

CORPORATIONS LAW

CONSTITUTION

FIGHT CANCER FOUNDATION

ACN 097 333 018

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**CORPORATIONS LAW
COMPANY LIMITED BY GUARANTEE
CONSTITUTION
OF
FIGHT CANCER FOUNDATION**

1. PRELIMINARY

1.1 In this Constitution unless the contrary intention appears:

Alternate Director means a person appointed as an Alternate Director under **clause 37**;

Auditor means the Company's auditor;

Board of Management means the governing board of the Company responsible for the management of the affairs of the company in the period immediately prior to the registration of the Company as a company under the Corporations Law;

Company means Fight Cancer Foundation Limited;

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

Director includes any person occupying the position of Director of the Company and, where appropriate, includes an Alternate Director;

Directors means all or some of the Directors acting as a board;

Initial Director means a Director holding office immediately after the registration of the Company as a company limited by guarantee under the Corporations Law;

Member means a member under **clause 5**;

Office means the Company's registered office;

Register means the register of Members of the Company;

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

Representative means a person appointed as such under clause 9;

Seal means the Company's common seal (if any): and

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the *Corporations Law* have the same meaning in this Constitution;

- (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (e) a reference to the *Corporations Law* is a reference to the *Corporations Law* as modified or amended from time to time.

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

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

2. OBJECTS

2.1 The objects for which the Company is established are:

- (a) to engage in any activity associated with, or related to, directly or indirectly, the following:
 - (i) research
 - (ii) education
 - (iii) treatment
 - (iv) patient care
 - (v) patient, family and wider community support services, programs and facilitiesin respect of all types of cancer and other life threatening diseases and illnesses or physical conditions:
- (b) without limiting sub-paragraph (a), the establishment, funding and promotion of donor registers and other similar support services and facilities to assist in the objectives set out in sub-paragraph (a); and
- (c) to engage in any other activity that the Board deems appropriate provided that it is in pursuit of charitable purposes only and that any income derived from that activity is applied solely in promoting those charitable purposes.

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

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

3. INCOME AND PROPERTY OF COMPANY

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

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

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

4. PAYMENTS TO DIRECTORS

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

- (a) out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of, and
- (d) an insurance premium in respect of a contract insuring a Director or the provision of a financial benefit to a director to which section 212 of the Corporations Law refers.

5. MEMBERSHIP - Admission

5.1 The number of Members of the Company is unlimited.

5.2 The Members of the Company will be:

- (a) the persons who consented to become Members in the Company's application for registration; and
- (b) any other persons, corporations or organisations whom or which the Directors admit to membership in accordance with this Constitution.

For the purpose of clarity, the initial Members of the Company will be those persons who were members of the Company immediately prior to its registration as a Company under the *Corporations Law*.

5.3 Applications for membership of the Company will be in writing, signed by the applicant, in a form approved by the Directors in their absolute discretion.

5.4 At the next meeting of Directors after the receipt of an application for membership, the application will be considered by the Directors. The Directors will:

- (a) determine the admission or rejections of the applicant; or
- (b) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.

5.5 If the Directors:

- (a) require further evidence under clause 5.4, determination of the application will be deferred until this evidence has been supplied;

- (b) reject an application for membership, they will not be required to give reasons for the rejection.
- 5.6 (a) As soon as practical following acceptance of an application, the Secretary will send the applicant written notice of the acceptance and request payment of the applicant's entrance fee and first annual subscription if any.
 - (b) Subject to **clause 5.7**, an applicant will become a Member of the Company on payment of the amount due under **clause 5.6(a)**.
- 5.7 If an amount due under **clause 5.6** is not paid within 30 days after the date the applicant is notified of acceptance, the Directors may cancel their acceptance of the applicant for membership of the Company.
- 5.8 The rights and privileges of every Member will be personal to each Member and will not be transferable by the Member's own act or by operation of law.

6. MEMBERSHIP - Subscriptions

- 6.1 The Directors may determine the entrance fee and annual subscription payable by each Member or each category of Member. Until otherwise determined by the Directors:
 - (a) there will be no entrance fee; and
 - (b) the annual subscription will be \$20.00.
- 6.2 (a) The annual subscription period will commence on 1 January of each year, and the annual subscription will be due in arrears within 30 days of this date.
 - (b) The first subscription payable by persons who consented to become Members in the application for the Company's registration will be payable within 30 days of the date from which subscriptions are determined by Directors.
- 6.3 The Directors may determine that any Member admitted to membership will pay only one half of the annual subscription until that Member's next annual subscription falls due.
- 6.4 If a Member does not pay a subscription within 30 days after it becomes due the Directors:
 - (a) will give the Member notice of that fact; and
 - (b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

7. MEMBERSHIP - Ceasing to be a Member

- 7.1 A Member's membership of the Company will cease:
 - (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (i) whose conduct in their opinion renders it undesirable that the Member continue to be a Member of the Company;

- (ii) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed.
- (c) if membership is forfeited under clause 6.4(b);
- (d) where the Member is an individual, if the Member:
 - (i) dies;
 - (ii) becomes of unsound mind or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (iii) is convicted of an indictable offence;
- (e) where the Member is not an individual, if:
 - (i) a liquidator is appointed in connection with the winding-up of the Member; or
 - (ii) an order is made by a Court for the winding-up or deregistration of the Member.

7.2 Any member ceasing to be a Member:

- (a) will not be entitled to any refund (or part refund) of a subscription; and
- (b) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

8. MEMBERSHIP - Powers of attorney

8.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.

8.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

8.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

9. MEMBERSHIP - Representatives

9.1 Any corporation or organisation which is a Member may by written notice to the Secretary:

- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the *Corporations Law*; and
- (b) remove a Representative.

9.2 A Representative is entitled to:

- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
- (b) stand for election as an office bearer or Director; and
- (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.

9.3 A certificate executed in accordance with Section 127 of the *Corporations Law* is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.

9.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.

9.5 The appointment of a Representative may set out restrictions on the Representative's powers.

10. GENERAL MEETINGS - Convening general meeting

10.1 Any Director may, at any time, convene a general meeting.

10.2 A Member may:

- (a) only request the Directors to convene a general meeting in accordance with section 249D of the *Corporations Law*; and
- (b) not convene or join in convening a general meeting except under Section 249E or 249F of the *Corporations Law*.

11. GENERAL MEETINGS - Notice of general meeting

11.1 Subject to the provisions of the *Corporations Law* allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.

11.2 A notice convening a general meeting:

- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
- (b) must state the general nature of the business to be transacted at the meeting; and
- (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

11.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:

- (a) the consideration of the annual financial report. Directors' report and the Auditor's report;
 - (b) the election of Directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 11.4 (a) The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting convened as the result of a request under **clause 10.2**).
- (b) The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- 11.5 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

12. PROCEEDINGS AT GENERAL MEETINGS - Member

In **clauses 13, 14, 16 and 20**, 'Member' includes a Member present in person or by proxy, attorney or representative.

13. PROCEEDINGS AT GENERAL MEETINGS - Quorum

- 13.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 13.2 A quorum of Members is seven (7) Members.
- 13.3 If a quorum is not present within 30 minutes after the time appointed for a meeting:
- (a) if the meeting was convened on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:
 - (ii) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is automatically dissolved.

14. PROCEEDINGS AT GENERAL MEETINGS - Chairperson

- 14.1 The chairperson or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every meeting of Members.
- 14.2 If:
- (a) there is no chairperson or deputy chairperson: or

- (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the meeting; or
- (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the meeting,

the Directors present may elect a chairperson.

14.3 If no election is made pursuant to clause 14.2, then:

- (a) the Members may elect one of the Directors present as chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

15. PROCEEDINGS AT GENERAL MEETINGS - Adjournment

15.1 The chairperson of a meeting at which a quorum is present:

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

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

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

15.4 Notice of an adjourned meeting must only be given in accordance with **clause 11.1** if a general meeting has been adjourned for more than 21 days.

16. PROCEEDINGS AT GENERAL MEETINGS - Decision of questions

16.1 Subject to the *Corporations Law* in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

16.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the *Corporations Law*.

16.3 Unless a poll is determined:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost, and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

16.4 The demand for a poll may be withdrawn.

- 16.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

17. PROCEEDINGS AT GENERAL MEETINGS - Taking a poll

- 17.1 A poll will be taken when and in the manner that the chairperson directs.
- 17.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 17.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 17.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 17.5 A poll demanded on the election of the chairperson or the adjournment of a meeting must be taken immediately.
- 17.6 After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

18. PROCEEDINGS AT GENERAL MEETINGS - Casting vote of chairperson

The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or representative.

19. PROCEEDINGS AT GENERAL MEETINGS - Offensive material

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

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

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

20. VOTES OF MEMBERS - Entitlement to vote

- 20.1 A Member is not entitled to vote a general meeting if the member's annual subscription is more than one month in arrears at the date of the meeting.
- 20.2 A Member is entitled to vote has one vote.

21. VOTES OF MEMBERS - Objections

- 21.1 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered his or her vote.
- 21.2 An objection must be referred to the chairperson of the meeting, whose decision is final.
- 21.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

22. VOTES OF MEMBERS - Votes by proxy

- 22.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 22.2 A proxy may demand or join in demanding a poll.
- 22.3 A proxy or attorney may vote on a poll.

23. VOTES OF MEMBERS - Instrument appointing proxy

- 23.1 A Member who is a natural person may appoint a proxy by a written appointment signed by the appointor or the appointor's attorney.
- 23.2 A Member which is a corporation may appoint a proxy by a written appointment executed in accordance with section 127 of the *Corporations Law* or the appointor's attorney duty authorised in writing.
- 23.3 A proxy need not be a Member.
- 23.4
 - (a) An appointment of a proxy must be in a form approved by the Directors.
 - (b) **Schedule 1** sets out a form which will be taken to be approved by the Directors unless they resolve to use a different form.
- 23.5 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll in accordance with any instructions on the appointment.
- 23.6 A proxy's appointment is valid at an adjourned meeting.

24. VOTES OF MEMBERS - Lodgement of proxy

- 24.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
 - (a) the time for holding the meeting or adjourned meeting at which the appointee proposes to vote; or

(b) the taking of a poll on which the appointee proposes to vote.

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

(a) the Office;

(b) a facsimile number at the Office; or

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

25. VOTES OF MEMBERS - Validity

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

(a) died;

(b) became of unsound mind, or

(c) revoked the proxy or power,

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

26. APPOINTMENT AND REMOVAL OF DIRECTORS - Number of Directors

26.1 There will not be less than 3 and no more than 12 Directors unless the Company in general meeting by resolution changes the maximum number.

26.2 The first Directors will be those persons who immediately prior to lodgement of the Company's application for registration as a company under the *Corporations Law*, were members of the Board of Management.

27. APPOINTMENT AND REMOVAL OF DIRECTORS - Appointment and removal of Directors

27.1 The Company may by resolution passed in general meeting:

(a) appoint new Directors;

(b) subject to **clause 26.1** increase or reduce the number of Directors;

(c) remove any Director before the end of the Director's period of office; and

(d) appoint another person in the Director's place.

27.2 A person appointed under **clause 27.1(d)** will hold office for the period for which the Director replaced would have held office if the Director had not been removed.

- 27.3 (a) If the conduct or position of any Director is such that continuance in Office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically convened for that purpose may suspend that Director.
- (b) Within 14 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office in accordance with **clause 27.1(c)** or annul the suspension and reinstate the Director.

28. APPOINTMENT AND REMOVAL OF DIRECTORS - Additional and casual Directors

- 28.1 Subject to **clause 26**, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
- 28.2 A Director appointed under **clause 28.1** will hold office until the next general meeting of the Company when the Director may be re-elected.

29. APPOINTMENT AND REMOVAL OF DIRECTORS - Retirement

- 29.1 Subject to **clause 29.3**, a Director must retire from office at the conclusion of the second annual general meeting after the Director was last elected.
- 29.2 A retiring Director will be eligible for re-election.
- 29.3 An initial Director must retire from office at the annual general meeting or as close to that time as reasonably practicable, at which he or she would have been required to retire but for the registration of the Company as a company under the *Corporations Law*.

30. APPOINTMENT AND REMOVAL OF DIRECTORS - Filling vacated office

- 30.1 When a Director retires at a general meeting, the Company may by ordinary resolution elect a person to fill the vacated office.
- 30.2 If the vacated office is not filled and the retiring Director has offered himself or herself for re-election, the retiring Director will be deemed to have been re-elected unless, at the meeting at which he or she retires:
- (a) it is resolved not to fill the vacated office; or
- (b) the resolution for the re-election of the Director is put and lost.

31. APPOINTMENT AND REMOVAL OF DIRECTORS - Nomination of Director

- 31.1 A person other than a retiring Director is not eligible for election as a Director at a general meeting unless the person, or a Member who intends to propose the person, has left at the Office a written notice signed by him or her:

- (a) giving the person's consent to the nomination; and
- (b) stating either that the person is a candidate for the office of Director or that the Member intends to propose the person for election.

31.2 A notice given in accordance with clause 31.1 must be left at the Office at least 30 days before the relevant general meeting.

31.3 A written notice referring to all Director vacancies and each candidate for election must be sent to all Members at least seven days before every general meeting at which an election of a Director will take place.

32. APPOINTMENT AND REMOVAL OF DIRECTORS - Vacation of office

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

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

33. POWER AND DUTIES OF DIRECTORS

33.1 **The** business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the *Corporations Law* do not require to be exercised by the Company in general meeting.

33.2 Without limiting the generality of **clause 33.1**, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property of business of the Company;

- (c) issue debentures or give any other security for a debt liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

34. PROCEEDINGS OF DIRECTORS - Directors' meetings

- 34.1 (a) A Director may at any time, and the Secretary must on the request of a Director, convene a Directors' meeting.
- (b) A Directors' meeting must be convened on at least 48 hours written notice of a meeting to each Director and each Director's alternate.
- 34.2 It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia except if the Director has advised of his or her address and email address.
- 34.3 (a) Subject to the Corporations Law, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- (b) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- (c) Subject to **clause 36**, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 34.4 **Clause 34.3** applies to meetings of Directors' committees as if all committee members were Directors.
- 34.5 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 34.6 A quorum is a majority of Directors for the time being.
- 34.7 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may convene a general meeting of Members to deal with the matter.
- 34.8 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

35. PROCEEDINGS OF DIRECTORS - Decision of questions

- 35.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to **clause 38**, each Director has one vote.
- 35.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.

- 35.3 (a) An Alternate Director has one vote for each Director for whom he or she is an alternate.
- (b) If the Alternate Director is a Director, he or she also has a vote as a Director.

36. PROCEEDINGS OF DIRECTORS - Directors' interest

- 36.1 Every Director who has a direct or indirect interest in a matter that is to be considered at a Directors' meeting:
- (a) must not vote on the matter or be present while the matter is being considered at a Directors' meeting:
- (b) will not be counted in a quorum in relation to that matter, if to do so would be contrary to the *Corporations Law*.
- 36.2 Each Director must disclose to the Company any direct or indirect interest in a matter before the Directors and, in the case of a contract, provide the Company with the names of the parties to the contract, particulars of the contract and the Director's interest in the contract. Failure by a Director to disclose under the clause will not render void or voidable a contract in which the Director has an interest.
- 36.3 A Director may join in executing in accordance with section 127 of the *Corporations Law* any document relating to a contract or arrangement or proposed contract arrangement in which the Director has an interest.

37. PROCEEDINGS OF DIRECTORS - Alternate Directors

- 37.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate for a period determined by that Director.
- 37.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 37.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 37.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 37.5 (a) The appointment of an Alternate Director may be revoked at any time by the appointor or by the other Directors.
- (b) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- 37.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

38. PROCEEDINGS OF DIRECTORS - Remaining Directors

- 38.1 The Directors may act even if there are vacancies on the board.

38.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

- (a) appoint a Director; or
- (b) convene a general meeting.

39. PROCEEDINGS OF DIRECTORS - Chairperson

39.1 The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.

39.2 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

39.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

40. PROCEEDINGS OF DIRECTORS - Directors' committees

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

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

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

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

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

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

41. PROCEEDINGS OF DIRECTORS - Written resolutions

41.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.

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

41.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

- 41.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this **clause 41**.
- 41.5 This clause applies to meeting of Directors' committees as if all members of the committee were Directors.

42. PROCEEDINGS OF DIRECTORS - Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

43. PROCEEDINGS OF DIRECTORS - Minutes and registers

- 43.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with **clause 41**;
 - (d) all appointments of officers;
 - (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made pursuant to **clause 36**.
- 43.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 43.3 The Company must keep all registers required by his Constitution and the *Corporations Law*.

44. LOCAL MANAGEMENT - Local management

- 44.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 44.2 Without limiting clause **44.1** the Directors may:

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

on any terms and subject to any conditions determined by the Directors.

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

45. LOCAL MANAGEMENT - Appointment of attorneys and agents

45.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Law appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers , authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,

determined by the Directors.

45.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local board established under this Constitution;
- (b) any company;
- (c) the members directors, nominees or managers of any company or firm; or
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

45.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

45.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.

45.5 An attorney or agent appointed under this **clause 45** may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

46. SECRETARY

- 46.1 If required by the Corporations Law, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 46.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 46.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

47. SEALS - Common seal

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

48. SEALS - Duplicate seal

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

49. INSPECTION OF RECORDS

- 49.1 Except as otherwise required by the Corporations Law, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 49.2 A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

50. NOTICES - Service of notices

- 50.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 50.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 50.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 50.4 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.
- 50.5 A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this clause.
- 50.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 50.7 Subject to the *Corporations Law* the signature to a written notice given by the Company may be written or printed.
- 50.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

51. NOTICES - Persons entitled to notice

- 51.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director and Alternate Director; and
 - (c) any Auditor.

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

52. AUDIT AND ACCOUNTS

- 52.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the *Corporations Law*.
- 52.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the *Corporations Law*.

53. WINDING UP

53.1 If the Company is wound up:

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

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

- (c) payment of debts and liabilities of the Company (in relation to clause 53.1(b)), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributions among themselves,

such amount as may be reasonably required not exceeding \$2.00.

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

- (a) required to pursue charitable purposes only;
- (b) required to apply its profits (if any) or other income in promoting its objects;
- (c) prohibited from making any distribution to its member or paying fees to its directors; and
- (d) is a Public Benevolent Institution or endorsed charity (as the case may be) under item 4.1 of the Table in subsection 30-45(1) of the Income Tax Assessment Act 1997 and for the purposes of subdivision 30-A of that Act.

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

54. INDEMNITY AND INSURANCE

54.1 To the extent permitted by law and that the officer is not indemnified by directors' and officers' liability insurance maintained by the Company, the Company indemnifies every person who is or has been an officer of the Company against any liability:

- (a) incurred by that person as such an officer to another person other than the Company or a related body corporate of the Company unless the liability arises out of conduct involving a lack of good faith; and

- (b) for costs and expenses incurred by the person as such an officer:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Law.

54.2 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against a liability:

- (a) incurred by the person as such an officer unless the liability arises out of conduct involving:
 - (i) a wilful breach of duty in relation to the Company; or
 - (ii) without limiting subparagraph (i), a contravention of subsection 232(5) or (6) of the *Corporations Law*; or
- (b) for costs and expenses incurred by the person as such an officer in defending proceedings, whether civil or criminal and whatever their outcome.

54.3 In this **clause 54**:

'indemnity' has the same meaning as in section 241 of the *Corporations Law*;

'officer' means a Director, secretary or executive officer of the Company; and

'pay' has the same meaning as in section 241A of the *Corporations Law*.

55. AMALGAMATION

Where it further the objects of the Company to amalgamate with any one or more organisations having similar objects, the other organisation(s) must have rules or constitutions prohibiting distribution of its (their) assets and income to members and the amalgamation must be subject to the approval of the Deputy Commissioner of Taxation.