

Constitution of Down Syndrome Australia

**ACN 150 209 224**

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## 1 Introduction

Down syndrome is the term used to refer to the presence of an extra chromosome in a person's genetic makeup, which results in a range of physical characteristics, health and development indications and some level of intellectual disability.

People with Down syndrome are not fundamentally different from anyone else. They have the same needs and aspirations in life that we all do, including somewhere to live, meaningful employment, the opportunity to enjoy the company of friends and family, intimacy and having a role in their community. However, the path to achieving these goals can be more complex than for most people, and most people with Down syndrome are likely to need some level of support to help them achieve the kind of life that most people take for granted.

Down Syndrome Australia is the peak national body which supports people with Down syndrome and their families.

## 2 Name of Corporation

- (a) The name of the company is Down Syndrome Australia.
- (b) The Company is a company limited by guarantee under the Corporations Act.

## 3 Status of the Constitution

- (a) This is the constitution of the Company.
- (b) This Constitution displaces the Replaceable Rules. Accordingly, none of the Replaceable Rules apply.

## 4 Interpretation

### 4.1 Definitions

In this Constitution:

**Auditor** means the person appointed for the time being as the auditor of the Company.

**Associate** has the meaning given to the term in the Corporations Act.

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

**Board** means the Board of Directors of the Company from time to time.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne, Victoria.

**CEO** means the CEO of the Company appointed under **clause 16**.

**Chairperson** means the chairperson of the Directors appointed under **clause 18.6**.

**Company** means Down Syndrome Australia.

**Constitution** means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.

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

**Director** means a person who is a director of the Company from time to time and **Directors** means more than one Director, and in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include alternates.

**Financial Year** means the 12 month period ending on 30 June.

**Insolvency Event** means in relation to a person, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a controller (as defined in the Corporations Act), receiver, receiver and manager, administrator, liquidator (whether provisional or otherwise) or analogous person appointed to it or any of its property;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other law;
- (d) seeking protection from its creditors under any law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- (e) any analogous event or circumstance to those described in paragraphs (a) to (d) under any law.

**Member** means a person who is, or who is registered as, a member of the Company.

**Members Guarantee Amount** means **\$10.00**.

**Membership** means being a Member of the Company.

**Objects** means the objects of the Company as set out in **clause 5.1**.

**Office** means the registered office of the Company.

**Present** means a Member being present in person or by proxy, attorney or Representative, and includes being present at a different venue from the venue at which other Members are participating in the same meeting, providing that the pre-requisites for a valid meeting at different venues are observed.

**Register** means the register of Members and Representatives maintained pursuant to the Corporations Act.

**Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.

**Representative** means a natural person nominated by an organisation in accordance with **clause 12**.

**Seal** means the common seal for the time being of the Company.

**Secretary** means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

**Special Resolution** has the meaning given to that term in section 9 of the Corporations Act.

**Voting Member** means any Member belonging to a class of Members that, in accordance with **clause 9.5**, has been determined and admitted by the Board as a class of Members with voting rights.

## 4.2 Interpretation

In this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Constitution; and
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means 12 months;
- (i) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (l) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, consolidated, re-enacted or replaced from time to time;



- (m) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (n) a reference to a "person" includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (o) money amounts are stated in Australian currency unless otherwise specified;
- (p) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body
- (q) any expression in a provision of this Constitution that relates to a particular provision of the Corporations Act has the same meaning as in that provision of the Corporations Act; and
- (r) any expression in a provision of this Constitution that relates to the Corporations Act also includes a reference to the Australian Charities and Not-for-profits Commission Act.

### **4.3 Compliance with the Corporations Act**

This Constitution is subject to the Corporations Act and the Australian Charities and Not-for-profits Commission Act and where there is any inconsistency between a clause of this Constitution and the Corporations Act or the Australian Charities and Not-for-profits Commission Act which is not permissible under the Corporations Act or the Australian Charities and Not-for-profits Commission Act, the Corporations Act or Australian Charities and Not-for-profits Commission Act prevails to the extent of the inconsistency. To the extent of any inconsistency between the Corporations Act and the Australian Charities and Not-for-profits Commission Act, the Australian Charities and Not-for-profits Commission Act prevails to the extent of the inconsistency.

### **4.4 Transitional**

Everything done under this Constitution continues to have the same operation and effect after the adoption of any successor Constitution as if properly done under that Constitution.

## **5 Objects and purpose**

### **5.1 Objects and purposes**

The object of the Company is to:

- (a) relieve the disadvantage and distress experienced by people in Australia with Down syndrome, through the provision of education, resources and information to people with Down syndrome and their families, based on a human rights approach and guided by the United Nations Convention on the Rights of Persons with Disabilities ratified by Australia; and

- (b) perform any duties and functions and do such other things as are incidental or conducive to the attainment of the object in paragraph (a), including by undertaking the following activities:
  - (i) supporting people with Down syndrome to have access to the same services, supports and community activities as other Australians;
  - (ii) providing access to consistent, up-to-date evidenced-based information on Down syndrome;
  - (iii) representing the experiences and views of people with Down syndrome and their families to the Federal government;
  - (iv) promoting the inclusion of people with Down syndrome in the social, economic and cultural life of the community;
  - (v) supporting relevant research and knowledge translation initiatives relating to Down syndrome; and
  - (vi) any other activities that are necessary or expedient to further the objects of the Company.

## **5.2 Charitable purpose**

The Company may only pursue charitable purposes, and must do so predominantly in Australia.

## **5.3 Application of income and property for Objects only**

The profits (if any), other income and property of the Company, however derived, must be applied solely toward the promotion of the Objects.

## **5.4 No dividend, bonus, distribution or profit paid to Members**

No part of the profits, income or property of the Company may be:

- (a) paid or transferred to a Member, either directly or indirectly by way of dividend, bonus, distribution or otherwise; or
- (b) paid as fees or otherwise to any Director except in accordance with the provisions of this Constitution.

## **5.5 Payments by Company in good faith**

With the approval of the Board, **clause 5.4** does not prevent payment in good faith to an officer of the Company or a Member (as applicable):

- (a) of remuneration for services provided by that officer to the Company;
- (b) for expenses reasonably incurred by that officer or Member in the performance of their duties, if such payment is approved by the Board and the amount payable is not more than an amount that would be reasonable for the expenses;
- (c) for goods supplied in the ordinary course of business; or
- (d) in respect of the indemnification of, or payment of premiums on contracts of insurance for, any Director, in accordance with **clause 25**,

provided that any payments pursuant to **clauses 5.4(b)** and **14.9** are commercially reasonable and at arm's length.

## 6 Powers of the Company

The Company has all the powers conferred on it by the Corporations Act, and the Company may use its powers to do anything which it considers advances or achieves its Objects and all other things that are incidental or conducive to carrying out its Objects.

## 7 Modification or repeal of this Constitution

### 7.1 Modifying or repealing Constitution

This Constitution may be modified or repealed only by a Special Resolution of the Company in a general meeting.

### 7.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.

## 8 Member's liability

### 8.1 Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company incurred before the time that the Member ceased to be a Member;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

### 8.2 Limited liability

The amount that each Member or past Member is liable to contribute under **clause 8.1** is limited to the amount of the Member's Guarantee Amount.

## 9 Members

### 9.1 Number of Members

The Company must have at least one Member.

### 9.2 Becoming a Member

- (a) The Directors may admit as a Member any person who:

- (i) agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by any Directors from time to time; and
  - (ii) agrees to assume the liability to pay the Member's Guarantee Amount.
- (b) Subject to the Corporations Act, a person becomes a Member on the registration of that person's name in the Register.

### **9.3 Eligibility for Membership**

Any person is eligible to become a Member provided that the person satisfies any other criteria for Membership that may from time to time be determined by the Board.

### **9.4 Application for Membership**

- (a) Only a person satisfying the eligibility requirements for Membership referred to in **clause 9.3** may apply for Membership.
- (b) The Board may prescribe the form of the application for Membership.
- (c) An application for Membership must:
  - (i) be in writing signed by the applicant;
  - (ii) if the Board has prescribed the form of the application for Membership, be in that prescribed form; and
  - (iii) specify the class of Membership being applied for.
- (d) At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept, accept subject to conditions or reject the application. An application for Membership may only be accepted, or accepted subject to conditions, by a resolution passed by at least two-thirds of Directors entitled to vote on the resolution.
- (e) If the Board accepts an application for Membership, the Board must register the name of the person in the Register, the class of membership and record any conditions imposed on that person's Membership, as soon as practicable.

### **9.5 Classes of Members**

The Board may determine and admit different classes of Members as defined by them, including non-voting members.

### **9.6 Membership Fees**

- (a) The Board may from time to time prescribe membership fees and the terms of payment of such fees, for any class of members.
- (b) The Board may in their absolute discretion increase or reduce the amount of any such fees and determine that a different amount is payable by different classes of members.

- (c) If a Voting Member fails to pay the relevant membership fee (if any) by the time such fees are due and payable, the Board may in their absolute discretion withdraw that Voting Members right to vote until the relevant membership fee is paid in full.

## **9.7 Rights of Members are non-transferable**

The rights and obligations of a Member are personal and are not transferable.

## **9.8 Cessation of Membership**

A person ceases to be a Member:

- (a) if the person resigns as a Member in accordance with this Constitution;
- (b) if the person ceases to satisfy the eligibility requirements for Membership of the relevant class under this Constitution;
- (c) if the person is expelled as a Member in accordance with this Constitution;
- (d) in the case of a natural person:
  - (i) if the person dies;
  - (ii) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Member;
  - (iii) if:
    - (A) in the reasonable opinion of the Board, the Member's status or conduct renders it undesirable that the Member continue to be a Member, including (without limitation) if the Member brings the reputation of the Company into disrepute;
    - (B) 75% of the Board entitled to vote at a Board meeting vote in favour of the resolution to terminate the Membership of the Member; and
    - (C) the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed; or
  - (iv) if the person becomes a bankrupt; and
- (e) in the case of a body corporate:
  - (i) if the body corporate is dissolved or otherwise ceases to exist;
  - (ii) if the body corporate is the subject of an Insolvency Event;
  - (iii) if the body corporate is placed under external administration or makes any composition or arrangement with its creditors;
  - (iv) if:
    - (A) in the Board's reasonable opinion, the Member's status or conduct renders it undesirable that the Member continue to

- be a Member, including (without limitation) if the Member brings the reputation of the Company into disrepute;
- (B) 75% of the Directors entitled to vote at a Board meeting vote in favour of the resolution to terminate the Membership of the Member; and
  - (C) the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed; or
  - (v) if the body corporate is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up.

### **9.9 Resignation of Member**

A Member may resign from the Company by giving the Board at least 30 days' notice.

### **9.10 Register**

The Secretary must maintain a Register setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) the class of membership and specifically whether the Member is a Voting Member or non-voting Member;
- (d) any conditions imposed on a Member's Membership;
- (e) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member; and
- (f) the name and date of appointment of any Representative.

### **9.11 Inspection of Register**

The Register must be kept at the Office or the principal place of business. A Member may inspect the Register. No amount may be charged for inspection.

## **10 General meetings**

### **10.1 Annual general meetings**

- (a) The Company must hold its first annual general meeting within 18 months after its incorporation.
- (b) The Company must hold an annual general meeting at least once in each calendar year.

### **10.2 Business at annual general meeting**

The business of an annual general meeting is to:

- (a) confirm the minutes of the last preceding annual general meeting and of any other general meeting held since the last annual general meeting;
- (b) unless for the preceding Financial Year the Company was a Small Company Limited By Guarantee, consider the annual report, Directors' report, and the Auditor's report (if any),
- (c) appoint Directors;
- (d) (where relevant) appoint the Auditor and fix the remuneration of the Auditor; and
- (e) transact any other business which under this Constitution, the Corporations Act or the Australian Charities and Not-for-profits Commission Act may properly be brought before the meeting.

### **10.3 Director convening a general meeting**

Any Director or the Directors may convene a general meeting when they think fit and must do so if required under the Corporations Act.

### **10.4 Meetings requested by Members**

- (a) If the Board receives a request from a Voting Member the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Voting Members requesting the meeting and be signed by all of the Voting Members making the request. For this purpose, signatures of the Voting Members may be contained in more than one document.
- (c) A general meeting requested by the Voting Members must be held no later than two calendar months after the request is received.

### **10.5 Members' resolutions at a general meeting**

- (a) A Voting Member may give the Company notice of a resolution they propose to move at a general meeting.
- (b) The notice under **clause 10.5(a)** must:
  - (i) be in writing;
  - (ii) set out the wording of the proposed resolution; and
  - (iii) be signed by the Voting Members proposing to move the resolution.
- (c) If the Company has been given notice of a Members' resolution under **clause 10.5(a)**, the resolution must be considered at the next general meeting of the Company that occurs more than 2 months after the notice is given.

### **10.6 Notice of general meeting**

- (a) At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (i) state the date, time and place (or places) of the meeting;
  - (ii) state the general nature of the business to be conducted at the meeting;
  - (iii) state any proposed resolutions;
  - (iv) state the names of proxies that have been appointed (if any); and
  - (v) contain a statement informing the Members of the right to appoint a proxy.
- (b) The Company cannot call a general meeting or annual general meeting on shorter notice than that specified in **clause 10.6(a)** if a resolution will be moved at the meeting to:
- (i) appoint, or remove, a Director; or
  - (ii) remove an Auditor.
- (c) Subject to the Corporations Act, the Company may give notices to Members electronically in accordance with section 259J of the Corporations Act, by notifying the Member:
- (i) that the notice is available; and
  - (ii) how the Member may use electronic means to access the notice,
  - (iii) by any electronic means permitted by the Corporations Act and to an electronic address nominated by the relevant Member for the purpose of receiving notices.

### **10.7 Shorter notice of general meeting**

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to attend and vote at the general meeting,

and accordingly, any such general meeting will be treated as having been duly convened.

### **10.8 Notice of resumption of an adjourned meeting**

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

### **10.9 Postponement or cancellation of general meeting**

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the



consent of the requesting Members, except where the general meeting is dissolved in accordance with **clause 10.13(b)**.

#### **10.10 Notice of change, postponement or cancellation of meeting**

- (a) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (b) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (c) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

#### **10.11 Omission to give notice relating to general meeting**

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting,

or the accidental omission to send out the instrument of proxy to a person entitled to receive notice of that instrument.

#### **10.12 Quorum**

A quorum at a general meeting is three quarters of the total number of Voting Members who are entitled to vote on each of the resolutions considered at the general meeting or the next whole number greater than three-quarters of the total number of Voting Members who are entitled to vote on each of the resolutions considered at the general meeting. The quorum must be Present at all times during the general meeting.

#### **10.13 Lack of quorum**

- (a) If a quorum is not Present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the Chairperson may allow) or ceases to be Present at any time during the general meeting, the general meeting shall be adjourned to be resumed on a day, time and place (or places) as the Directors or Director at the meeting may determine.
- (b) If a quorum is not Present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be Present during the meeting, the general meeting is dissolved.

#### **10.14 Chairing general meetings**

- (a) The Chairperson (elected under clause 18.6) must preside as chairperson at every general meeting during the period in which the Chairperson holds that office.
- (b) Where a general meeting is held and:
  - (i) a Chairperson has not been elected;
  - (ii) the Chairperson is not Present within 15 minutes after the time appointed for any general meeting; or
  - (iii) the Chairperson is unwilling or unable to act as chair for the whole or any part of that general meeting,the Directors Present must elect a Director Present to chair that general meeting.
- (c) If no Director is elected or if all the Directors Present decline to take the chair for the whole or any part of that general meeting, the Members Present (whether in person or by proxy) and who are entitled to vote may elect a Member Present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

#### **10.15 Right of officers and advisers to attend general meeting**

- (a) A Director who is not a Member is entitled to be present and to speak at any general meeting.
- (b) A Secretary who is not a Member is entitled to be present and, at the request of the Chairperson of the general meeting, to speak at any general meeting.
- (c) Any other person (whether a Member or not) required by the Directors to attend any general meeting is entitled to be present and, at the request of the Chairperson of the general meeting, to speak at that general meeting.

#### **10.16 Conduct of general meetings**

The Chairperson of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

#### **10.17 Adjournment**

- (a) The Chairperson of a general meeting at which a quorum is Present may adjourn the general meeting.
- (b) If a majority of Members Present at a general meeting in person or by proxy and who are entitled to vote determine that the meeting should be adjourned, the Chairperson must adjourn the meeting to another date, time and place (or places) determined by the Chairperson.

- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business left unfinished at the adjourned or postponed general meeting.
- (d) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.
- (e) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting. In all other cases it is not necessary to give notice of the adjourned meeting.

### **10.18 Use of technology**

The Company may hold a general meeting at 2 or more venues using any technology that gives Members a reasonable opportunity to participate.

## **11 Proxy**

### **11.1 Appointment of proxy**

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) Subject to the Corporations Act, a Member may appoint one proxy only at any given time.
- (c) A proxy may be, but does not have to be, a Member.
- (d) An appointment of a proxy may be a standing one. An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.
- (e) A proxy appointed to attend and vote at a general meeting for a Member in accordance with this **clause 11** has the same rights as the Member to:
  - (i) speak at the meeting;
  - (ii) vote (only to the extent allowed by the appointment and where the Member who has appointed the proxy is not present in person at the meeting); and
  - (iii) demand, or join in a demand, for a poll.

### **11.2 Proxy instruments**

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
  - (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 general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
  - (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy must vote as directed in the instrument, and is not entitled to vote on the proposed resolution except as directed in the instrument. If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.
  - (d) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:
    - (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
    - (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

### **11.3 Proxy to be received by Company**

The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (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 the general meeting.

### **11.4 Power to demand poll**

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

### **11.5 Revocation of proxy**

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

### **11.6 Validity of votes of proxy**

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48

hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member, or to be entitled to vote; or
- (b) the Company receives notice of:
  - (i) the revocation of the instrument appointing the proxy;
  - (ii) the appointment of a new proxy; or
  - (iii) the revocation of any power of attorney under which the proxy was appointed.

### **11.7 No liability**

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

## **12 Representatives**

### **12.1 Appointment of Representative**

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
  - (i) at meetings of the Members;
  - (ii) at meetings of creditors or debenture holders; or
  - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a Representative may be a standing one.

### **12.2 Authority to act as Representative**

- (a) An appointment of a Representative must be in writing and be signed by the body corporate appointing the Representative and state:
  - (i) the Member's name and address;
  - (ii) the Company's name;
  - (iii) the Representative's name or the name of the office held by the Representative; and
  - (iv) the general meeting at which the Representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the Representative may restrict the exercise of any power.

### **12.3 Instrument to be received by Company**

- (a) An instrument purporting to appoint the Representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a Representative must be received by the Company at any of the following:
  - (i) the Office;
  - (ii) a facsimile number at the Office; or
  - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

### **12.4 Revocation and appointment of Representative**

The appointment of a Representative may be revoked by the Member who appointed the Representative by notice to the Company from the Member stating that the appointment of the Representative is revoked or by appointing a new Representative.

### **12.5 Validity of votes of Representative**

A vote cast by a Representative will be valid unless before the start of the general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a Representative votes:

- (a) the Member who appointed the Representative ceases to be a Member or to be entitled to vote; or
- (b) the Company has received notice of:
  - (i) the revocation of the instrument appointing the Representative; or
  - (ii) the appointment of a new Representative.

### **12.6 No liability**

The Company is not responsible for ensuring that the terms of appointment of a Representative are complied with, and accordingly is not liable if those terms are not complied with.

## **13 Voting**

### **13.1 Entitlement to vote**

Each Member entitled to vote at a general meeting may vote in person or by proxy. Each Member entitled to vote at a general meeting has one vote, whether on a show of hands, or on a poll.

### **13.2 Proxy vote to be identified**

Before a vote is taken the Chairperson must inform the Members Present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

### **13.3 Voting on resolution**

- (a) At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.
- (b) Except where by law or by express provision in this Constitution a resolution is required to be a Special Resolution, a resolution put to the vote at a general meeting must be decided by at least two-thirds of votes cast by the Voting Members Present at the general meeting.

### **13.4 Objection to right to vote**

- (a) A challenge to a right to vote at a general meeting:
  - (i) may only be made at that general meeting; and
  - (ii) must be determined by the Chairperson.
- (b) A determination made by the Chairperson in relation to a challenge to a right to vote is binding on all Members and is final.

### **13.5 Written resolutions**

Voting Members may pass a resolution without a general meeting being held if all the Voting Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Voting Members may be contained in more than one document. The document may be sent or circulated by facsimile or electronic transmission. If a circulating resolution is passed in accordance with this **clause 13.5**, it is deemed to have been passed when the last signatory signs the resolution.

### **13.6 Minutes**

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the Chairperson that a resolution has, on a show of hands, been:
  - (i) carried;
  - (ii) carried unanimously;
  - (iii) carried by a particular majority; or
  - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the Chairperson is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:

- (i) the proceedings and resolutions of each general meeting;
  - (ii) any declarations at each general meeting ; and
  - (iii) all resolutions passed by Members without a general meeting.
- (c) The Chairperson, or the Chairperson of the next meeting, must sign the minutes within one month after the general meeting.
  - (d) The minute books must be kept at the Office.
  - (e) Members may inspect the minute books. No amount may be charged for inspection.

### **13.7 Disputes to be resolved by Chairperson**

The Chairperson will determine any dispute in relation to any vote, and the determination of the Chairperson is binding on all Members and is final.

### **13.8 Chair may determine to take a poll**

The Chairperson of a general meeting may determine that a poll be taken on any resolution.

### **13.9 Right to demand poll**

A poll may be demanded on any resolution at a general meeting other than the election of a Chairperson or the question of an adjournment by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll.

### **13.10 Procedure for demanding poll**

- (a) A poll may be demanded:
  - (i) before a vote on a show of hands is taken;
  - (ii) before the result of a vote on a show of hands is declared; or
  - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a Chairperson or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the Chairperson directs.
- (c) Other than where a poll is demanded on the election of a Chairperson or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a Chairperson or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.



- (e) The result of the poll will be the resolution of the meeting at which the poll was demanded.

### **13.11 Direct Voting**

- (a) The Directors may determine that, at any general meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to vote by direct vote in respect of that resolution. A direct vote includes a vote delivered to the Company by post, fax or other electronic means approved by the Directors.
- (b) Where **clause 13.11(a)** applies, the notice of meeting must indicate that direct voting is available at the relevant meeting or on particular resolutions.
- (c) The Directors may prescribe regulations, rules and procedures in relation to direct voting, including, without limitation:
  - (i) specifying the form, method and timing of casting a direct vote at a meeting for the vote to be valid; and
  - (ii) the circumstances in which a direct vote may be withdrawn by the Member or deemed withdrawn.

## **14 Directors**

### **14.1 Number of Directors**

The Company must have at least three Directors (not counting alternates). At least two Directors must reside ordinarily in Australia.

### **14.2 Appointment of Directors**

- (a) The Company may at any time by resolution passed in general meeting appoint any person to be a Director.
- (b) Subject to this Constitution, the Board may by resolution at a Board meeting appoint a natural person as a Director.
- (c) A resolution by the Board to appoint a Director under **clause 14.2(a)** must be passed by at least two-thirds of Directors entitled to vote on the resolution.
- (d) A person appointed as a Director by the Board under **clauses 14.2(a) and 14.2(c)**, holds office until the end of the next annual general meeting following their appointment and is eligible for appointment at that meeting. If the person is not appointed at that annual general meeting, the person ceases to be a Director at the conclusion of that annual general meeting.

### **14.3 Term of appointment of Directors**

- (a) No Director may hold office for a period in excess of 3 years, or beyond the third annual general meeting following confirmation of the Director's

appointment, whichever is longer, without submitting himself or herself for re-appointment at that annual general meeting.

- (b) A retiring Director holds office as a Director until the end of the meeting at which the Director retires.
- (c) A person must not hold the office of a Director for more than 3 consecutive periods of three (3) years, provided that where the Board determines that there are exceptional circumstances, a person may be re-appointed by the Company under **clause 14.2** for a further period of up to three (3) years beyond that maximum period.
- (d) A person having held office as a Director for the maximum period specified in **clause 14.3(c)**, is eligible to be appointed under **clause 14.2** once a period of three (3) years has expired since that person last held office as a Director.

#### **14.4 Director qualifications**

A person must give the Company a signed written consent to act as a Director before being appointed as a Director.

#### **14.5 Removal of Director**

- (a) The Company may remove a Director by ordinary resolution at a general meeting.
- (b) Notice of an intention to move a resolution to remove a Director at a general meeting must be given to the Company at least two months before the meeting is to be held.
- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, the Company must provide that notice to the Director the subject of the proposed resolution as soon as practicable.
- (d) The Director must be informed that he or she may:
  - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
  - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

#### **14.6 Cessation of Directorship**

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting in accordance with **clause 14.5**;

- (b) resigns as a Director in accordance with **clause 14.7**;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act;
- (f) without the consent of the Company in general meeting, holds an office of profit under the Company otherwise than as an officer or employee of the Company;
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of such interest as required by the Corporations Act;
- (h) is absent from three (3) consecutive Board meetings without leave of absence from the Board and the Board does not resolve that the Director should not cease to be a Director; or
- (i) is the subject of an Insolvency Event.

#### **14.7 Resignation of Directors**

A Director may resign from the office of Director by giving notice of resignation to the Company at the Office. Unless a later time is stipulated in the resignation notice, the Director's resignation will take effect at the time at which it is received by the Company.

#### **14.8 Remuneration of Director**

Subject to **clauses 5.5** and **14.9**, the Company must not pay and a Director is not entitled to receive any fee (or other remuneration) from the Company for services performed as a Director.

#### **14.9 Reimbursement of expenses**

Subject to **clause 5**, Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

### **15 Powers and duties of Board**

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.

- (c) The powers of the Board include the power to:
  - (i) appoint sub-committees and advisory committees as it thinks fit, and prescribe the functions of and delegate powers to such committees and sub-committees;
  - (ii) borrow or otherwise raise money;
  - (iii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
  - (iv) issue debentures and other securities, and any instrument (including any bond).
- (d) The Board may delegate any of its powers to:
  - (i) a Director;
  - (ii) a committee of Directors;
  - (iii) an employee of the Company; or
  - (iv) any other person.

## 16 CEO

- (a) The Board may appoint a chief executive officer (**CEO**) for such period, and on such terms, as the Board determines.
- (b) The Board may confer on the CEO any of the powers that the Board may exercise.
- (c) The Board may vary or revoke a conferral of any power on the CEO.
- (d) The Board may at any time vary or revoke an appointment of a CEO.
- (e) The CEO may be a Director of the Company.

## 17 Alternate Directors

### 17.1 Appointment and terms of appointment

- (a) If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
  - (i) the name, experience and qualifications of the person;
  - (ii) the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms of the notified; and
  - (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend.

- (b) The appointment of an alternate will take effect immediately if the alternate is already a Director or, otherwise, on the receipt of approval of a majority of the other Directors.
- (c) An alternate is not an agent of the Director appointing the alternate.

### **17.2 No liability**

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

### **17.3 Remuneration of alternate**

Subject to **clause 5.5**, an alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

### **17.4 Notice and attendance at Board meetings**

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate. An alternate may not attend any board meeting at which the Director who appointed the alternate is Present, except where the alternate is appointed by more than one Director and the alternate is attending that Board meeting in respect of a Director who is not Present.

### **17.5 Voting of alternate**

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

### **17.6 Termination of appointment of alternate**

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

### **17.7 Cessation of appointment of alternate**

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

## **18 Board meetings**

### **18.1 Convening meetings**

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

### **18.2 Notice of meetings**

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
  - (i) the date, time and place (or places) of the Board meeting;
  - (ii) the general nature of the business to be conducted at the Board meeting; and
  - (iii) any proposed resolutions.

### **18.3 Omission to give notice**

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

### **18.4 Use of technology**

- (a) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within 14 days before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being Present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the Chairperson of the meeting.

### **18.5 Quorum at meetings**

A quorum at a Board meeting is at least the next whole number which is greater than one-half of the total number of Directors. The quorum must be

present at all times during the Board meeting and may include alternate Directors.

### **18.6 Chair of meetings**

- (a) At the first Board meeting a Chairperson will be elected from the Directors present in person (not by alternate). The person that has been elected as Chairperson may chair each subsequent Board meeting. At any subsequent Board meeting, a new Chairperson may be elected. On the election of the new Chairperson, the new Chairperson will chair subsequent Board meetings. The Directors may elect a Director to chair a Board meeting by a majority vote.
- (b) If the Chairperson is not Present within 15 minutes after the time appointed for a Board meeting or if the Chairperson is unwilling or unable to act as Chairperson for the whole or any part of that Board meeting, the Directors Present may elect a Director Present to chair that Board meeting.

### **18.7 Passing resolutions at meetings**

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person or by alternate at a Board Meeting is entitled to vote and has one vote.

### **18.8 Casting vote**

If on any resolution an equal number of votes is cast for and against a resolution, the Chairperson has a casting vote.

### **18.9 Conduct of meetings**

The Chairperson of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

### **18.10 Written resolutions**

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document, with each document to be identical to each other document. The resolution is passed when the last Director signs. The document may be sent or circulated by facsimile or electronic transmission.

### **18.11 Minutes of meetings**

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
  - (i) the proceedings and resolutions of each Board meeting; and
  - (ii) all resolutions passed without a Board meeting.

- (b) The Chairperson, or the Chairperson of the next Board meeting, must sign the minutes within one month after the meeting.
- (c) The minute books must be kept at the Office.
- (d) The Directors may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

### **18.12 Committee meetings**

The rules of this Constitution relating to meetings (including resolutions and minutes) and proceedings of the Board with any necessary modifications apply to the meeting of any committee of the Board except that a quorum for a meeting of any committee is from time to time to be determined by the Board.

### **18.13 Right of advisers to attend Board meetings**

Any other person (whether a Member or not) required by the Directors to attend any Board meeting is entitled to be present and, at the request of the Chairperson of the Board meeting, to speak at that Board meeting. Such person must, if required by the Directors enter into a confidentiality undertaking (in a form required by the Directors) pursuant to which they agree to keep confidential all matters discussed and information provided at or, in connection with the Board meeting.

## **19 Director's interests**

### **19.1 Declaration of interest**

- (a) Where a Director:
  - (i) has a material personal interest in a contract or proposed contract of the Company;
  - (ii) holds any office; or
  - (iii) owns any property,such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, that Director must, as soon as practicable, give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
  - (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the Company.

### **19.2 Voting by interested Directors**

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or



- (b) be Present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

## 20 Secretary

- (a) The Company must have at least one Secretary. At least one (1) Secretary must ordinarily reside in Australia. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.
- (c) A person must give the Company a signed written consent to act as Secretary before being appointed as a Secretary.
- (d) The Secretary's responsibilities include:
  - (i) keeping the minutes of the meetings of the Board and the Members in one or more books provided for that purpose;
  - (ii) ensuring that all notices are duly given in accordance with the provisions of this Constitution or as required by law;
  - (iii) maintaining the Register; and
  - (iv) generally performing all duties incidental to the office of secretary of a corporation and such other duties as may be assigned to him or her by the Board from time to time.

## 21 Auditor

### 21.1 Remuneration of Auditor

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

### 21.2 Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
  - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request

the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and

- (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

### **21.3 Auditor's attendance at general meetings**

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

## **22 Seal**

- (a) If the Company has a Seal the Directors must provide for the safe custody of the Seal (and any duplicate of it).
- (b) The Seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the Seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the Seal, the fixing of the Seal must be witnessed by two Directors or a Director and Secretary.
- (d) The Secretary must record details of every document to which the Seal, if any, is fixed in a Seal register.
- (e) Where the Company has a Seal, the Seal register must be produced at each Directors' meeting for the purpose of the Directors approving the fixing of the Seal to each document recorded in the Seal register since the last Directors' meeting.

## **23 Financial records**

### **23.1 Company accounts and audit**

- (a) The Company must keep accounts in accordance with the requirements of the Corporations Act.
- (b) If required by the Corporations Act or the Australian Charities and Not-for-profits Commission Act, the Board must cause the Company's financial report and/or annual statement for each Financial Year to be audited and obtain an Auditor's report.

### **23.2 Member's and Auditor's access to financial records**

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company may be inspected by Members or the Auditor.

### **23.3 Directors' access to financial records**

Any Director may at any time access and inspect any financial and any other record of the Company.

### **23.4 Access to financial records after ceasing to be a Director**

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

## **24 Notices**

### **24.1 General**

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

### **24.2 How to give a communication**

In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register;
- (c) sent to the person's address as recorded in the Register by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the person's current fax number for notices; or
- (e) sent by email to the person's current email address for notices.

### **24.3 Communications by post**

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

### **24.4 Communications by fax**

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

### **24.5 Communications by email**

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient,

unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

## **24.6 After hours communications**

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## **25 Indemnity and insurance**

### **25.1 Indemnity**

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must indemnify each current or former officer, Director and Secretary of the Company out of the assets of the Company against any liability, loss, damage, cost or expense incurred or to be incurred by the officer, Director or Secretary in or arising out of the conduct of any activity of the Company or in or arising out of the proper performance of the officer's, Director's or Secretary's duties including any liability, loss, damage, cost, charge and expense incurred by that officer, Director or Secretary in defending any proceedings, whether civil or criminal, which relate to anything done or omitted to be done or alleged to have been done or omitted to be done by the officer, Director or Secretary, in which judgment is given in the officer's, Director's or Secretary's favour or in which the officer, Director or Secretary is acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the court to the officer, Director or Secretary.
- (b) This indemnity is not intended to indemnify any officer, Director or Secretary in respect of any liability in respect of which the Company must not give an indemnity, and should be construed and, if necessary, read down accordingly.

### **25.2 Documenting indemnity**

The Company must enter into an agreement containing an indemnity in favour of any officer, Director or Secretary. The Board will determine the terms of the indemnity contained in the agreement.

### **25.3 Insurance**

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company must pay any premium in respect of a contract of insurance between an insurer and an officer, Director or Secretary or any person who has been an officer, Director or Secretary of the Company in respect of the liability suffered or incurred in or arising

out of the conduct of any activity of the Company and the proper performance by the officer, Director or Secretary of any duty.

- (b) If the Board determines, the Company must execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

## 26 Winding up

- (a) In the event of the winding up of the Company or the revocation of its endorsement as a deductible gift recipient for income tax law, any property whatsoever remaining after satisfaction of all debts and liabilities of the Company must not be paid to or distributed among the Members, but must be given or transferred to some (one or more) other fund, authority or institution in Australia:
  - (i) to which income tax deductible gifts can be made;
  - (ii) having objects and purposes, being charitable, similar to those of the Company; and
  - (iii) which prohibits the distribution of its or their income among its members to an extent at least as great as is imposed on this Company under or by virtue of **clause 5**.
- (b) The organisation or organisations selected for the purpose of **clause 26(a)** will be determined by a Special Resolution of Members or, if it is not practicable to obtain such a Special Resolution, by a Court which has jurisdiction in the matter.