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# **Constitution of Mid North Coast Rural Health and Medical Research Foundation Limited ACN 680 167 506**

***Corporations Act 2001***

A public company limited by guarantee

# Corporations Act 2001

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# **Corporations Act 2001**

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## ***Corporations Act 2001***

### **A public company limited by guarantee**

### **Mid North Coast Rural Health and Medical Research Foundation Limited**

**ACN 680 167 506**

**(Company)**

## **1 Definitions and interpretation**

### **1.1 Definitions**

Unless the context otherwise requires and other than in the case of an expression defined in clause 1.1, an expression in a clause that is used in the Act has the same meaning as in the Act.

In this Constitution:

**Act** means the *Corporations Act 2001* (Cth) and any regulations and instruments made under the Act together with any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that section, part or division as so modified, amended or re-enacted.

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

**Advisory Board** means an advisory board established under clause 8.

**Alternate Director** means a person appointed as an alternate director of the Company under clause 5.9(a) who has not vacated their office.

**ASIC** means the Australian Securities and Investments Commission.

**Auditor** means a person appointed as an auditor of the Company under clause 13.1 who has not vacated their office.

**Board** means the Directors acting as a board of Directors.

**Business Day** means a day on which trading banks are open for business in Sydney, New South Wales, other than a Saturday or a Sunday.

**CEO** means chief executive officer.

**Chair** means the person elected under clause 7.5(a).

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 1997.

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**Company** means Mid North Coast Rural Health and Medical Research Foundation Limited.

**Constitution** means this constitution as amended from time to time and a reference to a clause is a reference to a clause of this constitution.

**Director** means a director of the Company from time to time.

**DGR** means a 'deductible gift recipient' within the meaning of section 30-227 of ITAA 97.

**Gift** means a gift to the Company as described in item 1 of the table in section 30-15 of the ITAA 1997.

**Gift Fund** means a fund that is maintained for the Principal Purpose.

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

**Managing Director** means a person appointed as managing director of the Company under clause 5.7(a).

**Member** means a person entered in the Register of Members as a member of the Company under clause 4.7.

**MNCLHD** means the Mid North Coast Local Health District ABN 57 946 356 658 as constituted under the *Health Services Act 1997* (NSW).

**MNCLHD Director** means a Director nominated by the MNCLHD.

**MNCLHD Member** means a Member nominated by the MNCLHD.

**MNCLHD Personnel** means any employee, contractor, officer, director, advisor, agent or consultant of MNCLHD.

**Principal Purpose** means the purposes of the Company as reflected in the objects of the Company specified in clause 2.5 or any of those purposes.

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

**Register of Members** means the register listing each person who is a Member which the Company maintains under the Act.

**Representative** means a person appointed to represent a corporate Member or a corporate proxy at a general meeting of the Company under clause 10.8 and the Act.

**Secretary** means a person appointed under clause 12 as a secretary of the Company.

**Special Resolution** means a resolution that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

**Tax Acts** means the *Income Tax Assessment Act 1936* (Cth) and ITAA 1997.

## 1.2 Interpretation

(a) In this Constitution unless the contrary intention appears:

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- (i) words importing any gender include all other genders;
- (ii) person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (iii) the singular includes the plural and vice versa;
- (iv) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (v) writing and written includes printing, typing and other modes of reproducing words in a visible form including, but not limited to, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (vi) a reference to a document or instrument, including this Constitution, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, novated, supplemented or replaced from time to time; and
- (vii) a reference to an act includes every amendment, re-enactment or replacement of that act and any subordinate legislation made under that act, such as regulations, together with any statutory rectification, amendment or re-enactment in force, and a reference to any section, part or division is to that section, part or division as so defined, amended or re-enacted.

- (b) Subject to clauses 1.2(c) and 1.2(d), this Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.
- (c) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules do not apply to the Company.
- (d) While the Company is a registered charity (as defined under and or for the purposes of the Tax Acts or the ACNC Act), if a clause of this constitution is inconsistent with the ACNC Act or would prevent the Company from complying with a provision of the ACNC Act, this Constitution will not apply to the extent of that inconsistency or to the extent it would prevent compliance with the ACNC Act.

## **2 Nature of the Company**

### **2.1 Public company**

The Company is a public company limited by guarantee.

### **2.2 Not for profit**

The income and property of the Company must be used and applied solely in promotion of its objects and no portion will be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to Members.

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## **2.3 Limitation of the Company**

The Company does not have the power to:

- (a) issue shares of any kind; or
- (b) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to, a Member, other than payments in good faith as provided in clauses 5.8, 5.10 and 16.

## **2.4 Guarantee of Members**

Each Member undertakes to contribute a maximum of \$10 to the Company for payment of:

- (a) the debts and liabilities of the Company;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

in the event that the Company is wound up:

- (d) while the Member is a Member; or
- (e) within one year after the Member ceases to be a Member.

## **2.5 Objects of the Company**

The object of the Company is to:

- (a) undertake the public charitable activities in Australia for the direct relief of poverty, sickness, suffering, misfortune, destitution, helplessness or disability in the manner the directors or members decide; and
- (b) promote and fund health and medical research;

in particular, but without limitation by:

- (c) raising funds to assist in the achievement of the objects of the Company including through soliciting, applying for and obtaining government or other grants, voluntary contributions, fund raising efforts and other appropriate means;
- (d) acquiring, operating and maintaining such buildings and equipment as the Company considers necessary or desirable in connection with the furtherance of its objects;
- (e) employing such persons as may be required to promote any of the above objects or to provide any service in accordance with them; and
- (f) any other activities that are incidental or ancillary to, and not inconsistent with, these objectives.

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## 2.6 Scope of powers

Subject to any restrictions set out in this Constitution, and provided that its capacities and powers are exercised directly or indirectly in the furtherance of its objects, the Company will have the legal capacity and powers set out in the Act.

## 3 Internal management of the Company

The internal management of the Company will be governed by this Constitution.

## 4 Members

### 4.1 Membership

#### (a) Number of Members

- (i) There must be at least six Members.
- (ii) The Directors may set a limit on the maximum number of Members.
- (iii) The Company must have no more than 50% MNCLHD Members.

#### (b) Classes of Members

The Directors may:

- (i) establish different classes of Members;
- (ii) prescribe the qualifications, rights (including voting rights), privileges and obligations of persons to become a Member of a class;
- (iii) change the membership class of a Member; or
- (iv) vary or cancel the rights attaching to any class of Members only if the variation or cancellation is permitted by the Act and approved by special resolution of each of:
  - (A) the Members of all classes voting as a single class; and
  - (B) the Members of the relevant class.

- (c) The Directors must give written notice of the variation or cancellation to the Members of the relevant class within seven days of the variation or cancellation.

### 4.2 Application for Membership

An application for membership must be made in the form approved by the Board from time to time, provided that each such application must contain:

- (a) an undertaking on the part of the applicant to be bound by the Constitution;
- (b) the residential address, facsimile number and electronic mail address (if any) of the

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applicant;

(c) adequate particulars of the applicant's qualifications for membership (if necessary); and

(d) the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time.

#### **4.3 Lodging of applications**

An application for membership accompanied by the applicable membership fee or subscription (where applicable) must be lodged with the Company at the place approved by the Board from time to time.

#### **4.4 Determination of application by the Board**

(a) Subject to clause 4.1(a), the Board must determine whether or not to approve each application for Membership at the next Board meeting after receipt of the application.

(b) The Board may require an applicant to give such further information as it desires before approving or refusing the admission of an applicant for membership.

(c) Subject to clause 4.1, an applicant for membership is taken to be admitted as a Member upon the Board approving the application and the name, address, facsimile number and electronic mail address (if any) of the applicant being entered in the Register of Members.

(d) The Board may determine the class of membership appropriate for each membership application (if applicable).

#### **4.5 Notification of change in qualifications**

If the Board has determined that there are qualifications required or necessary for a person to be a Member, that Member must promptly notify the Company of any change in the qualification of the Member to be a Member of the Company.

#### **4.6 Fees, Subscriptions and Charges**

The Board may set fees, subscriptions and other charges (if any) to be paid by Members of a class. The fees, subscriptions and other charges payable by Members may vary by class or other criteria determined by the Board.

#### **4.7 Register of Members**

(a) The Directors must cause the Company to keep a register of members in accordance with the Act, in which are entered:

(i) the name of each Member;

(ii) the residential address, facsimile number and electronic mail address (if any) for notices last notified by the Member;

(iii) the class of membership (if applicable);

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- (iv) the date of becoming a Member; and
- (v) in the case of former Members, the date of ceasing to be a Member.

(b) Each Member must notify the Company in writing of the change in any detail kept in the Register of Members within one month after the change.

#### **4.8 Rights and obligations**

- (a) Members that have been suspended in accordance with clause 4.10 are not eligible to participate in the activities of the Company.
- (b) The rights of Members are not transferable and end when the Member ceases to be a Member.

#### **4.9 Resignation of Members**

Members may resign by giving 14 days written notice of resignation to the Company at its Registered Office.

#### **4.10 Suspension and termination of membership**

- (a) The Board may by resolution passed with a majority of votes in favour suspend or terminate the membership of a Member.
- (b) The requirements of natural justice do not apply, except to the extent that the Board otherwise resolves.

#### **4.11 Cessation**

- (a) A Member ceases to be a Member if:
  - (i) the Member resigns under clause 4.9;
  - (ii) the Member, being a natural person, dies, becomes bankrupt, makes a composition with or assigns the member's estate for the benefit of the member's creditors;
  - (iii) the Member, being a corporation, becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation);
  - (iv) the Member ceases to satisfy, where applicable, the criteria for admission to membership of the Company;
  - (v) the Member's membership was for a term or period of time and that term or period expires without being renewed or extended; or
  - (vi) their membership is terminated under clause 4.10.
- (b) If a Member ceases to be a Member, the Directors must cause the Company without delay to make the necessary entry in the Register.
- (c) If a Member ceases to be a Member, that Member remains liable to pay to the Company any money which that Member owes to the Company and any amount

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which that Member has guaranteed under clause 2.4.

## 5 Directors

### 5.1 Preliminary

**(a) Number of Directors**

- (i) The Company must have at least six Directors.
- (ii) The maximum number of Directors is to be fixed by the Board, but must not be more than 20 unless the Members in general meeting resolve otherwise.
- (iii) At least two Directors must reside in Australia.

**(b) Constitution of Board**

- (i) The Board is to be constituted as follows:
  - (A) three MNCLHD Directors provided that the Company must have no more than 50% MNCLHD Directors;
  - (B) at least three Directors who are independent, nominated by one or more Directors and not nominated by MNCLHD and approved by the Members by resolution at a general meeting.
- (ii) The Initial Directors of the Company are the persons as nominated in Schedule 1 comprising of seven Directors.

**(c) Eligibility for appointment as Director**

- (i) A person must, to be eligible to be elected or appointed as a Director:
  - (A) be an individual;
  - (B) be at least 18 years old;
  - (C) be a Member of the Company; and
  - (D) not be otherwise ineligible or disqualified from holding office under this Constitution or the Act.

**(d) Non-eligibility of Auditor**

Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be elected or appointed as a Director.

**(e) Other offices held by Directors**

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions, including additional remuneration, as the Board determine by resolution.

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(f) **Period of appointment of Directors**

Each Director will hold office until they die or vacate the office under clause 5.5(a), or the term for which they are appointed or elected (if any) expires.

**5.2 Company may appoint a Director**

Subject to section 201E of the Act, the Company may elect a person as a Director by resolution passed in general meeting.

**5.3 Directors may appoint a Director**

Provided the total number of Directors does not exceed the maximum number for the time being fixed by or under this Constitution, the Board may by resolution appoint a Director to serve at any time, including but not limited appointment as a Director to fill a casual vacancy by resolution of the Board, provided that the Company confirms such appointment by resolution passed at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the end of the annual general meeting.

**5.4 Nomination and consent for Election of Directors**

Except where a Director has been appointed by the Board under clause 5.3 and stands for election, and subject to the Act, a person is only eligible for election as a Director by resolution of the Members in general meeting if, at least five Business Days before the notice of meeting calling that general meeting is sent to Members, the Company receives both:

- (a) a nomination of the person by a Member or a Director; and
- (b) a consent to that nomination signed by the person nominated for election as a Director.

**5.5 Resignation, cessation and termination of a Director**

(a) **Vacation of office**

- (i) A Director vacates office if the Director:
  - (A) resigns their office by written notice to the Company under clause 5.5(b);
  - (B) is removed from the office of Director by a resolution of the Members under clause 5.5(c);
  - (C) ceases to be a Member;
  - (D) was elected or appointed for a term and that term expires without the Director having been re-elected or re-appointed;
  - (E) fails to attend Board meetings for a continuous period of three months without leave of absence from the Board;
  - (F) is an executive Director under an employment or services agreement with the Company and that agreement terminates,

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unless the Board determines otherwise; or

(G) ceases to be a Director or becomes prohibited from being a Director under the Act.

(ii) A Director whose office is vacated under clause 5.5(a)(i)(G) is not eligible for re-election until the relevant prohibition no longer applies.

(b) **Director may resign**

(i) A Director may resign as a Director of the Company by written notice to the Company.

(ii) If the resignation of a Director under clause 5.5(b)(i) will cause the number of Directors to fall below the minimum number required by this Constitution or by the Act, the Director must not resign or otherwise vacate their office voluntarily until another Director has been appointed.

(c) **Removal of a Director by Members**

(i) The Company may, by resolution of the Members entitled to vote thereon in general meeting:

(A) remove a Director from office; and

(B) appoint another person as a Director in that Director's place.

(ii) If the removal of a Director under clause 5.5(c)(i) will cause the number of Directors to fall below the minimum required by this Constitution or the Act, the removal has no effect until a replacement has been appointed.

(iii) Notice of intention to move the resolution referred to in clause 5.5(c)(i) must be given to the Company at least two months before the meeting is to be held except if a general meeting is called after the notice of intention is given under this clause.

(iv) The Company must give the Director a copy of the notice as soon as practicable after it is received.

(v) The Director is entitled to put their case to Members by:

(A) giving the Company a written statement for circulation to Members; and

(B) speaking to the motion at the general meeting (whether or not the Director is a Member of the Company).

(vi) The written statement in clause 5.5(c)(v) is to be circulated by the Company to Members by:

(A) sending a copy to everyone to whom notice of the general meeting is sent if there is time to do so; or

(B) if there is not time to comply with clause 5.5(c)(vi)(A), having the statement distributed to Members attending the general meeting

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and read out at the meeting before the resolution is voted on.

- (vii) The Director's statement does not have to be circulated to Members if it is more than 1,000 words long or defamatory.
- (viii) If a person is appointed to replace a Director removed under this clause 5.5(c) and the Director who was removed was appointed or elected for a particular term, the time at which the replacement Director or any other Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed a Director.

## **5.6 Leave of absence**

- (a) The Board may grant a Director leave of absence from Board meetings for a period not exceeding 3 months.
- (b) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Director to seek the leave in advance.

## **5.7 Executive Directors**

### **(a) Appointment of Managing Director and other executive Directors**

The Directors:

- (i) may appoint one or more of themselves to an executive office for a period and on the terms (including as to remuneration in respect of that executive office) as the Board see fit;
- (ii) may confer on an executive Director any of the powers that the Board may exercise; and
- (iii) subject to the terms of appointment, may revoke or vary:
  - (A) the appointment of an executive Director; or
  - (B) any of the powers conferred on an executive Director.

### **(b) Consequence of cessation as Director**

- (i) A person ceases to be an executive Director if they cease to be a Director.

## **5.8 Chief Executive Officer (CEO)**

- (a) The Board may (but is not required to) appoint any person, to the position of CEO of the Company for the period and on the terms (including as to remuneration) the Board see fit.
- (b) The Board may, upon terms and conditions and with any restrictions it sees fit, confer on the CEO any of the powers that the Board can exercise.
- (c) The Board may at any time revoke or vary an appointment of, or any of the powers conferred on, the CEO.

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- (d) If the CEO becomes incapable of acting in that capacity the Directors may appoint any other person, to act temporarily as CEO until such time as the position can be permanently filled.
- (e) The CEO is not a Member or Director of the Company by virtue only of being appointed to the office of CEO but shall have the right to attend and speak at meetings of the Board.
- (f) The Board may delegate any of the roles and powers of the Board to the CEO:
  - (i) on the terms and subject to any restrictions the Board decides; and
  - (ii) so as to be concurrent with the powers of the Board, and may revoke the delegation at any time.
- (g) Without affecting the generality of clause 5.8(f) the CEO will:
  - (i) be the executive officer of the Company;
  - (ii) act consistently with the Objects of the Company as stated in this Constitution;
  - (iii) use his or her best endeavours at all times to enhance the good name of the Company;
  - (iv) insofar as the resources available permit, implement the policies of the Board;
  - (v) assist the Board to prepare an annual strategic plan and an operational plan for Board approval;
  - (vi) prepare an annual report for the Board on the work and activities of the Company during the preceding 12 months ending prior to the end of the relevant financial year; and
  - (vii) exercise such other functions duties and responsibilities as may be determined from time to time by the Board.
- (h) The appointment of the CEO terminates:
  - (i) at the expiration of a fixed term if so defined in a written contract; or
  - (ii) if the Board removes the CEO from that office (which, subject to any contract between the Company and the CEO, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

## **5.9 Alternate Director**

- (a) **Power to appoint Alternate Director**
  - (i) Each Director may at any time appoint any individual approved for that purpose by the Board to act as an Alternate Director in the appointor's place.

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- (ii) For the avoidance of doubt and in accordance with clause 5.1(b), a Director who is not a MNCLHD Director must not appoint a person from the MNCLHD to be an Alternate Director where the appointment would result in the Company having more than 50% MNCLHD Directors (including Alternate Directors).

**(b) Alternate Director membership**

An Alternate Director is not required to be a Member.

**(c) Suspension and termination of appointment of Alternate Director**

The appointor may vary, suspend or terminate the appointment of his or her Alternate Director.

**(d) Notice of appointment of Alternate Director**

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor, and a copy served on the Company.

**(e) Role of Alternate Director**

An Alternate Director:

- (i) is not entitled to receive notice of Board meetings unless the appointor has, by written notice to the Company, required the Company to do so either generally or in particular circumstances;
- (ii) may attend and vote at a Board meeting only if the appointor is not present at that meeting;
- (iii) may sign a circulating resolution under clause 7.1 unless the appointor has, by written notice to the Company, suspended that right either generally or in particular circumstances;
- (iv) is entitled to sign a document under clause 6.8 or section 127 of the Act;
- (v) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director (subject to clauses 5.8 to 5.9(h));
- (vi) does not have a conflict of interest, or a material personal interest in a matter that relates to the affairs of the Company, solely by reason of the fact that the appointor has; and
- (vii) is not taken into account in determining the number of Directors in clause 5.1(a).

**(f) Remuneration of Alternate Director**

An Alternate Director's only rights (if any) as to remuneration for ordinary service as a Director are against the appointor and not the Company.

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(g) **Multiple votes**

A Director or any other individual may act as Alternate Director to represent more than one Director, and has a corresponding number of votes accordingly, but for the purpose of forming a quorum counts as only one Director.

(h) **Termination of appointment**

The appointment of an Alternate Director will be terminated by any of the following events:

- (i) if the Alternate Director gives written notice to the Company that he or she resigns the appointment;
- (ii) if the appointment of the Alternate Director is terminated by the appointor under clause 5.9(d);
- (iii) if a majority of the remaining Directors withdraw the approval of the individual to act as an Alternate Director;
- (iv) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (v) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.

## **5.10 Remuneration of Directors**

(a) **Directors fees**

The Directors must not receive any remuneration for serving as Directors.

(b) **Remuneration of Directors for extra services**

- (i) If the Company requests a Director to perform services in addition to those provided in his or her capacity as a Director, the Company may remunerate the Director in any manner the Company thinks fit.

(c) **Reimbursement of expenses incurred by Director**

Subject to the Act and clause 5.10(d), a Director is entitled to reimbursement of the travelling and other expenses that the Director properly incurs:

- (i) in attending Board meetings or any meetings of a committee of Directors;
- (ii) in attending any general meeting of the Company;
- (iii) in connection with the Company's business; or
- (iv) in the case of a Managing Director, in connection with carrying out or managing the Company's business.

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(d) **Payment to be approved by Directors**

Any payment proposed to be made to a Director under this Constitution must first be approved by the Board (excluding the Director to whom the payment is to be made).

(e) **Financial benefit**

- (i) A Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.
- (ii) The Company must not make loans to Directors or provide guarantees or security for obligations undertaken by Directors except as may be permitted by the Act.

**5.11 Conflicts of interest**

(a) **Prohibition on being present or voting**

Subject to the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (i) must not vote on the matter; and
- (ii) must not be present while the matter is being considered at the meeting.

(b) **Directors' interests**

Subject to this Constitution and the Act:

- (i) a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (A) enter into any agreement or arrangement with the Company;
  - (B) hold any office or place of profit (other than Auditor) in the Company; and
  - (C) act in a professional capacity (other than as Auditor) for the Company,

and the Director or the body or entity may receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company;

- (ii) the fact that a Director holds office as a director and has fiduciary obligations arising out of that office:
  - (A) does not void or render voidable a contract made by the Director with the Company;
  - (B) does not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may

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have an interest; and

(C) does not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest;

(iii) a Director may be or become a director or other officer of, or otherwise be interested in:

(A) any related body corporate of the Company; or

(B) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in that body corporate; and

(iv) any Director:

(A) may exercise the voting power conferred by the interest held by the Company in another company in favour of a resolution appointing themselves or any Director as a director or other officer of the other company;

(B) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;

(C) may be appointed as Representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and

(D) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

(c) **Material personal interest - Director's duty to disclose**

(i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless an exception in the Act applies.

(ii) A notice required by clause 5.11(c)(i) must:

(A) include details of:

(I) the nature and extent of the interest; and

(II) the relation of the interest to the affairs of the Company;

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and

(B) be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter.

(d) **Director may give standing notice about a material personal interest**

- (i) A Director required to give notice under clause 5.11(c) may give standing notice of the nature and extent of the interest in the matter in accordance with the Act and this Constitution.
- (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- (iii) A notice under clause 5.11(d)(i) must be given:
  - (A) at a Board meeting either orally or in writing; or
  - (B) to the other Directors individually in writing.
- (iv) If the standing notice is given to the other Directors individually in writing:
  - (A) the notice is effective when it has been given to every Director; and
  - (B) the notice must be tabled at the next Board meeting after it is given.
- (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

**5.12 Validity of acts**

- (a) All actions at any meeting of the Board or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of appointing additional Directors or calling a general meeting of the Company but for no other purpose.

## **6 Management of business by the Board**

**6.1 Powers of Directors**

- (a) The business of the Company is to be managed by or under the direction of the Board.
- (b) The Directors may exercise all of the powers of the Company except any powers that any provision of the Act or this Constitution require the Company to exercise in

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general meeting.

- (c) Without limiting the generality of clause 6.1(b), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

## **6.2 Decisions requiring special resolution of Members**

The matters set out in Schedule 2 can only be done by the Company or the Board with the prior written approval of the Members by special resolution.

## **6.3 Duties**

The Directors must comply with their duties under common law and under the Act and the ACNC Act.

## **6.4 Directors must keep transactions confidential**

Every Director and other agent or officer of the Company must:

- (a) keep confidential all aspects of all transactions of the Company, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) as required by law; or
  - (iii) when requested by the Directors to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

## **6.5 Appointment of attorney for Company**

The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

## **6.6 Delegation by the Board**

- (a) Subject to the Act, the Board may delegate any of its powers to:
  - (i) a committee of Directors;
  - (ii) a Director;
  - (iii) an employee of the Company; or

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- (iv) any other person.
- (b) The Board must not delegate any of its powers to any MNCLHD Personnel.
- (c) The delegate must exercise the powers delegated to it under any directions of the Board.
- (d) The effect of the delegate exercising a power is the same as if the Board exercised it.
- (e) The Board may at any time revoke or vary any delegation to a person or committee.

## 6.7 Seals and execution of documents

- (a) The Directors must provide for the safe custody of any seal of the Company.
- (b) If the Company has a common seal or duplicate common seal:
  - (i) it must be used only by the authority of the Board, or of a committee of the Directors authorised by the Board to authorise its use; and
  - (ii) every document to which it is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.
- (c) The Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

## 6.8 Negotiable instruments

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

# 7 Board meetings

## 7.1 Directors' resolution without a meeting

- (a) The Directors may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution have provided their consent in writing to the resolution in accordance with this clause 7.1. The resolution is not invalidated if, in addition to the majority of Directors entitled to vote on the resolution, it is also consented to by a Director who is not entitled to vote.
- (b) A Director may consent to a resolution by providing the Company with a document (including by fax or electronic means):

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- (i) setting out the terms of the resolution;
- (ii) containing a statement to the effect that the Director is in favour of the resolution; and
- (iii) signed by the Director.

(c) Alternatively, the Director may consent to a resolution by giving the Company a written notice (including by fax or electronic means):

- (i) that includes the Director's assent to the particular resolution;
- (ii) that sets out the terms, or identifies, the particular resolution; and
- (iii) where the Director has notified the Company in writing of a specified means by which their consent must be authenticated, that enables the Director's consent to be authenticated by those specified means.

(d) Separate copies of a document referred to under clause 7.1(b) may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

(e) The resolution is passed when the last Director forming part of the majority required to pass the resolution consents to the resolution in accordance with this clause 7.1.

## 7.2 Calling Board meetings

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

## 7.3 Notice of meeting

Notice of every Board meeting must be given to each Director, but failure to give or receive that notice will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error, or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

## 7.4 Conduct of Board meetings

- (a) A Board meeting may be called and held:
  - (i) in person;
  - (ii) by telephone;
  - (iii) by audio visual linkup; or
  - (iv) using any technology consented to by a majority of the Directors before or during the relevant meeting.
- (b) Any consent under clause 7.4(a)(iv) may be a standing consent.
- (c) If a Director gives their consent under clause 7.4(a)(iv) they may only withdraw

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their consent within a reasonable period before the meeting commences.

- (d) A Director is regarded as present at a meeting where the meeting is conducted by telephone, audio visual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A meeting conducted by telephone, audio visual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Directors' meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this clause 7, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

## **7.5 Chairing Board meetings**

- (a) The Directors may elect a Director to the office of Chair of the Board.
- (b) The Directors may determine the period for which the Chair is to hold office.
- (c) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
  - (i) no Chair has been elected; or
  - (ii) the Chair is not available or declines to act as Chair for the meeting or part of it.

## **7.6 Voting by Chair at Board meetings**

In case of an equality of votes on a resolution at a Board meeting, the Chair will not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her capacity as a Director in respect of that resolution.

## **7.7 Quorum at Board meetings**

- (a) The quorum for a Board meeting is at least three Directors.
- (b) Subject to clause 5.9(g), in determining whether a quorum is present at a Board meeting, an Alternate Director is to be counted.
- (c) If, and so long as, a quorum does not exist for the consideration of a particular matter at a Board meeting because one or more of the Directors is prohibited from voting under clause 5.11(a), the Directors, including the Director or Directors prohibited, are entitled to vote on a resolution to call, and put the matter before, a general meeting.

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## **7.8 Meeting competent to exercise all powers**

A Directors' meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

## **7.9 Passing of Directors' resolutions**

A resolution of the Directors will be passed if a majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.

## **7.10 Resolution passed deemed to be a determination of the Board**

Any resolution properly passed at a duly called Directors' meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

## **7.11 Committee powers and meetings**

- (a) Any committee of Directors may exercise the powers delegated to it under any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this clause.

## **7.12 Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

# **8 By-laws and rules**

The Board may, by resolution of the Board, make or adopt by-laws and rules with respect to any matter or thing for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Company, which by-laws and rules shall be binding on the Members, provided that to the extent of any inconsistency, this Constitution shall prevail over all such by-laws and rules.

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## **9 Advisory Board**

### **9.1 Establishment of an Advisory Board**

The Board may, if it decides it is desirable to do so, establish an Advisory Board and establish rules for the operation of such Advisory Board.

### **9.2 Role of the Advisory Board**

- (a) The Advisory Board will consist of a group of independent, experienced and qualified individuals who will advise the Board on and assist the Board with such matters relevant to the Company and its objects as are referred by the Board from time to time.
- (b) Members of the Advisory Board will not have a right to vote at Board meetings.

### **9.3 Appointment, removal and resignation of Advisory Board members**

- (a) The members of the Advisory Board will be appointed and removed by the Board by resolution in its absolute discretion.
- (b) The Board may appoint a member of the Advisory Board to act as the Chairperson of the Advisory Board.
- (c) Members of the Advisory Board can resign their position by written notice to the Company.

## **10 General meetings**

### **10.1 Annual general meeting**

#### **(a) Company must hold an annual general meeting**

Unless the Company has only one Member, the Company must hold a general meeting, to be called the annual general meeting, once a year and under the Act, subject to any extension of time granted under the Act.

#### **(b) Business of the annual general meeting**

- (i) Whether or not stated in the notice of the annual general meeting, the business of the annual general meeting may include:
  - (A) receiving and considering the income statement balance sheet, reports of the Directors, reports of the Auditors and the statement of the Directors;
  - (B) electing Directors;
  - (C) appointing the Auditor; and
  - (D) fixing the remuneration of the Auditor.

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- (ii) The business of the annual general meeting may also include any other business which under this Constitution or the Act ought to be transacted at an annual general meeting.

(c) **Members' opportunity to ask questions**

- (i) The Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on:
  - (A) the management of the Company; or
  - (B) the remuneration report (if any).
- (ii) If the Auditor is at the meeting, the Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the Meeting to ask the Auditor questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

## 10.2 Right to call and attend general meetings

- (a) **Calling a general meeting**
  - (i) A Director or the Directors may, by written notice, call a general meeting at a time and place as the Director or the Directors resolve.
  - (ii) Members may requisition the holding of a general meeting only under the Act and the Directors must call a general meeting as soon as practicable after receiving that requisition.
  - (iii) Members may call and arrange to hold a general meeting only under the Act.
- (b) **Right to attend general meetings**
  - (i) Each Member (other than a Member of a class that does not have voting rights) and any Auditor is entitled to attend a general meeting.
  - (ii) Each Director is entitled to attend and speak at a general meeting.
  - (iii) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
  - (iv) A Member's proxy or a Representative may attend a general meeting only as provided by this Constitution and the Act.

## 10.3 Notice of general meetings

(a) **Amount of notice of general meetings**

Subject to the Act, at least 21 days' notice must be given of a general meeting.

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(b) **Calculation of period of notice**

In computing the period of notice under clause 10.3(a), the day on which the notice is given or taken to be given is to be disregarded but the day of the general meeting called by it is to be counted.

(c) **Right to notice of general meeting**

Written notice of the general meeting must be given under clause 15 and must be given to any person entitled to receive notice under the Act including:

- (i) each Member entitled to vote at the meeting;
- (ii) each Director; and
- (iii) the Auditor (if any) of the Company.

(d) **Content of notice**

A notice calling a general meeting must comply with the Act and must:

- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (ii) state the general nature of the business to be considered at the general meeting;
- (iii) if a special resolution is to be proposed at the general meeting, set out an intention to propose a special resolution and state the resolution;
- (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (A) that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
  - (B) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportional number of votes each proxy is appointed to exercise;
- (v) be accompanied by an instrument of proxy in the form as set out in Schedule 3 or in any form as the Directors may from time to time prescribe or accept; and
- (vi) contain information that is worded and presented in a clear, concise and effective manner.

**10.4 Cancellation or postponement of a general meeting**

(a) **Directors may cancel or postpone a general meeting**

- (i) The Board may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.

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(ii) Clause 10.4(a)(i) does not apply to general meetings called by court order or under the Act:

- (A) by the Directors on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
- (B) by Members, unless the Members who called the meeting consent to the postponement or cancellation.

(b) **Contents of notice postponing or cancelling a general meeting**

A notice of postponement or cancellation of a general meeting must specify:

- (i) the reasons for the postponement or cancellation; and
- (ii) if the general meeting is postponed:
  - (A) the postponed date and time for the holding of the general meeting;
  - (B) a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and
  - (C) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

(c) **Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Act.

(d) **Business at postponed general meeting**

Subject to clause 10.1(b), the only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice calling the general meeting.

(e) **Proxy or Representative at postponed general meeting**

Where:

- (i) an instrument of proxy or power of appointment authorises a proxy or Representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (ii) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

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then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

**(f) Validity of resolutions**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## **10.5 Conducting general meetings**

**(a) Time and place for general meetings**

A general meeting must be held at a reasonable time and place.

**(b) Technology**

A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

**(c) Quorum for a general meeting**

The quorum for a general meeting or an adjourned general meeting is six Members and the quorum must be present at all times during the meeting, unless the Company only has one Member in which case that Member constitutes a quorum.

**(d) Determination of quorum at general meeting**

In determining whether a quorum is present at a general meeting:

- (i) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
- (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
- (iii) if an individual is attending both as a Member and as a proxy or Representative, they are to be counted only once; and
- (iv) if an individual is attending as a proxy or Representative for more than one Member, they are to be counted only once.

**(e) Absence of quorum at a general meeting**

- (i) If within 30 minutes after the time for the general meeting set out in the notice of general meeting a quorum is not present, the general meeting:
  - (A) if called under the Act by a Director at the request of Members or

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by Members, is dissolved; and

(B) in any other case, is to be adjourned to a date, time and place as specified by the Directors.

(ii) If the Directors do not specify one or more of the requirements in clause 10.5(e)(i)(B), the general meeting is adjourned to:

(A) if the date is not specified, the same day of the following week;

(B) if the time is not specified, the same time; and

(C) if the place is not specified, the same place.

(f) **Adjourned meeting (quorum)**

If no quorum is present at the general meeting adjourned under clause 10.5(e) within 30 minutes after the time for the general meeting, the Directors may, in their absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.

(g) **Appointment and powers of Chair of general meeting**

The Chair will be entitled to take the chair at general meetings.

(h) **Absence of Chair at general meeting**

(i) If there is no Chair, or if the Chair is unable or unwilling to chair a general meeting, the Directors may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.

(ii) If a general meeting is held and the Chair, or the person elected under clause 10.5(h)(i), is not present within 30 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may take the chair of the meeting (in order of precedence):

(A) the deputy chair (if any);

(B) a Director chosen by a majority of the Directors present;

(C) the only Director present;

(D) a person (whether a Member or not) chosen by a majority of the Directors present; or

(E) a Member chosen by a majority of the Members present in person or by proxy or Representative who are entitled to vote at the meeting.

(iii) If an acting chair becomes unwilling or unable to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.

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(iv) Any person taking the chair of the general meeting under this clause will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this Constitution.

(i) **Powers of the Chair and conduct of general meetings**

- (i) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (ii) Any decision of the Chair is final.
- (iii) The Chair may delegate any power conferred by this clause to any person.

## **10.6 Adjournment of general meetings**

(a) **Adjournment of general meeting by Chair**

- (i) The Chair may, during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (ii) The Chair must adjourn a general meeting if the Members present in person or by proxy or Representative with a majority of votes at the meeting agree or direct that the Chair must do so.
- (iii) If any general meeting is adjourned for more than one month, a notice of the adjournment must be given to the Members in the same manner as notice was or ought to have been given of the original meeting.

(b) **Resumption of adjourned general meeting**

- (i) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 10.6(a).
- (ii) The resumed meeting may only be adjourned by the Chair.

## **10.7 Resolutions, voting and polls at general meetings**

(a) **Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

(b) **Resolution determined by majority**

At a general meeting, all resolutions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this Constitution or the Act.

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(c) **Voting by Chair at general meetings**

In case of an equality of votes on a resolution at a general meeting the Chair of that meeting will have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

(d) **How voting is carried out**

- (i) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under clause 10.7(f) or the Act either before, on or immediately after the declaration of the result of the vote on a show of hands.
- (ii) On a show of hands, a declaration by the Chair that a resolution has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes is conclusive evidence of the result.
- (iii) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

(e) **Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

- (i) the election of the Chair; or
- (ii) the adjournment of the general meeting.

(f) **Demand for poll**

Subject to clause 10.7(e), a poll may be demanded on any resolution by:

- (i) the Chair;
- (ii) at least five Members present in person or by proxy or by Representative; or
- (iii) Members holding not less than five percent of the total voting rights of all Members having the right to vote on the resolution.

(g) **Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken.

(h) **Right to vote at general meetings**

Subject to this Constitution, the Act, and any rights or restrictions attached to any class of Members, at a general meeting:

- (i) on a show of hands, each Member present in person or by proxy or Representative has one vote, provided that if an individual (whether or not also a Member) is attending as a proxy or Representative for one or more Members, that individual will only have one vote; and
- (ii) on a poll:

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- (A) each Member present in person or by proxy or Representative has one vote,
- (B) a person that holds multiple proxies has one vote for each proxy; and
- (C) a person that is a Representative for multiple corporate Members or corporate proxies, has one vote for each corporate Member or corporate proxy (as applicable).

(i) **Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (i) may only be made at the meeting or adjourned meeting; and
- (ii) must be determined by the Chair whose decision if made in good faith is final.

## **10.8 Proxies and Representatives**

(a) **Appointment of proxies and Representatives**

- (i) A Member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Member is a body corporate, a Representative to attend and cast a vote at that meeting.
- (ii) If a proxy appointed to attend and cast a vote at a general meeting under clause 10.8(a)(i) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (iii) Neither the proxy nor the Representative need be a Member.
- (iv) Any proxy or Representative appointed under this clause must be appointed under Division 6 of Part 2G.2 of the Act, and will have the rights set out in that Division.

(b) **Appointment received at electronic address**

For the purposes of clause 10.8(a), an appointment received at an electronic address will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated under the Act.

(c) **Verification of proxies**

- (i) Notwithstanding any other provision, a proxy shall be deemed to be invalid unless the following provisions are fulfilled:
  - (A) Each Member appointing a proxy must send or deliver to the Company, for receipt by 5.00 pm on the last business day before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote, the following:
    - (I) the document appointing the proxy, in the form as set out in Schedule 3 ; and

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- (II) if the appointment is signed by the Member's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- (ii) The required documents must be either sent or delivered to the Company's office address, fax number or electronic address, and marked to the attention of the relevant person, as specified for that purpose in the notice convening the meeting.

## **10.9 Members' circulating resolution without a general meeting**

- (a) This clause 10.9 applies to all resolutions of Members that are required or permitted to be passed by a general meeting, other than a resolution to remove an Auditor.
- (b) At a time when the Company has 20 Members or fewer (but more than one Member), the Members may pass a resolution without a general meeting being held if all of the Members (or Representatives) entitled to vote on the resolution (not being less than the number required for a quorum at a general meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (c) Separate copies of documents may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) The resolution made under clause 10.9(b) is passed when the resolution is signed by the last Member entitled to vote.
- (e) When the Members are asked to consider a resolution under this clause, the Company satisfies any requirement of the Act:
  - (i) to give Members information or a document relating to the resolution, by giving Members that information or document with the document to be signed;
  - (ii) to lodge with ASIC a copy of the notice of meeting to consider the resolution, by lodging a copy of the document to be signed by Members; and
  - (iii) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution, by lodging a copy of the information or documents referred to in clause 10.9(e)(i).

## **10.10 Meetings of a class of Members**

- (a) **General meeting provisions apply**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of a class of Members (if applicable) except that:

- (i) a quorum is constituted by at least two persons who, between them, hold or represent one-quarter of the Members of the class (unless only one person is a Member of the class, in which case that person constitutes a quorum);

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- (ii) any Member of the class, present in person or by proxy or by Representative, may demand a poll; and
- (iii) the Auditor is not entitled to notice of the meeting or to attend or speak at the meeting.

(b) **Director entitled to notice of class meetings**

A Director is entitled to receive notice of and to attend all separate meetings of the holders of any class of Members and is entitled to speak at those meetings.

## 11 Directors' and Members' minutes

### 11.1 Minutes

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors.

### 11.2 Minutes to be signed by chair

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute *prima facie* evidence of the matters stated in the minutes.

### 11.3 Members' access to minutes

- (a) The Directors must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Directors must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Directors determine that payment should be made for the copies, within 14 days after the Company receives the payment.

## 12 Secretary

### 12.1 Appointment of Secretary

The Directors must appoint one or more persons to the office of secretary to the Company. At least one of them must ordinarily reside in Australia.

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## 12.2 Notification to ASIC

- (a) If a Secretary is appointed, the Secretary must notify ASIC of the appointment.
- (b) The Directors may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

## 12.3 Terms and conditions of appointment

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Directors determine.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

# 13 Auditor

## 13.1 Appointment of Auditor

If required under the Act, the Directors must appoint one or more persons to the office of Auditor to the Company unless the Members at general meeting have appointed an Auditor.

## 13.2 Auditor and meetings of Members

- (a) The Auditor is ineligible to be elected or appointed as a Director.
- (b) The Auditor is entitled to receive notice of, attend, and be heard at general meetings.

# 14 Company books

## 14.1 Registers

### (a) Registers

In accordance with the Act, the Directors must cause the Company to keep:

- (i) a register of the holders of any debentures issued by the Company; and
- (ii) a register of charges.

### (b) Branch registers

- (i) The Company may cause a branch register of Members to be kept at any place outside Australia.
- (ii) Subject to the Act, the Directors may make any provisions or arrangements they think fit for the keeping of any branch register and to ensure compliance with the requirements of any local law.

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## 14.2 Financial records and statements

### (a) Financial records

- (i) The Directors must cause financial and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair statements of financial performance and financial position to be prepared to permit preparation of any other documents required by the Act or this Constitution.
- (ii) The records must be kept:
  - (A) in a manner which will enable them to be conveniently and properly audited;
  - (B) for seven years after the completion of the transactions or operations to which they relate; and
  - (C) at the Registered Office or at any other place as the Directors think fit and at all times be open to inspection by the Directors.

### (b) Financial, Directors' and Auditor's reports

If required under the Act, at each annual general meeting, the Directors must lay before the Company a financial report, a Directors' report and an Auditor's report for the last financial year of the Company that ended before that annual general meeting which comply with all applicable provisions of the Act.

### (c) Financial statements and reports

If required under the Act, the Company must cause copies of the Company's financial statements and other reports to be lodged with ASIC and sent to holders of its securities as, and to the extent, required by the Act.

## 14.3 Inspection

### (a) Inspection of financial records

- (i) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
- (ii) Subject to the Act, a majority of the Directors or the Members by special resolution may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the financial records and other books of the Company.
- (iii) This clause does not limit the rights of a Director or former Director to inspect the books of the Company under the law.

### (b) Copying financial records

- (i) After inspecting the financial records a Member may request permission to copy them.

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- (ii) The request under clause 14.3(b)(i) must be in writing, must specify the records the Member wishes to copy and must be delivered to the Company at its Registered Office.
- (iii) Subject to the Act, the Directors must consider the request at their next meeting and may (but need not) consent to the request or any part of the request on any terms as they think fit.

#### **14.4 Audit**

**(a) Financial statements to be audited**

If required under the Act, the financial statements of the Company for each financial year must be audited by the Auditors under the Act.

**(b) Approval of financial statements**

- (i) The financial statements of the Company once put before an annual general meeting (if the Company is required to do so) will be conclusive except as regards any error identified within three months after the date of that meeting.
- (ii) If any error is identified within the period referred to in clause 14.4(b)(i), the financial statements must then be corrected and are then conclusive.

#### **14.5 Audit Committee**

- (a) The Board must at its first meeting after the annual general meeting each year appoint an Audit Committee consisting of at least 3 Members, who:
  - (i) may or may not be Directors or Members of the Company; but
  - (ii) must not be employees of the Company.
- (b) The Audit Committee must:
  - (i) ensure that accurate and up-to-date financial statements are presented to each meeting of the Board;
  - (ii) report to each Board meeting on the financial position of the Company; and
  - (iii) ensure that the Board complies with its statutory financial and legal obligations.
- (c) Nothing in clause 14.5(a) limits the duties and liability of each Director of the Board.
- (d) The Board may by resolution establish other standing or ad hoc committees with such membership and terms of reference as it thinks appropriate.
- (e) Board committees may include members who are not Board Directors or Members of the Company.
- (f) The quorum for committee meetings is the presence in person of a majority of committee members at the time, unless the Board resolves otherwise.

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- (g) The meeting procedures of the Board contained in clause 7 apply to committee meetings (including the Audit Committee) with such modifications as are necessary.

## **14.6 Financial Year**

The financial year of the Company is from 1 July to 30 June.

## **14.7 Payments**

- (a) All payments by the Company must be:
  - (i) specifically authorised by the signatories approved by the Board; and
  - (ii) in the case of cheques - signed by, at least 2 persons nominated by the Board in writing.
- (b) The Board may nominate a list of individuals or positions to be signatories for the purpose of clause 14.7(a).

# **15 Notices**

## **15.1 Document includes notice**

In clause 15.2 to 15.7, a reference to a document includes a notice.

## **15.2 Giving a document to Members**

- (a) The Company may give a document to a Member:
  - (i) in person;
  - (ii) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by that Member;
  - (iv) by sending it to the Member by other electronic means (if any) nominated by the Member; or
  - (v) by notifying the Member under section 249J(3A) of the Act.
- (b) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by airmail, by air courier, by fax or by such electronic means.

## **15.3 Evidence of service of a document on a Member**

A certificate in writing signed by a Director or Secretary stating that a document was sent is *prima facie* evidence of service.

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#### **15.4 Giving a document to a Director**

The Company may give a document to a Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the Company and that person.

#### **15.5 Giving a document to the Company**

A person may give a document to the Company:

- (a) by leaving it at the Registered Office;
- (b) by sending it by post to the Registered Office;
- (c) by sending it to the fax number at the Registered Office;
- (d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) by any other means prescribed by the Act.

#### **15.6 Time of service of a document**

- (a) A document sent by post to an address within Australia is taken to be given:
  - (i) in the case of a notice of meeting, one Business Day after it is posted; or
  - (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (b) A document sent by post or airmail to an address outside Australia is taken to be given:
  - (i) in the case of a notice of meeting, five Business Days after it is posted; or
  - (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (c) A document sent by air courier to a place outside Australia is taken to be given three Business Days after delivery to the air courier.
- (d) A document sent by fax or to an electronic address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct fax number or electronic address.
- (e) A document given to a Member under clause 15.2(a)(v) is taken to be given on the

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day on which the Member is notified that the document is available.

## 15.7 Signatures

Where, by a provision of this Constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Directors.

# 16 Proceedings involving officers

## 16.1 Indemnity

### (a) Company to indemnify officers and other persons

(i) Subject to clause 16.1(a)(ii), the Company must indemnify any current or former Director, Secretary, executive officer or Auditor of the Company or of a related body corporate of the Company, member of the Advisory Board or any person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company, out of the property of the Company against:

- (A) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (B) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity.

(ii) Clause 16.1(a)(i) does not apply to the extent that:

- (A) the Company is forbidden by the Act or other statute to indemnify the person against the liability or legal costs; or
- (B) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by the Act or other statute.

### (b) Company may indemnify employee

The Company may indemnify any employee of the Company at the discretion of Directors.

## 16.2 Payments and advances to officer

### (a) Payment of costs, losses and expenses

Subject to this Constitution (including, without limitation, clause 5.10(d)), the Act, or other statute, the Company may pay all costs, losses and expenses which a person referred to in clause 16.1(a)(i) might incur or become liable to pay by reason of any contract entered into or act or thing done by them as such a person or in any way in discharge of their duties.

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(b) **Advances on account of costs, losses and expenses**

- (i) Subject to clause 5.10(d), the Act or any other relevant statute, the Company may make an advance, on account of anticipated costs, losses and expenses, to a person referred to in clause 16.1(a)(i) to assist the person in defending any proceeding brought against the person in that capacity.
- (ii) If the Company makes an advance to a person under clause 16.2(b)(i) the person must repay that advance if:
  - (A) judgment is not given in the person's favour;
  - (B) the person is not acquitted; or
  - (C) a court subsequently determines that the indemnification is not permitted.

### **16.3 Insurance**

(a) **Company may pay premium**

Subject to clauses 5.10(d) and 16.3(b), the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer or Auditor of the Company or of a related body corporate of the Company, or any person who takes or has taken part in, or is or has been concerned with, management of the Company or a related body corporate of the Company, against liability incurred by the person in that capacity, including a liability for legal costs.

(b) **Payment of premium prohibited in certain circumstances**

Clause 16.3(a) does not apply to the extent that:

- (i) the Company is forbidden by the Act or other statute to pay or agree to pay the premium; or
- (ii) the contract would, if the Company paid the premium, be made void by the Act or other statute.

## **17 Winding up**

### **17.1 Wind-up and distribution of surplus assets or property**

Despite the remainder of this clause 17, if:

- (a) the Members determine that the Company is to be wound up or dissolved; or
- (b) the Company is wound up or dissolved,

then:

- (c) the Members have no right to participate in any distribution or payment of the

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assets or property of the Company;

- (d) any surplus of assets or property of the Company remaining after the satisfaction of all debts and liabilities must, as determined by the Members, be given or transferred to another organisation or institution which has similar objects to those of the Company, which is charitable at law and which has rules prohibiting the distribution of its assets and income to its members (**Recipient Organisation**);
- (e) for the purposes of this clause 17.1, the Members will identify the Recipient Organisation or Recipient Organisations at the time of dissolution; and
- (f) if the Members fail to identify the institution or institutions under clause 17.1(e) the Supreme Court of New South Wales will make that determination.

## **17.2 Wind-up and distribution of surplus assets or property (in special circumstances)**

If at the time the Company is wound up or dissolved (**Wind-up Time**) it is:

- (a) registered (or otherwise recognised) under the ACNC Act as a registered charity, the Recipient Organisation must also be registered under the ACNC Act as a registered charity; and/or
- (b) endorsed or otherwise eligible under the Tax Acts to be exempt from taxation (as an income tax exempt charity or otherwise) the Recipient Organisation must also be endorsed or otherwise eligible (as the case may be) under the Tax Acts to be exempt from taxation (as an income tax exempt charity or otherwise); and/or
- (c) endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a DGR or otherwise) the Recipient Organisation must also be endorsed under the Tax Acts to receive tax deductible gifts (as a DGR or otherwise).

## **17.3 Wind-up event**

If at any time the Company is:

- (a) registered (or otherwise recognised) under the ACNC Act as a registered charity; and/or
- (b) endorsed or otherwise eligible under the Tax Acts to be exempt from taxation (as an income tax exempt charity or otherwise); and/or
- (c) endorsed or otherwise eligible under the Tax Acts to receive tax deductible gifts (as a deductible gift recipient or otherwise),

and the Company's status under any of these categories ceases or is revoked, the directors and/or the members must cause the Company to be wound-up or dissolved and its assets are to be dealt with in the manner prescribed at clauses 17.1 and 17.2 as if the above endorsements or registrations were still in effect.

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## 18 Public fund requirements

### 18.1 Application

This clause 18 only applies in the event that the Company is required to meet the public fund rules requirements as provided in Taxation Ruling TR 95/27 (or equivalent rulings and guidance materials).

### 18.2 Receipts

Any receipts generated and issued by the Company in respect of a gift or contribution to the Company must be issued in the name of the Company.

### 18.3 Contributions

The Company must invite the public to make gifts or contributions to the Company.

### 18.4 Notice to the Commissioner

The Company must provide written notice to the Commissioner of any alteration, variation or amendment to this Constitution within 30 days of it being made.

### 18.5 Establishment of a Gifts Committee

- (a) The Company must establish a committee (Gifts Committee) to manage all money and property received by the Company in the form of a gift for the objects of the organisation and contributions of money or property made to the Company in relation to an eligible fundraising event held for the objects of the Company.
- (b) At all times the Gifts Committee must be comprised of a majority of Responsible Persons.

### 18.6 Company may maintain a Gift Fund

The Company may maintain a Gift Fund in accordance with this clause 18 for so long as it seeks or has obtained endorsement as a DGR from the Australian Taxation Office, or the Company is named as a DGR in ITAA 1997.

### 18.7 Rules applying to the Gift Fund

The following rules apply to any Gift Fund established and maintained by the Company:

- (a) the Gift Fund must have a name;
- (b) the Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations;
- (c) the Company must maintain a separate bank account for the Gift Fund;
- (d) the following must be credited to the Gift Fund:
  - (i) all gifts of money or property to the Company for the Principal Purpose;
  - and

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- (ii) all money or property received by the Company because of those gifts;
- (e) no other money or property may be credited to the Gift Fund;
- (f) the Company must use any gifts, money or property of the kind referred to in clause 18.7(d) only for the Principal Purpose;
- (g) the Company must invite the public to make gifts or contributions to the Company; and
- (h) the Gift Fund is managed, controlled and administered by the Gifts Committee, unless delegated pursuant to the provisions contained in this Constitution.

## **19 General**

### **19.1 Exercise of power**

Except as specifically contemplated by this Constitution, the Company may exercise any power, take any action or engage in any conduct or procedure which under the Act a public company limited by guarantee has the power to do.

### **19.2 Amendment of Constitution**

This Constitution may be amended or repealed by Special Resolution in accordance with the Act.

### **19.3 Copy of Constitution**

The Company must send a copy of this Constitution to a member of the Company within seven days if the Member asks the Company in writing for a copy and pays the fee (up to the amount prescribed by the Act) required by the Company as approved by the Board.

## **20 Dispute resolution**

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution and in relation to charitable fundraising between a Member or Director and:
  - (i) one or more Members;
  - (ii) one or more Directors; or
  - (iii) the Company.
- (b) A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure concerning a Member until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under clause 20(c) they must within

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10 days:

- (i) tell the Directors about the dispute in writing
- (ii) agree or request that a mediator be appointed, and
- (iii) attempt in good faith to settle the dispute by mediation.

(e) The mediator must:

- (i) be chosen by agreement of those involved, or
- (ii) where those involved do not agree:
  - (A) for disputes between members, a person chosen by the directors, or
  - (B) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.

(f) A mediator chosen by the directors under clause 20(e)(ii)(A):

- (i) may be a Member or former Member of the Company;
- (ii) must not have a personal interest in the dispute; and
- (iii) must not be biased towards or against anyone involved in the dispute.

(g) When conducting the mediation, the mediator must:

- (i) allow those involved a reasonable chance to be heard;
- (ii) allow those involved a reasonable chance to review any written statements;
- (iii) ensure that those involved are given natural justice; and
- (iv) not make a decision on the dispute.

(h) This clause 20 shall not prohibit a Member from seeking urgent interlocutory relief from the Courts if that Member, Director or Company will incur irreparable harm if not permitted to do so.

# **Corporations Act 2001**

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## **Schedule 1 - Initial Directors**

### **1 Initial Directors**

- (a) Peter John Treseder (Chair)
- (b) Kellon Arthur Ernest Beard
- (c) Professor Heather Margaret Ann Urwin
- (d) Paul Andrew Connor
- (e) Dr Andrew James Bailey
- (f) Madeline Lawler
- (g) John Slaven

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## Schedule 2 - Matters requiring special resolution of Members

The following matters require the consent by special resolution of the Members:

- (a) the sale of the majority of the assets of the Company;
- (b) the winding up or appointment of a receiver and/or manager or administrator to the Company except on the grounds that the Company (as relevant) is insolvent;
- (c) the cessation of any material aspect of the Company's business or any other material change to the Company's business; and
- (d) the amendment of the Company's Constitution.

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## Schedule 3 - Proxy Form

**Mid North Coast Rural Health and Medical Research Foundation Limited**  
ACN 680 167 506  
**FORM OF APPOINTMENT OF PROXY**

I, .....  
(full name of member)

of .....  
(address)

being a member of the above Company.

hereby appoint .....  
(full name of proxy)

of .....  
(Insert address)

as proxy of the appointing member

at the Special General Meeting / Annual General Meeting (**delete as applicable**) of the  
Company to be held on

the ..... day of ..... / 20.....  
and at any adjournment of that meeting.

My proxy is authorized to vote (please tick selected option):

- in favour of
- against
- abstain
- as they see fit

for the following resolutions **[insert]**

.....  
Signature authorised signatory of member appointing proxy

.....  
Date

**NOTES:** In accordance with clause 10.4(e) of the Constitution this proxy must be provided to the Company no later than by 5pm on the last business day before the time for holding the meeting or adjourned meeting.

Please send all proxy forms to: **[insert contact details]**.