

# Constitution of JewishCare (ACN 000 041 529)

The Corporations Act

A public company limited by guarantee

Incorporated in New South Wales

**Constitution adopted by a special resolution  
passed on 26 November 2008**

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## General

### 1. Definitions

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The following definitions apply in this Constitution unless the context requires otherwise:

**Chair** means the person occupying the position of Chair or acting Chair of the Directors under rule 24.

**Corporations Act** means the *Corporations Act 2001* (Cth) and the Corporations Regulations.

**Deductible Gift Recipient** has the meaning given in the *Income Tax Assessment Act 1997* (Cth).

**Director** means a person appointed or elected to the office of director of the company in accordance with this Constitution and where appropriate includes an alternate Director.

**Gift** means a donation, contribution, gift, settlement, benefaction or other voluntary transfer or disposition of money, money's worth, property or benefits and whether inter vivos or by will.

**Gift Fund** means the gift fund established and maintained by the company in respect of its endorsement as a Deductible Gift Recipient pursuant to rule 5.

**Member Present** means, in connection with a meeting, the member present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the member is a body corporate, by representative.

**person** and words importing persons means any person including partnerships, associations and bodies corporate, unincorporated bodies and all other entities or associations recognised by law as well as natural persons.

**Prescribed Rate** means the base rate charged by the company's principal banker to corporate customers from time to time in respect of overdraft loans in excess of \$100,000 calculated on a daily basis and a year of 365 days.

**President** means the person occupying the position of president of the company under rule 40.

**Seal** means any common seal or duplicate common seal of the company.

**Secretary** means a person appointed as, or to perform the duties of, secretary of the company.

**Vice President** means the person occupying the position of vice president of the company under rule 40.

### 2. Interpretation

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Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise.

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- (a) The singular includes the plural and conversely.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (d) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.
- (e) A mention of anything after *include*, *includes* or *including* does not limit what else might be included.

### **3. Replaceable Rules and Transitional Matters**

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- (a) The replaceable rules contained in the Corporations Act do not apply to the company.
- (b) This Constitution supersedes the constitution (comprising the Memorandum and Articles of Association in force immediately before adoption). Everything done under the previous constitution continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution. In particular (without limitation) every Director in office immediately before adopted of this Constitution is taken to have been appointed under this Constitution.

## **Objects**

### **4. Purpose and Objects**

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The principal purpose of the company is to provide a range of services to Jewish people in order to build resilience and independence, direct relief of suffering, distress, misfortune and helplessness to members of the public in Australia in a non-discriminatory way. In pursuit of the principal purpose, the objects of the company are:

- (a) establishing and administering a Gift Fund for the purpose of collecting Gifts for the company in accordance with rule 5.
- (b) To deliver direct services to people in need and facilitate their access to other community services.
- (c) raising funds from the public to assist in the charitable activities of the company.
- (d) receiving Gifts for the furtherance of the purpose of the company.
- (e) conducting other activities incidental to or associated with the purpose of the company.

## Gift Fund

### 5. Establishment of Gift Fund

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At all times during which the company operates a fund, authority or institution which is endorsed as a Deductible Gift Recipient, the company must maintain a Gift Fund to which Gifts to the company for the principal purpose of that fund, authority or institution are to be made, subject to the following:

- (a) any Gifts received by the company will be placed in a separate bank account;
- (b) all Gifts made to the Gift Fund must be separately identified and kept separately from any other funds of the company; and
- (c) the Gift Fund must operate otherwise in accordance with any applicable requirements of the *Income Tax Assessment Act 1997* (Cth).

### 6. Accounting policies

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The company must establish and maintain internal accounting policies exclusively for money, property and benefits received for the Gift Fund.

### 7. Books of account

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The company must ensure that proper books of account and other records are kept in respect of all receipts and payments and otherwise in relation to the Gift Fund.

### 8. Winding up or revocation of endorsement

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On the earlier of:

- (a) the winding up of the fund, authority or institution; and
- (b) if the company is endorsed as a Deductible Gift Recipient because of the fund, authority or institution, the revocation of that endorsement,

any property whatsoever of the Gift Fund that remains after satisfaction of all debts and liabilities attributable to the Gift Fund, must be dealt with in the same manner as is described in rule 57.

## Income and Property

### 9. Application of Income and Property

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- (a) Subject to rules 9(b) and 10, the profits (if any) or other income and property of the company must:
  - (i) be applied solely towards the promotion of the objects of the company and no portion of it may be paid or transferred, directly or indirectly, to any

- member of the company whether by way of dividend, bonus or otherwise;  
and
- (ii) pending application in accordance with rule 9(a)(i), must be invested in accordance with Division 2 of the *Trustee Act 1925* (NSW).
- (b) Nothing in rule 9(a) prevents any payment in good faith by the company of:
- (i) reasonable and proper remuneration to any member for any services actually rendered or goods supplied in the ordinary and usual course of business to the company;
  - (ii) the payment of or reimbursement for expenses properly incurred by a member of the company on behalf of the company where the amount payable does not exceed an amount previously approved by the Directors;
  - (iii) reasonable and proper rent for premises let or demised by any member of the company to the company;
  - (iv) moneys to any member, being a lawyer, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service;  
or
  - (v) interest at a rate not exceeding the Prescribed Rate on money borrowed from members of the company.

## **10. No Fees for Directors**

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The company must not pay fees to Directors but the company may make payments in good faith for:

- (a) the payment of or reimbursement for all travelling and other expenses properly incurred by Directors in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the company or otherwise in connection with the business or affairs of the company where the amount payable does not exceed an amount previously approved by the Directors;
- (b) moneys to any director, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service;
- (c) any salary or wage due to the director as an employee of the company where the terms of employment have been approved by the Directors of the company;

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- (d) any indemnity, exemption or insurance premium in respect of a liability incurred as an officer of the company or an agreement to give an indemnity or exemption or pay an insurance premium of that kind, to which section 212(1) of the Corporations Act refers or the provision of a financial benefit to a director to which section 212(2) of the Corporations Act refers; and
- (e) any other payment to any Director approved by the Directors.

### Liability

#### 11. Limited Liability

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The liability of the members is limited.

#### 12. Extent of Liability

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Each member undertakes to contribute to the property of the company if the company is wound up while he, she or it is a member or within 1 year after he, she or it ceases to be a member, for payment of the company's debts and liabilities contracted before he, she or it ceases to be a member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, but not exceeding \$20.

### Membership

#### 13. Members

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- (a) The Directors may determine a maximum or minimum number of members. Until the Directors determine otherwise, the minimum number is 1 and the maximum number is unlimited.
- (b) The members of the company are:
  - (i) the persons specified, with their consent, as a proposed member in the company's application for registration; and
  - (ii) any other persons admitted to membership in accordance with this Constitution.
- (c) Members of the company who are natural persons must be aged 18 years or over.

#### 14. Classes and Procedures for Membership

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Subject to the Corporations Act, the Directors may:

- (a) prescribe different classes of members with preferred, deferred or other special rights, privileges, obligations or otherwise, and vary or cancel the rights, privileges, obligations or otherwise attached to a class and reclassify existing members;

- (b) prescribe conditions for eligibility for membership and amend or revoke those conditions; and
  - (c) prescribe procedures for applying for membership and amend or revoke those procedures,
- as the Directors may determine and on any terms the Directors consider appropriate.

## **15. Admission of Members**

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- (a) The Directors in their absolute discretion may admit as a member any person who has agreed in writing to become a member of the company.
- (b) When the Directors decide on an application for membership, the Secretary (or another person appointed by the Directors for that purpose) must give notice in writing to the applicant of the decision and if the application has been accepted, request payment of any entrance fee and annual subscription which may be payable under this Constitution.
- (c) The notice given under rule 15(b) may be given in the manner set out in rule 56 as if it were a notice to a member.
- (d) If a person who the Directors have decided to admit as a member does not pay the entrance fee and annual subscription within 30 days after the date on which that person is given notice that the entrance fee (if any) and annual subscription (if any) is payable, the Directors, in their absolute discretion, may revoke their decision to admit the person as a member, whether or not payment is made after the due date.
- (e) Subject to rule 15(d), on the making by the Directors of the decision to admit a person as a member and the payment of any entrance fee and annual subscription the person immediately becomes a member of the company.

## **16. Entrance Fees and Annual Subscription**

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- (a) The Directors may determine the entrance fee (if any) and annual subscription (if any). Until otherwise determined, no entrance fee or annual subscriptions are payable.
- (b) The Directors may determine that different entrance fees or annual subscriptions are payable by different classes of members.
- (c) If annual subscriptions are payable, the Directors may determine when the annual subscription period commences, when annual subscriptions are due and payable and any other requirements or arrangements for the payment of annual subscriptions as the Directors think necessary or appropriate.

## Cessation of Membership

### 17. Non-payment of Annual Subscriptions

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If the annual subscription of a member remains unpaid for a period of 30 days after it becomes due and payable, the Secretary must give notice to the member of that fact. If the annual subscription remains unpaid at the end of 21 days after the date of the notice from the Secretary, the Directors may, as they think fit, take various courses of action, including, but not limited to, the following:

- (a) suspend the member from all or any rights or privileges of membership and, if the Directors think fit, reinstate the member's rights or privileges on payment of all arrears; or
- (b) immediately, or after a period of suspension, expel the member from the company, whether or not all arrears have then been paid.

### 18. Misconduct of a Member

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- (a) If any member:
  - (i) is in breach of the provisions of this Constitution; or
  - (ii) is guilty of any act or omission which, in the opinion of the Directors is unbecoming of a member, or prejudicial to the interests of the company, the Directors may do any one or more of:
    - (iii) caution, censure or suspend the member;
    - (iv) suspend some or all of the member's rights, privileges or obligations of membership,or instead of the foregoing, expel the member from the company.
- (b) The Directors must not caution, censure or suspend a member, suspend a member's rights, privileges or obligations or expel a member, under rule 18(a) unless:
  - (i) at least 7 days notice is given to the member stating the date, time and place at which the question of the caution, censure, suspension or expulsion is to be considered by the Directors, and the nature of the alleged misconduct; and
  - (ii) the member (or, in the discretion of the Directors, a person appointed as a representative by the member) is given the opportunity to give to the Directors, orally or in writing, any explanation or defence that the member thinks fit.
- (c) Subject to rule 18(b), a member who is cautioned, censured, suspended or expelled or some of whose rights, privileges or obligations are suspended, under rule 18(a) has no right of appeal.

## **19. Other Grounds for Cessation of Membership**

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A member ceases to be a member:

- (a) in the case of a member who is a natural person, on the date that the member:
  - (i) resigns by notice in writing to the company;
  - (ii) dies;
  - (iii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (iv) becomes bankrupt;
  - (v) is imprisoned for any period or is convicted of a felony or an indictable offence; or
- (b) in the case of a member which is a body corporate, on the date that:
  - (i) the member resigns by notice in writing to the company;
  - (ii) a liquidator is appointed in connection with the winding-up of the member;
  - (iii) an order is made by a court for the winding-up or deregistration of the member; or
  - (iv) the member is otherwise dissolved, wound up, deregistered, terminated or ceases to exist.

## **20. Liability after Cessation**

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Any member who ceases to be a member:

- (a) is not entitled to any refund (or part refund) of an entrance fee or annual subscription;
- (b) remains liable for and must pay to the company all entrance fees, annual subscriptions and other moneys which were due by the member and unpaid on the date of ceasing to be a member; and
- (c) remains liable for amounts which the member is or may become liable to pay under rule 12.

## **General Meetings**

### **21. General Meetings**

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- (a) By resolution of the Directors, the company may call a general meeting of the company to be held at the time and place and in the manner determined by resolution of the Directors.
- (b) The company may cancel or postpone a general meeting or change the place at which it is to be held by notice in writing to all persons who were entitled to receive

notice of that meeting except where the cancellation or postponement would be contrary to the Corporations Act.

- (c) Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

## **22. Notice of General Meetings**

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A notice of a general meeting is to specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate any resolution passed at the meeting.

## **23. Quorum**

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- (a) No business may be transacted at any general meeting except, subject to rule 24, the election of the Chair unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, 10 Members Present constitutes a quorum.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Chair or the Directors adjourn the meeting to a date, time and place determined by the Chair or the Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- (d) For the avoidance of doubt, 3 Members Present at an adjourned meeting constitutes a quorum.

## **24. Conduct of Meetings**

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- (a) Subject to rule 24(b), the Chair of Directors or, in the Chair's absence, the deputy Chair is entitled to preside as Chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no Chair or deputy Chair; or
  - (ii) the Chair or deputy Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as Chair of the meeting,the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present may elect one of their number to be Chair of the meeting.
- (c) The general conduct of each general meeting of the company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chair.

- (d) The Chair may make rulings without putting the question (or any question) to the vote if the Chair considers action is required to ensure the orderly conduct of the meeting.
- (e) At any time the Chair considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (f) Any determination by the Chair in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard to vote may only be made at the meeting and may be determined by the Chair whose decision is final.
- (g) If a person purports to cast a vote in contravention of the Corporations Act, the Chair may determine that the vote be disregarded and treated as not having been cast.
- (h) Nothing contained in this rule limits the powers conferred on a Chair by law.

## **25. Adjournments**

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During the course of the meeting the Chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair. If the Chair exercises a right of adjournment of a meeting under this rule, the Chair has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **26. Voting at General Meetings**

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- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Members Present and entitled to vote, unless a poll is demanded.
- (b) Unless a poll is demanded, a declaration by the Chair following a vote on a show of hands that a resolution has been passed or lost is conclusive.
- (c) A poll may be demanded by a member in accordance with the Corporations Act (and not otherwise) or by the Chair. No poll may be demanded on the election of a Chair of a meeting or, unless the Chair otherwise determines, the adjournment of a meeting. A demand for a poll may be withdrawn.

## **27. Special Meetings**

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All the provisions of this Constitution as to general meetings apply to any special meeting of any class of members which may be held under the operation of this Constitution or the Corporations Act.

## **28. Procedure for Polls**

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- (a) When demanded, a poll may be taken in the manner and at the time the Chair directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the Chair considers appropriate.
- (c) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

## **29. Chair has Casting Vote**

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In the case of an equality of votes on a show of hands or on a poll the Chair of the meeting has a casting vote in addition to any vote to which the Chair may be entitled as a member or as a proxy, attorney or properly appointed representative of a member.

## **30. Representation and Voting of Members**

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Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of membership:

- (a) at meetings of members or classes of members each member entitled to attend and vote may attend and vote in person or by proxy, by attorney or (where the member is a body corporate) by representative;
- (b) on a show of hands:
  - (i) subject to paragraph (ii), each Member Present has 1 vote; and
  - (ii) where a person is entitled to vote because of paragraph (i) in more than one capacity, that person is entitled only to 1 vote; and
- (c) on a poll, only Members Present may vote and every Member Present having the right to vote on the resolution has 1 vote.

## **31. Restriction on Voting Rights**

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A member is not entitled to vote at a general meeting unless all sums presently payable by the member in respect of membership have been paid.

### 32. Form of Proxy

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- (a) A member who is entitled to attend and vote at a meeting of the company may appoint a person as a proxy to attend and vote for the member in accordance with the Corporations Act but not otherwise. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the member on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (b) A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Directors may prescribe or accept.
- (c) Any appointment of proxy under this rule 32 which is incomplete may be completed by the Secretary on the authority of the Directors and the Directors may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- (d) Where a notice of meeting provides for electronic lodgement of proxies, a proxy lodged at the electronic address specified in the notice is taken to have been received at the registered office and validated by the member if there is compliance with the requirements set out in the notice.

### 33. Validity of Proxies

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- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
  - (i) the previous death or unsoundness of mind of the principal;
  - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or
  - (iii) the transfer of the share in respect of which the instrument or power is given,if no notice in writing of the death, unsoundness of mind, revocation or transfer (as the case may be) has been received by the company at its registered office at least 48 hours (or any shorter period as the Directors may permit or specified by the Corporations Act) before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.
- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.
- (c) Voting instructions given by a member to a Director or employee of the company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy or, in the case of new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the registered office of the company at least 48 hours

before the meeting or adjourned meeting by a notice in writing signed by the member or they are otherwise validated by the member in a manner acceptable to the Directors in their discretion prior to the commencement of the meeting.

#### **34. Appointment of Patrons**

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- (a) Subject to rule 34(b), the company may appoint patrons on recommendation by the Directors on the terms and conditions they see fit.
- (b) Not more than 2 patrons shall hold office at any one time.

### **Appointment, Removal and Remuneration Of Directors**

#### **35. Appointment of Directors**

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- (a) The Board shall consist of not less than 7 and not more than 20 Directors. Three of those Directors will occupy the following offices (with one Director for each such office):
  - (i) President;
  - (ii) Vice President; and
  - (iii) Treasurer.
- (b) A Director must be a member and a natural person.
- (c)
  - (i) The Directors at any time; and
  - (ii) the company in general meeting,may appoint any person as a Director either to fill a casual vacancy or as an addition to the board of Directors but so that the number of Directors does not exceed the maximum number determined by rule 35(a).
- (d) A Director shall remain appointed to the Board until the first to occur of:
  - (i) the Director retiring from the Board,
  - (ii) the Director being removed at a general meeting of the company, or
  - (iii) the office of the Director becoming vacant pursuant to the requirements of the Corporations Act or rule 37.

#### **36. Voluntary Retirement and Removal of Directors**

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- (a) A Director may retire from the Board by giving one month's written notice to the Board. The retirement takes effect on the day that the notice expires or any earlier time accepted by the Board.
- (b) At a general meeting, the company may, by Special Resolution, remove any member of the Board of Directors before the expiration of the Director's term of office.

### **37. Vacation of Office in respect of Directors**

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In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns by notice in writing to the company;
- (c) is absent without the consent of the Directors from meetings of the Directors held during a continuous period of 6 months; or
- (d) dies.

### **38. Directors May Lend to the Company**

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Any Director may lend money to the company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the company and underwrite or guarantee the subscription of securities of any corporation in which the company may be interested without being disqualified in respect of the office of Director and without being liable to account to the company for the commission or profit.

### **39. Exercise of Voting Power in Other Corporations**

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The Directors may exercise the voting power conferred by the shares in any corporation held or owned by the company as the Directors determine (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them Directors of that corporation or voting or providing for the payment of remuneration to the Directors of that corporation) and a Director of the company may vote in favour of the exercise of those voting rights, despite the fact that the Director is, or may be about to be appointed, a Director of that other corporation and may be interested in the exercise of those voting rights.

### **President, Vice President and Treasurer**

### **40. Appointment of President, Vice President and Treasurer**

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- (a) The President, the Vice President and the Treasurer will be elected at a general meeting for a one-year term.
- (b) The President, the Vice President and the Treasurer retiring at a general meeting will be eligible for re-election.

## **Chief Executive Officer and Powers of Directors**

### **41. Appointment of a Chief Executive Officer**

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The Directors may appoint a person to the office of Chief Executive Officer for the period and on the terms as they determine. Subject to the terms of any agreement entered into in a particular case, the Directors may at any time revoke any appointment.

### **42. Powers of Directors and Chief Executive Officer**

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- (a) The business of the company is managed by the Directors, who may exercise all powers of the company which are not, by the law or this Constitution, required to be exercised by the company in general meeting.
- (b) The Directors may, on the terms and conditions and with any restrictions as they determine, delegate to a Chief Executive Officer any of the powers exercisable by them and may at any time withdraw, suspend or vary any of those powers conferred on the Chief Executive Officer.
- (c) The Directors may make rules for the establishment and conduct of any Gift Fund and amend, revoke and replace such rules.

## **Secretary**

### **43. Appointment and Powers**

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- (a) There must be at least one Secretary who is to be appointed by the Directors.
- (b) A Secretary of the company holds office on the terms and conditions, and with the powers, duties and authorities, as the Directors decide.

### **44. Termination**

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- (a) The Directors may at any time terminate the appointment of a Secretary.

## **Proceedings of Directors**

### **45. Proceedings**

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- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they determine.
- (b) The quorum necessary for the transaction of the business of the Directors shall be the presence at a meeting of Directors, in person or by technology, of a majority of the Directors or such greater number as may be fixed by the Directors.
- (c) Notice of meeting of the Directors may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or

residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

- (d) A meeting may be called by any 3 Directors at any time, and the Secretary must on the request of the Directors, call a meeting of the Directors.

#### **46. Meetings by Technology**

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- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors meeting:

- (i) video;
- (ii) telephone;
- (iii) electronic mail;
- (iv) any other technology which permits each Director to communicate with every other Director; or
- (v) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
- (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.

#### **47. Chair of Directors**

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- (a) The Directors may elect one of their number as their Chair and may decide the period for which the Chair is to hold office as Chair. References to the Chair in this Constitution include, in the absence of the Chair, the deputy Chair (unless the context otherwise requires).
- (b) Where a meeting of Directors is held and:
- (i) a Chair has not been elected as provided by rule 47(a); or
  - (ii) the Chair is not present at the time appointed for the holding of the meeting or does not wish to Chair the meeting,
- the Directors present may elect one of their number to be Chair of the meeting.

#### **48. Chair has Casting Vote**

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In the case of an equality of votes the Chair of the meeting of Directors has a casting vote in addition to any vote to which the Chair may be entitled as a Director.

#### **49. Directors' Voting Rights and Exercise of Powers**

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- (a) Subject to this Constitution, questions arising at a meeting of Directors are decided by a majority of votes of Directors present and voting.
- (b) In the case of an equality of votes, the Chair of the meeting has a casting vote in addition to the Chair's deliberative vote.
- (c) Subject to rule 50 and the Corporations Act, a Director:
  - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum;
  - (ii) may enter into contracts with, or otherwise have dealings with, the company; and
  - (iii) may hold other offices in the company.
- (d) A Director is not liable to account to the company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (e) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the company of financial products.
- (f) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

#### **50. Material Personal Interests**

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- (a) A Director is not disqualified from the Director's office by contracting with the company or any related body corporate of the company in any capacity by reason of holding the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
  - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (ii) a contract or arrangement made by the company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (iii) the Director will not be liable to account to the company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.

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- (c) Subject to rule 50(d), a Director who has a material personal interest in a matter that relates to the affairs of the company must give the other Directors notice of his or her interest.
- (d) A Director with a material personal interest in a matter that relates to the affairs of the company is not required to give notice in the following circumstances:
  - (i) if all of the following conditions are met:
    - (A) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the company;
    - (B) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
    - (C) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
  - (ii) if the Director has given a standing notice of the nature and extent of the interest in accordance with the Corporations Act and that standing notice is still effective in relation to the interest; or
  - (iii) as otherwise permitted under the Corporations Act.
- (e) Notices of material personal interest given by Directors must:
  - (i) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the company;
  - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
  - (iii) be recorded in the minutes of the Directors' meeting at which the notice is given.
- (f) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:
  - (i) if the material personal interest is not required to be disclosed under this rule or under the Corporations Act; or
  - (ii) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
    - (A) identified the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the company; and
    - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present; or
  - (iii) as otherwise permitted under the Corporations Act.
- (g) Nothing in this rule affects the duty of a Director:
  - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors'

duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict; or

- (ii) to comply with the Corporations Act.

## 51. Committees

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- (a) The Directors may delegate any of their powers to committees consisting of any 1 or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. A delegate of the Directors may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not in conflict with or superseded by, any regulations made by the Directors under rule 51(a).
- (c) Nothing in this rule 51 limits the power of the Directors to delegate.

## 52. Written Resolutions

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A resolution in writing signed by all Directors or a resolution in writing of which notice has been given to all Directors and which is signed by a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Directors) is a valid resolution of the Directors and is effective when signed by the last of all the Directors or the last of the Directors constituting the majority, as required. For the purpose of this rule the references to **Directors** include any alternate Director for the time being present in Australia who is appointed by a Director for the time being not present in Australia but do not include any other alternate Director. The resolution may consist of several documents in the same form each signed by 1 or more of the Directors. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director and is deemed to be signed when received in legible form.

## 53. Defects in Appointments

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- (a) All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the

number of Directors to that number or of calling a general meeting of the company but for no other purpose.

#### **54. Alternate Directors**

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Subject to this constitution, each Director may appoint any person approved by a majority of the other Directors, to act as an alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the registered office or to a meeting of the Directors. The appointment takes effect on approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of the alternate Director is terminated or on receipt at the registered office of notice in writing from the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Directors and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;
- (d) the alternate Director is not (without affecting the right to reimbursement for expenses under rule 10(a)) entitled to receive any remuneration as a Director from the company;
- (e) the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors; and
- (g) the alternate Director is, while acting as a Director, responsible to the company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

#### **Seals**

#### **55. Seals and their Use**

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The company may have a common seal and a duplicate common seal which are to be used by the company as determined by the Directors.

## Notices

### 56. Notices Generally

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- (a) Any member who has not left at or sent to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the company may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by the company to any member by, in its discretion:
  - (i) serving it on the member personally;
  - (ii) sending it by post to the member or leaving it at the member's address as shown in the register of members or the address supplied by the member to the company for the giving of notices;
  - (iii) sending it to the fax number supplied by the member to the company for the giving of notices;
  - (iv) sending it electronically to the electronic mail address given by the member to the company for giving notices; or
  - (v) serving it in any manner contemplated in this rule 56(b) on a member's attorney as specified by the member in a notice given under rule 56(c).
- (c) By written notice to the Secretary left at or sent to the registered office, a member may request that all notices to be given by the company or the Directors be served on the member's attorney at an address specified in the notice and the company may do so in its discretion.
- (d) Notice to a member whose address for notices is outside Australia may be sent by airmail, air courier, fax or electronic mail.
- (e) Any notice sent by post is considered to have been served at the expiration of 24 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a member personally or left at the member's registered address is considered to have been served when delivered. Any notice served on a member by facsimile or other electronic transmission is considered to have been served when the transmission is sent.

## Winding Up

### 57. Winding up of Gift Fund

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Upon whichever is the first to occur of:

- (a) the winding up of the Gift Fund;
- (b) the revocation of the endorsement of the company as a Deductible Gift Recipient and in respect of which the company has a Gift Fund; and

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- (c) the winding up of the company, whether voluntarily or otherwise, at a time when the company is endorsed as a Deductible Gift Recipient and in respect of which the company has a Gift Fund,

any assets of the Gift Fund remaining after the payment of any liabilities attributable to the Gift Fund, must be paid or transferred to one or more funds, authorities or institutions (whether or not a member of the company):

- (i) having objects similar to the purpose and objects of the company;
- (ii) whose constitution prohibits the distribution of income and property to an extent at least as great as that imposed on the company under rule 9;
- (iii) the objects of which are charitable; and
- (iv) which are Deductible Gift Recipients.

The selection of the funds, authorities or institutions for the purposes of this rule must be made by the Directors before the winding up of the company or, if the Directors do not make a determination before the winding up of the company, by the persons who were the Directors of the company at the time the company was wound up.

## **58. Winding Up Generally**

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If, on the winding up of the company, whether voluntarily or otherwise, there remains any assets of the company (other than assets referred to in rule 57), after satisfaction of all the company's liabilities, the assets must not be paid to or distributed among the members of the company, but must be distributed to:

- (a) one or more institutions (including an institution which is a member of the company) determined by the Directors before the winding up the company:
  - (i) having objects similar to the purpose and objects of the company; and
  - (ii) whose constitution prohibits the distribution of income and property to an extent at least as great as that imposed on the company under rule 9; or
- (b) if there are no institutions meeting the requirements of paragraph (a), to one or more funds, authorities or institutions (whether or not a member of the company) determined by the Directors before the winding up of the company, the objects of which are charitable and gifts and contributions to which are deductible under Subdivision 30A of the *Income Tax Assessment Act 1997* (Cth); or
- (c) if the Directors do not make a determination pursuant to paragraphs (a) or (b) before the winding up of the company, to one or more funds, authorities or institutions meeting the requirements of either paragraphs (a) or (b) determined by the persons who were the Directors of the company at the time the company was wound up.

**59. Indemnity of Officers, Insurance and Access**

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- (a) The company is to indemnify each officer of the company out of the assets of the company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer.
- (b) Where the Directors consider it appropriate, the company may execute a documentary indemnity in any form in favour of any officer of the company or a subsidiary.
- (c) Where the Directors consider it appropriate, the company may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the company or a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the company or a subsidiary or in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the company or a subsidiary to make the payments.
- (d) Where the Directors consider it appropriate, the company may:
  - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
  - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule 59:
  - (i) **officer** means:
    - (A) a Director or Secretary, executive officer or employee; or
    - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the company,and includes a former officer.
  - (ii) **duties of the officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the company or, where applicable, the subsidiary of the company to any other corporation.
  - (iii) **to the relevant extent** means:
    - (A) to the extent the company is not precluded by law from doing so;
    - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and

- (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

## Amending the Constitution

### 60. Amending the Constitution

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A special resolution of the members to modify or repeal this Constitution or a provision of this Constitution does not have any effect unless the modification or repeal is approved by a resolution of the Directors.