief Executive Officer**

The Board will from time to time appoint a Chairperson, a Deputy Chairperson, a Treasurer and a Chief Executive Officer.

### **16.2 Chief Executive Officer**

- (a) The Chief Executive Officer appointed by the Board will be remunerated for their services as an employee of the Company, and can be removed or dismissed from time to time by the Board from the office of Chief Executive Officer.
- (b) The Board may from time to time delegate to any Chief Executive Officer such of their powers as they think fit.

## **17 Remuneration of Directors**

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### **17.1 Honorary**

The Company must not pay fees to a Director for acting as a Director.

### **17.2 Expenses**

The Company may pay Directors all reasonable travelling and other expenses properly incurred:

- (a) in attending Board meetings or any meetings of committees of Directors;
- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business.

### **17.3 Extra services**

The Company may:

- (a) Remunerate a Director for performing any extra services or making special exertions (including going or living away from the Director's usual residential address) at the request of the Board and for the purposes of the Company; and
- (b) pay a Director if they are engaged to work for the Company other than as a Director.

### **17.4 Board approval**

All payments to Directors under clauses 17.2 and 17.3 must be approved by the Board.

## **18 Powers and duties of Directors**

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### **18.1 Management of the Company**

The business of the Company will be managed by the Board. The Board may exercise all the powers of the Company except any powers that are required by this Constitution or the Applicable Act to be exercised by the Company in general meeting.

### **18.2 Specific powers**

Without limiting the generality of clause 18.1, the Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) grant Security Interests in relation to any of the Company's property or business to secure any debt, liability or obligation of the Company or any other person;
- (c) guarantee, indemnify or otherwise become liable for the payment of money or the performance of any obligation by or of any other person; and
- (d) pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by the Company,

on any terms determined by the Board.

### **18.3 Duties under the Applicable Act**

A Director must comply with the Applicable Act and fulfil any duties prescribed in the Applicable Act and the common law including:

- (a) reasonable care and diligence;
- (b) good faith and proper purpose;

- (c) proper use of position;
- (d) proper use of information;
- (e) disclosure of any material personal interest in the manner set out in clause 18.5.
- (f) responsible management of financial affairs; and
- (g) not to allow the Company to trade while insolvent.

#### **18.4 No disqualification**

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office, place of profit or position of employment with the Company;
- (b) acting in a professional capacity for the Company;
- (c) being a member or creditor of any corporation (including the Company) or partnership; or
- (d) entering into any agreement or arrangement with the Company.

#### **18.5 Disclosure of interests**

If required by the Applicable Act, a Director must disclose to the Board any material personal interest the Director has in a matter relating to the affairs of the Company. The Secretary must record details of any such disclosures in the minutes of the relevant Board meeting.

#### **18.6 Voting if Director has an interest**

- (a) A director who has a material personal interest in a matter being considered at a Board meeting must not, except as provided under this clause 18.6:
  - (i) be present at the Board meeting while the matter is being discussed; or
  - (ii) vote on the matter.
- (b) A director may still be present, counted towards quorum and vote if:
  - (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;
  - (ii) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 28);
  - (iii) their interest relates to a payment by the Company under clause 28, or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (iv) the regulator under the Applicable Act makes an order allowing the Director to vote on the matter; or
  - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
    - (B) states that those Directors are satisfied that the interest should not stop the Director from being present or voting.
- (c) Subject to clause 18.6(b) any transactions that relate to the interest may proceed and the Director may participate in the execution of any relevant document; and if disclosure is made before the transaction is entered into:



- (i) the Director may retain benefits under the transaction; and
- (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

## **18.7 Confidentiality**

Every Director and other agent or officer of the Company must:

- (a) keep the transactions and affairs of the Company confidential, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) as required by the Board or the Company in general meeting; and
  - (iii) as required by law.
- (b) if requested by the Board, sign a confidentiality undertaking consistent with this clause.

## **19 Delegation of Directors' powers**

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### **19.1 Power to delegate**

The Board may delegate any of its powers to:

- (a) a committee;
- (b) a Director;
- (c) an employee or adviser of the Company; or
- (d) an attorney.

### **19.2 Terms of delegation**

A delegation of powers under clause 19.1 may:

- (a) be made for a specified period or without specifying a period;
- (b) be made on the terms (including the power to delegate further) and subject to any restrictions that the Board determines; and
- (c) may contain provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

### **19.3 Delegate to comply with directions**

A delegate under clause 19.1 must exercise its powers subject to any direction from the Board.

### **19.4 Board may revoke delegation**

The Board may revoke a delegation of its powers at any time.

### **19.5 Advisory committee**

- (a) The Board may establish one or more advisory committees comprising such persons as the Board thinks fit. A member of an advisory committee may, but need not be, a Director or Member.
- (b) An advisory committee will act in an advisory capacity only and in the exercise of the powers delegated in accordance with this clause 18.7, conform to any direction from the Board.

## **19.6 Proceedings of advisory committee**

Subject to the terms on which power is delegated to any committee and any directions from the Board:

- (a) a committee is free to determine the rules that regulate its meetings and proceedings; and
- (b) in the absence of such a determination, the rules will be the same as those that govern Board meetings in this Constitution, so far as they are applicable,

and the Board may change any of the powers, duties and functions of a committee, may remove any member of a committee or dissolve a committee at any time.

## **20 Board meetings**

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### **20.1 Procedure**

Subject to this Constitution and the Corporations Act, the Board may meet, adjourn and otherwise regulate its meetings as it determines. The Board may invite any other person it considers necessary or appropriate to attend and speak at any meeting but that person is not entitled to vote.

### **20.2 Calling**

A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting.

### **20.3 Notice**

Each Director must be given reasonable notice of a Board meeting or the resumption of an adjourned Board meeting. Notice may be given in any manner determined or adopted by the Board from time to time.

### **20.4 Use of technology**

- (a) A Board meeting can be held using audio or audio-visual technology.
- (b) If a Board meeting is held by audio or audio-visual technology:
  - (i) a Director is treated as present if the Director is able to hear and be heard by all others attending; and
  - (ii) unless the Chairperson is notified that a Director is leaving the meeting, the Director will be assumed to have been present for the duration of the meeting.
- (c) A minute certified by the Chairperson of such a meeting will be conclusive evidence of the proceedings at that meeting and the observance of all necessary formalities.

### **20.5 Quorum**

The quorum necessary for the transaction of business at a Board meeting is three Directors unless the Board determines a greater number. A quorum must be present for the entire meeting.

### **20.6 Chairperson**

The Chairperson (or, in the Chairperson's absence, the Deputy Chairperson) will chair every meeting of the Board. If:

- (a) there is no Chairperson or Deputy Chairperson; or
- (b) neither the Chairperson nor the Deputy Chairperson is present within 15 minutes after the time appointed for holding the meeting; or

- (c) both the Chairperson and the Deputy Chairperson are unwilling to act as chair of the meeting,

the Directors present and entitled to vote will elect a Director to chair the meeting.

## **20.7 Decisions**

A resolution of the Board must be passed by a majority of votes cast by Directors. If an equal number of votes is cast for and against a resolution:

- (a) the Chairperson does not have a casting vote in addition to the Chairperson's vote as a Director; and
- (b) the resolution is not passed.

## **20.8 Too few Directors**

The Directors may continue to act even if there are vacancies on the Board. If the number of Directors is reduced below the minimum required under clause 14.1, the continuing Directors may act as a Board only:

- (a) to convene a general meeting of Members; or
- (b) in emergencies.

## **20.9 Written resolutions passed by multiple Directors**

The Directors may pass a resolution without holding a Board meeting 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.

## **20.10 Signing written resolutions**

For the purposes of clause 20.9, the Company may accept a copy of a signed document sent by electronic means.

## **20.11 Valid proceedings**

Each resolution passed or other thing done by or with the participation of a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing that thing.

# **21 Secretary**

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## **21.1 Appointment**

Subject to the Corporations Act, the Board must appoint a Secretary who may also be a Director. The appointment may be made for a specified period or without specifying a period and the Board may remove the Secretary from office at any time.

## **21.2 Terms**

The appointment of a Secretary will be on the terms that the Board determines.

## **21.3 Role of the Secretary**

The role of the Secretary includes maintaining the Register and maintaining the Minutes in accordance with clause 22.

## **21.4 Cessation of appointment**

A person automatically ceases to be a Secretary if:

- (a) the person is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary;
- (b) the person becomes bankrupt or enters into or becomes subject to any arrangement or composition with one or more of its creditors;
- (c) the person becomes mentally incapable or a person whose estate or property is liable to be dealt with in any way under any law relating to mental health;
- (d) the person resigns by notice in writing to the Company;
- (e) the person is removed from office under clause 21.1;
- (f) the person dies; or
- (g) the term for which the person was appointed expires.

## **22 Minutes**

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### **22.1 Board must keep minutes**

The Board must cause minutes to be kept of:

- (a) the proceedings and resolutions of meetings of Members and Directors;
- (b) the names of Directors present at each meeting of Directors;
- (c) any resolutions passed by Members or Directors without a meeting;
- (d) any disclosures or notices of Directors' interests; and
- (e) any other matters for which the Applicable Act requires minutes to be kept.

### **22.2 Minutes must be signed**

Minutes must be signed in accordance with the Applicable Act. Minutes of a meeting must be signed within a reasonable time after the meeting by:

- (a) the Chairperson or the chair of that meeting; or
- (b) the Chairperson or the chair of the next meeting.

### **22.3 Minutes as evidence**

A minute recorded and signed in accordance with the Applicable Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proven.

### **22.4 Access to minutes**

The Company must ensure that the minute books for meetings of Members and for resolutions passed by Members without meetings are open for inspection by Members in accordance with the Applicable Act.

## **23 Execution of documents**

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A document will be binding on the Company if signed by two Directors or a Director and a Secretary or some other person or combination of persons appointed by the Board for that purpose.

## **24 Accounts**

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### **24.1 Obligations**

In accordance with the Applicable Act the Company must:

- (a) keep written financial records that:
  - (i) correctly record and explain its transactions and financial position and performance;
  - (ii) enable true and fair financial statements to be prepared and to be audited; and
- (b) prepare any reports required.

### **24.2 Inspection**

A Member who is not a Director does not have any right to inspect the Company's financial records except:

- (a) as authorised by the Board on terms determined by the Board; or
- (b) as required by the Applicable Act.

## **25 Audit**

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The Board must appoint an auditor unless the Members at a general meeting have appointed an auditor or unless otherwise required or permitted by the Applicable Act.

## **26 Notices**

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### **26.1 Method**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature); and
- (b) either:
  - (i) delivered personally;
  - (ii) sent by post to that person's registered address or an alternative address nominated by that person; or
  - (iii) sent to an electronic address nominated by that person.

### **26.2 Receipt**

A notice given in accordance with clause 26.1 is taken as having been given and received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post either:
  - (i) on the day on which the relevant postal service estimates delivery will occur; or
  - (ii) on the first day of the period during which the relevant postal service estimates delivery will occur,

based on the most recent estimate published by the relevant postal service as at the date on which the Notice is sent; or

if transmitted by e-mail, on transmission,

but if the delivery or transmission is not on a business day or is after 5.00pm (recipient's time) on a business day, the notice is taken to be received at 9.00am (recipient's time) on the next business day.

### **26.3 Evidence of service**

A certificate in writing signed by a Director or Secretary that a notice was sent is conclusive evidence of service.

## **27 Winding up**

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### **27.1 Distribution of Company's assets**

On the winding up or deregistration of the Company all surplus assets of the Company (including, without limitation, the Gift Fund), after satisfaction of all debts and liabilities of the Company, must be paid, distributed or transferred to:

- (a) one or more Eligible Charities; or
- (b) to the extent required or permitted by the Tax Act, funds, charitable at law, which comply with the requirements of item 2 of the table in section 30-15 of the Tax Act.

### **27.2 Conditions of distribution to Eligible Charities**

Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the Tax Act are satisfied, a transfer under this clause 27 must be made in accordance with those conditions.

### **27.3 Identity of Eligible Charities**

The identity of an Eligible Charity for the purposes of this clause 27 will be determined by the Board and (if applicable) approved by the Commissioner and, in default, will be determined by the Supreme Court of Victoria.

## **28 Indemnity and insurance**

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### **28.1 Indemnity and insurance**

Subject to and to the maximum extent permitted under the law, the Company:

- (a) indemnifies each of its officers; and
- (b) may enter into and pay premiums on a contract insuring any of its officers, against any liability incurred by an officer in that capacity, including any legal costs incurred in defending an action for such a liability.

### **28.2 Survival of indemnity**

The indemnity in clause 28.1 will continue notwithstanding that an officer ceases to be an officer of the Company.

### **28.3 Indemnity and insurance subject to law**

For the avoidance of doubt:

- (a) the indemnity in clause 28.1 does not apply so as to indemnify an officer from any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act; and
- (b) the Company may not insure an officer against any liability for which the Company is prohibited from indemnifying the officer under the Corporations Act.