

# Constitution of Sutherland Cranial Teaching Foundation of Australia and New Zealand Limited

As adopted by special resolution on the            day of            2014  
and signed by the President for the purposes of identification:

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President

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## **Corporations Act 2001**

### **COMPANY LIMITED BY GUARANTEE**

## **CONSTITUTION OF SUTHERLAND CRANIAL TEACHING FOUNDATION OF AUSTRALIA AND NEW ZEALAND LIMITED**

### **PRELIMINARY**

#### **1. Definitions and interpretation**

1.1 In this Constitution, unless the contrary intention appears:

**Appointed Director** has the meaning given to that term in rule 36.1(b).

**Auditor** means the Company's auditor (if any).

**Board** means the board of Directors of the Company constituted pursuant to rule 36.

**business day** has the same meaning as in the Corporations Act.

**Company** means Sutherland Cranial Teaching Foundation of Australia and New Zealand Limited.

**Competition and Consumer Act** means the Competition and Consumer Act 2010 (Cth).

**Constitution** means the constitution of the Company as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) as amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

**Director** includes any person occupying the position of director of the Company.

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

**Elected Director** has the meaning given to that term in rule 36.1(a).

**Executive Officer** means the person for the time being appointed as Executive Officer of the Company under rule 55 (if any).

**General Meeting** means a meeting of the Members of the Company and includes an Annual General Meeting;

**Member** means a member of the Company pursuant to rule 9.

**month** means calendar month;

**Office Bearer** means a person elected to one of the positions referred to in rule 41.1.

**President** means the person appointed as President of the Company under rule 41.1(a).

**Register** means the register of Members of the Company.

**registered address** means the last known address of a Member as noted in the Register.

**Registered Osteopath** means an osteopath who is registered and in good standing as an osteopath with the relevant authority, or otherwise officially recognised as an osteopath in the country in which they are currently practising.

**related body corporate** has the meaning given to that term in the Corporations Act.

**Seal** means the Company's common seal (if any).

**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.

**Treasurer** means the person appointed as Treasurer of the Company under rule 41.1(c).

**Vice President** means the person appointed as Vice President of the Company under rule 41.1(b).

- 1.2 In this Constitution, unless the contrary intention appears, an expression in a rule in this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the rule.
- 1.3 In this Constitution, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
  - (b) words importing natural persons include corporations;
  - (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
  - (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
  - (e) a reference to **dollar** or **\$** is to Australian currency.

## **2. Exclusion of replaceable rules**

- 2.1 To the extent permitted by law, the replaceable rules in the Corporations Act shall not apply to the Company.

## **NATURE OF THE COMPANY**

### **3. Objects**

- 3.1 The primary object for which the Company is established is to promote and teach the principles of osteopathy as conceived by A.T Still and developed by W.G Sutherland.
- 3.2 Subject always to its primary object, the Company also has the following secondary objects:
- (a) Establish education and training programs for Registered Osteopaths to become competent practitioners in osteopathy in the cranial field
  - (b) Undertake, support and promote research in osteopathy in the cranial field
  - (c) Encourage and support practitioners to undertake continuous professional development
  - (d) Promote cooperation with organisations which have objectives similar to the Company in Australia and internationally
  - (e) Provide a medium by which Members can effectively communicate with each other
  - (f) Engage in other activities in support of these objects.

### **4. Powers**

- 4.1 The Company may only exercise the powers in section 124(1) of the Corporations Act to:
- (a) pursue, promote or carry out the purposes or objects of the Company as set out in this Constitution; and
  - (b) do all things incidental or convenient in relation to the exercise of power under paragraph (a).

### **5. Income and property**

- 5.1 The income and property of the Company shall only be applied towards promotion of the purposes and objects of the Company as set out in this Constitution.
- 5.2 No income or property of the Company shall be paid or transferred directly or indirectly to any Member except for payment in good faith to any Member:
- (a) for services actually rendered to the Company whether as an employee or otherwise;
  - (b) for goods supplied to the Company in the ordinary and usual course of business;

- (c) of interest or like amounts, at a rate not exceeding the current overdraft rates of the Company's bank, on money borrowed from any Member;
- (d) of reasonable and proper rent or like amounts for premises demised or let by any Member
- (e) for any out-of-pocket expenses incurred by the Member on behalf of the Company; or
- (f) in his or her capacity as a Director which is permitted by rule 47.

## **6. Liability of Members**

6.1 The liability of Members is limited.

## **7. Contribution on winding up**

7.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
  - (c) payment of debts and liabilities of the Company (in relation to paragraph (b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
  - (d) adjustment of the rights of the contributories amongst themselves,such amount as may be required, not exceeding \$50 in aggregate.

## **8. Distribution of surplus on winding up**

8.1 If any surplus remains following the winding up of the Company, the surplus shall not be paid to or distributed amongst the Members but shall be paid to or distributed to another organisation or organisations in Australia:

- (a) with similar purposes and objects to the Company;
- (b) that is not carried on for the profit or gain of its individual members;

such organisation or organisations to be determined by the Members at or before the winding up and in default thereof by application to the Supreme Court of Victoria for determination.



## **MEMBERSHIP**

### **9. Membership**

- 9.1 Subject to this Constitution, the Members of the Company shall be those persons who are Members of the Company at the time of adoption of this Constitution and any new persons, corporations or organisations admitted under rule 10.
- 9.2 The Directors may in their sole discretion cap membership, with a certain percentage of membership open to Registered Osteopaths.
- 9.3 The rights and privileges of a Member are personal to that Member and are not transferable by the Member's own act or by operation of law.

### **10. Admission to Membership**

- 10.1 Subject to rule 9.2, the Directors may from time to time invite any person, corporation or organisation to apply for membership of the Company if the Directors are of the opinion that the membership of that person, corporation or organisation would assist the Company to pursue, promote and carry out its objects.
- 10.2 An application for membership of the Company must be:
- (a) in writing in a form approved by the Directors;
  - (b) signed by the applicant;
  - (c) accompanied by such documents or evidence as to qualification for membership as the Directors determine,
- and must include:
- (d) a consent to become a Member; and
  - (e) an agreement to be bound by the terms of the Constitution.
- 10.3 The Directors must consider an application for membership of the Company as soon as practicable after its receipt and determine, in accordance with this Constitution or otherwise at their absolute discretion, whether to accept or reject the application.
- 10.4 The Directors need give no reason for the rejection of an application.
- 10.5 If an applicant is accepted for admission to membership:
- (a) the Secretary must notify the applicant in writing of admission; and
  - (b) the name and details of the Member must be entered in the Register.

### **11. Cessation of Membership**

- 11.1 A Member's membership of the Company will cease:

- (a) if the Member gives the Secretary written notice of resignation, which is deemed to take effect from the date of receipt of the notice or such later date as is specified in the notice; or
- (b) if the Member is expelled under rule 12;
- (c) in the case of a Member which is a natural person, if the Member:
  - (i) dies;
  - (ii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (iii) becomes bankrupt or compounds with his or her creditors or assigns his estate for the benefit of his or her creditors; or
- (d) in the case of a Member which is a corporation or organisation, if the Member is wound up or is otherwise dissolved or deregistered.

## 12. Removal from Membership

### 12.1 If any Member:

- (a) wilfully refuses or neglects to comply with the provisions of the Constitution; or
- (b) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interest of the Company,

the Directors may call a General Meeting for the purpose of proposing a special resolution to expel the Member from the Company and remove the Member's name from the Register.

### 12.2 At least 21 days before the General Meeting at which a special resolution of the nature referred to in rule 12.1 is passed the Directors must give to the Member notice of:

- (a) the General Meeting;
- (b) what is alleged against the Member; and
- (c) the proposed special resolution.

### 12.3 At the General Meeting and before passing the special resolution the Member must have an opportunity to give orally or in writing any explanation or defence the Member thinks fit.

### 12.4 If at the General Meeting such a special resolution is passed, the Member concerned shall be expelled and the Member's name removed from the Register.

### 12.5 In rule 12.4, "**special resolution**" has the same meaning as under the Corporations Act.

## **13. Powers of attorney**

- 13.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 13.2 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.
- 13.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## **14. Representatives**

- 14.1 Any corporation or organisation which is a Member may by written notice to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
  - (b) remove a Representative.
- 14.2 A Representative is entitled to:
- (a) exercise at a General Meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
  - (b) stand for election as an office bearer or Director; and
  - (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a General Meeting by its Representative.
- 14.3 A certificate executed in accordance with the Corporations Act is rebuttable evidence of the appointment of the Representative, any restrictions on the Representative's powers or of the revocation of the appointment of the Representative.
- 14.4 The chairperson of a General Meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairperson of the General Meeting his or her status as a Representative within a period prescribed by the chairperson of the General Meeting.
- 14.5 The appointment of a Representative may set out restrictions on the Representative's powers

## **GENERAL MEETINGS**

### **15. Number of General Meetings**

- 15.1 Except as permitted by the Corporations Act, a General Meeting called the “Annual General Meeting” shall be held at least once every calendar year in accordance with the Corporations Act and this Constitution.
- 15.2 Other General Meetings shall be held in accordance with this Constitution.

### **16. Calling a General Meeting**

- 16.1 The Directors may, at any time, call a General Meeting.
- 16.2 A Member:
- (a) may only request the Directors to call a General Meeting in accordance with the Corporations Act; and
  - (b) may not convene or join in convening a General Meeting except in accordance with the Corporations Act.

### **17. Notice of General Meeting**

- 17.1 Subject to the provisions of the Corporations Act allowing General Meetings to be held with shorter notice, at least twenty-one (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 the persons entitled to notice of General Meetings.
- 17.2 A notice calling a General Meeting must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this); and
  - (b) state the general nature of the business to be transacted at the meeting;
  - (c) if a special resolution is to be proposed at the meeting – set out an intention to propose the special resolution and state the resolution; and
  - (d) if a Member is entitled to appoint a proxy – contain a statement setting out the following information:
    - (i) that the Member has a right to appoint a proxy;
    - (ii) whether or not the proxy needs to be a Member; and
    - (iii) that a Member who is entitled to cast two (2) or more votes may appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

- 17.3 A notice of an Annual General Meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the election of Directors; or
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 17.4 The Directors may postpone or cancel any General Meeting whenever they think fit (other than a meeting convened as the result of a request under rule 16.2). The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- 17.5 The failure or accidental omission to send a notice of a General Meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

## **18. Venue of General Meetings**

- 18.1 A General Meeting may be held at two (2) or more venues using any available technology that gives the Members as a whole a reasonable opportunity to participate.

## **19. Business of General Meetings**

- 19.1 The business of an Annual General Meeting will include the following:
- (a) to receive and consider the Company's financial statements and the reports of the Board and of the Auditor of the Company; and
  - (b) to transact any other business which, under the Corporations Act or this Constitution, is required to be transacted at any Annual General Meeting and any business which is brought under consideration by any reports of the Board issued with the notice convening the meeting.
- 19.2 The Auditor is entitled to attend and be heard on any part of the business of any General Meeting which concerns him or her as Auditor.

## **PROCEEDINGS AT GENERAL MEETINGS**

### **20. Member**

- 20.1 In rules 16.2, 18, 21, 24 and 27, '**Member**' includes a Member present in person or by proxy, attorney or Representative.

## **21. Quorum**

- 21.1 No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.
- 21.2 A quorum of Members is two (2) Members (unless there is only one (1) Member in which case a quorum of Members is that Member).
- 21.3 If a quorum is not present within thirty (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:
    - (i) it will stand adjourned to the same time and place seven (7) days after the meeting, or to another day, time and place determined by the Directors; and
    - (ii) if at the adjourned General Meeting a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting, it is automatically dissolved.

## **22. Chairperson**

- 22.1 The President, or in the President's absence the Vice President, will be the chairperson at every General Meeting.
- 22.2 The Directors present may elect a chairperson if:
- (a) there is no President or Vice President; or
  - (b) neither the President nor Vice President are present within fifteen (15) minutes after the time appointed for holding the General Meeting; or
  - (c) the President and Vice President are unwilling to act as chairperson of the General Meeting.
- 22.3 If no election is made under rule 22.2, then
- (a) the Members may elect one of the Directors present as chairperson; or
  - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 22.4 If there is a dispute at a General Meeting about a question of procedure, the chairperson may determine the question.

## **23. Adjournment**

- 23.1 The chairperson of a General Meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the General Meeting with the meeting's consent; and
  - (b) must adjourn the General Meeting if the meeting directs him or her to do so.
- 23.2 An adjourned General Meeting may take place at a different venue to the initial meeting.
- 23.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial General Meeting.
- 23.4 Notice of an adjourned General Meeting need not be given in accordance with rule 16.2 unless the General Meeting has been adjourned for more than twenty-one (21) days.

## **24. Decision on questions**

- 24.1 Unless specified otherwise in this Constitution and subject to the provisions of the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 24.2 A resolution put to the vote of a General Meeting is decided on a show of hands unless a poll is demanded, before or on the declaration of the result of the show of hands, by:
- (a) the chairperson;
  - (b) any Member entitled to vote on the resolution.
- 24.3 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.
- 24.4 The demand for a poll may be withdrawn.
- 24.5 A decision of a General Meeting may not be impeached or invalidated on the ground that a person voting at the General Meeting was not entitled to do so.

## **25. Taking a poll**

- 25.1 A poll will be taken when and in the manner that the chairperson directs.
- 25.2 The result of the poll will be the resolution of the General Meeting at which the poll was demanded.
- 25.3 The chairperson may determine any dispute about the admission or rejection of a vote.

- 25.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 25.5 A poll demanded on the election of the chairperson or the adjournment of a General Meeting must be taken immediately.
- 25.6 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.

## **26. Offensive material**

- 26.1 A person may be refused admission to, or required to leave and not return to, a General Meeting if the person is in possession of any:
- (a) electronic or recording device;
  - (b) placard or banner; or
  - (c) other article,
- which the chairperson considers to be dangerous, offensive or liable to cause disruption.

## **VOTES OF MEMBERS**

### **27. Entitlement to vote**

- 27.1 Subject to this Constitution:
- (a) every Member may vote;
  - (b) subject to rule 31.1(b), on a show of hands every Member has one vote; and
  - (c) on a poll every Member has one vote.

### **28. Casting vote of chairperson**

- 28.1 The chairperson has a casting vote on a show of hands and on a poll in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

### **29. Objections**

- 29.1 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 its vote.
- 29.2 An objection must be referred to the chairperson of the General Meeting, whose decision is final.



- 29.3 A vote which the chairperson does not disallow pursuant to an objection is valid for all purposes.

## **PROXIES**

### **30. Appointment of proxy**

- 30.1 A Member may appoint a person as the Member's proxy to attend and vote for the Member at a General Meeting.
- 30.2 A proxy need not be a Member.

### **31. Rights of proxies**

- 31.1 A proxy appointed to attend and vote for a Member has the same rights as the Member:
- (a) to attend and speak at the meeting;
  - (b) to vote (but only to the extent allowed by the appointment) provided that a proxy is not entitled to vote on a show of hands; and
  - (c) to demand or join in a demand for a poll.
- 31.2 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll in accordance with any instructions on the appointment.
- 31.3 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

### **32. Instrument appointing proxy**

- 32.1 An appointment of a proxy is valid if it is signed or otherwise authenticated in a manner prescribed under the Corporations Act by the Member making the appointment and contains the following information:
- (a) the Member's name and address;
  - (b) the Company's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meetings at which the appointment may be used.
- 32.2 A proxy's appointment is valid at an adjourned General Meeting.
- 32.3 An appointment may be a standing one.
- 32.4 An undated appointment is taken to have been dated on the day it is given to the Company.

- 32.5 An appointment may specify the way the proxy is to vote on a particular resolution.
- 32.6 A later appointment revokes an earlier one.

### **33. Lodgement of proxy**

- 33.1 The written appointment of a proxy must be deposited at the Company's registered office, or another address nominated by the Company, not less than forty-eight (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.
- 33.2 If the appointment purports to be executed under a power of attorney or other authority, then the original document, or an office copy or a notarially certified copy of it, must be deposited with the appointment.

### **34. Validity**

- 34.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:
- (a) died;
  - (b) became of unsound mind; or
  - (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind, or revocation was received at the Company's registered office before the relevant General Meeting or adjourned General Meeting.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **35. Number of Directors**

- 35.1 The number of Directors must not be less than three or more than seven.
- 35.2 The Members may, by ordinary resolution, increase or decrease the maximum number of Directors (provided the number of Directors must not be reduced to a number that is less than the number of Directors in office at the time of the resolution).

### **36. Composition of the Board**

- 36.1 Subject to rule 35, the Board shall comprise:

- (a) up to five persons elected by Members at a General Meeting who are Registered Osteopaths with demonstrated experience in osteopathy in the cranial field (***Elected Directors***); and
  - (b) up to two persons appointed by the Board who have an appropriate mix of qualifications, skills and experience (***Appointed Directors***).
- 36.2 The Board shall determine, in good faith, if a person meets the criteria for a class or type of Director.
- 36.3 The Board shall have the power to fill a vacancy under rule 36.1(a). A Director appointed to fill a vacancy under this rule 36.3 holds office until the conclusion of the next Annual General Meeting but is eligible for re-election.

### **37. Nomination and appointment of Directors**

- 37.1 Subject to this rule, the procedures for nomination and appointment of Directors shall be as determined by the Directors from time to time. Without limiting the foregoing, the Directors may determine at their absolute discretion whether the election of Elected Directors will be conducted by a ballot or by voting at the General Meeting (and, in the case of a ballot, the method of conducting the ballot).
- 37.2 If from time to time the composition of the Board changes by resignation or removal of Directors then, as vacancies permit, the Directors shall use reasonable endeavours to seek further nominees to maintain and enhance the skills, experience and expertise available to the Company to meet its objectives.
- 37.3 An appointment of a person may not be made unless the person has given the Company a signed consent to act as a Director.

### **38. Term**

- 38.1 Subject to the provisions in this Constitution relating to the earlier retirement or removal of Directors, each Director shall hold office until the conclusion of the third Annual General Meeting following the date of his or her election.
- 38.2 The terms of office of Directors shall rotate in accordance with rule 39.

### **39. Retirement of Directors**

- 39.1 At least one-third of the Directors, or if their number is not a multiple of three then the number nearest to but not exceeding one-third, must retire from office at the conclusion of each Annual General Meeting.
- 39.2 The Directors to retire under rule 39.1 will be the Directors that have been longest in office calculated from their last election, and if two (2) or more Directors have been in office an equal length of time, the Director or Directors to retire will, in default of agreement, be determined by lot.
- 39.3 Subject to rule 39.4, a retiring Director is eligible for re-election.

- 39.4 No Director shall continue in office longer than three consecutive terms unless specifically exempted from the operation of this rule by a resolution of the Members in each case.
- 39.5 To avoid doubt, no time served by a Director on the board prior to adoption of this Constitution will count as time served under rule 38 or 39 of this Constitution.

#### **40. Vacation of office**

- 40.1 The office of a Director immediately becomes vacant if the Director:
- (a) resigns by notice in writing to the Company;
  - (b) is prohibited by the Corporations Act from continuing as a Director;
  - (c) becomes bankrupt or compounds with his or her creditors or assigns his estate for the benefit of his or her creditors;
  - (d) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
  - (e) fails to attend three (3) consecutive meetings of the Directors without leave of the Directors;
  - (f) is removed pursuant to the provisions of this Constitution or the Corporations Act.

#### **41. Election of office bearers of the Board**

- 41.1 The Office Bearers of the Company are:
- (a) President;
  - (b) Vice President; and
  - (c) Treasurer,
- each of whom shall be elected by the Board from among the Directors at the first meeting after the Annual General Meeting each year (and, subject to the provisions of this Constitution, hold that position until the next Annual General Meeting).
- 41.2 The Board may revoke the appointment of an Officer Bearer at any time and elect another Director to that office.
- 41.3 An Office Bearer position becomes vacant if the person holding the position:
- (a) ceases to be a Director for any reasons;
  - (b) resigns from the position by giving written notice in writing to the Board (but continues to be a Director); or
  - (c) is removed from that position pursuant to rule 41.2.

- 41.4 If an Office Bearer position becomes vacant the Board must elect another Director to fill the office until the close of the next Annual General Meeting.

## **POWERS AND DUTIES OF DIRECTORS**

### **42. Powers of Board**

- 42.1 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 at a General Meeting.
- 42.2 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiate instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by any two Directors, or any such other manner as the Directors determine.

## **PROCEEDINGS OF DIRECTORS**

### **43. Directors' meetings**

- 43.1 A Director may at any time, and the Secretary must on the requisition of a Director, call a Directors' meeting.
- 43.2 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. The Directors need not all be physically present in the same place for a Directors' meeting to be held. A Director who participates in a meeting held in accordance with this rule 43.2 is taken to be present and entitled to vote at the meeting.
- 43.3 Subject to this Constitution, the Directors may meet together, adjourn and regulate their meetings as they think fit.
- 43.4 At a meeting of Directors a quorum is a majority of the Directors.
- 43.5 If a quorum for a meeting of Directors is not present within thirty (30) minutes after the time appointed for the meeting, then it will stand adjourned to another day, time and place determined by the Directors present, giving notice in accordance with rule 63.3, and at the adjourned meeting a quorum is any one (1) Director who was present at the first meeting.
- 43.6 At least two Board meetings must take place each calendar year.

### **44. Chairperson**

- 44.1 The President, or in the President's absence the Vice President, will be the chairperson of Director's meetings.
- 44.2 The Directors present may elect one of the Directors present as chairperson if:

- (a) there is no President or Vice President; or
- (b) neither the President nor Vice President is present within fifteen (15) minutes after the time appointed for holding the Directors' meeting.

44.3 If there is a dispute at a Directors' meeting about a question of procedure, the chairperson may determine the question.

## **45. Decision on questions**

45.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to rule 48, each Director has one (1) vote.

45.2 The chairperson of a meeting has a casting vote in addition to the chairperson's deliberative vote if there is an equality of votes.

## **46. Written resolutions**

46.1 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Directors' meeting held on the day on which the document was last signed by a Director.

46.2 For the purposes of rule 46.1, two (2) or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents.

46.3 Any document referred to in rule 46 may be in the form of a facsimile or electronic transmission.

46.4 Rule 46 applies to meetings of Directors' committees as if all members of the committee were Directors.

## **47. Payments to Directors**

47.1 No payment will be made to any Director other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;

- (c) of any salary or wage due to the Director as an employee of the Company or a related body corporate where the terms of employment have been approved by the Directors of the Company;
- (d) of an honorarium to participate in Board and committee meetings where the amount is approved by the Directors of the Company;
- (e) relating to an indemnity in favour of the Director and not prohibited by section 199A of the Corporations Act or section 77A of the Competition and Consumer Act or a contract of insurance not prohibited by section 199B; and
- (f) in his or her capacity as a Member which is permitted by rule 5.2.

## **48. Directors' interests**

- 48.1 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.
- 48.2 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.
- 48.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 48.4 Subject to rule 47, 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.

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

- (d) be present while the matter is being considered at the meeting; or
- (e) vote on the matter,

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

- (f) 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;
  - (g) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (h) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 48.5 A Director may be or become a director or other officer of, or otherwise interested in, any related 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.

## **49. Remaining Directors**

- 49.1 The Directors may act even if there are vacancies on the Board.
- 49.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
  - (b) convene a General Meeting.

## **50. Validity of acts of Directors**

- 50.1 If it is discovered that:
- (a) there was a defect in the appointment of a person as a Director or member of a Directors' committee; or
  - (b) a person appointed to one of those positions was disqualified,
- all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **51. Director's committees**

- 51.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.
- 51.2 The Directors may at any time revoke any delegation of power to a committee.
- 51.3 A committee appointed shall consist of such persons as the Directors think fit and may include persons who are not Directors.



- 51.4 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.
- 51.5 A committee may be authorised to sub-delegate all or any of the powers for the time being vested in it.
- 51.6 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.

## **52. Minutes and registers**

- 52.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
  - (b) all proceedings and resolutions of General Meetings, Directors' meetings and meetings of Directors' committees;
  - (c) all resolutions passed by Directors in accordance with rule 46;
  - (d) all appointments of officers;
  - (e) all orders made by the Directors and Directors' committees; and
  - (f) all disclosures of interests made pursuant to rule 47.
- 52.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 52.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## **LOCAL MANAGEMENT**

### **53. Local management**

- 53.1 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.
- 53.2 Without limiting rule 53.1 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 paragraph (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.

- 53.3 The Directors may at any time revoke or vary any delegation under this rule 53.

## **54. Appointment of attorneys and agents**

- 54.1 The Directors may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions, determined by the Directors.
- 54.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any company;
  - (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 54.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 54.4 The Directors may appoint attorneys or agents by telex, facsimile transmission, telegraph, cable or electronic means to act for and on behalf of the Company.
- 54.5 An attorney or agent appointed under this rule 54 may be authorised by the Directors to sub delegate all or any of the powers authorities and discretions for the time being vested in it.

## **EXECUTIVE OFFICER**

### **55. Executive Officer**

- 55.1 The Directors may appoint a person to the position of Executive Officer of the Company, for the period and on the terms (including as to remuneration) as the Directors see fit.
- 55.2 If the position of Executive Officer is vacant, the Directors may appoint any other person to act temporarily as Executive Officer.

- 55.3 The Directors may confer on the Executive Officer any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors.
- 55.4 The Executive Officer may be authorised by the Directors to sub-delegate all or any of the powers vested in him or her.
- 55.5 The Directors may at any time withdraw or vary any of the powers conferred on the Executive Officer.

## **SECRETARY AND OTHER OFFICERS**

### **56. Secretary**

- 56.1 There must be at least one (1) secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by the Directors.
- 56.2 The Secretary is entitled to attend and be heard on any matter at all Directors' Meetings and General Meetings.
- 56.3 The Directors may, without affecting the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

### **57. Other officers**

- 57.1 The Directors may from time to time:
- (a) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time confer; and
  - (b) appoint any person, whether or not a Director, to any position or positions created under paragraph (a).
- 57.2 The Directors at any time may terminate the appointment of a person holding a position created under rule 57.1 and may abolish the position.

## **SEALS**

### **58. Common Seal**

- 58.1 The Company may at the option of the Directors have a Seal.
- 58.2 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
  - (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
  - (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another director, the Secretary or

another person appointed by the Directors to countersign the document.

- 58.3 The Company may execute a document without using its Seal in accordance with the Corporations Act.

## **59. Duplicate Seal**

- 59.1 If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which
- (a) must be a facsimile of the Seal with “Duplicate Seal” on its face; and
  - (b) must not be used except with the authority of the Directors.

## **INSPECTION OF RECORDS**

### **60. Times for inspection**

- 60.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 60.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any accounting 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.

## **ACCOUNTS AND AUDIT**

### **61. Accounts and audit**

- 61.1 The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Corporations Act.
- 61.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

## **NOTICES**

### **62. Service of notices**

- 62.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
- (a) serving it on the person;

- (b) sending it by post, telex or facsimile 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;
- (c) if the notice is to a Member and the Member has no registered office, posting it on a notice board at the Company's registered office;
- (d) sending it to the electronic address (if any) nominated by the person; and
- (e) any other means requested by the person and agreed to by the Company.

62.2 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 next business day after the day on which it was posted.

62.3 A notice sent by telex, facsimile transmission or other electronic means is taken to be served:

- (a) by properly addressing the telex, facsimile transmission or electronic document and sending it; and
- (b) on the next business day after its dispatch.

62.4 A notice posted on a notice board is taken to be served twenty-four (24) hours after it is posted on the board.

62.5 A cheque, warrant or other document may be delivered by the Company either personally or by sending it:

- (a) in the case of a Member who does not have a registered address in Australia, by airmail post; and
- (b) in any other case, by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.

62.6 A Member whose registered address is not in Australia may specify in writing an address in Australia as the Member's registered address within the meaning of this rule.

62.7 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 posting.

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

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

## 63. Persons entitled to notice

- 63.1 Notice of every General Meeting must be given to:
- (a) every Member;
  - (b) every Director and Secretary; and
  - (c) any Auditor.
- 63.2 No other person is entitled to receive notice of a General Meeting.
- 63.3 Notice of every Directors' meeting shall be given to every Director and Secretary. Such notice shall afford the Director a reasonable opportunity to participate in the meeting.

## INDEMNITY AND INSURANCE

### 64. Indemnity and insurance

- 64.1 To the extent permitted by the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person as such an officer in respect of any act or omission whatsoever and howsoever occurring in defending proceedings, whether civil or criminal.
- 64.2 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against a liability incurred by the person as such an officer unless the liability arises out of:
- (a) conduct involving a wilful breach of duty in relation to the Company; or
  - (b) without limiting paragraph (a), a contravention of section 182 or 183 of the Corporations Act,
- or for costs and expenses incurred by the person as such an officer or auditor in defending proceedings, whether civil or criminal and whatever their outcome.
- 64.3 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance merely because the contract insures or would insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate.
- 64.4 In rule 64:
- indemnify*** has the same meaning as in section 199A of the Corporations Act;
- officer*** has the meaning given to that term in section 9 of the Corporations Act; and
- pay*** has the same meaning as in section 199B of the Corporations Act.

