



**The School Volunteer Program Limited  
trading as  
EdConnect Australia  
Constitution**

**October 2016**

*Amended 22/10/2018*

*26/5/2022*

## Contents

Introduction.....	6
1 Replaceable rules excluded .....	6
2 Definitions and interpretation .....	6
3 Objects .....	8
4 Powers .....	8
5 No distribution to members .....	9
6 Limited liability .....	9
7 Guarantee .....	9
Membership.....	10
8 Number of members .....	10
9 Membership.....	10
10 Categories of membership.....	10
11 Application for membership.....	10
12 Form of application.....	11
13 Admission to membership .....	11
14 Notification by members .....	12
15 Register of members.....	12
Annual subscription.....	13
16 Annual subscription .....	13
17 Unpaid annual subscriptions .....	13
Cessation of membership.....	13
18 Resignation or Retirement.....	13
19 Failure to pay.....	13
20 Cessation of membership .....	14
21 Disciplining and expulsion of members.....	14
22 Effect of cessation of membership .....	15
Meetings of members .....	15
23 Circulating resolutions .....	15
24 Calling of general meeting.....	15
25 Amount of notice of meeting .....	15
26 Persons entitled to notice of general meeting .....	15
27 How notice is given .....	15
28 When notice is given .....	16
29 Period of notice .....	16
30 Contents of notice .....	16
31 Notice of adjourned meeting.....	17
32 Accidental omission to give notice .....	17
33 Postponement of general meeting .....	17
34 Cancellation of general meeting .....	17
35 Technology .....	17

36	Quorum .....	17
37	Chair at general meetings .....	18
38	Business at adjourned meetings .....	19
	Proxies and entity representatives .....	19
39	Who can appoint a proxy .....	19
40	Rights of proxies .....	19
41	When proxy form must be sent to all members .....	19
42	Appointing a proxy .....	20
43	Form of proxy sent out by Company .....	20
44	Receipt of proxy documents .....	21
45	Validity of proxy vote .....	22
46	Entity representative .....	22
47	Attorney of member .....	23
	Voting at meetings of members .....	23
48	How vote may be exercised .....	23
49	Voting disqualification .....	23
50	Objections to right to vote .....	23
51	How voting is carried out .....	23
52	Matters on which a poll may be demanded .....	23
53	When a poll is effectively demanded .....	24
54	When and how polls must be taken .....	24
55	Chair's casting vote .....	24
	Annual general meeting .....	24
56	Business of an annual general meeting .....	24
57	Resolutions proposed by members .....	25
	Appointment of directors .....	25
58	Number of directors .....	25
59	Existing Directors .....	25
60	Election and appointment of directors .....	26
61	Nomination for election of directors .....	26
62	Election procedure .....	27
63	Time appointment or retirement takes effect .....	27
	Appointment of directors between AGMs .....	28
64	Casual vacancies and additional directors .....	28
65	Insufficient number of directors .....	28
	Alternate directors .....	28
66	Appointment .....	28
67	Rights and powers of alternate director .....	28
68	Suspension or revocation of appointment .....	28
69	Form of appointment, suspension or revocation .....	29
70	Termination of appointment .....	29
71	Power to act as alternate for more than 1 director .....	29

Powers of directors.....	29
72 Validation of acts of directors and secretaries.....	29
73 General business management.....	29
74 Borrowing powers.....	30
75 Appointment of attorney .....	30
76 Negotiable instruments .....	30
77 Delegation to committee of directors.....	30
78 Delegation generally.....	30
Chief executive officer .....	31
79 Power to appoint .....	31
80 Not a member of the board.....	31
81 Powers .....	31
82 Withdrawal of appointment or powers.....	31
83 Temporary appointments.....	31
84 Officers .....	31
Removal and resignation of directors .....	32
85 Removal of directors .....	32
86 Resignation of director.....	32
87 Vacation of office of director .....	32
Directors' interests.....	32
88 Prohibition on being present or voting .....	32
89 Director to disclose interests.....	33
90 Effect of interest in contract.....	33
91 Standing notice of interest.....	33
92 Other interests.....	34
93 Extension of meaning of "Company" .....	34
94 Other directorships and shareholdings.....	34
Directors' meetings.....	34
95 Circulating resolutions .....	34
96 Meetings of directors .....	35
97 Calling directors' meetings.....	35
98 Notice of meeting .....	35
99 Waiver of notice .....	35
100 Technology meeting of directors .....	35
101 Chairing directors' meetings.....	36
102 Quorum .....	36
103 Passing of directors' resolutions .....	36
Directors' remuneration .....	37
104 Payment of remuneration .....	37
105 Additional services rendered.....	37
106 Directors' expenses .....	37
107 Financial benefit .....	37

Secretary.....	37
108    Appointment of secretary.....	37
109    Terms of office of secretary .....	37
Indemnity and insurance.....	38
110    Indemnity.....	38
111    Insurance .....	39
112    Disputes and mediation.....	40
113    Director voting on contract of indemnity or insurance.....	40
114    Liability .....	40
115    Meaning of “officer” .....	41
116    Winding up .....	41
Minutes .....	41
117    Minutes to be kept.....	41
Inspection of records .....	42
118    Rights of inspection .....	42
119    Confidential information .....	42
Accounts, audit and records.....	42
120    Accounts .....	42
121    Audit.....	42
Execution of documents .....	42
122    Common seal .....	42
123    Use of common seal.....	42
124    Execution of documents without common seal.....	43
125    Execution of document as a deed .....	43
126    Execution – general.....	43
Notices.....	43
127    Notices other than notices of meeting.....	43
Inadvertent omissions .....	43
128    Formalities omitted .....	43
129    Establishment and Operation of Gift Account .....	43
Alterations .....	44
130    Alterations .....	44

Corporations Act 2001

Company limited by guarantee

## **Constitution**

Of

**The School Volunteer Program Limited trading as EdConnect Australia (“the Company”)**

### **Introduction**

#### **1 Replaceable rules excluded**

- (1) The replaceable rules contained in the Act do not apply to the Company.

#### **2 Definitions and interpretation**

- (1) Definitions

In this constitution:

1. **Act** means the Corporations Act 2001 (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
2. **Associate Member** means a person or entity whose name is recorded on the Register as an associate member of the Company and who has been admitted to such membership by the board in accordance with rule 13;
3. **Friend** means a person whose name is recorded on the Register as an Friend member of the Company and who has been admitted to such membership by the board in accordance with rule 13.
4. **Auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
5. **Board** means the directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum;
6. **Business day** means a day that is not a Saturday, a Sunday or a public holiday in the place where the Company has its registered office;
7. **CEO** means the Chief Executive Officer of the Company;
8. **Company** means The School Volunteer Program Limited trading as EdConnect Australia ACN 109 551 96;
9. **Convene** means to call together for a formal meeting;
10. **Financial year** means a period not exceeding 18 months fixed by the Board, being a period commencing on the date of incorporation of the Company and ending on 30 June; and thereafter each period commencing 1 July and ending on 30 June in the following year.
11. **Annual general meeting** means a meeting to which all members are invited, convened under rule 24.2.
12. **Ordinary resolution** means resolution other than a special resolution.

13. **Educational Professional** means School Principal, Deputy Principal, Teacher, Teacher's aide or any other position employed in a school setting.
14. **Poll** means voting conducted in written form (as opposed to a show of hands). If a poll is held, a declaration by the person presiding as to the result of a poll is evidence of the matter so declared.
15. **Directors** means the directors for the time being of the Company or the directors assembled as a board;
16. **Existing Directors** has the meaning given in rule 60.1;
17. **Full Member** means a person or entity whose name is recorded on the Register as a full member of the Company and who has been admitted to such membership by the board in accordance with rule 13;
18. **Law** is Commonwealth and State legislation including regulations, by-laws, and other subordinate legislation;
19. **Government Authorities** means any government or governmental body, whether:
  20. legislative, judicial or administrative;
  21. a department, commission, authority, instrumentality, tribunal, agency or
  22. Commonwealth, State, Territorial or local,
    - a. and includes any self-regulatory organisation established under any law but excludes a governmental body in respect of any service or trading function as distinct from regulatory or fiscal functions;
23. **member** means a member whose name is entered in the Register as a either a Full Member, Associate Member or Friend of the Company and, in the context of voting at a general meeting, means only a Full Member;
24. **Objects** are those outlined in rule 3;
25. **Register** means the register of members to be kept pursuant to the Act;
26. **Related body corporate** has the meaning given in the Act;
27. **Representative** means a person authorised to act as a representative of an entity pursuant to section 250D of the Act;
28. **Secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary; and
29. **Special resolution** means a resolution
  30. which has been passed by at least 75% of the votes cast by members entitled to vote on the resolution
  31. of which notice as set out in section 249L(1)(c) of the Act has been given
32. ITAA97 means the Income Tax Assessment Act 1997 (Cth).

## (2) Interpretation

- (1) Reference to:

- (a) one gender includes the others;
  - (b) the singular includes the plural and the plural includes the singular; and
  - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
- (a) an expression has in this constitution the same meaning as in the Act; and
  - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) “Including” and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

### **3 Objects**

- (1) The objects of the Company are to work with primary, secondary and tertiary educational providers to:
- (1) provide additional learning support to disadvantaged, vulnerable or at-risk young people that promote positive academic, social or emotional outcomes
  - (2) prepare and connect intergenerational volunteers to deliver individual or group learning support and mentoring services
  - (3) connect educational institutions with volunteer resources and programs that enhance their ability to achieve their learning objectives;
  - (4) promote volunteer engagement in educational institutions and thereafter enhancing volunteer’s connectedness with the community and contributing to volunteers wellbeing; and
  - (5) partner and collaborate with like-minded organisations to advance and enhance the learning support available.

### **4 Powers**

- (1) The powers conferred on the Company are such that the company and any additions, exclusions or modifications inserted below, the Company may do all things necessary or convenient for carrying out its objects and purposes, and in particular, may:
- (1) Raise money by all lawful means and to solicit, receive and enlist and accept financial or other aid from any source and to conduct fundraising campaigns;
  - (2) Acquire, hold, deal with, and dispose of any real or personal property;
  - (3) Open and operate bank accounts;
  - (4) Invest its money:
    - (1) in any security in which trust moneys may be invested; or
    - (2) in any other manner authorised by the rules of the Company;



- (5) Borrow money upon such terms and conditions as the Company thinks fit;
  - (6) Give such security for the discharge of liabilities incurred by the Company as the Company thinks fit;
  - (7) Appoint agents and attorneys to transact any business of the Company on its behalf;
  - (8) Enter into any other contract it considers necessary or desirable;
  - (9) May act as trustee and accept and hold real and personal property upon trust, but does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the rules of the Company; and
  - (10) Raise, receive, hold and invest funds to sustainably support the objects of the Company.
- (2) The property and income of the Company shall be applied solely towards the promotion of the objects of the Company and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members, except in good faith in the promotion of those objects. This rule 4.11 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any Director to the extent permitted by law and this constitution.

## **5 No distribution to members**

- (1) No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company.
- (2) Rule 5(1) above does not prevent the
  - (1) payment in good faith of remuneration to any officer, servant or member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
  - (2) payment of interest at a reasonable commercial rate on money borrowed from any member of the Company;
  - (3) payment of reasonable and proper rent by the Company to a member for premises leased by the member to the Company; or
  - (4) reimbursement of expenses incurred by any officer or member on behalf of the Company.

## **6 Limited liability**

- (1) The liability of the members is limited to the amount of the guarantee given in rule 7.

## **7 Guarantee**

- (1) Every full member of the Company undertakes to contribute an amount not exceeding \$10 to the property of the Company in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required for payment:
- (2) of the debts and liabilities of the Company (contracted before the member ceases to be a member);
- (3) of the costs, charges and expenses of winding up; and
- (4) for the adjustment of the rights of the contributories among themselves.

## **Membership**

### **8 Number of members**

- (1) The number of members for which the Company proposes to be registered is unlimited.

### **9 Membership**

- (1) The members of the Company are any persons the directors admit to membership in accordance with this constitution.
- (2) A member's rights, privileges and benefits of membership are not transferable, other than by operation of Law.

### **10 Categories of membership**

- (1) There are three categories of membership: Full Member, Associate Member and Friends.
- (2) Only Full Members (and not Associate Members or Friends) are entitled to vote at meetings of members of the Company.
- (3) Additional categories of members, if recommended by the directors, may be created from time to time by the members in general meeting.
- (4) A person or entity cannot contemporaneously be a Full Member and an Associate Member, or Friend.

### **11 Application for membership**

#### **Full Member**

- (1) To become a Full Member:
  - (1) in the case of an entity, the entity must:
    - (a) be a school, TAFE or University;
    - (b) be an employer or contractor of Educational Professionals;
    - (c) be an organisational educator, researcher or trainer of existing or potential Educational Professionals;
    - (d) be a Government Authority working or providing education related services;
    - (e) be an entity which the board deem appropriate to appointment as a member and whose membership would be in the best interests of the Company in furthering the Company's objectives; or
  - (2) in the case of a natural person, the person must not be less than 18 years of age at the date of application and must:
    - (a) be a person who the board deems appropriate to appointment as a member and whose membership is in the best interests of the Company in furthering the Company's objectives.

#### **Associate Member**

- (3) To become an Associate Member, the entity or natural person applying for membership must:

- (a) in the case of a natural person, not be less than 18 years of age at the date of the application;
- (b) display an interest in the operations of the Company and furtherance of its objectives.
- (c) be a member school who has completed a formal partnership agreement with the Company
- (d) be an active approved volunteer of the Company.

### **Friend Member**

- (4) To become a Friend, the natural person must:
  - (a) In the case of a natural person, not be less than 18 years of age,
  - (b) Must be invited to become a Friend by the board in accordance with Section 9.1 of the constitution.
  - (c) Be a current or former senior executive in a large state based, national or multinational company, former government minister or elected member, own or manage a philanthropic foundation and/or have a high positive public profile or be highly regarded in your chosen field and recognised as someone who could further the objects of the Company.
  - (d) Display an interest in the operation of the company and furtherance of its objectives.
  - (e) Commit to meeting formally no less than two occasions per annum as arranged by the Company and;
  - (f) Following initial establishment, up to five new members may be appointed each year.

## **12 Form of application**

- (1) An application for membership with the exception of Friends shall be approved by the board and must be:
  - (1) in writing in a form approved by the directors, specifying the category of membership applied for;
  - (2) signed by the applicant; and
  - (3) accompanied by any other documents or evidence as to qualification for the category of membership applied for which the directors require.
- (2) If the applicant is an entity it must nominate 1 person (**nominated representative**) to represent it in the Company. The application form must:
  - (1) state the name and address of the nominated representative; and
  - (2) be signed by the nominated representative.

The powers of the nominated representatives are set out in rule 46.

The nominated representative will be recorded on the Register as the representative and exercise the powers of the member on behalf of the member.

## **13 Admission to membership**

- (1) The directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.
- (2) The directors may in their absolute discretion determine if the applicant is suitable for membership

in the category applied for.

- (3) The directors need not give any reason for the rejection of an application or the granting of membership.
- (4) If an application for membership is rejected, the secretary must notify the applicant in writing.
- (5) If an applicant is accepted for membership, the secretary must:
  - (1) notify the applicant in writing; and
  - (2) request payment of the annual subscription (if any), determined in accordance with rule 16.
- (6) The applicant becomes a member upon payment of the annual subscription (if any). The name and details of the member must be entered in the Register.
- (7) If payment of the annual subscription (if any) is not received within 1 months after the date of the giving of the notice referred to in rule 13(5), the directors may revoke their acceptance of the applicant for membership.
- (8) All existing members on the date of adoption of this constitution will automatically become Full Members.

#### **14 Notification by members**

- (1) Each member has a continuing obligation to promptly notify the secretary in writing of any change in their qualification to be a member of the Company.
- (2) Each corporate member must promptly notify the secretary in writing of any change in the person nominated as its nominated representative under rule 12(2).

#### **15 Register of members**

- (1) The Company must keep a Register in accordance with the Act.
- (2) The following must be entered in the Register in respect of each member:
  - (1) the full name of the member and their Australian Business Number (in the case of an entity);
  - (2) the residential or registered address and electronic mail address, if any, of the member (and if applicable, the member's nominated representative);
  - (3) the category of membership;
  - (4) the date of admission to and cessation of membership;
  - (5) the date of last payment of the member's annual subscription;
  - (6) such other information as the directors require.
- (3) Each member and nominated representative must notify the secretary in writing of any change in that person's name, address or electronic mail address within 1 month after the change.
- (4) The Company Secretary must cause the name of a person who:
  - (a) dies;
  - (b) has ceased to be a member under rule 19(2); or

if a member, by reason of rule 11(2)(4) has become an inactive volunteer or has ceased to be a full member pursuant to rules 11(1) or 15 (4)(b) to be deleted from the register of members.

## **Annual subscription**

### **16 Annual subscription**

- (1) The annual subscription (if any) payable by a member of the Company is the amount determined by the directors. The directors may review the necessity and magnitude of any annual subscription fees on an annual basis and introduce, remove or increase or decrease fees accordingly.
- 8 All annual subscriptions (if any) are due and payable in advance by 1 July in each year.
- 9 All renewal of membership applications must be accompanied by a declaration by the member that they continue to satisfy the eligibility requirements for their membership in the Company. The CEO will have absolute discretion as to whether the member satisfies the particular eligibility requirements relevant to their category of membership and whether to renew their membership.
- 10 If a person is admitted to membership of the Company during the months of January to June inclusive, the directors may reduce the annual subscription payable (if any) by the applicant, in any manner they see fit.

### **17 Unpaid annual subscriptions**

- (1) If:
  - (1) the annual subscription (if any) of a member remains unpaid for 1 month after it becomes payable; and
  - (2) a notice of default is given to the member following a resolution of the directors to do this,the member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if (in their absolute discretion) the directors see fit.

## **Cessation of membership**

### **18 Resignation or Retirement**

- (1) A member may resign from membership of the Company by giving written notice to the secretary.
- (2) The resignation of a member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

### **19 Failure to pay**

- (1) If a member has not paid all arrears of annual subscription (if any) under rule 16 or, if paid, the member's rights and privileges are not reinstated:
  - (1) the member remains liable for all the obligations and liabilities of membership until the expiration of 1 month after the date of notification under rule 17.1(2); and
  - (1) the member ceases to be a member and the member's name must be removed from the Register at the expiration of the 1 month period.
  - (2) An Ambassador should automatically retire from membership of the Company after a period of six years from their date of appointment by the board.

## **20 Cessation of membership**

- (1) A member who is a natural person ceases to be a member:
  - (1) on the death of the member;
  - (2) if the member is expelled under rule 21; or
  - (3) if the directors so decide in their absolute discretion, a member is untraceable because the person has ceased to reside at, attend or otherwise communicate with the address recorded for that member in the Register.
- (2) A member that is not a natural person ceases to be a member:
  - (1) if it is wound up or is otherwise dissolved or deregistered;
  - (2) if it is expelled under rule 21; or
  - (3) if the directors so decide in their absolute discretion, a member becomes untraceable because the person has ceased to reside at, attend or otherwise communicate with the address recorded for that member in the Register.

## **21 Disciplining and expulsion of members**

- (1) If any member:
  - (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
  - (2) is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial or injurious to the interest of the Company,

the directors (in their absolute discretion) may resolve to censure, fine, suspend or expel the member from the Company and, in the case of expulsion, to remove the member's name from the Register.
- (2) In exercising their powers under rule 21.1 the directors must not fine a member an amount exceeding the annual subscription (if any) of a member, being a natural person.
- (3) At least 14 calendar days before the meeting of the directors at which a resolution of the nature referred to in rule 21.1 is passed, the directors must give to the member notice of:
  - (1) the meeting;
  - (2) what is alleged against the member; and
  - (3) the intended resolution.
- (4) At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.
- (5) The expelled member's name must be removed from the Register immediately following the decision to expel that member.
- (6) Any decision of the directors in accordance with rule 21 is final and the member has no right to appeal that decision.
- (7) If any member ceases to be a member under rule 21.6, the directors may reinstate the member and restore the name of that member to the Register upon and subject to any terms and conditions they see fit.

## **22 Effect of cessation of membership**

- (1) If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any sum not exceeding \$10 for which the member is liable under rule 8 of this constitution.

## **Meetings of members**

### **23 Circulating resolutions**

- (1) This rule 23 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- (2) The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (3) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- (4) The resolution is passed when the last member signs.
- (5) If the Company receives by electronic transmission a copy of a document referred to in this rule 23 it is entitled to assume that the copy is a true copy.

### **24 Calling of general meeting**

- (1) A majority of directors may call a general meeting whenever they see fit.
- (2) Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.
- (3) Except as provided in the Act, no member or members may call a general meeting.

### **25 Amount of notice of meeting**

- (1) Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

### **26 Persons entitled to notice of general meeting**

- (1) Written notice of a meeting of the Company's members must be given individually to:
  - (1) each member entitled to vote at the meeting;
  - (2) each director; and
  - (3) the Company's auditor.
- (2) The Company is only required to give notice of general meetings to those persons entitled to receive notice under this constitution and the Act.

### **27 How notice is given**

- (1) The Company may give the notice of meeting to a member:

- (1) personally;
  - (2) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member;
  - (3) by sending it to the electronic address (if any) nominated by the member;
  - (4) by sending it by other electronic means (if any) nominated by the member; or
  - (5) by notifying the member in accordance with rule 27(2).
- (2) If the member nominates:
- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
  - (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;
- the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):
- (3) that the notice of meeting is available; and
  - (4) how the member may use the nominated access means to access the notice of meeting.

## **28 When notice is given**

- (1) A notice of meeting sent by post is taken to be given 5 business days after it is posted.
- (2) Except as provided by rule 28(3), a notice of meeting given to a member under rule 27.1(3) is taken to be given on the business day after it is sent.
- (3) A notice of meeting given to a member under rule 27.1(3) is not effective if:
  - (1) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
  - (2) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- (4) A notice of meeting given to a member under rule 27.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.
- (5) A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 28 is conclusive evidence of the matter.

## **29 Period of notice**

- (1) Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

## **30 Contents of notice**

- (1) A notice of a general meeting must:
  - (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);



- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (4) be worded and presented in a clear, concise and effective manner; and
- (5) contain a statement setting out the following information:
  - (a) that the member has a right to appoint a proxy; and
  - (b) that the proxy need not be a member of the Company.

### **31 Notice of adjourned meeting**

- (1) When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

### **32 Accidental omission to give notice**

- (1) The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not invalidate the proceedings at or any resolution passed at the meeting.

### **33 Postponement of general meeting**

- (1) The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- (2) Whenever any meeting is postponed (as distinct from being adjourned under rule 36.4) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

### **34 Cancellation of general meeting**

- (1) The directors may cancel a general meeting, other than a general meeting which the directors are required to convene and hold under the Act.
- (2) The directors may cancel a general meeting if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least 2 business days prior to the time of the meeting as specified in the notice of meeting.

### **35 Technology**

- (1) The Company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
- (2) Members are taken to be present at the meeting if they take part in the meeting by technology.
- (3) All provisions in relation to notice of meeting and conduct of meeting apply, with any necessary changes, where a meeting is conducted using technology.

### **36 Quorum**

- (1) The members in a general meeting cannot transact any business unless a quorum of members is present at the time when the meeting proceeds to business.

- (2) The quorum for a meeting of the Company's members is the lesser of:
  - (1) 20% of the total number of members entitled to vote at the meeting at the time (rounded down to the nearest whole number, provided that a quorum must be at least one member); or
  - (2) 3 members entitled to vote at the meeting at the time (present in person or by attorney, representative or proxy).
- (3) In determining whether a quorum is present, individuals attending as proxies, attorneys or entity representatives are counted. However, if a member has appointed more than 1 proxy, attorney or representative, only 1 of them is counted. If an individual is attending both as a member and as a proxy, attorney or entity representative, the individual is counted only once.
- (4) If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
  - (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
  - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
    - (a) if the date is not specified – the same day in the next week;
    - (b) if the time is not specified – the same time; and
    - (c) if the place is not specified – the same place.
- (5) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

### **37 Chair at general meetings**

- (1) If the directors have appointed 1 of their number as chair of their meetings, the person appointed presides as chair at every general meeting.
- (2) If the directors have appointed one of their number as deputy chair of their meetings, to act as chair in the absence of the chair, the person appointed presides as chair at every general meeting at which the chair is absent.
- (3) Where a general meeting is held and:
  - (1) a chair has not been appointed as referred to in rule 37.1. or a deputy chair as referred to in rule 37.2; or
  - (2) the chair or deputy chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the directors present may appoint one of their number to be chair of the meeting and in default of their doing so the members present must appoint another director or if no director is present or willing to act then the members present may appoint any 1 of their number to be chair of the meeting.
- (4) The chair may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate 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. In exercising this discretion, the chair may, but need not, seek the approval of the members present. Unless required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.

- (5) The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.
- (6) The chair may temporarily vacate their position at a general meeting in favour of another person present at any time and for any reason they see fit, and must do so if the members or directors are voting on the chair's election or re-election as director.
- (7) Where a general meeting is held:
  - (1) any director is entitled to be present and to speak to any general meeting;
  - (2) a secretary who is not a member is entitled to be present and to speak at any general meeting;
  - (3) the auditor of the Company from time to time and any assistant of the auditor who is not a member is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company; and
  - (4) any professional adviser of the Company (including, without limitation, a solicitor or financial adviser), at the request of any director, is entitled to be present and, at the request of the chair, to speak at any general meeting. However, subject to the Act and this constitution, the Company is not obliged to send a notice of meeting to any professional adviser.

### **38 Business at adjourned meetings**

- (1) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### **Proxies and entity representatives**

#### **39 Who can appoint a proxy**

- (1) A full member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual or representative on behalf of an entity as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.

#### **40 Rights of proxies**

- (1) A proxy appointed to attend and vote for a member has the same rights as the member:
  - (1) to speak at the meeting;
  - (2) to vote (but only to the extent allowed by the appointment); and
  - (3) to join in a demand for a poll, except where expressly stated otherwise.
- (2) If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- (3) A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
- (4) A proxy may be revoked at any time by notice in writing to the Company.

#### **41 When proxy form must be sent to all members**

- (1) If the Company sends a member a proxy appointment form for a meeting or a list of persons

willing to act as proxies at a meeting:

- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

#### **42 Appointing a proxy**

- (1) An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001* and in rule 42.2) by the member making the appointment and contains the following information:

- (1) the member's name and address;
- (2) the Company's name;
- (3) the proxy's name or the name of the office held by the proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

- (2) An electronically authenticated appointment of a proxy must in addition to rule 42.1:
  - (1) include a method of identifying the member; and
  - (2) include an indication of the member's approval of the information communicated.
- (3) An undated appointment is taken to have been dated on the day it is given to the Company.
- (4) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
  - (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
  - (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
  - (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this rule 42.4 does not affect the way that the person can cast any votes the person holds as a member.

- (5) An appointment does not have to be witnessed.
- (6) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

#### **43 Form of proxy sent out by Company**

- (1) A form of proxy sent out by the Company may be in a form determined by the directors but must:

- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular resolution; and
- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.
- (2) The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.
- (3) Despite rule 43.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

The School Volunteer Program Limited trading as EdConnect Australia  
ACN 109 551 966 (Company)

I/We,                    of                   , being a member/members of the Company,  
appoint                    of                    or, in his or her absence,                    of                    as  
my/our proxy to vote for me/us on my/our behalf at the \*annual general/\*general meeting of the  
company to be held on and at any adjournment of that meeting.

† This form is to be used \*in favour of/\*against the resolution.

Signed on                   .

\* Strike out whichever is not desired.

† To be inserted if desired.

#### **44 Receipt of proxy documents**

- (1) For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
  - (1) the proxy's appointment in the form specified in rule 42; and
  - (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- (2) If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (3) The Company receives an appointment or authority:
  - (1) when it is received at any of the following:
    - (a) the Company's registered office; or
    - (b) a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting; or
  - (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rule 42.2.
- (4) An appointment of a proxy is ineffective if:
  - (1) the Company receives either or both the appointment or authority at a fax number or electronic address; and

- (2) a requirement (if any) in the notice of meeting that:
  - (a) the transmission be verified in a way specified in the notice; or
  - (b) the proxy produce the appointment and authority (if any) at the meeting;

is not complied with.

#### **45 Validity of proxy vote**

- (1) A proxy vote is invalid if it is not produced prior to a meeting or a vote being taken, as required by this constitution.
- (2) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (3) Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:
  - (1) the appointing member dies;
  - (2) the member is mentally incapacitated;
  - (3) the member revokes the proxy's appointment; or
  - (4) the member revokes the authority under which the proxy was appointed by a third party;before the proxy votes.
- (4) A proxy is not revoked by the member attending and taking part in the meeting unless the member actually votes at the meeting on a resolution for which the proxy is proposed to be used.

#### **46 Entity representative**

- (1) An entity may appoint an individual as a representative to exercise all or any of the powers the entity may exercise:
  - (1) at meetings of the Company's members;
  - (2) at meetings of creditors or debenture holders;
  - (3) relating to resolutions to be passed without meetings; or
  - (4) in the capacity of a member's proxy appointed under rule 39.

The appointment may be a standing one.

- (2) The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (3) An entity may appoint more than 1 representative but only 1 representative may exercise the entity's powers at any one time.
- (4) Unless otherwise specified in the appointment, the representative may exercise, on the entity's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

#### **47 Attorney of member**

- (1) An attorney for a member may do whatever the member could do in their capacity as a member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

#### **Voting at meetings of members**

#### **48 How vote may be exercised**

- (1) Subject to rules 49 and 50, and subject to the rights attached to the categories of membership under this constitution, at any general meeting of members, each member present and entitled to vote has 1 vote on a show of hands and on a poll.
- (2) The vote may be exercised in person or by proxy, entity representative or attorney.

#### **49 Voting disqualification**

- (1) A member is not entitled to vote at a general meeting if:
  - (1) the annual subscription (if any) of the member; or
  - (2) in the case of a person who is a nominated representative, the annual subscription (if any) of the member for which he or she is the nominated representative,is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

#### **50 Objections to right to vote**

- (1) A challenge to a right to vote at a meeting of members:
  - (1) may only be made at the meeting at which the vote objected to is given or tendered; and
  - (2) must be determined by the chair, whose decision is final.
- (2) A vote not disallowed following the challenge is valid for all purposes.

#### **51 How voting is carried out**

- (1) A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.
- (2) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- (3) Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

#### **52 Matters on which a poll may be demanded**

- (1) A poll may be demanded on any resolution.
- (2) A demand for a poll may be withdrawn.

### **53 When a poll is effectively demanded**

- (1) At a meeting of the Company's members, a poll may be demanded by:
  - (1) at least 5 members entitled to vote on the resolution;
  - (2) a member or members with at least 10% of the votes that may be cast on the resolution on a poll; or
  - (3) the chair.
- (2) The poll may be demanded:
  - (1) before a vote is taken;
  - (2) before the voting results on a show of hands are declared; or
  - (3) immediately after the voting results on a show of hands are declared.

### **54 When and how polls must be taken**

- (1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- (3) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (4) The result of the poll is the resolution of the meeting at which the poll was demanded.

### **55 Chair's casting vote**

- (1) In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.
- (2) The chair has a discretion both as to use of the casting vote and as to the way in which it is used.

## **Annual general meeting**

### **56 Business of an annual general meeting**

- (1) The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
  - (1) the consideration of the annual financial report, directors' report and auditor's report;
  - (2) the election of member nominated directors;
  - (3) the appointment of the auditor;
  - (4) the fixing of the auditor's remuneration; and
  - (5) directors remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

- (2) The business of the annual general meeting also includes any other business which under this



constitution or the Act ought to be transacted at an annual general meeting.

- (3) 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 the management of the Company.
- (4) If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must:
  - (1) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit; and
  - (2) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA of the Act.

## **57 Resolutions proposed by members**

- (1) A member may not at any meeting move any resolution relating to special business unless:
  - (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months notice has elapsed since the notice was given; or
  - (2) the resolution has previously been approved by the directors.

## **Appointment of directors**

### **58 Number of directors**

- (1) Following the first annual general meeting, after the adoption of this constitution, the number of the directors must be not less than 4 nor more than 9
- (2) The Company in a general meeting may by resolution increase or reduce the number of directors referred to in rule 58.1.
- (3) There are two categories of directors, member elected directors and board appointed directors.
- (4) The total number of directors will comprise of no less than of 2 persons nominated by members in accordance with rule 61.
- (5) All board appointed directors must hold specialist skills or experience that the board considers valuable to the successful operation of the Company and furtherance of its objectives (in its absolute discretion).
- (6) All directors must be a Full Member of the company.
- (7) If a director retires or is otherwise removed from office, it should be treated as a casual vacancy and a replacement director may be appointed in accordance with rule 64.

### **59 Existing Directors**

- (1) The Existing Directors are those directors as set out in Annexure A.
- (2) The Existing Directors hold office until, and are eligible for re-election at, the meeting of the board or members (as applicable) as set out in Annexure B and may be replaced in accordance with rule 64. Their replacements hold office for the period as set out in Annexure B and are eligible for re-

election at that time.

- (3) A director who is eligible for election or re-election under this rule may:
  - (a) propose or second himself or herself for election or re-election; and
  - (b) vote for himself or herself.

## **60 Election and appointment of directors**

- (1) Each member elected director holds office until termination of the second annual general meeting following his or her election and is eligible for reelection at that meeting for a maximum of an additional three year term, following his/her re-election
- (2) Each board appointed director holds office until termination of the first board meeting convened 36 months following their appointment and is eligible for re-appointment at that meeting if again nominated by the directors for no more than a further 36 month period. Board approved directors are not subject to election or re-election by members of the company.
- (3) An Elected Director who has held office for 2 consecutive terms since first being elected by Members may only be re-appointed as a Director where the Board unanimously agrees that there is a need for the continuing service of that Elected Director in the role of Chairperson. In which case the Board may re-appoint that Director for a further one year period ceasing at the next Annual General Meeting

## **61 Nomination for election of directors**

- (1) Each candidate for election as a member elected director must:
  - (1) be proposed by a member, or the nominated representative of a member; and
  - (2) be seconded by another member, or the nominated representative of another member,both of which members must be current members of the Company at the time of nomination who have paid their annual subscription fee (if any) for the financial year.
- (2) No member or nominated representative of a member may propose more than 1 person as a candidate.
- (3) Members may not second more than 1 nomination.
- (4) A nomination of a candidate for election must:
  - (1) be in writing;
  - (2) be signed by the candidate; and
  - (3) be signed by the proposer and seconder.
- (5) A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day which is 30 days prior to the annual general meeting at which the candidate seeks election.
- (6) A list of the candidates' names in alphabetical order together with the proposers' and seconders' names must be sent to members with the notice of the annual general meeting.
- (7) Each candidate for election as a board appointed director must:
  - (1) be proposed by a director; and
  - (2) be seconded by another director.

- (8) No director may nominate more than 1 person as a candidate.
- (9) Directors may not second more than 1 nomination.
- (10) A nomination of a candidate for election must:
  - (1) be in writing;
  - (2) be signed by the candidate; and
  - (3) be signed by the proposer and seconder.
- (11) A nomination of a candidate for election must be received by the board no later than 5pm on the day which is 30 days prior to the aboard meeting at which the candidate seeks election..
- (12) A list of the candidates' names in alphabetical order together with the proposers' and seconders' names must be sent to members with the notice of the annual general meeting.

## **62 Election procedure**

- (1) If the number of candidates nominated for election is equal to or less than the number of vacancies for member elected and/or board appointed directors on the board, then the chair must declare those candidates to be duly elected as directors.
- (2) If the number of candidates for election as member elected directors is greater than the number of member elected director vacancies on the board, a ballot of the board must be held for the election of the candidates.  
  
If the number of candidates for election as board appointed directors is greater than the number of member elected director vacancies on the board, a ballot must be held for the election of the candidates.
- (3) If a ballot is required, balloting lists must be prepared listing the names of the candidates only in alphabetical order.
- (4) At the relevant meeting for the election of directors, each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.
- (5) The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.
- (6) If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:
  - (1) does not exercise a casting vote; or
  - (2) is one of the candidates who received the same number of votes;

then the names of the candidates who received the same number of votes must be put to a further ballot.

## **63 Time appointment or retirement takes effect**

- (1) Member elected directors who are appointed at a meeting of members take office immediately after the end of the meeting.
- (2) Member elected directors who retire at a meeting of members continue to hold office until the end of the meeting.

- (3) Board appointed directors who are appointed at a board meeting take office immediately after the end of the meeting.
- (4) Board appointed directors who retire at a board continue to hold office until the end of the meeting.

#### **Appointment of directors between AGMs**

##### **64 Casual vacancies and additional directors**

- (1) Where a member elected director resigns, the directors may appoint a new director to fill that casual vacancy. The new director so appointed shall remain in office to fill the balance of the term of the retiring director and be eligible for re-election by the members at the expiration of that term.

Where a board appointed director resigns, the directors may appoint a new director to fill that casual vacancy. The new director so appointed shall remain in office to fill the balance of the term of the retiring director and be eligible for re-election by the board at the expiration of that term.

- (2) In addition to rules 64.1 and 64.2 , the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- (3) Any director appointed under rule 64.2 holds office for such period as specified in rule 64.1 (for those appointed under this rule as elected directors).

##### **65 Insufficient number of directors**

- (1) In the event of a vacancy or vacancies in the office of a director, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

#### **Alternate directors**

##### **66 Appointment**

- (1) A director may appoint any person who is qualified to be a director and who is approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period.
- (2) An alternate director is not taken into account for the purpose of rule 58.

##### **67 Rights and powers of alternate director**

- (1) An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.
- (2) Subject to the requirements of the Act, an alternate director is entitled to a separate vote for each director that the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (3) An alternate director, when acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken as the agent of the director by whom he or she was appointed.

##### **68 Suspension or revocation of appointment**

- (1) A director may revoke or suspend the appointment of an alternate director appointed by him or her.
- (2) The directors may suspend or remove an alternate director by resolution after giving the appointing director reasonable notice of their intention to do so.

#### **69 Form of appointment, suspension or revocation**

- (1) An appointment, suspension or revocation under rules 66 or 68 takes effect only when the Company has received notice in writing of the appointment, suspension or revocation. The notice may be given by any electronic means.

#### **70 Termination of appointment**

- (1) The appointment of an alternate director automatically terminates:
  - (1) if the appointor ceases to hold office as director;
  - (2) on the happening in respect of the alternate director any event which causes a director to vacate the office of director; or
  - (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

#### **71 Power to act as alternate for more than 1 director**

- (1) A director or any other person may act as alternate director to represent more than 1 director.
- (2) Subject to the Act, in determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.

#### **Powers of directors**

#### **72 Validation of acts of directors and secretaries**

- (1) An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- (2) Rule 72(1) does not deal with the question whether an effective act by a director or secretary:
  - (1) binds the Company in its dealings with other people; or
  - (2) makes the Company liable to another person.
- (3) Where a person whose office as director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

#### **73 General business management**

- (1) The business of the Company is to be managed by or under the direction of the directors.
- (2) The directors may exercise all the powers of the Company except any powers that the Act or this constitution (if any) requires the Company to exercise in general meeting.
- (3) A rule made or resolution passed by the Company in general meeting does not invalidate any

prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

#### **74 Borrowing powers**

- (1) Without limiting the generality of rule 73, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to give any other security for a debt, liability or obligation of the Company or of any other person.

#### **75 Appointment of attorney**

- (1) The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- (2) A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

#### **76 Negotiable instruments**

- (1) Unless otherwise resolved by the board, any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (2) The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

#### **77 Delegation to committee of directors**

- (1) The directors may delegate any of their powers to a committee that is chaired by a director and revoke the delegation.
- (2) A committee must exercise the powers delegated to it in accordance with any directions of the directors. The exercise of the power by the committee is as effective as if the directors had exercised it.
- (3) The meetings and proceedings of any committee of directors are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

#### **78 Delegation generally**

- (1) For managing any affairs of the Company in any specified locality the directors may:
  - (1) establish any local committees, boards or branches;
  - (2) appoint any members of the Company or any nominated representative of a corporate member to be a member of the local committee, board or branch;
  - (3) appoint any managers or agents, fix their remuneration and delegate to them any of the powers vested in the directors; and
  - (4) authorise the members for the time being of the local committee, board or branch to fill any vacancies on it and to act despite vacancies.
- (2) In the exercise of delegated powers, any committee formed (including a committee of directors and a local board or branch) or person or persons appointed to the committee must conform to any regulations that may be imposed by the directors. The committee may be authorised to sub-delegate any of the powers vested in it.

- (3) A local committee, board or branch may remove any person appointed under rule 78(1)(3) and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation is affected by it.

#### **Chief executive officer**

#### **79 Power to appoint**

- (1) The directors may appoint any person, not being a director, to the position of CEO for the period and on the terms (including as to remuneration) the directors see fit.

#### **80 Not a member of the board**

- (1) The CEO is not a member of the board of the Company but may attend meetings of the directors except where the directors otherwise request.

#### **81 Powers**

- (1) The directors may, upon terms and conditions and with any restrictions they see fit, confer on a CEO any of the powers that the directors can exercise.
- (2) Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.

#### **82 Withdrawal of appointment or powers**

- (1) The directors may revoke or vary:
  - (1) an appointment; or
  - (2) any of the powers conferred on a CEO.

#### **83 Temporary appointments**

- (1) If a CEO becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as CEO.

#### **84 Officers**

The Chief Executive Officer must:

- (1) Ensure that the Company has appropriate systems and process in place in keeping with relevant legislation and Australian Tax Office guidelines for the receipt of all moneys paid to or received by the Company and that receipts are issued for those moneys in the name of the Company;
- (2) Ensure all moneys referred to in rule 84.1 are paid into such account or accounts of the Company as the Board may from time to time direct;
- (3) Ensure appropriate delegations are in place, approved by a meeting of the board that will enable the Directors or employees of the Company to make payments from the funds of the Company and in so doing ensure that all cheques or electronic funds transfers (EFTs) over a delegated amount are signed or authorised by signatories as outlined in the delegated authority.
- (4) Ensure compliance on behalf of the Company with the Act with respect to the accounting records of the Company whenever directed to do so by the Chairperson, submit to the Board a report, balance sheet or financial statement in accordance with that direction;
  - (a) submitting to members at each annual general meeting of the Company accounts of The Company showing the financial position of the Company at the end of the immediately

preceding financial year.

- (5) unless the members resolve otherwise at a general meeting, ensure that the Company has secure custody of all securities, books and documents of a financial nature and accounting records of the Company, including those referred to in paragraphs 84.4 and 84.5; and
- (6) perform such other duties as are imposed by these rules on the Chief Executive officer.

## **Removal and resignation of directors**

### **85 Removal of directors**

- (1) The Company may by resolution remove a director from office.

### **86 Resignation of director**

- (1) A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

### **87 Vacation of office of director**

- (1) In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:
  - (1) becomes bankrupt;
  - (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (3) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
  - (4) becomes disqualified from being a director under the Act or any order made under the Act;
  - (5) is removed from office in accordance with rule 85; or
  - (6) resigns from office in accordance with rule 86.

## **Directors' interests**

### **88 Prohibition on being present or voting**

- (1) Except where permitted by the Act a director who has a material personal interest or conflict of interest in a matter that is being considered at a meeting of directors:
  - (1) must not be counted in a quorum;
  - (2) must not vote on the matter; and
  - (3) must not be present while the matter is being considered at the meeting.
- (2) If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the Act from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.
- (3) A director who is interested in any matter may, despite that interest, witness the fixing of the seal to any document evidencing or otherwise connected with that matter.



## **89 Director to disclose interests**

- (1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.
- (2) A director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.
- (3) For the purposes of rules 89.1 and 89.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:
  - (1) a guarantee to be given by the director (or by persons including the director or by a body corporate of which the director is a member or officer) in respect of a loan to the Company; or
  - (2) the position of the director as a director of a related body corporate.
- (4) If there are not enough directors to form a quorum as a result of a director having an interest which disqualifies them from voting then one or more of the directors (including those with a disqualifying interest in the matter) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

## **90 Effect of interest in contract**

- (1) Subject to the Act, if a director has an interest in a contract or proposed contract with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Company:
  - (1) the contract may be entered into; and
  - (2) if the disclosure is made before the contract is entered into:
    - (a) the director may retain benefits under the contract even though the director has an interest in the contract;
    - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
    - (c) the director is not disqualified from the office of director.
- (2) For the purposes of rule 90.1 **contract** includes an arrangement, dealing or other transaction.

## **91 Standing notice of interest**

- (1) A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. 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.
- (2) A notice under the above rule may be given:
  - (1) at a directors' meeting (either orally or in writing); or
  - (2) to the other directors individually in writing.

- (3) If the standing notice is given to the other directors individually in writing:
  - (1) the notice is effective when it has been given to every director; and
  - (2) the notice must be tabled at the next directors' meeting after it is given.
- (4) 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.

## **92 Other interests**

- (1) Without limiting rule 89 or rule 90 a director may to the extent permitted by the Act:
  - (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;
  - (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

## **93 Extension of meaning of "Company"**

- (1) For the purposes of rules 89, 90 and 91 **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

## **94 Other directorships and shareholdings**

- (1) A director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any remuneration or benefits received as a director, officer, employee or member of the other company.
- (2) Subject to the Act:
  - (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
  - (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;
  - (3) any director of the Company 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
  - (4) a director of the Company who is 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 of the Company as directors or other officers of the other company.

## **Directors' meetings**

### **95 Circulating resolutions**

- (1) The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left an

electronic mail address or other contact details acceptable to the directors, at which he or she may be given notice) sign a document containing a statement that they are in favour of the resolution set out in the document.

- (2) 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.
- (3) The resolution is passed when the last director signs.
- (4) A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 95 must be treated as a document in writing signed by that director.
- (5) In this rule 95 a reference to all the directors does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of his or her appointor.

#### **96 Meetings of directors**

- (1) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit, but must meet not less than 6 times each calendar year.

#### **97 Calling directors' meetings**

- (1) A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

#### **98 Notice of meeting**

- (1) Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:
  - (1) has been given special leave of absence; or
  - (2) is absent from Australia and has not left a facsimile number or other contact details acceptable to the directors at which he or she may be given notice.
- (2) Any notice of a meeting of directors may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

#### **99 Waiver of notice**

- (1) All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

#### **100 Technology meeting of directors**

- (1) A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.
- (2) If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- (3) The following provisions apply to a technology meeting:

- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
- (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- (4) If the secretary is not present at a technology meeting, 1 of the directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- 11 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 12 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

#### **101 Chairing directors' meetings**

- (1) The chair elected in accordance with rule 37 of this constitution will also chair all meetings of the directors.
- (2) At a meeting of directors if:
  - (1) no chair has been elected (as provided by rule 37); or
  - (2) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
 the deputy-chair is the chair of the meeting, but if:
  - (3) no deputy-chair has been elected (as provided by rule 37); or
  - (4) the deputy-chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
 the directors present must elect a director present to chair the meeting.

#### **102 Quorum**

- (1) The quorum for a directors' meeting is three directors present throughout the meeting.
- (2) An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the Act relating to directors' interests, entitled to vote).

#### **103 Passing of directors' resolutions**

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- (2) The chair has a casting vote if necessary in addition to any vote he or she has as a director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- (3) A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

## **Directors' remuneration**

### **104 Payment of remuneration**

- (1) Any increases to the total amount of remuneration must be approved by the Company at a general meeting.
- (2) The Company determines by resolution only the total remuneration to be paid to the directors, and the directors determine how the total remuneration is divided among them.

### **105 Additional services rendered**

- (1) A director may be paid a fee in return for any additional services rendered to the Company in a professional or technical capacity (other than within his or her ordinary duties as a director):
  - (1) with the prior approval of the directors; and
  - (2) where the amount payable does not exceed a commercially reasonable amount.
- (2) A fee payable in accordance with this rule 105 may be paid either by fixed sum or salary determined by the directors.

### **106 Directors' expenses**

- (1) Despite rules 5 and 104 the Company may permit payments to directors in the following circumstances:
  - (1) for the payment of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the board;
  - (2) for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the board and the amount payable is approved by a resolution of the board and is on reasonable commercial terms; or
  - (3) as an employee of the Company where the terms of employment have been approved by a resolution of the board.

### **107 Financial benefit**

- (1) The Company must not provide any financial benefit to a director or any related party of a director, other than in accordance with rule 106.1.
- (2) The Company must not make loans to directors, or provide guarantees or security for obligations undertaken by directors other than obligations which were undertaken by the director solely in promotion of the objects of the Company.
- (3) No director's fees may be paid to any director.

## **Secretary**

### **108 Appointment of secretary**

- (1) The directors must, in accordance with the Act, appoint 1 or more secretaries.
- (2) The directors may appoint a person as an acting secretary or as a temporary substitute for a secretary.

### **109 Terms of office of secretary**

- (1) A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

## **Indemnity and insurance**

### **110 Indemnity**

- (1) To the extent permitted by the Act, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be). This indemnity includes, without limitation:

- (3) a liability for negligence; and
  - (4) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Act.
- (2) The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.
  - (3) In accordance with section 199A of the Act, the Company must not indemnify a person against:
    - (1) any of the following liabilities incurred as an officer of the Company:
      - (a) a liability owed to the Company or a related body corporate;
      - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
      - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
    - (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
      - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 110.3(1);
      - (b) in defending or resisting criminal proceedings in which the person is found guilty;
      - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
      - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 110.3(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 110.3(2) the outcome of proceedings is the outcome of the

proceedings and any appeal in relation to the proceedings.

(4) An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified by the Company;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

(5) In rule 110(4) Claim means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
  - (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
  - (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 110.5(1) or 110.5(2) may be initiated.
- (6) If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 110.1, the directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

## **111 Insurance**

(1) The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

(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 or a related body corporate of the Company

against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

## **112 Disputes and mediation**

- (1) The grievance procedure set out in this rule applies to disputes under these rules between:
  - (a) a member and another member; or
  - (b) a member and the Company; or
  - (c) if The Company provides services to non-members, those non-members who receive services from the Company, and the Company.
- (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (3) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (4) The mediator must be:
  - (a) a person chosen by agreement between the parties; or
  - (b) in the absence of agreement:
    - (i) in the case of a dispute between a member and another member, a person appointed by the Board of the Company;
    - (ii) in the case of a dispute between a member or relevant non-member and the Company, a person who is a mediator appointed to, or employed with, a not for profit organisation.
- (5) A member of the Company can be a mediator.
- (6) The mediator cannot be a member who is a party to the dispute.
- (7) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (8) The mediator, in conducting the mediation, must:
  - (a) give the parties to the mediation process every opportunity to be heard;
  - (b) allow due consideration by all parties of any written statement submitted by any party; and
  - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (9) The mediator must not determine the dispute.
- (10) The mediation must be confidential and without prejudice.
- (11) If the mediation process does not result in the dispute being resolved, the parties

## **113 Director voting on contract of indemnity or insurance**

- (1) Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

## **114 Liability**

- (1) An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.



### **115 Meaning of “officer”**

- (1) For the purposes of rules 110, 111, 113 and 114, officer means a director, CEO or secretary or a member of a local committee, board or branch appointed under rule 78.1.

### **116 Winding up**

- (1) If, on the winding up or dissolution of the Company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to an institution:
  - (i) that is charitable at law;
  - (ii) whose constitution prohibits distributions or payments to its members and directors (if any).
  - (iii) Gifts and Deductible Contributions to which can be deducted under Division 30 of the ITAA 97 due to it being characterised as a public benevolent institution.
- (2) The identity of the institution referred to in rule 116.1 must be decided by the Directors, or if the Directors do not wish to decide or do not decide, it must be decided by the members by ordinary resolution at or before the time of winding up of the Company and, if the members do not decide, by the Supreme Court of the state or territory in which the Company is registered
- (3) In the event of the winding up or dissolution of the Company, the Commissioner of Taxation shall be advised of the date of dissolution within 30 days of the dissolution.

### **Minutes**

#### **117 Minutes to be kept**

- (1) The secretary shall cause proper minutes of all proceedings of all general meetings and Board meetings to be taken and then to be entered within 30 days after the holding of each general meeting or Board meeting, as the case requires, in a minute file for that purpose. Without limiting this rule, the secretary shall cause proper minutes to be taken of:
  - (1) proceedings and resolutions of meetings of the Company’s members;
  - (2) proceedings and resolutions of directors’ meetings (including meetings of a committee of directors);
  - (3) resolutions passed by members without a meeting; and
  - (4) resolutions passed by directors without a meeting.
- (2) The secretary must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
  - (1) the chair of the meeting; or
  - (2) the chair of the next meeting.
- (3) The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- (4) Without limiting rule 117.1 the directors must record in a minute file for that purpose:
  - (1) all appointments of officers;
  - (2) the names of the directors and alternate directors present at all meetings of directors and the Company;
  - (3) in the case of a technology meeting, the method by which the meeting was held;

- (4) all orders resolutions and proceedings of general meetings and of meetings of the directors and of committees formed by the directors;
- (5) proxy votes exercisable and exercised in respect of each resolution at a meeting; and
- (6) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest in a matter that relates to the affairs of the Company.

## **Inspection of records**

### **118 Rights of inspection**

- (1) The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- (2) A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolution of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting
- (3) Directors have the rights of inspection and access provided by section 198F of the Act.

### **119 Confidential information**

- (1) Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

## **Accounts, audit and records**

### **120 Accounts**

- (1) The directors must cause proper accounting and other records to be kept in accordance with the Act.
- (2) The directors must distribute copies of every financial statement (including every document required by law to be attached to it) as required by the Act.

### **121 Audit**

- (1) Subject to the Act, a registered company auditor must be appointed.
- (2) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

## **Execution of documents**

### **122 Common seal**

- (1) The Company may, but need not, have a common seal.

### **123 Use of common seal**

- (1) If the Company has a common seal the directors must provide for its safe custody.
- (2) The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.

- (3) The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 directors of the Company;
  - (2) a director and a secretary of the Company; or
  - (3) a director and any other person authorised by the directors for that purpose.

#### **124 Execution of documents without common seal**

- (1) The Company may execute a document without using a common seal if the document is signed by:
- (1) 2 directors of the Company; or
  - (2) a director and a secretary of the Company.

#### **125 Execution of document as a deed**

- (1) The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 125 or rule 126.

#### **126 Execution – general**

- (1) The same person may not sign in the dual capacities of director and secretary.
- (2) A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- (3) Rules 125 and 126 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

### **Notices**

#### **127 Notices other than notices of meeting**

- (1) Any notice by the Company to a member may be given in the same way as a notice of meeting may be given under rule 27, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 28.

### **Inadvertent omissions**

#### **128 Formalities omitted**

- (1) If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

#### **129 Establishment and Operation of Gift Account**

- (1) To the extent as required by applicable law, the Company must maintain a management account (Gift Account):
- (a) to identify and record Gifts and Deductible Contributions;

- (b) to identify and record any money received by the Company because of those Gifts and Deductible Contributions; and
  - (c) that does not record any other money or property.
- (2) Taxation Administration Act requirements in accordance with section 382-15 of Schedule 1 of the Taxation Administration Act 1953 (Cth), the Gift Account must record and explain all other acts the Company engages in that are relevant to the Company's status as a deductible gift recipient.
- (3) Limits on use of Gift Account the Company must use the Gift Account only for its principal purpose.
- (4) Winding up or revocation of deductible gift recipient endorsement
  - (a) Upon:
    - (i) the winding up of the Company; or
    - (ii) the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of ITAA 97, whichever is earlier, any surplus Gifts and Deductible Contributions and money received by the Company because of those Gifts and Deductible Contributions must be transferred to an institution that complies with rule 116:
- (5) Receipts for Gifts or Deductible Contributions must state the information required in the applicable provisions of section 30-228 of the ITAA 97.
- (6) The term Gift means a gift to the Company as described in item 1 of the table in section 30-15 of the ITAA 97.

## **Alterations**

### **130 Alterations**

- (1) If the Company is endorsed as an income tax exempt fund, a tax concession charity or a deductible gift recipient by the Australian Taxation Office, before making any alterations to this constitution (in particular rules 3, 5, 77, 78, 81, 104, 106 or 107) the directors must consider whether:
  - (1) those alterations may effect the entitlement of the Company to that endorsement; and
  - (2) as a term of the endorsement, the Company is required to notify the Australian Taxation Office or any other government authority of the alterations to this constitution.

End

