

CONSTITUTION

of

AUSTRALIAN VOLUNTEERS INTERNATIONAL

(Previously Overseas Service Bureau)

Adopted by the Company
in general meeting on 30 October 2009

Amended by the Company in general meeting on 26 June 2015

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A PUBLIC COMPANY LIMITED BY GUARANTEE UNDER THE CORPORATIONS ACT 2001
(CTH)

CONSTITUTION

OF

AUSTRALIAN VOLUNTEERS INTERNATIONAL

1 PRELIMINARY

1.1 In this Constitution unless the contrary intention appears:

‘**ACNC Act**’ means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

‘**Auditor**’ means the Company’s auditor;

‘**Board**’ means the Board of Directors of the Company;

‘**Chair**’ means the chair of a general meeting or Board meeting, as the context requires;

‘**Chairperson**’ means the Chairperson of the Board appointed in accordance with **clause 25**;

‘**Chief Executive Officer**’ means a person employed as the Chief Executive Officer of the Company in accordance with **clause 47**;

‘**Company**’ means Australian Volunteers International;

‘**Constitution**’ means the constitution of the Company as amended from time to time;

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

‘**Deputy Chairperson**’ means a Deputy Chairperson of the Board appointed in accordance with **clause 25**;

‘**Director**’ includes any person occupying the position of director of the Company;

‘**Directors**’ means all or some of the Directors acting as the Board;

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

‘**Life Member**’ means a life member under **clause 6**;

‘**Member**’ means Ordinary Members but does not include Life Members;

‘**Office**’ means the Company’s registered office;

‘**Ordinary Member**’ means an ordinary member under **clause 5** but does not include Life Members;

‘President’ means the President of the Company appointed in accordance with **clause 8**;

‘Register’ means the register of Members of the Company;

‘Registered Address’ means the last known address of a Member as noted in the Register;

‘Returned Volunteer’ means any person who has served in an international program managed by the Company;

‘Seal’ means the Company’s common seal (if any); and

‘Secretary’ means any person appointed by the Directors to perform any of the duties of a secretary of the Company.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution;
- (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (e) a reference to the Corporations Act is a reference to the Corporations Act as modified or amended from time to time.

1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the clause.

1.4 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

1.5 Unless the contrary intention appears in this Constitution, 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 absolute discretion of the person or body.

2 OBJECTS

2.1 The objects for which the Company is established are:

- (a) to provide direct relief to people suffering the impact of poverty or disaster;
- (b) to provide technical assistance as a contribution towards poverty reduction and sustainable development outcomes through:
 - (i) placing a wide range of skilled Australians to live and work within developing communities under local conditions according to locally identified needs; and

- (ii) implementing people-centred projects and programs in cooperation with Australian and overseas partners;
- (c) to provide specialist cross cultural recruitment and training services to Australian and international organisations and to enhance human resources practice in this area;
- (d) to provide opportunities for Australians to build on their experience of other cultures and to create and maintain links with the people of other communities; and
- (e) to contribute to a peaceful and just world by fostering cross-cultural relationships and international understanding between people and by participating in the social and economic development of communities.

2.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this **clause 2**; and
- (b) do all things incidental and convenient in relation to the exercise of power under **clause 2.2(a)**.

3 BENEVOLENT, CHARITABLE AND NOT-FOR-PROFIT NATURE OF THE COMPANY

3.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 2**.

3.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member in return for:

- (a) any services rendered (including services rendered under a contract of employment) in the ordinary and usual course of business to the Company; and
- (b) goods supplied in the ordinary and usual course of business to the Company.

3.3 Despite anything to the contrary in this Constitution, the Company is established:

3.3.1 solely to be a not-for-profit, charitable and benevolent institution; and

3.3.2 to pursue not-for-profit, charitable and benevolent Purposes only.

4 PAYMENTS TO DIRECTORS

No payment will be made to any Director of the Company other than the payment of:

- (a) out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;

- (b) any salary or wage due to the Director in their capacity as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (c) any services rendered or goods supplied in the ordinary and usual course of business to the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company.

5 ORDINARY MEMBERSHIP

- 5.1 The Ordinary Members of the Company consist of the Directors on the Board of the Company. An Ordinary Member's membership of the Company ceases if that Ordinary Member ceases to be on the Board of the Company.
- 5.2 At all times while an Ordinary Member's membership of the Company is current the Ordinary Member is bound by and must comply in all respects with any code of conduct or ethics approved by the Board, including amendments or additions to the code of conduct or ethics as may be notified by the Board to Ordinary Members from time to time.

6 LIFE MEMBERSHIP - Admission

- 6.1 The Directors may determine to offer to appoint a person to be a Life Member where the Directors consider that person to have made a significant contribution to the Company.
- 6.2 Offers of Life Membership must be made in writing in a form approved by the Directors in their absolute discretion.
- 6.3 A person will become a Life Member upon the Secretary receiving the written consent of the person to become a Life Member.
- 6.4 Subject to **clause 6.5** and this Constitution a Life Member is not a Member or an Ordinary Member.
- 6.5 A Life Member:
 - (a) is not required to pay any entrance fee or annual subscription or contribution to the Company;
 - (b) may attend and participate in the annual general meeting of the Company; and
 - (c) has no right in his or her capacity as a Life Member to vote at general meetings of the Company or in any other meeting.

7 LIFE MEMBERSHIP - Ceasing to be a Life Member

- 7.1 A Life Member's life membership of the Company will cease:
 - (a) if the Life Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the life membership of a Life Member whose

conduct in their opinion renders it undesirable for that Life Member to continue to be a Life Member of the Company; or

- (c) if the Life Member:
 - (i) dies;
 - (ii) becomes of unsound mind or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - (iii) is convicted of an indictable offence under a Commonwealth, State or Territory law in Australia, or overseas;
 - (iv) becomes untraceable for 3 months because the Life Member cannot be contacted using the address notified to the Company; or
 - (v) becomes bankrupt or makes any arrangement or composition with the Life Member's creditors generally.

8 PRESIDENT

- 8.1 The Directors may, with the consent of that person, appoint a person to be President of the Company to preside over the annual general meetings of the Company and represent the Company in such manner as the Directors and the President may agree from time to time.
- 8.2 The President is not (unless otherwise admitted as a Member) a Member of the Company and does not have any of the rights, duties, obligations or liabilities of a Member and without limitation does not have the right to vote at a general meeting.
- 8.3 The Directors may at any time determine that a person shall cease to be President of the Company.

9 GENERAL MEETINGS OF THE COMPANY - Convening general meeting

- 9.1 The Directors must convene and hold annual and special general meetings of the Members if required by the Corporations Act and the ACNC Act.
- 9.2 Any 3 Directors may, at any time, convene a general meeting.
- 9.3 The Chairperson, or in the absence of the Chairperson, one of the Deputy Chairpersons of the Board may, at any time, convene a general meeting.
- 9.4 An Ordinary Member may:
 - (a) only request the Directors to convene a general meeting in accordance with section 249D of the Corporations Act; and
 - (b) not convene or join in convening a general meeting except under section 249E of the Corporations Act.

10 GENERAL MEETINGS OF THE COMPANY - Notice of general meeting

- 10.1 Subject to the provisions of the Corporations Act and the ACNC Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 10.2 A notice convening a general meeting, unless the Corporations Act or ACNC Act requires otherwise:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used; and
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 10.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report; or
 - (b) the appointment and fixing of the remuneration of the Auditor.
- 10.4
- (a) The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting convened under **clause 9.4**).
 - (b) The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- 10.5 The failure or accidental omission to send a notice of a general meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings of or any resolution passed at the general meeting.

11 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Ordinary Member

In **clauses 12, 13, 15 and 19**, 'Ordinary Member' includes an Ordinary Member present in person or by proxy.

12 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Quorum

- 12.1 No business may be transacted at a general meeting unless a quorum of Ordinary Members is present when the meeting proceeds to business.
- 12.2 A quorum of Ordinary Members is a simple majority of the existing Ordinary Members.
- 12.3 If a quorum is not present within 30 minutes after the time appointed for a meeting:
- (a) if the meeting was convened under **clause 9.4**, it is automatically dissolved; or

- (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is automatically dissolved.

13 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Chairperson

13.1 The Chairperson, or in the Chairperson's absence one of the Deputy Chairpersons of the Board will chair every general meeting other than an annual general meeting.

13.2 The President will chair the annual general meeting. In the President's absence the Chairperson, or in the Chairperson's absence one of the Deputy Chairpersons of the Board will chair the annual general meeting.

13.3 If:

- (a) there is no President (where applicable), Chairperson or Deputy Chairpersons; or
- (b) the President (where applicable), Chairperson or Deputy Chairpersons is not present within 15 minutes after the time appointed for holding the meeting; or
- (c) the President (where applicable), Chairperson and Deputy Chairpersons are unwilling to act as Chairperson of the meeting,

the Directors present may elect one of their number to chair the meeting.

13.4 If there is a dispute at a general meeting about a question of procedure, the chair may determine the question.

14 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Adjournment

14.1 The chair of a meeting at which a quorum is present:

- (a) in his or her discretion may adjourn a meeting with the meeting's consent; and
- (b) must adjourn a meeting if the meeting directs him or her to do so.

14.2 An adjourned meeting may take place at a different venue to the initial meeting.

14.3 The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.

14.4 Notice of an adjourned meeting must only be given in accordance with **clause 10.1** if a general meeting has been adjourned for more than 21 days.

15 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Decision of questions

- 15.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 15.2 The Directors may if they think fit submit any question or resolution to the vote of all Members entitled to a vote at a general meeting by circular resolution, unless the Corporations Act or the ACNC Act requires a special or ordinary resolution to be passed at a general meeting.
- 15.3 The Directors may determine:
- 15.3.1 the form of the circular resolution;
 - 15.3.2 the polling date;
 - 15.3.3 the method for responding to the circular resolution; and
 - 15.3.4 whether voting on the circular resolution is to be by secret ballot.
- 15.4 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded, before or on the declaration of the result of the show of hands, by:
- (a) the chair; or
 - (b) at least two Ordinary Members entitled to vote on the resolution.
- 15.5 Unless a poll is demanded:
- (a) a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting is conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 15.6 The demand for a poll may be withdrawn.
- 15.7 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

16 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Taking a poll

- 16.1 A poll will be taken when and in the manner that the chair directs.
- 16.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 16.3 The chair may determine any dispute about the admission or rejection of a vote.
- 16.4 The chair's determination, if made in good faith, will be final and conclusive.

16.5 A poll demanded on the election of the chair or the adjournment of a meeting must be taken immediately.

16.6 After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

17 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Casting vote of chair

17.1 The chair has a casting vote in addition to the chair's vote or votes as an Ordinary Member or proxy.

17.2 Notwithstanding **clause 17.1**, when the President is the chair, the chair has no casting vote (unless the President is otherwise entitled to exercise a casting vote as an Ordinary Member).

18 PROCEEDINGS AT GENERAL MEETINGS OF THE COMPANY - Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

(a) refuses to permit examination of any article in the person's possession; or

(b) is in possession of any:

(i) electronic or recording device;

(ii) placard or banner; or

(iii) other article,

which the chair considers to be dangerous, offensive or liable to cause disruption.

19 VOTES OF ORDINARY MEMBERS - Entitlement to vote

19.1 An Ordinary Member entitled to vote has one vote.

20 VOTES OF ORDINARY MEMBERS - Objections

20.1 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered their vote.

20.2 An objection must be referred to the chair of the meeting, whose decision is final.

20.3 A vote which the chair does not disallow because of an objection is valid for all purposes.

21 VOTES OF ORDINARY MEMBERS - Votes by proxy

21.1 If an Ordinary Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

21.2 A proxy may demand or join in demanding a poll.

21.3 A proxy or attorney may vote on a poll.

22 VOTES OF ORDINARY MEMBERS - Instrument appointing proxy

22.1 An Ordinary Member may appoint a proxy by a written appointment signed by the appointor or the appointor's attorney.

22.2 A proxy need not be an Ordinary Member.

22.3 An appointment of a proxy must be in a form approved by the Directors from time to time. If no form is approved, the proxy form must be in the customary form.

22.4 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll in accordance with any instructions on the appointment.

22.5 A proxy's appointment is valid at an adjourned meeting.

23 VOTES OF ORDINARY MEMBERS - Lodgement of proxy

23.1 The written appointment of a proxy or attorney must be received by the Company at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

- (a) the time for holding the meeting or adjourned meeting at which the appointee proposes to vote; or
- (b) the taking of a poll on which the appointee proposes to vote.

23.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:

- (a) the Office;
- (b) a facsimile number at the Office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

24 VOTES OF ORDINARY MEMBERS - Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became of unsound mind; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant meeting or adjourned meeting.

25 APPOINTMENT AND REMOVAL OF CHAIRPERSON AND DEPUTY CHAIRPERSONS

25.1 At:

- (a) the first meeting of the Board held upon or after the annual general meeting held in 2009; and
- (b) at every subsequent Board meeting upon or after the cessation of any office established under this **clause 25.1**,

the Board will elect from amongst the Directors of the Board the following offices:

- (c) a Chairperson; and
- (d) two (2) Deputy Chairpersons,

to hold office from the date of their election by the Board for a term of **up to three years** as determined by the Board at the time of election.

26 APPOINTMENT AND REMOVAL OF CHAIRPERSON AND DEPUTY CHAIRPERSONS - Retirement

26.1 A retiring Chairperson will be eligible for re-election provided that the total consecutive and non-consecutive terms as Chairperson **does not exceed nine years**.

26.2 A retiring Deputy Chairperson will be eligible for re-election provided that the total consecutive and non-consecutive terms as Deputy Chairperson **does not exceed nine years**.

27 APPOINTMENT AND REMOVAL OF CHAIRPERSON AND DEPUTY CHAIRPERSONS - Vacation of Office

The office of Chairperson or Deputy Chairperson immediately becomes vacant if the Chairperson or Deputy Chairperson:

- (a) dies;
- (b) cannot perform his or her role as Chairperson or Deputy Chairperson of the Board because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company; or
- (e) ceases to be an Ordinary Member of the Company.

28 POWERS AND DUTIES OF CHAIRPERSON AND DEPUTY CHAIRPERSON

- 28.1 The role of the Chairperson is to oversee the activities, conduct and performance of the Directors on behalf of the Board.
- 28.2 Each Deputy Chairperson shall jointly or severally (as agreed between the Deputy Chairpersons) undertake and exercise the powers and duties of the Chairperson only:
- (a) in the absence of the Chairperson;
 - (b) where the Chairperson is incapable of performing his or her duties for any reason;
 - (c) where the Chairperson has resigned or ceased to be Chairperson in accordance with this Constitution; or
 - (d) where the Chairperson has ceased to be an Ordinary Member of the Company in accordance with this Constitution.

29 APPOINTMENT AND REMOVAL OF DIRECTORS - Number of Directors

There will not be less than three nor more than ten Directors unless the Company by resolution in general meeting changes the maximum number.

30 APPOINTMENT AND REMOVAL OF DIRECTORS - Appointment and qualifications of Directors

- 30.1 The Board may by resolution:
- (a) appoint new Directors;
 - (b) subject to **clause 29** increase or reduce the number of Directors;
 - (c) remove any Director before the end of the Director's term of office; and
 - (d) appoint another person in the Director's place.
- 30.2 To qualify for nomination and appointment as a Director, a person must:
- (a) meet the minimum requirements specified in the director role profile prescribed by regulations;
 - (b) be over the age of 18 years; and
 - (c) not be prohibited or disqualified or otherwise prevented from being a director of a company under the Corporations Act or a responsible person of a registered charity under the ACNC Act.
- 30.3 Any appointment of a Director to the Board (other than a casual vacancy) must, unless impracticable or unreasonable, ensure that the composition of the Board is such that at least one third, but not more than two thirds, of the Directors on the Board are Returned Volunteers.

31 APPOINTMENT AND REMOVAL OF DIRECTORS - Retirement

- 31.1 A Director must retire from office on the third anniversary of that Director's appointment to the Board.
- 31.2 A retiring Director will be eligible for re-appointment subject to **clause 31.3**.
- 31.3 A retiring Director will be ineligible for re-appointment after serving three consecutive terms in office but may become eligible to be appointed if at least three years has elapsed since the expiry of his or her last term of office.

32 APPOINTMENT AND REMOVAL OF DIRECTORS - Nomination of Director

- 32.1 A person other than a retiring Director is not eligible for appointment as a Director at a general meeting unless the person, or a Member who intends to propose the person, has left at the Office a written notice signed by him or her:
- (a) giving the person's consent to the nomination;
 - (b) stating either that the person is a candidate for the office of Director or that the Member intends to propose the person for appointment; and
 - (c) showing how the person meets the qualifications in **clause 30.2**.
- 32.2 A notice given in accordance with **clause 32.1** must be left at the Office at least 14 days before the Board is due to consider the appointment of directors.
- 32.3 The Board will consider the nominations and decide on the appointment of new Directors.

33 APPOINTMENT AND REMOVAL OF DIRECTORS - Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act or ACNC Act from continuing as a Director;
- (b) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (c) cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
- (d) resigns by notice in writing to the Company;
- (e) is removed by a resolution of the Company;
- (f) is absent from Directors' meetings for six consecutive months without leave of absence from the Directors;
- (g) holds any office of profit under the Company; or

- (h) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

34 POWERS AND DUTIES OF DIRECTORS

- 34.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution, the ACNC Act and the Corporations Act do not require to be exercised by the Company in general meeting.
- 34.2 Without limiting the generality of **clause 34.1**, the Directors may exercise all the powers of the Company to:
 - (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) establish subsidiaries and hold investments in the name of those subsidiaries.

35 PROCEEDINGS OF BOARD - Directors' meetings

- 35.1 (a) A Director may at any time, and the Secretary must on the request of a Director, convene a Directors' meeting.
- 35.1 (b) A Directors' meeting must be convened on at least 48 hours written notice of a meeting to each Director.
- 35.2 It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia.
- 35.3 (a) A Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 35.3 (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 35.3 (c) Subject to **clause 37**, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 35.4 **Clause 35.3** applies to meetings of Directors' committees as if all committee members were Directors.
- 35.5 The Directors may meet, adjourn and regulate their meetings as they think fit.
- 35.6 A quorum is a simple majority of Directors for the time being.

36 PROCEEDINGS OF BOARD - Decision of questions

- 36.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting.
- 36.2 The chair of a meeting of Directors does not have a casting vote in addition to his or her deliberative vote.
- 36.3 Despite clause 36.1, where a matter has been previously debated by the Board but not voted upon, a Director who will not be present at a subsequent meeting where the matter is to be voted upon may cast a vote by submitting a written vote to the Company prior to the Board meeting. The written vote must be signed (including electronically or by other technological means which the Director agrees to use to sign).

37 PROCEEDINGS OF BOARD - Directors' interests

- 37.1 Subject to **clause 37.4**, every Director who has a material personal interest in a matter that is to be considered at a Directors' meeting:
- (a) must not vote on the matter or be present while the matter is being considered at the Directors' meeting; and
 - (b) will not be counted in a quorum in relation to that matter, if to do so would be contrary to the Corporations Act or the ACNC Act.
- 37.2 Each Director must disclose to the Company any direct or indirect interest in a matter before the Directors and in the case of a contract, provide the Company with the names of the parties to the contract, particulars of the contract and the Director's interest in the contract. Failure by a Director to disclose under this **clause 37** will not render void or voidable a contract in which the Director has an interest.
- 37.3 A Director may attest the affixing of the Seal to any document relating to a contract or arrangement or proposed contract or arrangement in which the Director has an interest.
- 37.4 **Clause 37.1** does not apply if at any time the Directors have passed a resolution that:
- (a) specifies the Director, the interest and the matter; and
 - (b) states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering or voting on the matter.

38 PROCEEDINGS OF BOARD - Remaining Directors

- 38.1 The Directors may act even if there are vacancies on the board.
- 38.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
 - (b) convene a general meeting.

39 PROCEEDINGS OF BOARD - Chair of Proceedings

39.1 The Chairperson, or in the Chairperson's absence one of the Deputy Chairpersons of the Board will chair every meeting of the Board.

39.2 If:

- (a) there is no Chairperson or Deputy Chairpersons; or
- (b) neither the Chairperson nor any Deputy Chairpersons is present within 15 minutes after the time appointed for holding the meeting; or
- (c) the Chairperson and Deputy Chairpersons are unwilling to act as Chairperson of the meeting, the Directors present may elect one of their number to chair the meeting.

40 PROCEEDINGS OF BOARD - Directors' committees

40.1 (a) The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.

(b) The Directors may at any time revoke any delegation of power to a committee.

40.2 At least one member of each committee must be a Director.

40.3 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

40.4 A committee may be authorised to sub-delegate all or any of the powers for the time being vested in it.

40.5 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

41 PROCEEDINGS OF BOARD - Written resolutions

41.1 The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign (including electronically or by other technological means which the Director agrees to use to sign) a document containing a statement that they are in favour of the resolution set out in that document. The resolution is passed when the last Director signs.

41.2 For the purposes of **clause 41.1**, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

41.3 Any document referred to in this **clause 41** may be in the form of a facsimile or electronic transmission, or other technological form which the Director agrees to use to sign.

41.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this **clause 41**.

41.5 This **clause 41** applies to meetings of Directors' committees as if all members of the committee were Directors.

42 PROCEEDINGS OF BOARD - Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified, all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

43 PROCEEDINGS OF BOARD - Minutes and registers

43.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
- (b) all proceedings of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all appointments of officers;
- (d) all orders made by the Directors and Directors' committees; and
- (e) all disclosures of interests made pursuant to **clause 37**.

43.2 Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

43.3 The Company must keep all registers required by this Constitution, the ACNC Act and the Corporations Act.

44 LOCAL MANAGEMENT - Local management

44.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

44.2 Without limiting **clause 44.1** the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (b) delegate to any person appointed under **clause 44.2(a)** any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution, on any terms and subject to any conditions determined by the Directors.

44.3 The Directors may at any time revoke or vary any delegation under this **clause 44**.

45 LOCAL MANAGEMENT - Appointment of attorneys and agents

- 45.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions determined by the Directors.
- 45.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
 - (b) any company;
 - (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 45.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 45.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 45.5 An attorney or agent appointed under this **clause 45** may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

46 SECRETARY

- 46.1 If required by the Corporations Act or the ACNC Act there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 46.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings but shall not be entitled to vote at such meetings.
- 46.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

47 CHIEF EXECUTIVE OFFICER

- 47.1 The Directors may appoint a Chief Executive Officer who shall be the primary executive officer responsible to the Directors for implementing the Company's policy and decisions.
- 47.2 The Chief Executive Officer shall be an officer of the Company employed by the Company for the term and at remuneration and on conditions as determined by the Directors.
- 47.3 The Chief Executive Officer is entitled to attend and be heard on any matter at all Directors' and general meetings but shall not be entitled to vote at such meetings.
- 47.4 The Directors may, subject to the terms of the Chief Executive Officer's employment contract, suspend, remove or dismiss the Chief Executive Officer.
- 47.5 A person may be appointed as both Company Secretary and Chief Executive Officer.

48 SEALS - Common seal

- 48.1 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
 - (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal; and
 - (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

49 SEALS - Duplicate seal

- 49.1 If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal which:
- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal';
 - (b) must not be used except with the authority of the Directors.

50 INSPECTION OF RECORDS

- 50.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members of the Company.

51 NOTICES - Service of notices

- 51.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:

- (a) by serving it on the person; or
- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

51.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the day after the day on which it was posted.

51.3 A notice sent by facsimile transmission or electronic notification is taken to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (b) on the day after its despatch.

51.4 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.

51.5 A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this **clause 51**.

51.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

51.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.

51.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

52 NOTICES - Persons entitled to notice

52.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director; and
- (c) any Auditor.

52.2 No other person is entitled to receive notice of a general meeting.

53 AUDIT AND ACCOUNTS

53.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act and the ACNC Act.

53.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act and the ACNC Act.

54 WINDING UP AND DEDUCTIBLE GIFT RECIPIENT REVOCATION

54.1 If the Company is wound up:

- (a) each Ordinary Member; and
- (b) each person who has ceased to be an Ordinary Member in the preceding year,:

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to **clause 54.1(b)**, contracted before the person ceased to be an Ordinary Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,

such amount as may be required, not exceeding \$20.

54.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another corporation which, by its constitution, is:

- (a) required to pursue charitable and benevolent purposes consistent with those of the Company only;
- (b) registered under the ACNC Act if the Company had been;
- (c) are income tax exempt under the ITAA if the Company had been;
- (d) can receive deductible gifts under the ITAA if the Company could and on the same basis;
- (e) required to apply its profits (if any) or other income in promoting its objects; and
- (f) prohibited from making any distribution to its members or paying fees to its directors on at least the terms of clauses 3 and 4,

such corporation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court for determination.

54.3 On revocation of the Company's deductible gift recipient endorsement, any surplus gifts, fundraising contributions or money received because of them as set out in section 30-125(6)(b) of the ITAA must be transferred to one or more funds, authorities or institutions determined according to clause 54.2 which is also endorsed as a deductible gift recipient on the same basis as the Company.

55 INDEMNITY AND INSURANCE

- 55.1 To the extent permitted by law and that the officer is not indemnified by directors' and officers' liability insurance maintained by the Company, the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person:
- (a) as such an officer of the Company; and
 - (b) to a person other than the Company or a related body corporate of the Company, unless the liability arises out of conduct on the part of the officer which:
 - (c) involves a lack of good faith; or
 - (d) is contrary to the Company's express instructions.
- 55.2 To the extent permitted by law and that the officer is not indemnified by directors' and officers' liability insurance maintained by the Company, the Company indemnifies every person who is or has been an officer of the Company against any liability for costs and expenses incurred by the person in his or her capacity as an officer of the Company:
- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (b) in connection with an application, in relation to those proceedings, in which the Court grants relief to the person under the Corporations Act.
- 55.3 The Company may pay a premium in respect of a contract insuring a person who is or has been an officer against liability incurred by the person as an officer, except in circumstances prohibited by the Corporations Act.
- 55.4 For the purposes of this **clause 55**, 'officer' means a Director as defined in this Constitution or an officer of the Company as defined by the Corporations Act.

56 REGULATIONS

The Board may make regulations governing the conduct of the affairs of the Company subject to the provisions of this Constitution, to the provisions of the Corporations Act and to such regulations being not inconsistent with the Constitution or provisions of the Corporations Act, and to such other regulations as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting will invalidate any prior act of the Board which would have been valid if that regulation had not been made.

57 Amendment of Constitution

- 57.1 The Members may amend this Constitution by special resolution in accordance with the Corporations Act and the ACNC Act.
- 57.2 If the Company is registered under the ACNC Act, a special resolution under clause 57.1 does not take effect if it would cause the Company to lose its entitlement to registration under the ACNC Act.

58 APPLICATION OF THE CORPORATIONS ACT AND ACNC ACT

- 58.1 This Constitution is to be interpreted subject to the Corporations Act. However, the rules that apply as replaceable rules to companies under the Act do not apply to the Company.
- 58.2 Unless the contrary intention appears, a word or expression in a clause that is defined in section 9 of the Corporations Act has the same meaning in this Constitution as in that section.
- 58.3 This Constitution is to be interpreted subject to the ACNC Act.