



Constitution of the Foundation for Young Australians

ACN 092 744 968

CONSTITUTION OF FOUNDATION FOR YOUNG AUSTRALIANS
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1. PRELIMINARY

1.1 Objects of the Company

The objects of the Company are to assist young Australians to reach their full potential through:

- (a) the development of programs aimed at assisting socially, financially, physically and intellectually disadvantaged young Australians (with at least 50% of the Company's annual expenditure on programs and grants being spent for the benefit of such disadvantaged young Australians);
- (b) the promotion of the pursuit of excellence by young Australians; and
- (c) the development of leadership potential in young Australians from all backgrounds.

1.2 Application of income and property

Subject to rule 15, the Company must apply its income and property solely towards the promotion of the objects of the Company as stated in rule 1.1 and no portion of its income or property may be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise to members of the Company.

1.3 Replaceable rules

The replaceable rules referred to in section 135 do not apply to the Company and are replaced by the rules set out in this document.

1.4 Corporations Act and ACNC Act

While the Company is a registered charity, the ACNC Act and the Law override any rules in this Constitution which are inconsistent with them to the extent of the inconsistency.

1.5 Definitions

The following definitions apply in this document.

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

"Board" means the Directors acting collectively under this document.

"Chief Executive" means a chief executive appointed under rule 12.1.

"Company" means the company named at the beginning of this document whatever its name is for the time being.

"Constitution" means this constitution, and a reference to a rule is a reference to a rule of this constitution.

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"Director" means a person, who is, for the time being, a director of the Company and includes a Young Director.

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

"member" means a person whose name is entered in the Register as a member of the Company.

"Officer" means a Director, Secretary or Chief Executive of the Company and any other person determined by the Board to be an Officer from time to time.

"ordinary resolution" means a resolution of members other than a special resolution.

"Register" means the register of members kept as required by sections 168 and 169.

"Secretary" means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

"special resolution" has the meaning given by section 9.

"Young Director" means a Director who is:

- (a) appointed to the Board before the age of twenty-six (26); and
- (b) younger than 32 years old.

1.6 Rules for interpreting this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.

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- (c) A word which suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **"agreement"** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **"written"** or **"in writing"** includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise.
- (j) Words (other than those defined in rule 1.5) which are defined by the Law have the same meaning in this document.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Law.
- (l) A reference to a person being **"present"** at a meeting includes:
 - (i) at a meeting of members:
 - (A) a member being present in person;
 - (B) a member being present by proxy, attorney or representative;
and
 - (C) to the extent permitted by law, a member participating using technology approved by the Board in accordance with this Constitution; and
 - (ii) at a meeting of the Board, participating using technology approved by the Board in accordance with this Constitution.

2. MEMBERSHIP

2.1 Membership

Subject to rule 2.3, the members of the Company are:

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- (a) the initial members, namely:
- Mr William John Conn
 - Ms Yolanda Klempfner, AO
 - Mr John Theodore Ralph, AO
 - Mr Alexander James McDonald
 - Mr Willoughby James Bailey, AO
 - Ms Jill Reichstein, OAM.
 - Captain David John Eldridge
- (b) such other persons as the Board admits to membership and who have consented in writing to be a member.

2.2 Limited liability of members

Each member of the Company undertakes to contribute to the assets of the Company (up to an amount not exceeding 50 dollars) in the event of its being wound up while a member of the Company, or within one year after ceasing to be a member, for payment of the debts and liabilities of the Company including the costs charges and expenses of the winding up.

2.3 Cessation of membership

- (a) A member may resign from the Company by giving notice in writing to the Board.
- (b) The Board may by resolution, expel from the Company and remove from the Register, any member who does not comply with the provisions of this Constitution or any by-laws, rules or regulations of the Company or whose conduct in the opinion of the Board is prejudicial to the interests of the Company.
- (c) At least 21 days before the Board holds a meeting to expel a member the Board must send a notice to the member which states:
- (i) the allegations against the member;
 - (ii) the proposed resolution for the member's expulsion;
 - (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing; and
 - (iv) that the member may elect to have the question of their expulsion dealt with by the Company in general meeting, provided that the member notifies the secretary in writing, at least 48 hours before the meeting at which the resolution is to be considered by the Board.
- (d) The Company must expel a member and remove the member's name from the Register where:
- (i) a general meeting is held to expel a member; and

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- (ii) a resolution is passed at the meeting for the expulsion of the member by a majority of two-thirds of those present and voting (such vote shall be by ballot).
- (e) A member expelled from the Company does not have any claim monetary or otherwise upon the Company, its funds or property.

3. MEETINGS OF MEMBERS

3.1 Annual general meeting

The Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year in accordance with section 250N.

3.2 Calling meetings of members

- (a) The Board or a Director may at any time; and
- (b) the Board must when requested by members in accordance with section 249D or ordered by the Court under section 249G,

convene a meeting of members.

3.3 Use of technology at general meetings

- (a) Subject to any applicable law:
 - (i) the Company may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate (which may include, but is not limited to, electronic participation facilities or technology with or without members being able to attend a physical venue or linking separate venues together by technology); and
 - (ii) participation in such a meeting will constitute presence as if in person at such a meeting.
- (b) If, before or during a meeting of members, any technical difficulty occurs such that the members as a whole do not have a reasonable opportunity to participate, the chair may:
 - (i) adjourn the meeting until the difficulty is remedied; or
 - (ii) where a quorum remains present (either at the place at which the chair is present or by technology contemplated by paragraph (a)) and able to participate, subject to the Law, continue the meeting.

3.4 Notice of meeting

Subject to rules 3.5 and 3.7, at least 21 days' written notice of a meeting of members must be given individually to:

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- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

The notice of meeting must contain the following information subject to section 249L:

- (d) the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
- (e) the general nature of the meeting's business; and
- (f) if a special resolution is to be proposed at the meeting - an intention to propose the special resolution and state the resolution; and
- (g) if a member is entitled to appoint a proxy - a statement that:
 - (i) the member has a right to appoint a proxy; and
 - (ii) the proxy need not be member of the Company.

The notice of meeting may be given in accordance with rule 24 and subject to section 249J(3).

3.5 Short notice

Subject to sections 249H(3) and (4):

- (a) if a meeting of members is the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

3.6 Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members; or
- (b) cancel a meeting of members;
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

3.7 Fresh notice

If a meeting of members is postponed or adjourned for 1 month or more, the Company must give new notice of the resumed meeting.

3.8 Technology

The Company may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

3.9 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

4. PROCEEDINGS AT MEETINGS OF MEMBERS

4.1 Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

4.2 Quorum

The quorum for a meeting of members is not less than ten members present in person or by proxy or representation.

4.3 Quorum not present

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, within 15 minutes from the time appointed, the members present shall form a quorum.

4.4 Chairing meetings of members

If the Board has appointed a Chair or Deputy Chair to chair Board meetings, the Chair or, in their absence, a Deputy Chair may also chair meetings of members. If:

- (a) there is no Chair or Deputy Chair who the Board has appointed to chair Board meetings for the time being; or
- (b) the Chair or Deputy Chair is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

4.5 Attendance at general meetings

- (a) Every member has the right to attend all meetings of members whether or not entitled to vote.
- (b) Every Director has the right to attend and speak at all meetings of members of the Company.
- (c) The auditor has the right to attend any meeting of members of the Company and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

4.6 Adjournment

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

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

adjourn it to another time and place.

4.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

5. PROXIES, ATTORNEYS AND REPRESENTATIVES

5.1 Appointment of Proxies

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of a proxy must be made by written notice to the Company:

- (a) in a form that contains the following information in accordance with section 250A(1):
 - (i) the member's name and address;

- (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used; or
- (b) in any other form and mode that is, and is signed or acknowledged by the member in a manner, satisfactory to the Board.

5.2 Member's attorney

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of the Company. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

5.3 Deposit of proxy forms and powers of attorney

An appointment of a proxy or power of attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company at its registered office (or another address (including an electronic address) specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

5.4 Corporate representatives

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

5.5 Standing appointments

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or to a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

5.6 Suspension of proxy or attorney's powers if member present

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

6. ENTITLEMENT TO VOTE

6.1 Number of votes

Each member has one vote.

6.2 Casting vote of chair

The chair of a meeting of members has a casting vote.

6.3 Decision on right to vote

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chair, whose decision is final.

7. HOW VOTING IS CARRIED OUT

7.1 Method of voting

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 7.2 either before or on declaration of the result of the vote on a show of hands.

Unless a poll is demanded, the chair's declaration of a decision on a show of hands is final.

7.2 Demand for a poll

A poll may be demanded on any resolution except a resolution concerning the election of the chair of a meeting by:

- (a) at least 3 members present in person or by proxy entitled to vote on the resolution; or
- (b) the chair.

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

7.3 When and how polls must be taken

On the proper demand for a poll:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 7.3(c), in the manner that the chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 7.3(c), in the manner that the chair of the meeting directs;

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- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

8. PATRONS

The Board may from time to time in its discretion appoint a Patron or Patrons of the Company who may (but need not) be members.

9. DIRECTORS

9.1 Number of Directors

- (a) Until otherwise determined by the Board the number of Directors must not be less than seven (7) nor more than twelve (12).
- (b) A minimum of three (3) Directors must be Young Directors.

9.2 Appointment by the Board

Subject to this document and to the number of Directors for the time being fixed under rule 9.1 not being exceeded, the Board may appoint a person to be a Director at any time. Any Director so appointed automatically retires at the next annual general meeting and is eligible for re-election by that general meeting.

The Board shall endeavour to ensure that each State and mainland Territory of Australia is represented on the Board. A Director must be admitted as a member of the Company.

9.3 Election by general meeting

Subject to this document and to the number of Directors for the time being fixed under rule 9.1 not being exceeded, the Company may elect a person nominated for election or re-election as a Director by ordinary resolution.

The Board may, in its absolute discretion, determine the method of any ballot or other voting process to be conducted under this rule 9.3.

9.4 Eligible candidates

Except in the case of a retiring Director or a person recommended by the Board for election or re-election, a person is not eligible for election as a Director at a general meeting unless the Company receives at least 14 days before the meeting, a notice in writing of their candidature duly signed by the proposer and by the nominee giving consent to the nomination.

The Company must notify members of every candidate for election as a Director at least 7 days before the relevant general meeting.

9.5 Retirement and Re-election

- (a) Each Director will hold office for a term ending at the conclusion of the second annual general meeting following their election under rule 9.3.
- (b) Subject to any limit on the term of office of Directors under rule 9.6(a), retiring Directors are eligible for re-election.

9.6 Limit on term of office

- (a) Directors may serve up to three consecutive terms of the duration set out in rule 9.5(a).
- (b) If a Director has reached the maximum term under rule 9.6(a), that person will be ineligible to be re-appointed or re-elected as a Director until the later of:
 - (i) the expiration of 2 years; or
 - (ii) the conclusion of second annual general meeting,
following their retirement, resignation or removal (as applicable).
- (c) If a Young Director reaches the age of 32:
 - (i) they will cease to be Young Director but will, subject to sections 9.5(a) and 9.6(a) of this Constitution continue to be a Director; and
 - (ii) the maximum term under rule 9.6(a) does not reset.

9.7 Time of retirement

A Director's retirement under rule 9.2 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

9.8 Chair and Deputy Chairs

The Board must elect a Chair of the Board and if they think fit one or more Deputy Chairs of the Board and determine the period or periods for which they are to hold office.

9.9 Honorary Treasurer

The Board may elect from their number an Honorary Treasurer and determine the period for which they are to hold office.

9.10 Board offices

At least one of the Chair, Deputy Chair or Treasurer must be a Young Director.

9.11 Cessation of Director's appointment

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) becomes an insolvent under administration;
- (b) is not permitted by the Law (or an order made under the Law) to be a director or is removed from office by resolution under section 203D;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings (personally or using technology) for a continuous period of 6 months without leave of absence from the Board; or
- (e) resigns by notice in writing to the Company.

9.12 Removal from office

Subject to the Law, the Company by ordinary resolution may remove a Director from office.

9.13 Too few Directors

If the number of Directors is reduced below the minimum required by rule 9.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number; and
- (b) in emergencies.

10. POWERS OF THE BOARD

10.1 Powers generally

Except as otherwise required by the Law, any other applicable law or this document, the Board:

- (a) has power to manage the business and operations of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

10.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed, or treated by rule 17 as passed, at a meeting of the Board; or
- (b) in accordance with a delegation of the power under rule 13.

11. EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) by which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner for the time being decided by the Board.

12. CHIEF EXECUTIVE

12.1 Appointment and power of the Chief Executive

The Board may appoint a person to be Chief Executive of the Company either for a specified term (but not for life) or without specifying a term.

The Board may delegate any of the powers of the Board to the Chief Executive:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion, of the powers of the Board, and may revoke the delegation at any time.
- (c) The Board may appoint a Chief Executive (who is otherwise eligible to be a Director) to be a Director under rule 9.2 and a Chief Executive is eligible to be a Director under rule 9.4.
- (d) In addition to the other circumstances set out in rule 9.11, where a Chief Executive who is also a Director ceases to be Chief Executive, that person automatically ceases to be a Director.
- (e) Without limiting rule 15.2, a Chief Executive who is also a Director may be remunerated on terms approved by the Board, but then only in their capacity as an employee of the Company and not as a Director.

12.2 Termination of appointment of Chief Executive

Subject to any contract between the Company and the Chief Executive, the Board may terminate the appointment of the Chief Executive whether or not the appointment was expressed to be for a specified term.

13. DELEGATION OF BOARD POWERS

13.1 Delegation to committee or attorney

The Board may delegate any of its powers:

- (a) to a committee consisting of at least 1 Director and may also include people who are not Directors; or
- (b) to an attorney;

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 126(1).

13.2 Terms of delegation

A delegation of powers under rule 13.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

13.3 Powers of attorney

A power of attorney under rule 13.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

13.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

14. DIRECTOR'S DUTIES AND INTERESTS

14.1 Compliance with Law

Each Director must comply with Part 2D.1.

14.2 Scope of Directors' duties

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

- (a) holding any office or place of profit or employment other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor; or

- (b) entering into any agreement with the Company.

14.3 Declaration of interests

A Director who:

- (a) is in any way interested in a contract or proposed contract with the Company; or
- (b) holds any office or possesses any property as a result of which duties or interests might be created which are directly or indirectly in conflict with that Director's duties or interests as a Director,

must declare the fact and the nature of the interest, or nature, character and extent of the conflict at the first Board meeting held after the relevant facts come to the Director's knowledge or after appointment as a Director (whichever is later).

14.4 Director interested in agreement

Each Director must comply with section 195 in relation to being present, or voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, whether the Company enters into an agreement or proposed agreement in which that Director has an interest;
- (b) the Company may enter into the agreement and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters involving the agreement; and
- (d) if disclosure under rule 14.3 is made before the agreement is entered into:
 - (i) the Director may retain benefits under the agreement even though the Director has an interest in the agreement; and
 - (ii) the Company cannot avoid the agreement merely because of the existence of the interest.

14.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure required by rule 14.3; or
- (b) is present at, or counted in the quorum for, a meeting that considers, votes on, or participates in the execution of, that agreement in breach of section 195.

14.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its accounts confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

15. REMUNERATION

15.1 Remuneration of Directors

Subject to applicable law, the Directors may be paid for their services as Directors as determined by the Company in general meeting by resolution.

15.2 Remuneration for services rendered

Nothing in this Constitution prevents the payment in good faith of remuneration to any officers, or employees of the Company or to any member of the Company in return for:

- (a) any services actually rendered to the Company;
- (b) goods supplied in the ordinary and usual way of business;
- (c) the payment of reasonable interest on money borrowed from any Director or member of the Company; or
- (d) reasonable rent for premises leased by any Director or member to the Company.

16. DIRECTORS' AND OFFICERS' INDEMNITY AND INSURANCE

16.1 Indemnity

To the maximum extent permitted by law, the Company must indemnify every Officer of the Company and its wholly owned subsidiaries against a liability:

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- (a) incurred as Officer to a person other than the Company or a related body corporate (including a liability incurred as a result of appointment or nomination of the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred in defending civil or criminal proceedings in which judgement is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person under the Law.

16.2 Insurance

To the maximum extent permitted by law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person, including a Director.

16.3 Former Officers

The indemnity in favour of Officers under rule 16.1 is a continuing indemnity. It applies in respect of all acts done by a person while an Officer of the Company or one of its wholly owned subsidiaries even though the person is not an Officer at the time the claim is made.

17. BOARD MEETINGS

17.1 Convening Board meetings

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

17.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

17.3 Use of technology

A Board meeting may be held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period.

A Board meeting held solely or partly by means of technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chair of the meeting is located.

17.4 Chairing Board meetings

The Chair of the Board, or in their absence, the Deputy Chair is entitled to chair meetings of the Board. If there is no Chair or Deputy Chair or the Chair and Deputy Chair are not present within 15 minutes after the time for which a Board meeting is called or are unwilling to act, the Directors present must elect a Director present to chair the meeting.

17.5 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is 4 Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

17.6 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution, the chair has a second or casting vote.

17.7 Procedural rules

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

17.8 Written resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is treated as having been passed at a Board meeting at the time when the last Director signs.

17.9 Additional provisions concerning written resolutions

For the purpose of rule 17.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document; and
- (b) an e-mail message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

17.10 Valid proceedings

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

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

18. SECRETARY

18.1 Appointment and removal of secretary

- (a) The Board may appoint 1 or more individuals to be a Secretary of the Company either for a specified term or without specifying a term.
- (b) The Company must have at least 1 Secretary at all times.

18.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

18.3 Removal from office

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

19. MINUTES

19.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 13); and
- (d) resolutions passed by Directors without a meeting,

to be kept in accordance with sections 232A(7) and 251A.

19.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

19.3 Inspection of minute books

The Company must allow members to inspect, and provide copies of the minute books for the meetings of members in accordance with section 251B.

20. COMPANY SEALS

20.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

20.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

20.3 Fixing seals to documents

The affixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

21. ACCOUNTS AND AUDIT

21.1 Company must keep accounts

- (a) The Board must cause the Company to keep written financial records that: correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the auditor to inspect those records at all reasonable times.

21.2 Financial reporting

The Board must cause the Company to prepare financial reports as required by law.

21.3 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by sections 324 to 334 inclusive and 1278, 1280 and 1289.

21.4 Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

21.5 Inspection of financial records and books

Subject to rule 19.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

22. REGISTER OF MEMBERS

The Company must maintain a register of members.

In accordance with section 169, the register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the register is made;
- (c) the name and details of each person who stopped being a member of the Company within the last 7 years;
- (d) the date on which the person stopped being a member; and
- (e) an index of member's names where the company has more than 50 members (and the register itself is not kept in a form that operates effectively as an index).

23. WINDING UP

If upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any surplus property the surplus shall not be paid to or distributed amongst the members of the Company but shall be given or transferred to some institution or institutions having objects similar to the objects of the Company and whose constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under rule 1.2 and contains a rule in relation to winding up in substantially the same terms as this rule 23, such institution or institutions to be determined by the members of the Company at or before the time of dissolution and, failing such determination, by a Judge of the Supreme Court of the Australian

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Capital Territory or such other court as may have or acquire jurisdiction in the matter.

24. NOTICES

24.1 Notices by Company

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

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either
 - (i) delivered personally;
 - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by electronic message to the electronic address (if any) nominated by that person.

24.2 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

24.3 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by electronic message:
 - (i) by 5.00 p.m. (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5.00 p.m. (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
- (b) if it is sent by mail, 1 business day after posting.

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

24.4 Business days

For the purposes of rule 24.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

24.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

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