

# Constitution

## International Women's Development Agency

**ACN:126 215 165**

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## International Women's Development Agency

### 1 Nature and Purposes of the Company

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#### 1.1 Public company limited by guarantee

The company is a public company limited by guarantee.

#### 1.2 Company's purposes

The purposes for which the company is established are:

- (a) The company is a voluntary organisation which undertakes development projects in partnership with women of other countries, and Aboriginal and migrant women in Australia, and gives priority to working with women who suffer poverty and oppression.
- (b) The development which the company seeks to promote is the equitable growth of people and communities, the just distribution of basic resources and respect for human rights.
- (c) The company actively promotes projects and programs which demonstrate women's competence and effectiveness as agents of development in agriculture, marketing, manufacturing, health, education, water supply and sanitation, housing and other fields.
- (d) The company assists women internationally to develop skills and to gain just access to resources.
- (e) The work of the company will include the identification, implementation and management of development projects, training and advisory services on women and development issues, and assistance in project design and evaluation.
- (f) The company has a board of women with representation to include women with overseas development experience. It seeks sponsorship and support from Australian women's organisations and other donors.

#### 1.3 Capacity and powers of the company

The company has the legal capacity and powers set out in section 124 of the Act.

#### 1.4 Application of the company's income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any member or director.
- (c) This rule 1.4 does not prohibit payment of fees or the indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

## 1.5 Payments to directors or members

All payments to directors or members must be approved by the directors including, but not limited to:

- (a) a service rendered to the company by a director or member in a professional or technical capacity or as an employee, where:
  - (1) the provision of the service has the prior approval of the directors; and
  - (2) the amount payable is not more than an amount that commercially would be reasonable payment for the service;
- (b) the payment of interest at a rate not exceeding interest at the rate for the time being charged by the company's bankers for overdrawn accounts on money borrowed from a member;
- (c) reasonable and proper rent for premises demised or let by any member.

## 2 Membership

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### 2.1 Application

- (a) The members are the members at the date of the adoption of this constitution, the directors and any other persons the directors admit to membership.
- (b) Every applicant for membership of the company must apply in the form and manner decided by the directors.
- (c) After receipt of an application for membership, the directors (or a delegate approved by the directors) must consider the application and decide whether to admit or reject the admission of the applicant. The directors need not give any reason for rejecting an application.

### 2.2 Death, resignation and other events

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) resigns as a member by giving written notice to the company;
- (c) ceases to be a director, unless the board otherwise directs;
- (d) becomes of unsound mind or the person is, or their estate is, liable to be dealt with in any way under a law relating to mental health;
- (e) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (f) is expelled under rule 2.3; or
- (g) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

### 2.3 Expulsion

- (a) The directors may by resolution expel a member who is not a director from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member.

- (b) If the directors intend to consider a resolution under rule 2.3(a), at least one week before the meeting at which the resolution is to be considered, they must give the member written notice:
  - (1) stating the date, place and time of the meeting;
  - (2) setting out the intended resolution and the grounds on which it is based; and
  - (3) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.

## **2.4 Liability of member**

The liability of the members is limited to the amount of the guarantee given in rule 2.5.

## **2.5 Guarantee by member**

Every member must contribute an amount not more than \$10 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:

- (a) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member; and
- (b) costs, charges and expenses of winding up.

# **3 Establishment and operation of Gift Account**

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## **3.1 Maintaining a Gift Account**

The company must maintain a management account (**Gift Account**):

- (a) to identify and record Gifts and Deductible Contributions;
- (b) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
- (c) that does not record any other money or property.

## **3.2 Taxation Administration Act requirements**

In accordance with section 385-15 of Schedule 1 of the Taxation Administration Act 1953 (Cth), the Gift Account must record and explain all other acts the company engages in that are relevant to the company's status as a deductible gift recipient and show the use of the Gift Account in accordance with rule 3.3.

## **3.3 Limits on use of Gift Account**

The company must use the Gift Account only for its principal purpose.

## **3.4 Winding up or revocation of deductible gift recipient endorsement**

- (a) Upon:
  - (1) the winding up of the company; or
  - (2) the company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97,

whichever is earlier, any surplus Gifts and Deductible Contributions and money received by the company because of those Gifts and Deductible Contributions must be transferred to an institution:

- (3) which is charitable at law;
  - (4) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 1.4; and
  - (5) gifts to which are deductible under Division 30 of ITAA 97 on the basis that it is characterised as a public benevolent institution as described in item 4.1.1 of the table in section 30-45.
- (b) The identity of the institution referred to in rule 3.4(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the members by ordinary resolution at or before the time of winding up of the company and, if the members do not decide, by the Supreme Court of the state or territory in which the company is registered.

### **3.5 Receipts**

Receipts for Gifts or Deductible Contributions must state the information required in the applicable provisions of section 30-228 of the ITAA 97.

### **3.6 Gift**

The term **Gift** means a gift to the company as described in item 1 of the table in section 30-15 of the ITAA 97.

## **4 Altering this constitution**

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### **4.1 Charity**

The company must not pass a special resolution altering the constitution, if, as a result, the company will cease to be a charity.

### **4.2 Notice to Commissioner**

- (a) The company must give written notice to the Commissioner if:
  - (1) a special resolution is passed materially altering rule 1; or
  - (2) the company ceases to be entitled to be endorsed as a tax concession charity or as a deductible gift recipient as a result of a change in its constitution or activities or otherwise.
- (b) The notice must be given as soon as possible after the passing of the special resolution or the cessation.

## **5 Directors**

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### **5.1 Appointment of directors**

- (a) The board of directors must be composed:

- (1) of at least the number of directors required by the Act;
  - (2) of at least 2 directors who ordinarily reside in Australia; and
  - (3) in a way that complies with any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the company.
- (b) The company may by resolution appoint or remove a director.
- (c) The directors may appoint any natural person to be a director, either to fill a casual vacancy or as an addition to the existing directors, provided before appointing the director, the proposed director signs a consent to act as a director.
- (d) Subject to rule 5.3 and to the terms of any agreement entered into between the company and the relevant director, a director holds office until the director dies or is removed from office under this rule 5.

## **5.2 Retirement of directors by rotation**

- (a) A director appointed by the directors under rule 5.1(c) who is not an executive director, holds office only until the conclusion of the next annual general meeting following his or her appointment.
- (b) At every annual general meeting if the number of directors, (after excluding any executive directors and any directors appointed by the directors under rule 5.1(c) and standing for election),
- (1) is 5 or less, then 2 of the remaining directors must retire from office; or
  - (2) if the number is more than 5, one third of those directors (to the nearest whole number) must retire from office.
- (c) No director (excluding any executive director) may hold office without re-election beyond the third annual general meeting following the meeting at which the director was last elected or re-elected.
- (d) The directors to retire under rule 5.2(b) are those directors who wish to retire and not offer themselves for re-election, those directors required to retire under rule 5.2(c) and, so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment. As between directors who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be decided by lot.
- (e) The directors to retire under rule 5.2(b) (both as to number and identity) is decided having regard to the composition of the board of directors at the date of the notice calling the annual general meeting. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice but before the meeting closes.
- (f) A director retiring from office is eligible for re-election subject to a maximum term of 9 years, unless the maximum term is varied for a particular director by the directors.
- (g) The retirement of a director from office and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.



### 5.3 Vacation of office

The office of a director becomes vacant:

- (a) in the circumstances prescribed by the Act or any other applicable law;
- (b) if the director resigns by written notice to the company;
- (c) if the director is removed from office under rule 5.1;  
if the director misses three consecutive meetings, or three out of five consecutive meetings, without prior approval of the chair and exceptional circumstances;
- (d) if the director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (e) if the director is disqualified from holding office as a director of the company on the grounds of not being 'fit and proper' within the meaning of any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the company.

### 5.4 Powers and duties of directors

- (a) The business of the company is to be managed by or under the direction of the directors and the directors may exercise all powers and do all things that are within the company's power and are not expressly required by the Act or this constitution to be exercised by the company in general meeting.
- (b) Without limiting the general nature of rule 5.4(a), the directors may exercise all the powers of the company to borrow or raise money in any other way, to charge any of the company's property or business or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (d) The directors may 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 it.
- (e) The directors may:
  - (1) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and on such conditions as they decide;
  - (2) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors decide.

## 5.5 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, except a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) must give reasonable notice of the meeting; and
  - (4) may be given in person or by post, telephone, fax, email or other electronic means.
- (c) A director may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone, fax, email or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) the director has waived or waives notice of that meeting under rule 5.5(c) before or after the meeting;
  - (3) the director has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax, email or other electronic means before or after the meeting; or
  - (4) the director attended the meeting.
- (e) Attendance by a person at a meeting of directors waives any objection which that person may have to a failure to give notice of the meeting.

## 5.6 Proceedings of directors

- (a) The directors may meet together to attend to business and adjourn and regulate their meetings as they decide.
- (b) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (c) A secretary must, on the requisition of a director, convene a meeting of the directors.
- (d) A meeting of the directors may be held using video conferencing, telephone, electronic communication or any other technology consented to by all the participating directors (**Approved Technology**) and the consent may be a standing one. The contemporaneous linking together by Approved Technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by Approved Technology.
- (e) A director participating in a meeting by Approved Technology is to be taken to be present in person at the meeting.
- (f) A meeting by Approved Technology is to be taken to be held at the place determined by the chair of the meeting as long as at least one of the directors involved was at that place for the duration of the meeting.

- (g) If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

## **5.7 Quorum at meetings of directors**

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) Unless the company has only one director, a quorum consists of 2 directors present at the meeting of directors.
- (c) If there is a vacancy in the office of director, the remaining director or directors may act. But, if the number of remaining directors is not sufficient to constitute a quorum, the remaining director or directors may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

## **5.8 Chair(s) of directors**

- (a) The directors may elect one or more of the directors to the office of chair or co-chair of directors and may decide the period for which any director is to be a chair or co-chair of directors.
- (b) Where there is a co-chair, the directors may provide direction to the co-chairs as to how they require the co-chairs to operate to provide certainty, clarity of role and good governance.
- (c) Where there is a co-chair, the co-chairs must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) nominate one of them to preside as chair at the forthcoming meeting of directors.
- (d) Where there is no co-chair, the chair of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chair at each meeting of directors.
- (e) If at a meeting of directors:
  - (1) there is no chair of directors;
  - (2) the chair of directors is not present within 10 minutes after the time appointed for the meeting; or
  - (3) the chair of directors is present within that time but is not willing to act as chair of the meeting,the directors present must elect one of themselves to be chair of the meeting.

## **5.9 Decisions of directors**

- (a) Questions arising at a meeting of directors at which a quorum is present are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a decision of the directors.
- (b) If votes are equal on a proposed resolution the chair of the meeting shall have a second or casting vote.
- (c) If the company has only one director (where permitted by the Act), the director may pass a resolution and make a declaration by recording it and signing the record.

## **5.10 Written resolutions of directors**

- (a) A resolution is taken to have been passed by a meeting of directors if:
  - (1) the majority of all of the directors (other than any director on leave of

- absence approved by the directors, any director who disqualifies himself or herself from considering the resolution in question and any director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
- (2) the directors who sign or consent to the resolution would have constituted a quorum at a meeting of directors held to consider that resolution.
- (b) A director may consent to a resolution by:
- (1) signing the document containing the resolution (or a copy of that document);
  - (2) giving to the company at its registered office a written notice (including by fax, email or other electronic means) addressed to the secretary or to the chair signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (3) telephoning the secretary or the chair and signifying assent to the resolution and clearly identifying its terms.
- (c) Where a document is assented to in accordance with rule **Error! Reference source not found.**, the document is to be taken as a minute of a meeting of directors.

## 5.11 Alternate directors

- (a) A director may appoint, with approval of a majority of the other directors:
  - (1) a person to be the director's alternate director for such period as the director thinks fit; and
  - (2) another person to be the director's alternate director in the absence of any alternate director appointed under rule 5.11(a)(1).
- (b) An alternate director may, but need not, be a member or a director of the company.
- (c) One person may act as alternate director to more than one director.
- (d) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- (e) An alternate director has a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment, and does not take effect until the company has received written notice of the appointment or termination.
- (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
- (k) In determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.

- (l) An alternate director is entitled to be paid such remuneration as the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
- (m) An alternate director is not entitled to be remunerated by the company for his or her services as an alternate director except as provided in rule 5.11(l).
- (n) An alternate director, while acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

## **5.12 Committees of directors and delegation to a director**

- (a) The directors may delegate any of their powers to a committee or committees as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) The directors may delegate any of their powers to a director.
- (e) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

## **5.13 Validity of acts**

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated merely because of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified from being a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as applicable) when the act was done.

# **6 General meetings**

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## **6.1 Calling general meetings**

- (a) The directors may, whenever they think fit, call and arrange to hold a general meeting.
- (b) A general meeting may be convened only as provided by this rule 6.1 or as otherwise required by the Act.
- (c) Subject to rule 6.1(d), the directors may postpone, cancel or change the venue for a general meeting.
- (d) A general meeting called and arranged under section 249D of the Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the requisitioning member or members.

## **6.2 Notice of general meetings**

- (a) Subject to this constitution and to the rights or restrictions attached to any class of members, notice of a general meeting must be given within the time limits prescribed by the Act.
- (b) The content of a notice of a general meeting called by directors is to be decided by the directors, but must state the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (c) A person waives notice of any general meeting by giving written notice to the company or by attending the meeting.
- (d) Failure to give a member or any other person notice of a general meeting or a proxy form, does not invalidate anything done or resolution passed at the general meeting if:
  - (1) the failure occurred by accident or inadvertent error; or
  - (2) before or after the meeting, the person notifies the company of the person's agreement to that thing or resolution.

## **6.3 Admission to general meetings**

The chair of a general meeting may take any action they consider appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chair to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
  - (1) a member or a proxy, attorney or representative of a member;
  - (2) a director;
  - (3) an auditor of the company; or
  - (4) a person requested by the directors or chairman to attend the meeting.

## **6.4 Quorum at general meetings**

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
  - (1) if the number of members entitled to vote is 2 or more – 2 of those members; or
  - (2) if only one member is entitled to vote – that member, present at the meeting.

- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
  - (2) in any other case, the meeting stands adjourned to the day, and at the time and place, the directors decide or, if they do not make a decision, to the same day in the next week at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

## **6.5 Chair of general meetings**

- (a) Where there is a co-chair, the co-chairs must (if present within 15 minutes after the time appointed for the meeting and willing to act) nominate one of them to preside as chair at each general meeting.
- (b) Where there is no co-chair, the chair of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chair at each general meeting.
- (c) If at a general meeting there is no chair of directors or the chair or co-chairs of directors are not present or not willing to act as chair of the meeting, one of the other directors must act as chair.

## **6.6 Conduct of general meetings**

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:
  - (1) proper and orderly debate or discussion, including limiting the time that a person may speak on a motion or other item of business before the meeting; and
  - (2) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) The chair of a general meeting may at their sole discretion at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question or resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (c) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) Where a meeting is adjourned, notice need not be given to any person unless the meeting is adjourned for more than 30 days.
- (e) Where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting.
- (f) Where a meeting of members is held at 2 or more venues using any form of technology:
  - (1) a member participating in the meeting is to be taken to be present in person at the meeting;
  - (2) all the provisions in this constitution relating to meetings of members apply, so far as they can and with such changes as are necessary, to meetings of the members using that technology; and

- (3) the meeting is to be taken to be held at the place determined by the chair of the general meeting as long as at least one of the members involved was at that place for the duration of the general meeting.
- (g) If the technology used in accordance with the requirement of rule 6.6(f) encounters a technical difficulty, whether before or during the meeting, which results in a member not being able to participate in the meeting, the chair may, subject to the Act, allow the meeting to continue or may adjourn the meeting either for such reasonable period as may be required to fix the technology or to such other time and location as the chair deems appropriate.

## **6.7 Decisions at general meetings**

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. A decision made in this way is for all purposes a decision of the members.
- (b) If votes are equal on a proposed resolution, the chair of the meeting has a casting vote, in addition to any deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands, unless a poll is demanded by:
  - (1) the chair of the meeting; or
  - (2) any member present and having the right to vote at the meeting,before a show of hands is held or before the result of the show of hands is declared or immediately after the result of the show of hands is declared.
- (d) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it is to be taken in a way and subject to rule 6.7(g) either at once or after an interval or adjournment or otherwise as the chair of the meeting directs. The result of the poll as declared by the chair is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn with the chair's consent.

## **6.8 Voting rights**

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership, at a general meeting every member present has one vote.
- (b) A proxy, attorney or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in his or her own right.
- (c) An objection to the qualification of a person to vote at a general meeting must be:
  - (1) raised before or at the meeting at which the vote objected to is given or tendered; and
  - (2) referred to the chair of the meeting, whose decision is final.



- (d) A vote not disallowed by the chair of a meeting under rule 6.8(c) is valid for all purposes.

## **6.9 Decisions without general meetings**

- (a) When the company has more than one member, the company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:
- (1) if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document; and
  - (2) otherwise in accordance with the Act.
- (b) For the purposes of rule 6.9(a):
- (1) separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy; and
  - (2) the resolution is passed when the last person signs the document.
- (c) The passage of the resolution satisfies any requirement in this constitution that the resolution be passed at a general meeting.

## **6.10 Resolution of single member**

When the company has only one member:

- (a) The company may pass a resolution by the member recording it and signing the record.
- (b) The passage of the resolution satisfies any requirement in this constitution that the resolution be passed at a general meeting.

## **6.11 Representation at general meetings**

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
- (1) in person or, where a member is a body corporate, by its representatives;
  - (2) by one proxy; or
  - (3) by one attorney.
- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative is to be taken to confer authority:
- (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
  - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given; and
  - (3) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions to do any of the acts specified in rule 6.11(e).

- (e) The acts referred to in rule 6.11(d)(3) are:
  - (1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (2) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
  - (3) to act generally at the meeting.
- (f) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (g) Subject to rule 6.11(h), an instrument appointing a proxy or attorney need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (h) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are:
  - (1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
  - (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (3) in the case of a poll, produced when the poll is taken.
- (i) The directors may waive all or any of the requirements of rules 6.11(g) and 6.11(h) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment of a proxy or attorney, accept:
  - (1) an oral appointment of a proxy or attorney;
  - (2) an appointment of a proxy or attorney which is not signed in the manner required by rule 6.11(g); and
  - (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.
- (j) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no written notice of the revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under rule 6.11(h).
- (k) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

## 7 Executive officers

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### 7.1 Secretaries

- (a) The directors must appoint at least one secretary.
- (b) The directors may appoint one or more assistant secretaries.

### 7.2 Provisions applicable to all executive officers

- (a) A reference in this rule 7.2 to an executive officer is a reference to an executive director (including a managing director), secretary or assistant secretary appointed under this rule 7.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer of the company may be removed or dismissed by the directors at any time, with or without cause, and if he or she is also a director, the executive officer ceases to be a director on termination of his or her employment.
- (d) The directors may:
  - (1) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties so conferred; and
  - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer need not be a member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated merely because of:
  - (1) a defect in the person's appointment as an executive officer; or
  - (2) the person being disqualified from being an executive officer,if that circumstance was not known by the person when the act was done.

## 8 Seals

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### 8.1 Common seal

Without limiting the ways in which the company can execute documents in accordance with the Act, if the directors so decide, the company may have a common seal.

### 8.2 Use of seal

The directors may decide on procedures for the use of the seal.

## 9 Indemnity and insurance

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### 9.1 Persons to whom rules 9.2 and 9.4 apply

Rules 9.2 and 9.4 apply to:

- (a) each person who is or has been a director, alternate director, secretary or executive officer (within the meaning of rule 7.2(a)) of the company; and
- (b) any other officers or former officers of the company or of its related bodies corporate as the directors in each case decide.

### 9.2 Indemnity

The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 9.2 applies against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company or of a related body corporate.

### 9.3 Extent of indemnity

The indemnity in rule 9.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 9.2 applies even though that person has ceased to be an officer of the company or of a related body corporate; and
- (b) operates to the extent and for the amount that the person to whom rule 9.2 applies is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy).

### 9.4 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 9.4 applies against any liability incurred by the person as an officer of the company or of a related body corporate where the directors consider it appropriate to do so.

### 9.5 Savings

Nothing in rule 9.2 or 9.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

### 9.6 Deed

Without limiting a person's right under this rule 9, the company may enter into a deed agreeing with the person to give effect to the rights of the person conferred by this rule 9 or the exercise of a discretion under this rule 9, on such terms and conditions as the directors think fit, as long as they are not inconsistent with this rule 9.

## 10 Access to documents

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- (a) A person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company, except as provided by law or this constitution, or as authorised by the directors or by a resolution of the members.
- (b) The company may enter into contracts with its directors agreeing to provide continuing access for a specified period after they cease to be a director to board papers, books, records and documents of the company which relate to the period during which the director was a director on such terms and conditions as the directors think fit and which are not inconsistent with this rule 10.
- (c) The company may procure that its subsidiaries provide similar access to board papers, books, records or documents as that set out in rules 10(a) and 10(b).

## 11 Notices

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### 11.1 Notices by the company to members

- (a) The company may give notices, including a notice of general meeting to a member:
  - (1) personally;
  - (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
  - (3) where permitted by law by sending it to the fax number, email address or other electronic address (if any) nominated by the member or by any other means.
- (b) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

### 11.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or by fax, email or other electronic means to such address as the director has supplied to the company for giving notices.

### 11.3 Notices by members or directors to the company

Subject to this constitution, a notice may be given by a member, director or alternate director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by fax or electronic means to the principal fax number or the principal electronic address of the company at its registered office.

## 11.4 Time of service

- (a) Where a notice is sent by post, service of the notice will be deemed to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (1) in the case of a notice of a general meeting, 10.00am on the day after the date of its posting; or
  - (2) in any other case, 10.00am on the day that is 3 days after the date of its posting.
- (b) Where a notice is sent by fax, service of the notice is to be taken to be effected if the correct fax number appears on the fax report generated by the sender's fax machine and to have been effected at the time the fax is sent.
- (c) Where a notice is sent by email or other electronic means, service of the notice will be deemed to be effected by sending the notice by electronic mail to the electronic mail address supplied by the recipient for the purpose of receiving notices and shall be deemed to have been effected at the time the electronic mail is sent.

## 11.5 Other communications and documents

Rules 11.1 to 11.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

## 11.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by fax, email or other electronic transmission or any other form of written communication.

## 12 Winding up

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- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution:
  - (1) that is charitable at law;
  - (2) whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 1.4; and
  - (3) **Gifts and Deductible Contributions to which can be deducted under Division 30 of the ITAA 97** due to it being characterised as a public benevolent institution under item 4.1.1 of the table in section 30-45.
- (b) The identity of the institution referred to in rule 12(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the members by ordinary resolution at or before the time of winding up of the company and, if the members do not decide, by the Supreme Court of the state or territory in which the company is registered.

## 13 General

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### 13.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the company is taken to be registered, the Federal Court of Australia and the courts which may hear appeals from those courts.

### 13.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

## 14 Definitions and interpretation

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### 14.1 Definitions

The meanings of the terms used in this constitution are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Business Day</b>	a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or a public holiday in that city.
<b>Commissioner</b>	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.
<b>Deductible Contribution</b>	a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 in relation to a fundraising event held for the principal purpose of the company.
<b>Gift</b>	the meaning outlined in clause 3.
<b>ITAA 97</b>	the <i>Income Tax Assessment Act 1997</i> (Cth).

### 14.2 Interpretation

In this constitution:

- (a) references to notices include formal notices of meeting, all documents and other communications from the company to its members;
- (b) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements nor re-enactments of any of them;
- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative;
- (d) a reference to writing and written includes printing, lithography, electronic means of writing (eg fax, email) and other ways of representing or reproducing words in a visible form;
- (e) the singular includes the plural and the plural includes the singular; and
- (f) headings and bold type are used for convenience only and do not affect the interpretation of this constitution.

## 15 Application of the Act

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### 15.1 What parts of the Act apply

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to rule 15.1(a), an expression in a rule that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

### 15.2 Replaceable rules displaced

- (a) The provisions of this constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this rule) to the company.
- (b) The replaceable rules do not apply to the company except those which operate as mandatory rules for public companies under the Act.

## 16 Exercise of powers

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- (a) The company may, in any way the Act permits:
  - (1) exercise any power;
  - (2) take any action; or
  - (3) engage in any conduct or procedure,which, under the Act, a company limited by guarantee may exercise, take or engage in, subject to any restrictions at law applying to charities and subject to any restrictions of the Commissioner.
- (b) Where this constitution provides that a person or body may do a particular act or thing, the act or thing may be done at the person's discretion.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power



exercisable in the same manner and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.

- (d) Where this constitution confers a power to do a particular thing in respect of particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that thing in respect of some only of those matters or in respect of a particular class or particular classes of those matters and to make different provision in respect of different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
  - (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
  - (2) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
  - (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of the office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
  - (1) the delegation may be concurrent with, or (except in the case of a delegation by the board of directors) to the exclusion of, the performance or exercise of that function or power by the person or body;
  - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
  - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position;
  - (4) the delegation may include the power to delegate;
  - (5) where the performance or exercise of that function or power is dependent on the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to that matter; and
  - (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

## 17 Transition

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This constitution must be interpreted in such a way that:

- (a) every director, executive director (including a managing director) and secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution;
- (b) any register maintained by the company immediately before this constitution is adopted is taken to be a register maintained under this constitution;
- (c) any seal adopted by the company immediately before this constitution is adopted is taken to be a seal which the company has under a relevant authority given by this constitution;
- (d) unless a contrary intention appears in this constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the company in force before this constitution is adopted, continue to have the same status, operation and effect after this constitution is adopted; and
- (e) except where expressly stated to the contrary, the adoption of this constitution does not alter the rights of any members which exist at the date this constitution is adopted.