



Incorporating



## **A.Q.A. Victoria Limited**

# **Constitution**

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# A.Q.A Victoria Limited

A company limited by guarantee

## Constitution

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### 1 Company's name

The name of the company is A.Q.A Victoria Limited.

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### 2 Company's purposes

(a) The company's objects are to assist people with disabilities, in particular those with spinal cord injury, to attain maximum independence principally by providing direct support and programs to people with disabilities and their carers, including, without limitation:

- (1) providing care plans tailored to individual support needs and lifestyles;
- (2) providing highly qualified and capable Disability Support Workers; and
- (3) providing support and information to assist in quality of life and integration in the community.

As incidental objects the company will raise awareness and educate the community about the issues facing those with disabilities, in particular, those with spinal cord injury, and seek to find ways through research and education to improve access and services and to enhance the lifestyles of those with disabilities and prevention of spinal cord injuries.

(b) For the purposes outlined in rule 2(a), the directors may:

- (1) formulate policies;
  - (2) make rules in connection with any policy; and
  - (3) revoke or amend any policy or rules and formulate others.
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### 3 Company's powers

Solely for carrying out the company's purposes, the company may:

- (a) raise funds or encourage contributions by way of gifts (by will or otherwise), grants, sponsorships or otherwise, by personal or public appeals or by any other manner;
- (b) provide funds or other material benefits by way of grant or otherwise;
- (c) accept and hold funds or property of any kind on or for any charitable objects or purposes specified or to be specified by any person or to be

- selected by the directors from a class of trusts, objects or purposes specified by any person;
- (d) accept and undertake trusteeship, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration for doing so;
  - (e) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges;
  - (f) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
  - (g) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
  - (h) construct, improve, maintain, develop, work, manage and control real or personal property;
  - (i) enter into contracts and deeds;
  - (j) appoint an attorney or agent with the powers (including the power to sub-delegate) and on the terms the company thinks fit, and procure registration or recognition of the company in any other country or place;
  - (k) enter into arrangements with any government or authority, and obtain from any government or authority any right, privilege or concession;
  - (l) engage, dismiss or suspend any employee, agent, contractor or professional person;
  - (m) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the company's property (both present and future) and purchase, redeem or pay off those securities;
  - (n) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
  - (o) print and publish newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by electronic means;
  - (p) accept any gift of property, whether subject to any special trust or not;
  - (q) appoint patrons of the company;
  - (r) make donations for charitable purposes;
  - (s) decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property;
  - (t) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums; and
  - (u) do all other things that are incidental or conducive to doing so.

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## **4 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 of the members or directors.
- (c) No directors fees may be paid to the directors. All other payments to directors must be approved by the directors including, but not limited to:
  - (1) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
  - (2) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
    - (A) the provision of the service has the prior approval of the directors; and
    - (B) the amount payable is not more than an amount which commercially would be reasonable payment for the service.
- (d) This rule does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

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## **5 Liability of members**

The liability of the members is limited to the amount of the guarantee given in rule 6.

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## **6 Guarantee by members**

Every member undertakes to contribute an amount not more than \$100 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) the costs, charges and expenses of winding up.
- (c) the adjustment of the rights of the contributories among themselves.

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## **7 Winding up**

- (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) which 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 4; and
  - (3) gifts to which can be deducted under Division 30 of 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 7(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 or dissolution of the company, and, if the members cannot decide, by the Supreme Court of the State.

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## 8 Altering this constitution or the activities

- (a) The company must not pass a special resolution making a material alteration to, or materially affecting, rules 2, 4 or 7, or any other alteration to the constitution, if, as a result, the company is no longer charitable.
- (b) The company must notify the Commissioner if:
  - (1) a special resolution is passed materially altering rules 2 or 7; or
  - (2) the company is no longer eligible to be endorsed as charitable or as a deductible gift recipient under Subdivision 30-BA of ITAA 97, as a result of a change in its constitution or activities or otherwise.

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## 9 Establishment and operation of Gift Fund

### 9.1 Maintaining Gift Fund

The company must maintain for its purposes a fund (**Gift Fund**):

- (a) to which gifts of money or property for those purposes are to be made;
- (b) to which any money received by the company because of those gifts is to be credited;
- (c) that does not receive any other money or property; and
- (d) for which a separate bank account is maintained.

### 9.2 Limits on use of Gift Fund

The company must use the following only for its purposes:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of those gifts.

### 9.3 Winding up

- (a) At the first occurrence of:
  - (1) the winding up of the Gift Fund; or

- (2) the company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97,
- any surplus assets of the Gift Fund 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 4; and
  - (5) gifts to which can be deducted under Division 30 of ITAA 97, due to it being characterised as a public benevolent institution under item 4.1.1 of the table in section 30-45 of ITAA 97.
- (b) The identity of the institution must be decided by the directors.

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## **10 Membership**

### **10.1 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 (except the initial members and the directors) must apply in the form and manner decided by the directors.
- (c) The directors may decide to create eligibility criteria and categories of membership with the same or differing rights or privileges.
- (d) After the receipt of an application for membership, the directors or delegate 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.
- (e) In the event of a rejection, an applicant may not resubmit an application for membership within one year of the date of notification.

### **10.2 Entrance Fee**

- (a) A person seeking membership to the company shall, at the time of application for membership pay the Entrance Fee to the company.
- (b) Where the person is declined membership by the company in accordance with the terms of the constitution, the company shall return to the person the Entrance Fee.

### **10.3 Subscription Fee**

- (a) An annual Subscription Fee may be decided by the directors.
- (b) The directors must notify all persons entered on the register of members of the amount and time for payment of any annual Subscription Fee and of any alteration to the annual Subscription Fee. Varying amounts may be

applied as decided by the directors and made available to the members in a membership policy.

- (c) The annual Subscription Fee must be paid in each calendar year on a date determined by the directors.
- (d) Where the annual subscription fee is not received:
  - (1) after one month of the due date, the directors must issue a written reminder notice to the member; and
  - (2) after one month of the written reminder notice, the member's rights and privileges associated with that membership will be suspended.
- (e) If a member who was suspended pursuant to rule 10.3(d) has not paid an annual subscription fee for more than 2 months after the written reminder notice, the person ceases to be a member and the person's name must be removed from the register of members.

#### **10.4 Delegation**

The directors may at any time delegate, on such terms as they think fit, to such persons or committees as they may determine, the power to:

- (a) admit persons as members;
- (b) re-admit such persons; and
- (c) refuse applications for membership.

#### **10.5 Directors may fix Entrance Fee and annual Subscription Fees**

The directors may at any time fix different rates, suspend or waive payment of the Entrance Fee or Annual Subscription in favour of any member.

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## **11 When membership ceases**

### **11.1 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) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (e) is expelled under rule 11.3; or
- (f) ceases to be a member under rule 10.3(e);
- (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; or

- (h) ceases to satisfy the eligibility criteria as required by the directors from time to time.

## **11.2 Appointment as member not transferable**

A right, privilege or obligation which a person has by reason of being a member of the company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of the person's membership.

## **11.3 Expulsion**

- (a) The directors may by resolution expel a member 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 propose a resolution under rule 11.3(a), at least one week before the meeting at which the resolution is to be proposed, 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.

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# **12 General meetings**

## **12.1 Calling general meetings**

- (a) The directors may call and arrange to hold a general meeting whenever they think fit.
- (b) The company must hold an AGM at least once every calendar year in accordance with the Act.
- (c) A general meeting may be called and arranged to be held only as provided by this rule or as provided by sections 249D, 249E, 249F and 249G of the Act.
- (d) The directors may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the members or the court under the Act. If a general meeting is called and arranged to be held under section 249D of the Act, the directors may not:
  - (1) postpone it beyond the date by which section 249D requires it to be held; or
  - (2) cancel it without the consent of the requisitioning member.

## 12.2 Notice of general meetings

- (a) Notice of every general meeting must be given in any manner authorised by rule 18 to each person who is at the date of the notice:
  - (1) a member entitled to vote, except a member who has not supplied the company with an address in Australia for giving notices;
  - (2) a director; and
  - (3) the auditor.
- (b) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting;
  - (2) except as provided by the Act, state the general nature of the business to be transacted at the meeting; and
  - (3) specify a place and fax number or electronic address for the receipt of proxies.
- (c) A notice of general meeting must be given within the time limits prescribed by the Act.
- (d) A person may waive notice of a general meeting by written notice to the company.
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 12.2 does not invalidate any thing done or resolution passed at the general meeting if:
  - (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person:
    - (A) has waived or waives notice of that meeting under rule 12.2(d); or
    - (B) has notified or notifies the company of the person's agreement to that thing or resolution by written notice to the company.
- (f) A person's attendance at a general meeting waives any objection that person may have to:
  - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

## 12.3 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chairperson 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 there is only one member entitled to vote, that member; and
  - (2) in any other case, 12 members entitled to vote, unless the members have fixed a higher number of members entitled to vote, and are 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:
    - (A) the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place; and
    - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **12.4 Chairperson of general meetings**

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
  - (1) there is no chairperson of directors;
  - (2) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
  - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the members present must elect as chairperson of the meeting:

  - (4) another director who is present and willing to act; or
  - (5) if no other director present at the meeting is willing to act, a member who is present and willing to act.

#### **12.5 Conducting and adjourning general meetings**

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting.
- (b) The chairperson may at any time the chairperson considers it necessary or desirable for the proper and orderly conduct of the meeting:
  - (1) impose a limit on the time that a person may speak on each motion or other item of business and terminate 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; and

- (2) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers.
- (c) A decision by a chairperson under rules 12.5(a) or 12.5(b) is final.
- (d) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the members in person, to constitute a quorum constitutes a meeting of the members, provided each member has a reasonable opportunity to participate at the meeting.
- (e) All the provisions in this constitution relating to meetings of the members apply, so far as they can and with any necessary changes, to meetings of the members by telephone or other electronic means.
- (f) A member who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (g) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting.
- (h) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (i) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (j) Except as provided by rule 12.5(i), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (k) Where a meeting is adjourned, the directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act, the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member.

## **12.6 Admission to general meetings**

- (a) The chairperson of a general meeting may take any action he or she considers 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:
  - (1) in possession of a pictorial-recording or sound-recording device;
  - (2) in possession of a placard or banner;
  - (3) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
  - (4) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;

- (5) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or
  - (6) who is not entitled to receive notice of the meeting.
- (b) The chairperson may delegate the powers conferred by this rule to any person he or she thinks fit.

## **12.7 Decisions at general meetings**

- (a) Except where by law a resolution 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. Such a decision is for all purposes a decision of the members.
- (b) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (1) the chairperson of the meeting;
  - (2) at least five members present and with the right to vote on the resolution; or
  - (3) a member or members present at the meeting and representing at least 5% of the total voting rights of all the members entitled to vote on the resolution on a poll.
- (c) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (d) Unless a poll is duly demanded, a declaration by the chairperson 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 in favour of or against the resolution.
- (e) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (f) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (g) The demand for a poll may be withdrawn.
- (h) If the company has only one member, the company may pass a resolution by the member recording it and signing the record.

## **12.8 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 chairperson of the meeting, whose decision is final.
- (d) A vote not disallowed by the chairperson of a meeting under rule 12.8(c) is valid for all purposes.
- (e) If permitted or contemplated by the Act or this constitution, the directors may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited person are to be disregarded.

## **12.9 Representations 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;
  - (3) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:
    - (A) 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;

- (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
  - (C) to act generally at the meeting.
- (e) 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.
- (f) Subject to rule 12.9(g), 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 appointor or the appointor's attorney.
- (g) 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.
- (h) The directors may waive all or any of the requirements of rules 12.9(f) and 12.9(g) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment or 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 12.9(f); 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.
- (i) 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 12.9(g).
- (j) The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the general meeting but, if the appointor votes on a resolution, the person acting as proxy or attorney for the appointor is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution.

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## 13 Directors

### 13.1 Appointing and removing directors

- (a) Subject to rule 13.1(b), there must be:
  - (1) at least 6 directors; and
  - (2) not more than 9 directors.
- (b) The company may by resolution:
  - (1) increase or reduce the minimum or maximum number of directors; and
  - (2) appoint or, in accordance with section 203D of the Act, remove a director.
- (c) Subject to rule 13.1(a) and subject to the individual signing a consent to act as a director, the directors may appoint any individual as a director, either to fill a casual vacancy or as an addition to the existing directors.
- (d) A director appointed by the directors under rule 13.1(c), holds office only until the conclusion of the next AGM following his or her appointment under rule 13.1(c).
- (e) At every AGM if the number of directors, (after excluding any directors appointed by the directors under rule 13.1(c) and standing for election or re-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.
- (f) No director may hold office without re-election beyond the third AGM following the meeting at which the director was last elected or re-elected.
- (g) If there are fewer or an equal number of persons standing for election or re-election than vacancies, all persons will be deemed to be elected at the AGM without the need for an actual election.
- (h) The directors to retire under rule 13.1(e) are those directors who wish to retire and not offer themselves for re-election, those directors required to retire under rule 13.1(f) 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.
- (i) The directors to retire under rule 13.1(e) (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 AGM. 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.

- (j) The company may by resolution at an AGM fill an office vacated by a director under rules 13.1(d), 13.1(e) or 13.1(f) by electing or re-electing an eligible person to that office.
- (k) A director retiring from office under rule 13.1(d), 13.1(e) or 13.1(f) 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. This rule 13.1(k) also applies retrospectively to all current directors at the date this Constitution is adopted.
- (l) The retirement of a director from office under this constitution 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.

### **13.2 Vacation of office**

- (a) The office of a director becomes vacant:
  - (1) in the circumstances prescribed by the Act;
  - (2) 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;
  - (3) if the director is removed from office under rule 13.1;
  - (4) if the director resigns by written notice to the company; or
  - (5) if the director is absent from more than 3 consecutive meetings of directors without the prior leave of the directors.
- (b) Any director may resign from office by giving notice in writing to the company of the director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time. However, the resignation must take effect within three months from the date of the giving of the notice.

### **13.3 Interested directors**

- (a) A director may hold another position (except as auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that position on terms as to remuneration, tenure and otherwise that the directors see fit.
- (b) A director:
  - (1) may be or become a director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise; and
  - (2) is not accountable to the company for any remuneration or other benefits he or she receives as a director or officer of, or from having an interest in, that body corporate.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in the manner in all respects that they think fit.

- (d) A director is not disqualified merely because he or she is a director from contracting with the company in any respect including, but not limited to:
  - (1) selling property to, or purchasing property from, the company;
  - (2) lending money to the company with or without interest or security;
  - (3) guaranteeing the repayment of money borrowed by the company for a commission or profit;
  - (4) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise, for a commission or profit; or
  - (5) being employed by the company or acting in any professional capacity (except as auditor) on behalf of the company.
- (e) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with the disclosure requirements applicable to the director under the Act regarding that interest.
- (f) A contract made by a director with the company and a contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is not avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (g) A director contracting with or being interested in any arrangement involving the company is not liable to account to the company for any profit realised by or under that contract or arrangement merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (h) Unless section 195 of the Act permits, a director who has a material personal interest in a matter that is being considered at a directors' meeting must not:
  - (1) be present while the matter is being considered at the meeting; or
  - (2) vote on the matter.
- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person considered by the directors as related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.

#### **13.4 Powers and duties of directors**

- (a) The directors are responsible for managing the company's affairs and carrying out the objects of the company. The directors may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.

- (b) Without limiting rule 13.4(a), the directors may exercise all the company's powers to:
  - (1) borrow or otherwise raise money;
  - (2) charge any property or business of the company; and
  - (3) 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, bankers 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 a person to be an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for the period and on the conditions they think fit;
  - (2) authorise an officer, agent or attorney to delegate all or 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 at any time, with or without cause.
- (f) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors think fit.

### **13.5 Proceedings of directors**

- (a) The directors may meet together and adjourn and otherwise regulate their meetings as they think fit, provided that at least one Board meeting is held in every period of three consecutive months.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, so far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the directors involved was at that place for the duration of the meeting.

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

### **13.6 Convening meetings of directors**

- (a) A director may convene a meeting of the directors whenever he or she thinks fit.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

### **13.7 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) may be given immediately before the meeting;
  - (4) may be given in person or by post, telephone, fax or other electronic means.
- (c) A director or may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone, fax 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) before or after the meeting, the director:
    - (A) has waived or waives notice of that meeting under rule 13.7(c); or
    - (B) has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (3) 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.

### **13.8 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) A quorum necessary for the transaction of business shall be four directors.

- (c) If there is a vacancy in the office of a director then, subject to rule 13.8(d), the remaining directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors, or is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to:
  - (1) increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution;
  - (2) convene a general meeting of the company for that purpose, or
  - (3) appoint additional directors,and, until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### **13.9 Chairperson of directors**

- (a) The chairperson of directors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each meeting of directors.
- (b) If at a meeting of directors:
  - (1) there is no chairperson of directors;
  - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the meeting; or
  - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,the directors present must elect one of the directors as chairperson of the meeting.

### **13.10 Decisions of directors**

- (a) A meeting of directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.

### **13.11 Written resolutions of directors**

- (a) If:
  - (1) all the directors, other than any director:
    - (A) on leave of absence approved by the directors;
    - (B) who disqualifies himself or herself from considering the thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; or

- (C) who the directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question, assent to a document containing a statement to the effect that a thing has been done or resolution has been passed; and
  - (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that thing or resolution,

then that thing or resolution is to be taken as having been done at or passed by a meeting of the directors.
- (b) For the purposes of rule 13.11(a):
  - (1) the meeting is to be taken as having been held:
    - (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
    - (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
  - (2) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
  - (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, fax, telephone or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with rule 13.11(a), the document is to be taken as a minute of a meeting of directors.

### **13.12 Minutes of meetings and minutes of resolutions**

- (a) The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of directors (including committees of directors) are recorded in books kept for the purpose, within one month after the relevant meeting is held.
- (b) The directors must ensure minutes of resolutions passed by directors (and committees of directors) without a meeting are recorded in books kept for that purpose within 1 month after the resolution is passed.
- (c) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

### **13.13 Committees of directors**

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors they think fit.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.
- (c) The provisions of this constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors.

### **13.14 Delegation to individual directors**

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.

### **13.15 Validity of acts**

- (a) An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as a director, is not invalidated merely because of:
  - (1) a defect in the appointment of the person as a director;
  - (2) the person being disqualified to be a director or having vacated office; or
  - (3) the person not being entitled to vote,if that circumstance was not known by the person, the directors or the committee (as applicable) when the act was done.
- (b) Despite anything contained in this constitution, if it is found that some formality required by this constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing but for such omission would have been valid.

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## **14 Office Bearers**

- (a) The Office Bearers will comprise:
  - (1) the Chairperson;
  - (2) the Treasurer; and
  - (3) the Company Secretary.
- (b) Those directors appointed under rule 14(a) will hold their positions from the date of appointment for any period that the directors think fit and will be eligible for re-appointment.
- (c) A director's appointment as an Office Bearer automatically terminates if he or she ceases to be a director.

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## **15 Indemnity and insurance**

### **15.1 Persons to whom the indemnity and insurance apply**

The indemnity and insurance referred to in this rule apply to the following individuals (referred to as 'indemnified officers' in this rule):

- (a) each person who is or has been a director of the company; and
- (b) any other officers or former officers of the company as the directors in each case decide.

### **15.2 Indemnity**

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each indemnified officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
  - (1) is a continuing obligation and is enforceable by an indemnified officer even though that person has ceased to be an officer of the company; and
  - (2) operates only to the extent that the loss or liability in question is not covered by insurance.

### **15.3 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 indemnified officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

### **15.4 Savings**

Nothing in this rule:

- (a) affects any other right or remedy that an indemnified officer may have in respect of any loss or liability referred to in this indemnity or insurance; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule does not apply.

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## **16 Seals**

### **16.1 Safe custody of Seal**

The directors must provide for the safe custody of the Seal.

## **16.2 Manner of execution**

- (a) Without limiting the ways in which the company can execute documents under the Act and subject to this constitution, the company may execute a document if the document is signed by:
  - (1) 2 directors; or
  - (2) a director and a secretary; or
  - (3) any other person or persons authorised by the directors for that purpose.

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## **17 Auditor**

The company must appoint a properly qualified auditor whose duties will be regulated in accordance with the Act.

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## **18 Notices**

### **18.1 Notices by the company to members**

The company may give notices, including a notice of general meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the register of members, the business address of the person last known to the person serving the document, or the alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member.
- (d) subject to the Act, by publication in a newspaper circulating generally in the State in which the company's registered office is located.

### **18.2 Notices by the company to directors**

Subject to this constitution, a notice may be given by the company to any 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 electronic means or fax to such electronic address or fax number, as the director has supplied to the company for giving notices.

### **18.3 Notices by members or directors to the company**

Subject to this constitution, a notice may be given by a member or 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.

## 18.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken 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, on the day after the date of its posting; or
  - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (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 electronic means, service of the notice is to be taken to be effected:
  - (1) in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry, or other confirmation; or
  - (2) in the case of electronic mail or other electronic messaging system (other than those referred to in rule 18.4(c)(1)), on the delivery to:
    - (A) where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account; or
    - (B) where the addressee is a corporation, the corporation's computer systems.
- (d) If service under rule 18.4(c) is on a day which is not a business day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following business day.
- (e) For the purposes of rule 18.4(d), business day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place concerned.
- (f) Where a notice is publicised in a newspaper under rule 18.1(d), the notice is treated as having been duly served, regardless of whether it is actually received, on the day the newspaper is first published.
- (g) Subject to the Act, where a specified number of days notice extending over any period is required to be given, the day of service is included in such number of days, but the day of the act or event for which notice is required to be given is not included.
- (h) Every document required to be served upon the company or upon any officer of the company may be served by leaving it at the company's registered office.
- (i) The signature to any document to be given by the company may be written, printed or stamped.

## 18.5 Other communications and documents

Rules 18.1 to 18.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

## 18.6 Notices in writing

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

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# 19 Definitions and interpretation

## 19.1 Definitions

In this constitution:

**Act** means the Corporations Act 2001 (Cth);

**AGM** means the annual general meeting of members;

**auditor** means the auditor of the company;

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97;

**directors** means the company's board of directors;

**Entrance Fee** means the amount (if any) determined by the directors from time to time as necessary to cover administrative costs and fees which are payable by a member upon his or her admission to the company as a member;

**ITAA 97** means the Income Tax Assessment Act 1997 (Cth);

**member** means a member of the company;

**registered address** means a member's address as notified to the company by the member and recorded in the company's records;

**registered office** means the registered office for the time being of the company;

**remuneration** includes, without limitation, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentives or profit sharing schemes;

**Seal** means any common seal, duplicate seal or certificate seal of the company;

**Subscription Fee** means an annual amount payable by members to the company to maintain their membership, determined by the directors from time to time.

## 19.2 Interpretation

In this constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the company to its members;
- (b) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;

- (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 and other ways of representing or reproducing words in a visible form;
- (e) the singular (including defined terms) includes the plural and the plural includes the singular;
- (f) reference to a person includes reference to a natural person or any other entity recognised by the Act;
- (g) reference to any one gender includes every gender;
- (h) terms such as "including", "for example" and "for instance" are not words of limitation;
- (i) except for the definitions in clause 18.1, an expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act; and
- (j) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

### **19.3 Headings**

Headings are used for convenience only and do not affect the interpretation of this constitution.

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## **20 Application of the Act**

### **20.1 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 20.1(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.

### **20.2 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.

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## **21 Transitional provisions**

This constitution must be interpreted in such a way that:

- (a) every director, 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.