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Constitution

The Water Well Project Limited
ABN 38 177 188 057
ACN 626 808 811

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The Water Well Project (Company)

A company limited by guarantee

Date: First adopted 14 June 2018

Amended and approved 14 September 2021

Amendments: Clause 9.3.2 changed 'A quorum to a general meeting is 3 Members' to 'A quorum for a general meeting is a majority (50% plus 1)'

Clause 10.10.2 changed 'A quorum for a meeting of directors is 2' to 'A quorum for a meeting of directors is a majority (50% plus1)'

Constitution

1. Definitions

In this Constitution:

Alleged Conduct means a matter identified in clauses 7.1.1, 7.1.2 or 7.1.3.

Alternate Director means a person appointed as an alternate director under clause 10.14.

Appointing Document has the meaning given in clause 9.8.4.

Board means the board of directors of the Company.

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria.

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

Director means a director appointed under clause 10.

Founder Director means Linny Kimly Phuong.

Indemnified Loss means, in relation to any fact, matter or circumstance:

- (a) all Loss arising out of or in connection with that fact, matter or circumstance; and
- (b) all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

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

Loss means damage, liability, action, loss, charge, cost or expense.

Managing Director means a managing director appointed under clause 11.1

Member means a person admitted to membership of the Company and **Membership** has a corresponding meaning.

Officer means a Director, Alternate Director, Secretary or executive officer of the Company.

Principal Purposes means the principal purposes of the Company set out in clause 3.

Register means the register of Members required to be kept under the Corporations Act.

Relevant Law means:

- (a) the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth);
- (b) the *Australian Charities and Not-for-Profits Commission Regulations 2013* (Cth);
- (c) the *Charities Act 2013* (Cth);
- (d) the ITAA;
- (e) the Corporations Act;
- (f) the *Corporations Regulations 2001* (Cth); or
- (g) any:
 - (i) class order or regulatory guide issued by the Australian Securities and Investments Commission;
 - (ii) public or private ruling issued by the Australian Taxation Office; or
 - (iii) Commissioner's interpretation statement issued by the Australian Charities and Not-for-Profits Commission.

Representative means, in relation to a body corporate, a person authorised by the body corporate to act as its representative as allowed by the Corporations Act.

Secretary means a secretary of the Company.

Surplus Property means, on a winding up of the Company, all property of the Company remaining after the satisfaction of all of its debts and liabilities.

2. Constitution

2.1 Application of the Corporations Act

2.1.1 The replaceable rules in the Corporations Act do not apply to the Company.

2.1.2 An expression in a clause of this Constitution that deals with a matter which is dealt with by a provision of the Corporations Act or which is defined in the Corporations Act has the same meaning as in the Corporations Act, unless that expression is given a different meaning in this Constitution.

2.2 Inconsistency

Where a Relevant Law confers a right on a Member, imposes a restriction or prohibition on exercise of rights or powers, or requires that a particular procedure be followed before:

2.2.1 any right or power under this Constitution is exercised;

2.2.2 any resolution is passed; or

2.2.3 any other thing is done by the Company, the Officers or the Members,

then the provisions of this Constitution are subject to the exercise of that right or that restriction or prohibition and the Company, Officers and Members must comply with any procedure that is required to be followed.

3. Principal purposes

- 3.1 The principal purposes of the Company are to improve the health and wellbeing of migrants and individuals from refugee or asylum seeker background by providing health education and promoting community empowerment.
- 3.2 The Company's principal activity is promoting the prevention and control of diseases in human beings.
- 3.3 To fulfil its purpose the Company aims to:
 - 3.3.1 provide equitable access for individuals from refugee, asylum seeker or migrant background to health and wellbeing education and resources so that they can attain and maintain health; and
 - 3.3.2 create greater communication and cultural understanding between members of the healthcare professionals and the wider refugee population and sector.
- 3.4 The vision of the Company is:
 - 3.4.1 for individuals from refugee, asylum seeker or migrant background to have equitable access to health and wellbeing education and resources to attain and maintain health; and
 - 3.4.2 for healthcare professionals to have greater cultural understanding of health issues relating to those from a refugee, asylum seeker or migrant background; as well as have improved communication with those from culturally and linguistically diverse communities
- 3.5 In furtherance of the Company's Purpose, the Company will:
 - 3.5.1 engage healthcare professionals with migrant and refugee communities to build trusting relationships;
 - 3.5.2 provide culturally-appropriate, interactive health information sessions;
 - 3.5.3 enhance general and practical knowledge within communities about relevant health issues;
 - 3.5.4 increase awareness of, and access to, local health care and resources within communities;
 - 3.5.5 facilitate more effective, informed health consultations by community members with local hospitals, general practitioners, specialists, refugee health nurses and allied health services;
 - 3.5.6 establish partnerships with community and health support groups; and
 - 3.5.7 provide invaluable experience for healthcare professionals to work with culturally diverse groups – strengthening communication skills and enhancing their own understanding of the specific health issues relating to communities from refugee, asylum seeker or migrant background.

4. Powers

Solely for carrying out the Principal Purposes, the Company has the legal capacity and powers of an individual and all the powers of a body corporate, other than the power to issue shares.

5. Member liability and guarantee

5.1 The liability of each Member is limited to the amount set out in clause 5.2.

5.2 Each Member undertakes to contribute a maximum of \$10.00 to the Company if it is wound up:

5.2.1 while the Member is a Member; or

5.2.2 within one year after that Member ceases to be a Member,

for:

5.2.3 the debts and liabilities of the Company contracted while that Member was a Member; and

5.2.4 the costs, charges and expenses of winding up.

6. Membership

6.1 Register

The Company must establish and maintain a Register.

6.2 General

The Members are:

6.2.1 the persons identified in the application to register the Company lodged under s 117 of the Corporations Act and who have consented to be Members; and

6.2.2 any other person the Board admits to Membership under clause 6.3.

6.3 Applying for Membership

6.3.1 Each applicant for Membership must apply in the form and manner determined by the Board from time to time.

6.3.2 The Board must consider each application for Membership it receives and determine whether to accept or reject the application.

6.3.3 The Board does not need to give any reason for rejecting an application. If the Board rejects an application, the Secretary will notify the applicant.

6.3.4 If the Board approves an application for Membership, the Secretary will enter the name of the applicant in the Register and notify them. The applicant becomes a Member when their name is entered in the Register.

6.4 Not transferrable

Membership is not transferrable.

7. Disciplinary action

7.1 Grounds for taking disciplinary action

The Board may take disciplinary action against a Member (**Breaching Member**) in accordance with this clause if it determines that the Breaching Member:

- 7.1.1 has failed to comply with this Constitution;
- 7.1.2 has acted in a way which indicates that the member will not support the principal purpose of the Company; or
- 7.1.3 has engaged in conduct prejudicial to the Company.

7.2 Disciplinary subcommittee

- 7.2.1 The Board may appoint a subcommittee (**Disciplinary Subcommittee**) to determine whether the Alleged Conduct has occurred and what, if any, action to take against the Breaching Member.
- 7.2.2 The members of the Disciplinary Subcommittee:
 - (a) may be Directors, Members or third parties; but
 - (b) must not be biased against or in favour of the Breaching Member.

7.3 Notice to Member

- 7.3.1 The Disciplinary Subcommittee must hold a meeting to consider the proposed disciplinary action against the Breaching Member (**Disciplinary Meeting**).
- 7.3.2 The Secretary must give a written notice to the Breaching Member which sets out:
 - (a) that the Board has made a determination of the kind described in clause 7.1;
 - (b) details of the Alleged Conduct and the grounds for the proposed determination;
 - (c) the date, place and time of the Disciplinary Meeting;
 - (d) that the Breaching Member may do one or both of:
 - (i) attending the Disciplinary Meeting and addressing the Disciplinary Subcommittee at that meeting; and
 - (ii) giving a written statement to the Disciplinary Subcommittee at any time before the Disciplinary Meeting; and
 - (e) the Breaching Member's appeal rights under clause 7.5.

- 7.3.3 The Secretary must give the notice described in clause 7.3.2 to the Breaching Member at least 10 Business Days, and no more than 20 Business Days, before the date of the Disciplinary Meeting.

7.4 Decision of Disciplinary Subcommittee

- 7.4.1 At the Disciplinary Meeting, the Disciplinary Subcommittee must:
- (a) give the Breaching Member an opportunity to be heard; and
 - (b) consider any written statement submitted by the Breaching Member.
- 7.4.2 If it has complied with clause 7.4.1 at the Disciplinary Meeting the Disciplinary Subcommittee may determine:
- (a) to take no further action against the Breaching Member;
 - (b) to reprimand the Breaching Member;
 - (c) to suspend the Membership of the Breaching Member for a specified period;
or
 - (d) that the Breaching Member's Membership will cease.
- 7.4.3 The Disciplinary Subcommittee must not fine the Breaching Member.
- 7.4.4 The suspension or cessation of the Breaching Member's Membership will take effect at the end of the Disciplinary Meeting.
- 7.4.5 A Member whose Membership has been suspended has a right to receive notices, but no right to vote, at any general meeting during the term of the suspension.

7.5 Appeal rights

- 7.5.1 A Breaching Member whose Membership has been suspended or which has ceased under clause 7.4.2 may appeal the suspension or cancellation by giving notice (**Appeal Notice**):
- (a) to the Disciplinary Subcommittee immediately after the Disciplinary Meeting;
or
 - (b) to the Secretary within 48 hours after the end of the Disciplinary Meeting.
- 7.5.2 If a Breaching Member has given an Appeal Notice as required by clause 7.5.1, the Board must call a meeting of Members (**Disciplinary Appeal Meeting**) in accordance with clause 9.
- 7.5.3 Notice of the Disciplinary Appeal Meeting must be given as soon as practicable to each member of the Disciplinary Subcommittee and each Member who is entitled to vote and must include:
- (a) the time and date of the Disciplinary Appeal Meeting;
 - (b) the name of the Breaching Member;
 - (c) the grounds for taking disciplinary action; and

- (d) that, at the Disciplinary Appeal Meeting, the Members must vote on whether the decision to suspend or cease the Breaching Member's Membership should be upheld or revoked.

7.5.4 A Member may not vote by proxy or attorney at a Disciplinary Appeal Meeting.

7.6 Conduct of Disciplinary Appeal Meeting

7.6.1 At a Disciplinary Appeal Meeting:

- (a) no business other than the question of the appeal may be conducted; and
- (b) the Breaching Member must be given an opportunity to be heard.

7.6.2 If clause 7.6.1 is complied with, the Members present and entitled to vote at the meeting must vote by secret ballot on the question whether the decision to suspend or cancel the Breaching Member's Membership should be upheld or revoked.

7.6.3 A decision to suspend or cease the Breaching Member's Membership is upheld if at least 75% of the Members voting at the Disciplinary Appeal Meeting vote in favour of the decision.

8. Cessation of Membership

8.1 Grounds for cessation

8.1.1 A Member will cease to be a Member if:

- (a) the Member resigns in writing to the Company;
- (b) the Member's Membership is cancelled under clause 7;
- (c) the Member ceases to be an officeholder of the Company;
- (d) the Member (who is an individual) is bankrupt; or
- (e) the Member (which is a corporation) is insolvent.

8.1.2 The Board may determine, in its absolute discretion, that a Member is an untraceable Member because they are not located at, do not attend or otherwise communicate with, their registered address. An untraceable Member ceases to be a Member on the date the Board makes a determination.

8.2 Removal from the Register

8.2.1 If a Member ceases to be a Member, their name must be removed from the Register.

8.2.2 On the removal of a Member's name from the Register:

- (a) the Member will forfeit all rights and privileges attaching to Membership and all rights which the Member may have against the Company arising out of the Membership; and
- (b) the Company will have no liability to that Member arising from the Member ceasing to be a Member or the Member's removal from the Register.

8.3 Surviving liability

Any Member who ceases to be a Member remains liable:

- 8.3.1 for any money owing to the Company; and
- 8.3.2 if the Company is wound up within one year of the date of cessation of Membership, for the Member's contribution under clause 5.2.

9. General meetings

9.1 Calling general meetings

- 9.1.1 The Directors may call a general meeting at any time.
- 9.1.2 A Member may only call a general meeting in accordance with the Corporations Act.
- 9.1.3 Subject to clause 9.1.4, the Directors may postpone or cancel a general meeting or change the venue at which the general meeting will be held.
- 9.1.4 A general meeting called under s 249D of the Corporations Act may not be postponed beyond the date by which s 249D requires it to be held. A general meeting called under s 249D of the Corporations Act may not be cancelled without the consent of the requisitioning Member or Members.

9.2 Notice of general meetings

- 9.2.1 The Company must give Members and other people entitled to receive notice of the general meeting the period of notice required by the Corporations Act.
- 9.2.2 The notice of a general meeting must set out the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act. The Directors may decide what other content to include in the notice of a general meeting.
- 9.2.3 A person may waive the right to receive notice of a general meeting by notice to the Company.
- 9.2.4 If a person entitled to receive a notice of a general meeting:
 - (a) does not receive that notice; or
 - (b) the Company fails to give that notice,every act performed or resolution passed at the general meeting will still be effective, if:
 - (c) the failure to receive or give notice occurred by accident or error; or
 - (d) before or after the meeting, the person:
 - (i) waives notice of that meeting under clause 9.2.3; or
 - (ii) gives the Company notice of the person's agreement to that act or resolution.

- 9.2.5 A person waives any objection that person may have to any failure to give notice, or a defective notice, of a general meeting if the person attends the general meeting. That person will not have waived any objection if the person objects to the holding of the meeting at the beginning of the meeting.

9.3 Quorum at general meetings

- 9.3.1 No business may be transacted at any general meeting unless a quorum of Members is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.
- 9.3.2 A quorum for a general meeting is a majority (50% plus 1) of Members entitled to vote on a resolution at the meeting.
- 9.3.3 Each individual present at a general meeting may only be counted once towards a quorum.
- 9.3.4 If a Member has appointed more than one proxy, attorney or Representative, only one of them may be counted towards a quorum.
- 9.3.5 If a quorum is not present within 30 minutes after the commencement time of a general meeting:
- (a) if the meeting was convened on the requisition of Members, the meeting will be dissolved; and
 - (b) in any other case, the meeting is adjourned to the day, and at the time and place, that the chairperson of the meeting or the Directors decide. If they do not make a decision, the meeting is adjourned to the same day in the next week at the same time and place.

9.4 Chairperson of general meetings

- 9.4.1 The chairperson of Directors must act as chairperson at a general meeting if the chairperson of Directors is present within 15 minutes after the time appointed for a general meeting and is willing to act.
- 9.4.2 One of the other Directors present at the general meeting must act as chairperson if:
- (a) there is no chairperson of Directors; or
 - (b) the chairperson of Directors is not present at a general meeting; or
 - (c) the chairperson of Directors is not willing to act as chairperson of the meeting.

9.5 Conduct of general meetings

- 9.5.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for deciding the procedures to be adopted at the meeting.
- 9.5.2 In particular, the chairperson of a general meeting may:
- (a) require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion or for the proper and orderly casting or recording of votes at the meeting; and

- (b) terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.
- 9.5.3 A decision of the chairperson on any matter under clause 9.5.2 is final.
- 9.5.4 A general meeting may be held at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 9.5.5 Where clause 9.5.4 applies:
 - (a) a Member participating in such a meeting is taken to be present in person at the meeting;
 - (b) all the provisions in this Constitution relating to general meetings apply, so far as they can and with necessary changes, to meetings using the technology; and
 - (c) the meeting is taken to be held at the place determined by the chairperson of the meeting, if at least one Member was at that place for the duration of the meeting.
- 9.5.6 If the technology used for a general meeting encounters a technical difficulty, whether before or during the meeting, and as a result a Member is not able to participate in the meeting, the chairperson may:
 - (a) allow the meeting to continue, if a quorum of Members remains able to participate in the meeting; or
 - (b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location that the chairperson decides,unless required to do otherwise by the Corporations Act.
- 9.5.7 The chairperson of a general meeting may, and must if directed by the meeting, adjourn the meeting from time to time and from place to place. No new business may be transacted at any adjourned meeting. An adjourned meeting must only transact the business left unfinished at the meeting from which the adjournment took place.
- 9.5.8 If the meeting is adjourned for more than 30 days, notice of an adjournment or of the business to be transacted at an adjourned meeting must be given.

9.6 Decisions at general meetings

- 9.6.1 Except for a resolution which the Corporations Act requires to be passed by a special majority, questions at a general meeting must be decided by a majority of votes cast by the Members present at the meeting and entitled to vote on the resolution.
- 9.6.2 If there is an equal number of votes for and against a proposed resolution:
 - (a) the chairperson of the meeting will not have a second or casting vote; and
 - (b) the proposed resolution is taken to have been lost.
- 9.6.3 A resolution proposed at a general meeting must be decided on a show of hands.

- 9.6.4 If the chairperson of a general meeting declares that a resolution has been carried or lost on a show of hands and an entry to that effect is made in the minutes of the meeting, no proof of the number or proportion of the votes recorded in favour of or against the resolution is required.

9.7 Voting rights

Each Member present at a general meeting and entitled to vote on a resolution has one vote on a show of hands for that resolution.

9.8 Representation at general meetings

- 9.8.1 Each Member entitled to vote at a general meeting may vote by proxy or by attorney.
- 9.8.2 A proxy or attorney may be a Member but is not required to be a Member for the appointment to be effective.
- 9.8.3 A proxy or attorney may be appointed for all general meetings, for any number of general meetings or for a particular general meeting.
- 9.8.4 A document appointing a proxy (**Appointing Document**) must be lodged with the Company no later than 48 hours before the commencement time for a general meeting unless the notice of meeting sets out a different place for lodgement or an earlier time, in which case that different place or time will apply.
- 9.8.5 An Appointing Document may contain limits on the power or authority of the proxy or attorney. If the Appointing Document does not contain any limits, the proxy or attorney will have the authority to:
- (a) agree to a meeting being convened on shorter notice than is required by the Corporations Act or this Constitution, including when a special resolution is proposed or passed;
 - (b) speak to any proposed resolution on which the proxy or attorney may vote;
 - (c) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (d) vote on any procedural motion; and
 - (e) attend and vote at any rescheduled or adjourned meeting or at any new venue.
- 9.8.6 A proxy or attorney must comply with:
- (a) any limits on the powers of the proxy, attorney or Representative; or
 - (b) any directions as to how the proxy, attorney or Representative is to vote on a particular resolution,
- which are set out in the Appointing Document.
- 9.8.7 If a person present at a general meeting is the proxy or attorney of more than one Member, the person is entitled to one vote only on a show of hands.
- 9.8.8 Nothing in clause 9.8 limits a Member's right to appoint an attorney or Representative.

9.9 Decisions without general meetings

- 9.9.1 If the Company has more than one Member, the Company may pass a resolution (except a resolution to remove an auditor) without holding a general meeting if all the Members entitled to vote on the resolution sign a document:
- (a) setting out the resolution; and
 - (b) containing a statement that they are in favour of that resolution.
- 9.9.2 For the purposes of clause 9.9.1:
- (a) the resolution is passed when the last person signs the document; and
 - (b) separate copies of a document may be used for signing by Members if the wording of the resolution and the statement is identical in each copy.
- 9.9.3 The passing of a resolution in accordance with clause 9.9.1 satisfies any requirement in the Corporations Act or in this Constitution that the resolution be passed at a general meeting.

10. Directors

10.1 Number of Directors

- 10.1.1 There must be:
- (a) at least 3 Directors; and
 - (b) not more than 9 Directors.
- 10.1.2 The Company may by resolution increase or reduce the minimum or maximum number of Directors for the purpose of clause 10.1.1. However, the minimum number of Directors must not be less than 3.

10.2 Appointment of Directors

The Directors may appoint any natural person to be a Director:

- 10.2.1 to fill a casual vacancy; or
- 10.2.2 in addition to the existing Directors,

as long as the total number of Directors does not exceed the maximum number referred to in clause 10.1.1 (as increased or decreased under clause 10.1.2).

10.3 Term of appointment of Directors

- 10.3.1 Except for Directors appointed to fill casual vacancies and subject to clauses 10.3.2 and 10.4, Directors will hold office for a term of approximately 3 years starting at the end of the annual general meeting at which they were appointed and expiring at the end of the third annual general meeting after their election, at which time they must retire.
- 10.3.2 The first Directors will be appointed for a term that expires at the end of the first annual general meeting.

- 10.3.3 A Director appointed to fill a casual vacancy will be appointed for a term that expires at the end of the next annual general meeting occurring after the date of the Director's appointment.
- 10.3.4 A retiring Director is eligible for re-election, but each Director other than the Founder Director will only be eligible to be re-elected as a Director for 3 consecutive terms, unless the Directors resolve unanimously that a Director may serve further consecutive terms.
- 10.3.5 Clause 10.3.2 does not prevent a person:
- (a) serving as a Director for more than 3 terms; or
 - (b) being re-elected as a Director after having served 3 consecutive terms, if any further term starts at least 3 years after the end of the person's third consecutive term as Director.

10.4 Rotation of Directors

- 10.4.1 At the first annual general meeting:
- (a) one third of the Directors will be appointed to hold office until the end of the following annual general meeting, when each of them must retire but will be eligible for re-election;
 - (b) one third of the Directors will be appointed to hold office until the end of the second annual general meeting after the one at which each of them was elected, when they each must retire but will be eligible for re-election; and
 - (c) one third of the Directors will be appointed to hold office until the end of the third annual general meeting after the one at which each of them was elected, when they each must retire but will be eligible for re-election.
- 10.4.2 If the number of Directors to be appointed is not a multiple of 3, the Board in its discretion may determine which Directors are elected for one, 2 and 3 years respectively. If the Board cannot agree, the Directors must draw lots to determine who is appointed for one, 2 and 3 years.

10.5 Termination of office

A person ceases to be a Director if the Director:

- 10.5.1 is disqualified from managing corporations under the Corporations Act;
- 10.5.2 is suspended or removed from being a responsible entity by the Australian Charities and Not-For Profits Commission;
- 10.5.3 is removed from office by resolution of the Company; or
- 10.5.4 resigns by notice in writing to the Company.

10.6 Powers of directors

The Directors are responsible for managing the business of the Company. The Directors may exercise all the powers of the Company which are not required by the Corporations Act or this Constitution to be exercised by the Company in general meeting.

10.7 Proceedings of Directors

- 10.7.1 The Directors may meet together to attend to business and adjourn and regulate their meetings as they decide.
- 10.7.2 A meeting of the Directors may be held using any technology consented to by all of the participating Directors (**Approved Technology**). The consent may be a standing one.
- 10.7.3 Where a meeting of Directors is held at two or more venues using Approved Technology:
- (a) a Director participating in the meeting is taken to be present in person at the meeting;
 - (b) all the provisions in this Constitution relating to meetings of Directors apply, so far as they can and with such changes as are necessary, to meetings using Approved Technology; and
 - (c) the meeting is taken to be held at the place decided by the chairperson of the meeting, if at least one of the Directors was at that place for the duration of the meeting.
- 10.7.4 If the technology used for a meeting of Directors encounters a technical difficulty before or during the meeting, and as a result a Director is not being able to participate in the meeting, the chairperson may:
- (a) allow the meeting to continue, if a quorum of Directors remains able to participate in the meeting; or
 - (b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location as the chairperson decides,
- unless required to do otherwise by the Corporations Act.

10.8 Calling meetings of Directors

- 10.8.1 A Director may call a meeting of the Directors at any time.
- 10.8.2 A Secretary must call a meeting of the Directors at the request of a Director.

10.9 Notice of meetings of Directors

- 10.9.1 Notice of a meeting of Directors must be given to:
- (a) each Director, other than a Director who will be on a leave of absence approved by the other Directors at the time of the meeting; and
 - (b) any Alternate Director.
- 10.9.2 A Director or Alternate Director may waive notice of any meeting of Directors by notice to the Company.
- 10.9.3 If a person who is entitled to receive notice of a meeting of Directors:
- (a) does not receive that notice; or
 - (b) the notice is not given,

then every act performed or resolution passed at the meeting will still be effective if:

- (c) the failure to receive or give notice occurred by accident or error;
- (d) before or after the meeting the person:
 - (i) has waived or waives notice of that meeting under clause 10.9.2; or
 - (ii) has given or gives the Company notice of the person's agreement to that act or resolution.

10.9.4 If a person attends a meeting of Directors, that person waives any objection that person may have to a failure to give notice of the meeting. A waiver of objection under this clause 10.9.4 binds:

- (a) any Alternate Director appointed by that person; or
- (b) if the person is an Alternate Director, the Director who appointed that person as Alternate Director and any other Alternate Director appointed by that Director.

10.10 Quorum at meetings of Directors

10.10.1 No business may be transacted at a meeting of Directors unless a quorum of Directors is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.

10.10.2 A quorum for a meeting of directors is a majority (50% plus 1).

10.10.3 If the number of Directors is not sufficient to constitute a quorum, the remaining Director or Directors may act only:

- (a) in an emergency;
- (b) to increase the number of Directors to a number sufficient to constitute a quorum; or
- (c) to call a general meeting of the Company.

10.11 Chairperson of Directors

10.11.1 The Directors may elect one of the Directors as a chairperson of Directors and may decide the period for which that Director is to be chairperson of Directors.

10.11.2 The chairperson of Directors must act as chairperson at a meeting of Directors if that person is present within 15 minutes after the time appointed for the holding of a meeting of Directors and willing to act.

10.11.3 One of the other Directors must act as chairperson of the meeting if:

- (a) there is no chairperson of Directors; or
- (b) the chairperson of Directors is not present at a meeting of Directors; or
- (c) the chairperson of Directors is not willing to act as chairperson of the meeting.

10.12 Decisions of Directors

- 10.12.1 Questions arising at a meeting of Directors will be decided by a majority of votes of Directors present and entitled to vote.
- 10.12.2 If there is an equal number of votes for and against a proposed resolution:
- (a) the chairperson of the meeting will not have a second or casting vote; and
 - (b) the proposed resolution is taken to have been lost.

10.13 Written resolutions

- 10.13.1 The Directors may pass a resolution without holding a Directors' meeting if all the Directors entitled to vote on the resolution sign a document setting out the resolution and containing a statement that they are in favour of the resolution.
- 10.13.2 For the purposes of clause 10.13.1:
- (a) the resolution is taken to have been passed when the last person signs the document; and
 - (b) 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.

10.14 Alternate Directors

- 10.14.1 A Director may, with approval of a majority of the other Directors, appoint an alternate director for a specified period.
- 10.14.2 An Alternate Director may, if the appointor does not attend a meeting of Directors, attend and vote in place of and on behalf of the appointor.
- 10.14.3 An Alternate Director has a separate vote for each Director the Alternate Director represents. The votes are in addition to any vote that person may have as a Director in their own right.
- 10.14.4 An Alternate Director may, in the absence of the appointor, exercise any powers that the appointor may exercise.
- 10.14.5 The office of an Alternate Director is vacated when the appointor ceases to be a Director.
- 10.14.6 A Director who appoints an Alternate Director may terminate that appointment at any time.
- 10.14.7 An appointment of an Alternative Director or termination of that appointment must be by written notice to the Company.
- 10.14.8 The Directors must decide the remuneration, if any, payable to an Alternate Director and whether that remuneration is payable in addition to, or in reduction of, the remuneration payable to the appointor.
- 10.14.9 An Alternate Director, while acting as a Director, is responsible to the Company for their own acts and defaults. An Alternate Director is not the agent of the appointor.

10.15 Delegation by Directors

10.15.1 The Directors may delegate any of their powers to:

- (a) a committee of Directors; or
- (b) a Director; or
- (c) any other person, including as attorney or agent.

10.15.2 The delegate must exercise the powers delegated in accordance with any directions of the Directors.

10.15.3 The exercise of a power by a delegate is as effective as if the Directors had exercised it.

10.15.4 The rules applying to meetings and resolutions of Directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of Directors.

10.16 Validity of acts

An act by a person acting as a Director or by a meeting of Directors or a committee of Directors attended by a person acting as a Director is valid despite:

10.16.1 a defect in the appointment of the person as a Director;

10.16.2 the person being disqualified to be a Director or having vacated office; or

10.16.3 the person not being entitled to vote,

if the person or the Directors or committee of Directors (as the case may be) were not aware of the relevant circumstances when the act was done.

11. Executive officers

11.1 Managing Directors

11.1.1 The Directors may appoint one or more of the directors to the office of the Managing Director.

11.1.2 A Managing Director's appointment automatically terminates if the Managing Director ceases to be a Director.

11.2 Secretaries

The Directors must appoint one person, and may appoint more people, as Secretary.

12. Indemnity and insurance

12.1 Indemnification of Officers

12.1.1 Subject to clause 12.1.2, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Loss of the Officer as a result of or in connection with that person's role as an Officer.

- 12.1.2 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.
- 12.1.3 The obligation of the Company in clause 12.1.1:
- (a) is enforceable without the Officer having to first incur any expense or make any payment;
 - (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the relevant company;
 - (c) applies to Loss incurred both before and after the date of the adoption of this Constitution; and
 - (d) does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.
- 12.1.4 The obligation of the Company in this clause 12.1 will not apply to the extent that:
- (a) the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;
 - (b) an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or
 - (c) the Company is not allowed by Law to make a payment for legal costs.

12.2 Insurance

To the extent allowed by Law, 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 against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.

12.3 Agreement

The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 12.

13. Seals

- 13.1 If the Company has a common seal, the Directors may decide any procedures they consider appropriate for use of the seal.
- 13.2 Clause 13.1 does not limit the ways in which the Company can execute documents in accordance with the Corporations Act.

14. Application of income and property

14.1 Promotion of Principal Purposes

- 14.1.1 All of the income and property of the Company must be applied solely towards the furtherance and promotion of the Principal Purposes.

- 14.1.2 No part of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or other profit distribution to any of the Members (in their capacity as Members) or Directors.

14.2 Payments in good faith

- 14.2.1 The Company must not make any payment to a Director for services rendered by that Director to the Company, including services as a Director, unless:
- (a) the provision of those services has the prior consent of the Board;
 - (b) the amount payable is on reasonable commercial terms; and
 - (c) the payment has the prior approval of the Board.
- 14.2.2 Clause 14.1 does not prevent payment in good faith to an Officer or Member, or to a firm of which an Officer or Member is a partner if the payment complies with clause 14.2.1 and is:
- (a) of remuneration for services to the Company;
 - (b) of reimbursement for expenses properly incurred on behalf of or for the purposes of the Company;
 - (c) for goods supplied to the Company in the ordinary course of business;
 - (d) of interest on money borrowed by the Company and rent for premises let to the Company, where:
 - (i) the interest or rent has the prior approval of the Board; and
 - (ii) the amount payable is not more than an amount which commercially would be reasonably paid.
- 14.2.3 The total of payments made to Directors under this clause 14.2 must be disclosed to the Members at the annual general meeting.
- 14.2.4 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by a Relevant Law and this Constitution.

15. Gift Fund

- 15.1.1 If the Company is endorsed as a deductible gift recipient under Sub-division 30-BA of the ITAA:
- (a) it will maintain a fund, called the 'Gift Fund' for the Principal Purposes;
 - (b) all gifts of money or property received by the Company must be credited to the Gift Fund; and
 - (c) the Gift Fund will not receive any other money or property.
- 15.1.2 The Company must use the Gift Fund only to further the Principal Purposes.
- 15.1.3 If the Gift Fund is wound up, or the Company's endorsement under Sub-division 30-BA of the ITAA is revoked, the Company must transfer any surplus assets of

the Gift Fund to a fund, authority or institution, nominated by the Board, to which gifts can be deducted under Division 30 of the ITAA.

- 15.1.4 Any other provisions which from time to time are required by the ITAA in order to maintain the status of the Company as a Company to which gifts can be deducted under the ITAA are deemed to form part of this Constitution.

16. Distribution of property on winding-up

- 16.1 If the Company is wound up all Surplus Property must be given or transferred to another organisation which:
- 16.1.1 has principal purposes similar to the Principal Purposes;
 - 16.1.2 is endorsed as a deductible gift recipient under the ITAA, if the Company is at that time endorsed as a deductible gift recipient under the ITAA; and
 - 16.1.3 prohibits the distribution of profit, income and assets to its members to at least the same extent as this Constitution.
- 16.2 Surplus Property must not be paid to or distributed to a Member or a former Member, unless that Member or former Member is an organisation described in clause 16.1.
- 16.3 The organisation to which Surplus Property is distributed under clause 16.1 must be determined:
- 16.3.1 by a special resolution of the Members at or before the time of winding up of the Company; or
 - 16.3.2 if no special resolution is passed, by a judge of the Supreme Court or another court of competent jurisdiction.

17. Notices

17.1 Delivery of notice

- 17.1.1 A notice required by this Constitution must be in writing and may be delivered:
- (a) personally;
 - (b) by leaving it at the person's address in the Register;
 - (c) by posting it by prepaid post addressed to that person at the person's address for service;
 - (d) by facsimile to the person's facsimile number; or
 - (e) by electronic mail to the person's email address.
- 17.1.2 If the person receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.
- 17.1.3 A person may change their address, facsimile number or email address by giving notice to the Company.

17.2 Time of delivery

A notice or other communication is deemed delivered:

- 17.2.1 if delivered personally or left at the person's address, upon delivery;
- 17.2.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
- 17.2.3 if delivered by facsimile, subject to paragraph 17.2.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 17.2.4 if delivered by electronic mail, subject to clause 17.2.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
- 17.2.5 if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day in that place.

18. Interpretation

18.1 Words and headings

In this Constitution, unless expressed to the contrary:

- 18.1.1 words denoting the singular include the plural and vice versa;
- 18.1.2 the word 'includes' in any form is not a word of limitation;
- 18.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- 18.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Constitution

18.2 Specific references

In this Constitution a reference:

- 18.2.1 in general terms to a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;
- 18.2.2 to a gender includes every other gender;
- 18.2.3 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 18.2.4 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 18.2.5 writing includes writing in digital form;

- 18.2.6 'this Constitution' is to this Constitution as amended from time to time;
- 18.2.7 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 18.2.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Constitution;
- 18.2.9 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 18.2.10 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 18.2.11 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 18.2.12 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

19. General

19.1 Submission to jurisdiction

Each member submits to the exclusive jurisdiction of the courts of Victoria.

19.2 Severability

19.2.1 Any provision of this Constitution that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

19.2.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Constitution that is unlawful or unenforceable will be severed from this Constitution and the remaining provisions continue in force.

19.3 Business Day

If a payment or other act is required by this Constitution to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.