

Consolidated Constitution

Australian Business Volunteers Limited

ACN 008 612 431

A Not-For-Profit Public Company Limited by Guarantee

Amended November 2016

Reference: AUS111-2

Sydney

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Introduction

1 Name

- 1.1 This is the constitution of Australian Business Volunteers Limited ACN 008 612 431, a public company limited by guarantee.

2 Liability of each Member is limited

- 2.1 The liability of each Member is limited.

- 2.2 If the Company is wound up or dissolved:

- (a) each Member; and
- (b) each person who has ceased to be a Member within the preceding 12 months from the date of the resolution to wind up or dissolve the Company;

undertakes to contribute to the assets of the Company up to an amount not exceeding \$100.00 for:

- (c) the payment of the debts and liabilities of the Company (in relation to rule 2.2(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of the winding up or dissolution; and
- (d) adjustment of rights of the contributories amongst themselves.

3 Replaceable rules

- 3.1 To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company and are replaced by the rules set out in this constitution.

4 Amendments to this constitution

- 4.1 Subject to rule 4.2, this constitution may be amended by a Special Resolution at a general meeting of the Company, provided that:

- (a) at least 21 days' written notice of the proposed Special Resolution (including details of the proposed changes to this constitution) is given to each person entitled to receive notice of general meetings under rule 26 in accordance with this constitution; and
- (b) a quorum of Members is present at the meeting.

- 4.2 The Members must not pass a Special Resolution that amends this constitution without the prior consent of the ATO or other relevant government agency if the amendment would cause the Company to cease to be a not-for-profit organisation or, if at the time the Company is endorsed as a DGR, to cease to be endorsed as a DGR.

5 Corporations Act

5.1 Subject to rule 3:

- (a) nothing in this constitution is intended to derogate from the mandatory requirements of the Corporations Act and all provisions in this constitution are subject to the mandatory requirements of the Corporations Act; and
- (b) to the extent that a rule in this constitution is or becomes inconsistent with a mandatory requirement of the Corporations Act (including because the Corporations Act is amended after this constitution comes into effect), then the mandatory requirement of the Corporations Act prevails to the extent of the inconsistency.

6 Definitions and interpretation

6.1 A term or expression starting with a capital letter:

- (a) which is defined in Part 1 of Schedule 1 (**Dictionary**), has the meaning given in the Dictionary; and
- (b) which is defined in the Corporations Act but is not defined in the Dictionary, has the meaning given in the Corporations Act.

6.2 Part 2 of Schedule 1 sets out rules of construction that apply to this constitution.

Objects of the Company

7 Objects and powers

7.1 The Company is a not-for-profit, non-religious, non-political entity established and located in Australia for the main purpose of providing charitable relief of poverty or distress (including from sickness, disability, destitution, misfortune, helplessness or lack of education or training and resulting unemployment) suffered by individuals, by the Company contributing to skills transfer, capacity building, economic growth, job creation, advice and guidance to improve their livelihoods and incomes and strengthen their local community organisations in Australia's closest developing countries and to provide or fund (or both) sustainable development, relief and aid projects within and outside Australia.

7.2 To achieve its main purpose the Objects of the Company are:

- (a) to assist developing countries to achieve economic growth;
- (b) to help strengthen and improve the performance of businesses, communities, enterprises, institutions and organisations in developing countries;
- (c) to provide opportunities for Australian volunteers to participate in the Company's development assistance activities;
- (d) to promote co-operation and understanding between the peoples of Australia and developing countries, and within the Australian community;
- (e) to undertake other projects as deemed appropriate by the Directors; and
- (f) to do such other things which are similar, related, necessary or incidental to achieving its main purpose and these Objects.

- 7.3 The Objects may be undertaken by the Company by (among other things):
- (a) the establishment of a relief fund (or a number of relief funds) for the purposes of raising money both through public donations and subscriptions and through government assistance to provide or fund (or both) sustainable development, relief and aid projects in developing countries (as declared by the Minister for Foreign Affairs for the purposes of the Overseas Aid Gift Deduction Scheme established by ITAA 1997) (**Relief Fund**); and
 - (b) the establishment of a fund similar to a Relief Fund should appropriate circumstances and recognised necessity give rise to the need to do so and to create the necessary rules for such fund in accordance with any applicable laws.
- 7.4 Provided that its powers are exercised for the purpose of carrying out the Objects, the Company has all the powers of a natural person in accordance with section 124(1) of the Corporations Act. These may be exercised by the Directors, unless the Corporations Act or this constitution requires the Members to exercise a power at a general meeting.
- 7.5 Without limiting rules 7.3 or 7.4, in the course of undertaking the Objects, the Company may:
- (a) develop partnerships with indigenous and other local organisations in countries in which the Company works; and
 - (b) do all things as are incidental or conducive to the attainment of any and all of the objectives and purposes specified in the foregoing provisions of this rule.
- 7.6 The Company does not have the power to:
- (a) issue or allot shares of any kind;
 - (b) pay dividends of any kind; or
 - (c) engage in any activity that would require the lodgement of a disclosure document (such as a prospectus or product disclosure statement) under Chapters 6D or 7 of the Corporations Act.

Income and property of the Company

8 Income and property of the Company

- 8.1 The Company is a not-for-profit organisation.
- 8.2 The income and property of the Company may only be applied towards the promotion of the objects of the Company. The Company must not carry on business for the purpose of profit or gain to its Members.
- 8.3 No income or property of the Company will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to any Member.

9 Exceptions

- 9.1 Rule 8 does not prevent:
- (a) payments to Officers or employees of the Company permitted under rule 56; or

- (b) the payment of reasonable remuneration to any Officer or employee of the Company or to any Member or other person in return for services rendered to or for the Company.

9.2 Without limiting the generality of rule 9.1, rule 8 does not prevent the Company from paying to a Member:

- (a) reasonable remuneration for any services rendered or goods supplied by the Member to or for the Company in the ordinary and usual course of business;
- (b) interest on money lent by the Member to the Company at a rate not exceeding current Australian bank overdraft rates of interest for moneys lent; and
- (c) reasonable rent for premises let by a Member to the Company.

Membership

10 Membership of the Company

10.1 The Directors will endeavour to ensure that the Company has at least 100 Members at all times.

10.2 The Members of the Company are:

- (a) the persons who consented to become Members in the application for registration of the Company; and
- (b) any other persons, corporations, associations or other organisations that the Directors admit to membership in accordance with this constitution from time to time,

and that have not ceased to be Members of the Company in accordance with this constitution.

11 Classes of membership

11.1 The Company will initially have the following classes of membership:

- (a) Individual Members; and
- (b) Business Members.

11.2 The Company:

- (a) may only admit natural persons as Individual Members; and
- (b) may admit any person as a Business Member.

11.3 Subject to rule 12, the Directors may at any time:

- (a) establish new classes of membership of the Company;
- (b) establish new categories of a class of membership of the Company;
- (c) determine any restrictions on the number of Members within each class or category;

- (d) determine the qualifications and eligibility criteria for admission in or to each class or category; and
- (e) determine the rights and privileges of Members within each class or category.

12 Variation of rights and privileges

12.1 Subject to the Corporations Act and the terms of a particular class or category of membership, the Company may vary or cancel the rights or privileges (or both) of Members of a particular class or category, or convert a particular class or category of membership to another class or category:

- (a) by Special Resolution of the Company; and
- (b) either:
 - (1) a Special Resolution passed at a meeting of the Members included in the affected class or category (as applicable); or
 - (2) the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of Members of the affected class or category (as applicable).

12.2 The Company must give a written notice of the variation or cancellation to Members of the class or category (as applicable) affected within 7 days after the variation or cancellation.

12.3 The provisions of this constitution relating to general meetings also apply to separate meetings of Members in a class or category of membership (so far as they are capable of application), except for the following changes:

- (a) a quorum is constituted by:
 - (1) if there is 1 Member in a class or category (as applicable), that person; or
 - (2) at least 2 Members (personally present or represented by a duly appointed proxy, attorney or representative) holding at least 25% of the votes of the class or category (as applicable); and
- (b) any Member in the class or category (as applicable) may demand a poll.

12.4 For the avoidance of doubt, rule 12.1 does not apply in relation to a Member seeking to change from one class or category of membership to another. Whether such a Member is admitted to the new class or category of membership is a matter to be determined by the Directors in their sole and absolute discretion, taking into account the matters listed in rule 14.3 and any other matters the Directors consider relevant.

13 Applications for membership

13.1 Any person, corporation, association or other organisation may apply in writing to be a Member of the Company.

13.2 Applications for membership of the Company must be:

- (a) in writing in the form prescribed or otherwise approved by the Directors from time to time;
- (b) signed by or on behalf of the applicant; and

- (c) accompanied by such documents or evidence as to eligibility as the Directors require in accordance with rule 13.3.

13.3 The Directors may, in their sole and absolute discretion, require:

- (a) a certified copy of a recent police or child protection check (or both); and
- (b) such other documentation or information as the Directors may require,

to be provided by an applicant in support of his, her or its application for membership. The Directors may, in their sole and absolute discretion, require such checks and other documentation and information to be updated and reviewed annually or whenever deemed necessary in respect of a Member.

14 Admission to membership

14.1 The Directors will consider each application for membership at the next Directors' meeting after the application is received.

14.2 In considering an application for membership, the Directors may:

- (a) accept or reject the application; or
- (b) ask the applicant to give more evidence of eligibility for membership.

14.3 An application for membership must not be approved unless the Directors, in their sole and absolute discretion, consider the applicant to be suitable to be a Member. Without limiting the Directors' discretion in determining suitability, regard may be had to all or any of the following:

- (a) the perceived ability of the applicant to assist in promoting the Objects;
- (b) the applicant's association with a Member or community group that has contributed significantly to the Company either financially or in providing volunteer services;
- (c) the applicant having been a member of a local area or advisory committee;
- (d) the applicant having provided volunteer services to the Company on a long term basis;
- (e) the applicant being, or having been, a community leader or high profile person such as a politician, media figure or business leader;
- (f) a police or child protection check (or both), where required, and any other documentation or information provided by the applicant in support of his, her or its application for membership;
- (g) the suitability in general of the applicant to be a Member; and
- (h) any other matter the Directors, in their sole and absolute discretion, consider relevant.

14.4 If the Directors ask for more evidence under rule 14.2(b), determination of the application for membership is deferred until the evidence is provided to the Directors.

14.5 As soon as practicable following acceptance of an application for membership, the Secretary must:

- (a) send the applicant written notice of the acceptance;

- (b) if applicable, request payment of the applicant's entrance fee and first annual subscription fee in accordance with rules 20 and 21; and
- (c) on receipt of the amounts referred to in rule 14.5(b), enter the name and other relevant details of the applicant into the Register in accordance with the Corporations Act.

14.6 Subject to rule 14.9, an applicant for membership becomes a Member when:

- (a) if required under rules 20 and 21, the applicant's entrance fee and first annual subscription fee are paid; and
- (b) the applicant's name is entered into the Register in accordance with the Corporations Act,

whichever is later.

14.7 If an application for membership is rejected, the Company must notify the applicant that the application has been rejected as soon as reasonably practicable after the application has been rejected.

14.8 The Directors do not have to give any reason for accepting or rejecting an application for membership.

14.9 If the entrance fee and first annual subscription fee of an applicant for membership are required to be paid under rules 20 and 21 and are not paid within 30 days after the date the applicant is notified of acceptance of their application for membership, the Directors may cancel their acceptance of the applicant for membership of the Company.

14.10 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own acts or by operation of law.

14.11 Current staff and paid consultants of the Company are not eligible for membership of the Company.

15 Ceasing to be a Member

15.1 A Member's membership of the Company will cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if membership is forfeited under rule 23.1(b);
- (c) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (1) whose conduct in their opinion renders it undesirable that the Member continue to be a Member of the Company; and
 - (2) the Member has been given at least 21 days' notice of the proposed resolution (where the notice sets out the reasons for the proposed resolution) and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- (d) where the Member is an individual, if the Member:
 - (1) dies;

- (2) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
- (3) becomes bankrupt;
- (4) is convicted of an indictable offence; or
- (5) fails a police or child protection check; or
- (e) where the Member is not an individual, if:
 - (1) a liquidator is appointed in connection with the winding-up of the Member; or
 - (2) an order is made by a court for the winding-up or deregistration of the Member.

15.2 In the event of a dispute in connection with the cessation of a Member's membership any Member or Director may seek to have the matter independently arbitrated.

15.3 Without limiting the operation of rule 2.2, any Member ceasing to be a Member:

- (a) will not be entitled to any refund (or part refund) of any subscription fee or other monies paid to the Company;
- (b) will remain liable for and must pay to the Company all subscription fees and other monies which were due as at the date of the Member ceasing to be a Member; and
- (c) will remain liable to pay the amount the Member has agreed to pay the Company in accordance with rule 2.2 for the period referred to in that rule.

16 Powers of attorney

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

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

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

17 Representatives

17.1 Any corporation, association or other organisation that is a Member may by written notice to the Secretary:

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

- 17.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the corporation, association or other organisation that appointed him or her could exercise if it were a natural person;
 - (b) stand for appointment as an office bearer or Director of the Company; and
 - (c) be counted towards a quorum on the basis that the Member corporation, association or other organisation is to be considered personally present at a general meeting by its Representative.
- 17.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 17.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 17.5 The appointment of a Representative may set out restrictions on the Representative's powers.

18 Register of Members

- 18.1 A Register must be kept in accordance with the Corporations Act.
- 18.2 The following information must be entered in the Register in respect of each Member:
- (a) the full name of the Member;
 - (b) the residential address, facsimile number and email address, if any, of the Member;
 - (c) the class and, where applicable, category of membership;
 - (d) the date of admission to and cessation of membership; and
 - (e) such other information as the Directors require.
- 18.3 Each Member must notify the Company of the details of its email address and postal address in Australia where the Company can send notices.
- 18.4 If a Member fails to provide an address in accordance with rule 18.3, the address of the Member is deemed to be the registered office of the Company.
- 18.5 Each Member must notify the Secretary in writing of any change in that person's name, address, facsimile number or email address within 1 month after the change.

19 Membership not transferrable

- 19.1 No membership interest, benefit or right of any Member is transferrable or capable of being sold in any manner.
- 19.2 A membership interest automatically lapses if a Member sells or transfers, attempts to sell or transfer or enters into an agreement to sell or transfer its membership interest.

Fees

20 Entrance fees

20.1 The Directors may determine the entrance fee, if any, payable by applicants for membership or each class or category of membership from time to time.

21 Annual subscription fees

21.1 Subject to rule 21.2, Members must pay an annual subscription fee as determined by the Directors from time to time. The annual subscription fee may be different for different Members or classes or categories of membership. Annual subscription fees will be payable by Members at such times and in such manner as the Directors may determine from time to time.

21.2 The Directors may in their sole and absolute discretion:

- (a) determine that no annual subscription fee is payable by any Member, all Members or any class or category of Members (in whole or in part) for any given year; and
- (b) extend the time for payment of annual subscription fees by any Member, all Members or any class or category of Members (in whole or in part) for any given year.

22 No refunds

22.1 No part of any fee will be refunded to a Member who ceases to be a Member in accordance with rule 15.

23 Non-payment of fees

23.1 If a Member does not pay an entrance fee or annual subscription fee within 30 days after it becomes due, the Directors:

- (a) may give the Member notice of that fact; and
- (b) if the entrance fee or annual subscription fee remains unpaid 21 days from the date of such notice, may declare that Member's membership forfeited.

General meetings

24 Annual general meeting

24.1 The Company must hold an annual general meeting as required by section 250N of the Corporations Act.

25 Calling a general meeting

25.1 Any Director may, at any time, call a general meeting.

25.2 A Member may:

- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and

- (b) not call and arrange to hold a general meeting except under section 249E or section 249F of the Corporations Act.

25.3 Any general meeting called in accordance with rule 25.2 may be cancelled or postponed by:

- (a) Members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 Members who are entitled to vote at the general meeting.

26 Persons entitled to notice

26.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director and Alternate Director; and
- (c) any Auditor.

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

27 Notice of general meetings

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

27.2 A notice calling a general meeting:

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

27.3 A notice of an annual general meeting must state if the business to be transacted at the meeting includes:

- (a) the consideration of the annual financial report, the Directors report and the Auditor's report;
- (b) the appointment of Directors; and
- (c) the appointment and fixing of the remuneration of the Auditor.

27.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under rule 25.2).

27.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in rule 26.1 entitled to receive notices from the Company.

27.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings or any resolution passed at the general meeting.

28 Technology

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

Proceedings at general meetings
29 Member present at general meetings

29.1 In rules 30, 31, 35 and 37, Member includes a Member present in person or by proxy, attorney or Representative.

29.2 If a Member has appointed a proxy, attorney or Representative to act at a general meeting, that Member is taken to be present at a meeting at which the proxy, attorney or Representative is present.

30 Quorum

30.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

30.2 A quorum of Members is 3 Members.

30.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
 - (1) it will stand adjourned to another day, time and place determined by the Directors; and
 - (2) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

31 Chairperson

31.1 The chairperson or, in the chairperson's absence the deputy chairperson, of the Directors' meetings will be the chairperson at every general meeting.

31.2 If:

- (a) there is no chairperson or deputy chairperson;
 - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for the holding of the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,
- then:
- (d) the Members may elect one of the Directors present as chairperson for that general meeting; or

- (e) if no Director is present or willing to act as chairperson, the Members may elect one of the Members present as chairperson for that general meeting.

31.3 If there is a dispute at the general meeting about a question of procedure, the chairperson may determine the question. The chairperson's decision is final and conclusive.

32 Adjournment

32.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting; and
- (b) must adjourn the general meeting if directed by an Ordinary Resolution of the Members to do so.

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

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

32.4 Notice of an adjourned general meeting must only be given in accordance with rule 27 if a general meeting has been adjourned for more than 21 days.

33 Decision on questions

33.1 Subject to the provisions of the Corporations Act which relate to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

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

33.3 Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

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

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

34 Taking a poll

34.1 A poll will be taken when and in the manner that the chairperson directs.

34.2 The result of the poll will be a resolution of the meeting at which the poll was demanded.

34.3 The chairperson may determine any dispute about the admission or rejection of a vote.

34.4 The chairperson's determination, if made in good faith, will be final and conclusive.

34.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

34.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

35 Casting vote of chairperson

35.1 The chairperson will have a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

36 Offensive material

36.1 A person (including a Member and any proxy, attorney or Representative of a Member)) may be refused admission to, or required to leave and not return to, a meeting if the person:

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

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

Votes of Members

37 Entitlement to vote

37.1 A Member is not entitled to vote at a general meeting if the Member's annual subscription fees are more than one month in arrears at the date of the meeting.

37.2 A Member entitled to vote has one vote.

38 Objections

38.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered his, her or its vote.

38.2 An objection must be referred to the chairperson of the general meeting, whose decision is final and conclusive.

38.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

39 Votes by proxy

39.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

39.2 A proxy need not be a Member.

- 39.3 A proxy may demand or join in demanding a poll.
- 39.4 A proxy or attorney may vote on a poll.
- 39.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted in the manner directed.

40 Document appointing proxy

- 40.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 40.2 For the purposes of rule 40.1, an appointment received at an email address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 40.3 A proxy's appointment is valid at an adjourned general meeting.
- 40.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 40.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (1) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (2) any procedural motion, including any motion to elect the chairperson, to vacate the chairperson or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 40.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

41 Lodgement of proxy

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

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

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

(a) the Company's registered office;

(b) a facsimile number at the Company's registered office; or

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

42 Validity

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

(a) died;

(b) became mentally incapacitated; or

(c) revoked the proxy or power,

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

Appointment and Removal of Directors

43 Number of Directors

43.1 Subject to rules 43.2 and 43.3, the Company must have at least 3 Directors and must not have more than 6 Directors.

43.2 The Board may determine to increase the maximum number of Directors from time to time.

43.3 The Company may from time to time in general meeting:

(a) reduce the maximum number of Directors so long as it is not less than 6; and

(b) increase or reduce the minimum number of Directors so long as it is not less than 3 or more than 6.

43.4 Subject to the minimum and maximum number of Directors required under rule 43.1 as varied from time to time in accordance with rules 43.2 and 43.3, the Board may determine the number of Directors from time to time.

44 Eligibility

44.1 A person is not eligible to act as a Director unless:

(a) the person is an Individual Member of the Company or the Representative of a Business Member of the Company; and

(b) the person has provided the Company with a certified copy of a recent police check and, if required by the Board, a recent child protection check.

- 44.2 Neither the Auditor for the time being nor any partner, director or employee of the Auditor for the time being is eligible to act as a Director.
- 44.3 A person is not eligible for appointment as a Director by the Company by Ordinary Resolution in accordance with rule 45.1(a) unless the person, or a Member or Director who intends to propose the person, has either given to the Secretary or left at the Company's registered office a written notice:
- (a) giving the person's consent to the nomination; and
 - (b) stating either that the person intends to propose themselves for appointment as a Director or that the Member or Director (as applicable) intends to propose the person for appointment as a Director.
- 44.4 A notice given in accordance with rule 44.3 must be either given to the Secretary or left at the Company's registered office at least 30 days before the date of the meeting at which the relevant person is to be proposed for appointment as a Director.

45 Appointment of Directors

- 45.1 Subject to rules 43, 44 and 45.2 and section 201E of the Corporations Act:
- (a) the Company may by Ordinary Resolution appoint up to 3 Directors (including any existing Directors appointed under this rule 45.1(a)); and
 - (b) the Board may appoint:
 - (1) up to 3 Directors (including any existing Directors appointed under this rule 45(b)(1)); and
 - (2) additional Directors where the maximum number of Directors permitted under rule 43.1 has been increased under rule 43.2 to a number greater than 6.
- 45.2 Where the Directors determine under rule 43.4 that:
- (a) the Company is to have only 3 Directors, those Directors are to be appointed by the Company by Ordinary Resolution in accordance with rules 45.1(a);
 - (b) the Company is to have between 4 to 6 Directors (inclusive):
 - (1) the first 3 Directors are to be appointed by the Company by Ordinary Resolution in accordance with rule 45.1(a); and
 - (2) the remaining Director or Directors (as applicable) is or are to be appointed by the Board in accordance with rule 45.1(b)(1).
- 45.3 If all of the then existing Directors are removed from the Board by Ordinary Resolution of the Company under rule 47(f), then, for the avoidance of doubt and subject to rules 43, 44 and 45.2 and section 201E of the Corporations Act:
- (a) the Company may by Ordinary Resolution appoint up to 3 Directors in accordance with rule 45.1(a); and
 - (b) the Directors appointed under rule 45.3(a) may subsequently appoint up to 3 Directors in accordance with rule 45.1(b)(1).

- 45.4 When a Director appointed by the Company by Ordinary Resolution in accordance with rule 45.1(a) retires, the Company may by Ordinary Resolution appoint a person to fill the vacated office in accordance with rule 45.1(a).
- 45.5 When a Director appointed by the Board in accordance with rule 45.1(b)(1) retires, the Board may appoint a person to fill the vacated office in accordance with rule 45.1(b)(1).
- 45.6 The notice of general meeting given to the Members in accordance with rule 27 for every general meeting at which an appointment of a Director by the Company by Ordinary Resolution in accordance with rule 45.1(a) is proposed to take place must identify:
- (a) all Director vacancies that are to be filled in accordance with rule 45.1(a); and
 - (b) each candidate for appointment.
- 45.7 The existing Directors may appoint a casual Director to replace a Director that has vacated or been removed from office in accordance with rule 47.

46 Directors' terms

- 46.1 Subject to rules 46.2, 46.3 and 47, a Director appointed under rules 45.1(a) or 45.1(b)(1):
- (a) holds office until the third annual general meeting after the Director was last appointed at which meeting the Director automatically retires; and
 - (b) is eligible for re-appointment but may not serve more than two consecutive terms of 3 years – that is, a maximum continuous period of more than 6 years.
- 46.2 A Director appointed under rule 45.1(b)(2):
- (a) automatically retires at the next annual general meeting after the Director was appointed and is eligible for re-appointment by the Company by Ordinary Resolution at that general meeting in accordance with rule 45.1(a); and
 - (b) may not serve more than two consecutive one-year terms – that is, for a maximum continuous period of more than two years.
- 46.3 A Director appointed under rule 45.7 must retire when the Director replaced would have been required to retire and is eligible for re-appointment by the Company by Ordinary Resolution in accordance with rule 45.1(a).

47 Vacation and removal of Directors

A person automatically ceases to be a Director if he or she:

- (a) is prohibited by the Corporations Act from holding office or continuing to hold office as a Director;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under sections 206F or 206G of the Corporations Act;
- (c) is liable to have a person appointed to administer his or her affairs under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs;
- (d) is, in the opinion of the Board, incapable of performing their duties;
- (e) resigns by notice in writing to the Company;

- (f) is removed by an Ordinary Resolution of the Company (whether or not the Director's appointment was expressed to be for a specified period);
- (g) is absent from two consecutive Directors' meetings without leave of absence from the Directors, and the chairperson determines that the absence should result in the vacation of the Director's office;
- (h) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act; or
- (i) is the Representative of a Business Member that ceases to be a Member under rule 15.

48 Too few Directors

If the number of Directors is reduced below the minimum required by rule 43.1, the continuing Directors may act as the Directors only:

- (a) to appoint Directors up to that minimum number in accordance with this constitution;
- (b) to convene a meeting of Members; or
- (c) in emergencies.

49 Alternate Directors

- 49.1 A Director may, with the approval of the other Directors, appoint any person as his or her alternate for a period determined by that Director.
- 49.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 49.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 49.4 The provisions of this constitution which apply to Directors also apply to Alternate Directors.
- 49.5 The appointment of an Alternate Director:
 - (a) may be revoked at any time by the appointor or by the other Directors; and
 - (b) ends automatically when the appointor ceases to be a Director.
- 49.6 Any appointment or revocation under this rule 49 must be effected by written notice delivered to the Secretary.

Powers and duties of the Directors

50 Powers and duties of the Directors

- 50.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this constitution and the Corporations Act do not require to be exercised by the Company in general meeting.

- 50.2 Without limiting the generality of rule 50.1, the Directors may exercise all the powers of the Company:
- (a) to borrow money;
 - (b) to charge any property or business of the Company;
 - (c) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
 - (d) to guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person;
 - (e) without limiting its power to give other indemnities, to give indemnities permitted by section 199A of the Corporations Act; and
 - (f) without limiting its power to enter into other contracts (including other contracts of insurance), to enter into a contract of insurance permitted by section 199B of the Corporations Act.

Proceedings of the Directors

51 Directors' meetings

- 51.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 51.2 A Directors' meeting must be called on at least 48 hours' notice to each Director given in writing or using any technology consented to by all the Directors.
- 51.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 51.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 51.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 51.6 Subject to rule 57, a Director who participates in a meeting held in accordance with this constitution is taken to be present and entitled to vote at the meeting.
- 51.7 Rules 51.4 to 51.5 apply to meetings of Directors' committees as if all committee members were Directors.
- 51.8 The Directors may meet together, adjourn and regulate Directors' meetings as they think fit.
- 51.9 A quorum is a majority of Directors for the time being.
- 51.10 Where a quorum cannot be established for the consideration of a particular matter at a Directors' meeting, the chairperson may call a general meeting to deal with the matter.

52 Decisions on questions

- 52.1 Subject to this constitution, questions arising at a Directors' meeting are to be decided by a majority of votes of the Directors present and voting and, subject to rule 57, each Director has one vote.
- 52.2 In addition to any vote the chairperson of the meeting has as a Director, the chairperson also has a casting vote if an equal number of votes is cast for and against a resolution. If the chairperson is not permitted to, or does not, exercise a casting vote and an equal number of votes is cast for and against a resolution, the matter is decided in the negative.
- 52.3 An Alternate Director has one vote for each Director for whom he or she is an alternate. If the Alternate Director is a Director, he or she also has a vote as a Director.

53 Chairperson

- 53.1 At each successive Directors' meeting, the Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.
- 53.2 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 53.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

54 Circulating resolutions

- 54.1 The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 54.2 For the purposes of rule 54.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 54.3 Any document referred to in this rule 54 may be in the form of a facsimile or an email transmission.
- 54.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this rule 54.
- 54.5 This rule 54 applies to meetings of committees as if all members of the committee were Directors.

55 Validity of acts of Directors

If it is discovered that:

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

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

Payments to Directors and Secretaries

56 Payments to Directors and Secretaries

No payment will be made to any Director or Secretary other than payment:

- (a) of out of pocket expenses incurred by the Director or Secretary in the performance of any duty as Director or Secretary of the Company (as applicable) where the amount payable does not exceed an amount previously approved by the Directors;
- (b) for any service rendered to or for the Company by the Director or Secretary in a professional or technical capacity, other than in the capacity as Director or Secretary, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director or Secretary as an employee where the terms of employment have been approved by the Directors; and
- (d) relating to an indemnity in favour of the Director or Secretary (including the indemnity under rule 77) and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

Directors' interests

57 Directors' interests

57.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

57.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

57.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

57.4 Subject to rule 56, a Director or a body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any agreement or arrangement with the Company;
- (b) hold any office or place of profit (other than as auditor) in the Company; and
- (c) act in a professional capacity (other than as auditor) for the Company,

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

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

- (a) be present while the matter is being considered at the meeting; or

(b) vote on the matter,

unless permitted by the Corporations Act to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

57.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

Delegation

58 Delegation

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

58.2 The Directors may at any time revoke any delegation of power to a committee.

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

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

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

58.6 Meetings of any committee will be governed by the provisions of this constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions of this constitution apply to each member of a committee as if each member was a Director.

Managing Director and executive officers

59 Appointment

59.1 The Directors may appoint 1 or more (acting jointly) of themselves to the office of Managing Director for the period and on the terms the Directors see fit.

59.2 The Directors may appoint 1 or more of themselves to act as an executive officer for the period and on the terms the Directors see fit.

60 Powers of Managing Director or executive officer

60.1 The Directors may, upon the terms they see fit, confer on a Managing Director or executive officer any of the powers that the Directors can exercise.

60.2 Any powers so conferred under rule 60.1 may be concurrent with, or to the exclusion of, the powers of the Directors.

61 Temporary appointments

61.1 If a Managing Director or executive officer becomes incapable of acting in that capacity, the Directors may appoint another Director to act temporarily as Managing Director or executive officer.

62 Withdrawal of appointment or powers

62.1 The Directors may revoke or vary an appointment or any of the powers conferred on the Managing Director or executive officer.

63 Qualifications

63.1 A person ceases to be Managing Director or executive officer if he or she ceases to be a Director or employee of the Company.

64 Remuneration

64.1 A Managing Director or executive officer is, subject to the terms of any agreement entered into, in any particular case, to receive the remuneration that the Directors may determine.

Local management

65 Local management

65.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

65.2 Without limiting rule 65.1, the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (b) delegate to any person appointed under rule 65.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this constitution,

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

65.3 The Directors may at any time revoke or vary any delegation made under this rule.

66 Appointment of attorneys and agents

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

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this constitution or the Corporations Act);

- (c) for the period; and
 - (d) subject to any conditions,
determined by the Directors.
- 66.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of any person, including:
- (a) any member of any local board established under this constitution;
 - (b) any company;
 - (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 66.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors thinks fit.
- 66.4 The Directors may appoint attorneys or agents to act for and on behalf of the Company in any manner they think fit, including by facsimile transmission, telegraph, cable or email transmission.
- 66.5 An attorney or agent appointed under this rule may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in the attorney or agent.

Corporate secretarial matters

67 Secretary

- 67.1 If required by the Corporations Act, there must be at least one Secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by the Directors.
- 67.2 The Directors may appoint a person as an acting Secretary or as a temporary substitute for a Secretary.
- 67.3 The Secretary is entitled to attend and be heard on any matter at all meetings of Directors and meetings of Members, including general meetings of Members.
- 67.4 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

68 Minutes and registers

- 68.1 The Company must keep all registers required by this constitution and the Corporations Act.
- 68.2 The Directors must keep minute/resolution books in which they record within 1 month:
- (a) proceedings and resolutions of meetings of the Company's:
 - (1) Members; and

- (2) Directors (including meetings of a committee of Directors); and
 - (b) circulating resolutions passed without a meeting.
- 68.3 The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:
- (a) the chairperson of the meeting; or
 - (b) the chairperson of the next meeting.
- 68.4 Without limiting this rule 68 the Directors must record in the minute/resolution books:
- (a) all appointments of Officers;
 - (b) the names of the Directors and Alternate Directors present at all meetings of Directors and the Company;
 - (c) the method by which the meeting was held;
 - (d) all orders, resolutions and proceedings of:
 - (1) general meetings;
 - (2) meetings of the Directors; and
 - (3) committees of Directors;
 - (e) proxy votes exercisable and exercised in respect of each resolution at a meeting;
 - (f) 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; and
 - (g) all other matters required by the Corporations Act to be recorded in the minute/resolution books.

69 Common seal

- 69.1 If the Company has a seal:
- (a) the Directors must provide for the safe custody of the seal (and all duplicate seals);
 - (b) the seal (including duplicate seals) must not be used without the authority of the Directors or a Directors' committee authorised to use the seal;
 - (c) every document to which the seal is affixed must:
 - (1) be signed by a Director;
 - (2) be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; and
 - (3) comply with rule 72.
- 69.2 If the Company has a seal, the Company may have one or more duplicate seals each of which must be a facsimile of the seal with "Duplicate Seal" on its face.

70 Execution of documents without common seal

70.1 The Company may execute a document without using a common seal if the document is signed by 2 Directors of the Company or a Director and a Secretary and the form of execution complies with rule 72.

71 Execution of document as a deed

71.1 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 69 or rule 70.

72 Execution – general

72.1 The same person may not sign in the dual capacities of Director and Secretary.

72.2 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, despite his or her interest, his or her signature complies with the requirements of this constitution as to execution.

72.3 Rules 69, 70 and 71 do not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

73 Rights of inspection of and access to records

73.1 Without limiting the terms of any agreement between the Company and any Director, the Directors have a right of access to the Company's books and records in accordance with section 198F of the Corporations Act.

73.2 Except as otherwise required by the Corporations Act:

(a) the Directors may determine:

- (1) whether and to what extent;
- (2) at what times and places; and
- (3) under what conditions,

the financial records and other documents of the Company or any of them will be open for inspection by Members who are not Directors; and

(b) a Member that is not a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Notices

74 Service of notices

74.1 Notice may be given by the Company to any person who is entitled to notice under this constitution:

(a) by serving it on the person; or

- (b) by sending it by post, facsimile transmission or email transmission to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

74.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the day after the day on which it was posted.

74.3 A notice sent by facsimile transmission or email transmission is taken to be served:

- (a) by properly addressing the facsimile transmission or email transmission and transmitting it; and
- (b) on the day after it is transmitted or otherwise despatched.

74.4 If delivery, receipt or transmission of a notice sent by post, facsimile transmission or email transmission is not on a Business Day or is after 5.00 pm on a Business Day, the notice is taken to be received at 9.00 am on the next Business Day.

74.5 If a Member does not have an address recorded in the Register, a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.

74.6 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Members address for the purpose of this rule 74.

74.7 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of those matters, including its posting.

74.8 Subject to the Corporations Act, the signature to a written notice given by the Company may be written or printed.

74.9 All notices sent by post outside Australia must be sent by prepaid airmail post.

Audit and accounts

75 Audit and accounts

75.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.

75.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

Winding up

76 Winding up

76.1 If the Company is wound up or dissolved rule 2.2 applies.

- 76.2 If the Company is wound up or its DGR endorsement is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organisation or institution with similar objects, which is charitable at law and which holds a DGR endorsement:
- (a) gifts of money or property for the main purpose of the Company;
 - (b) contributions made in relation to an eligible fundraising event held for the main purpose of the Company;
 - (c) money received by the Company because of such gifts and contributions; and
 - (d) any remaining property or other income after all the Company's debts and liabilities have been paid and satisfied.
- 76.3 Such corporation or institution under rule **Error! Reference source not found.** is to be determined:
- (a) at first instance, by the Members at or before the winding up of the Company; and
 - (b) failing that, by application to the Supreme Court of New South Wales for determination.
- 76.4 The Relief Fund is subject to this rule 76 and rule 2.2 with respect to the winding up of the Company.

Indemnity and insurance

77 Indemnity

- 77.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against:
- (a) any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a Subsidiary of the Company where the Company requested the officer to accept that appointment); and
 - (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a Subsidiary of the Company where the Company requested the officer to accept that appointment).
- 77.2 The amount of any indemnity payable under rules 77.1(a) or (b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- 77.3 The Directors may agree to advance to an officer an amount which it might otherwise be liable to pay to the officer under rules 77.1(a) or (b) on such terms as the Directors' think fit but which are consistent with this rule, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Company is in fact liable to indemnify the officer under rules 77.1(a) or (b). If after the Company makes the advance, the Directors form the view that the Company is not liable to indemnify the officer, the Company may recover any advance from the officer as a debt due by the officer to the Company.

77.4 For the purposes of this rule 77, “**officer**” means:

- (a) a Director; or
- (b) a Secretary.

78 Insurance

78.1 To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company may pay or agree to pay a premium for a contract of insurance insuring a person who is or has been a Director or Secretary (if applicable) of the Company against liability incurred by the person in that capacity, including a liability for legal costs.

Governing law

79 Governing law

79.1 The governing law of this constitution is the law of New South Wales.

Schedule 1 Definitions and Interpretation

PART 1. Dictionary

1 Definitions

In this constitution, unless the contrary intention appears:

Alternate Director means a person appointed as an alternate director under rule 49.

ATO means the Australian Commissioner of Taxation.

Auditor means the auditor of the Company from time to time.

Board means the Directors acting as a board.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office.

Business Member has the meaning given in rule 11.2(b).

Company means Australian Business Volunteers Limited ACN 008 612 431.

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

DGR means an entity endorsed by the ATO as a deductible gift recipient under the ITAA 1997.

Dictionary has the meaning given in rule 6.1.

Director includes any person occupying the office of director of the Company and, where appropriate, includes an Alternate Director.

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

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

Individual Member has the meaning given in rule 11.2(a).

Managing Director means a managing director appointed under rule 59.1.

Member means, subject to rule 14.6, a person whose name is entered in the Register as a member of the Company and includes a Business Member and an Individual Member.

Objects means the principal objects of the Company as set out in rule 7.

Ordinary Resolution means a resolution passed by over 50% of the votes validly cast. Unless a resolution is specified to be a Special Resolution it is taken to be an Ordinary Resolution.

Relief Fund has the meaning given in rule 7.3(a).

Register means the register of Members of the Company kept under Part 2C.1 of the Corporations Act.

Representative means a person appointed as such under rule 17.1.

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

Special Resolution means a resolution that has been notified in accordance with the Corporations Act and passed by at least 75% of the votes validly cast by Members entitled to vote on the resolution.

Subsidiary has the meaning given to that term in the Corporations Act.

2 Corporations Act

In this constitution, unless the contrary intention appears:

- (a) an expression in a rule of this constitution has the same meaning as in the Corporations Act; and
- (a) where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a rule of this constitution, that expression has the same meaning as in that provision.

PART 2. Interpretation

1 Interpretation

In this constitution, unless and contrary intention appears:

- (b) **(documents)** a reference to this constitution or another document includes any document which varies, supplements, replaces, assigns or novates this constitution or that other document;
- (c) **(references)** a reference to a rule, paragraph, schedule or annexure is a reference to a rule, paragraph, schedule or annexure to or of this constitution;
- (d) **(headings)** rule and clause headings and the table of contents (if any) are inserted for convenience only and do not affect interpretation of this constitution;
- (e) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (g) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (h) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (i) **(singular)** the singular includes the plural and vice-versa;
- (j) **(gender)** words importing one gender include all other genders;
- (k) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this rule implies that part performance of an obligation constitutes performance of that obligation;
- (l) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (m) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (n) **(writing)** a reference to something being written or in writing includes that thing being represented or reproduced in any mode in visible form; and
- (o) **(currency)** a reference to A\$, dollar or \$ is to Australian currency.