



CONSTITUTION OF AUSTRALIAN BONE MARROW DONOR REGISTRY

12 SEPTEMBER 2016

A PUBLIC COMPANY LIMITED BY GUARANTEE

1 PRELIMINARY

1.1 Replaceable Rules

The replaceable rules referred to in section 141 of the Law do not apply to the Company and are replaced by the rules set out in this document.

1.2 Definitions

The following definitions apply in this constitution except where the context indicates otherwise:

“**AHMAC**” means Australian Health Ministers’ Advisory Council.

“**ARCBS Directors**” means a group comprising the Directors of the Australian Red Cross Blood Service.

“**ASEATTA**” means The Australasian and South East Asian Tissue Typing Association Incorporated.

“**Australian Bone Marrow Donor Registry Inc**” means the incorporated association incorporated under the New South Wales Associations Incorporations Act 1984 (“the Act”) prior to the transfer of the incorporated association to a company limited by guarantee pursuant to section 56 of the Act.

“**Australasian Bone Marrow Transplant Cooperative Study Group**” means a group of haemopoietic stem cell transplant physicians from Australia and New Zealand.

“**Board**” means the Directors acting collectively under this constitution.

“**Commonwealth**” means Commonwealth of Australia acting through and represented by the Department of Health and Ageing.

“**Company**” means the company named above whatever its name may be from time to time.

“**Cord Blood**” means blood extracted from the umbilical cord and placenta, following the delivery of a child.

“**Cord Blood Bank**” means a facility responsible for the collection, processing and long term storage of cord blood units.

“**Cord Blood Collection Centre**” means a centre within a hospital responsible for collection and transfer of cord blood to a cord blood bank.

“**Director**” means a person who is, for the time being, a director of the Company.

“**Founding Stakeholder Organisations**” means the organisations which have been involved in the management of the Australian Bone Marrow Donor Registry Inc prior to its incorporation as a company limited by guarantee and which on its transfer to an incorporated entity continue to be the interested organisations involved in supporting the ongoing operation of the new Company and are the following bodies:

- (i) Commonwealth;
- (ii) AHMAC;
- (iii) Australasian Bone Marrow Transplant Cooperative Study Group;

- (iv) ARCBS Directors;
- (v) ASEATTA; and
- (vi) Cord Blood Advisory Committee.

“Inaugural Chairperson” means Dr Jeremy Chapman the chairperson of the Australian Bone Marrow Donor Registry Inc immediately prior to the incorporation of the Company who is appointed to serve an initial three-year term as the chairperson of the Company.

“Law” means the Corporations Law.

“Member” means a person whose name is entered in the Register as a Member of the Company.

“National Cord Blood Collection Network” means the network of approved and funded facilities and services including collection centres, cord blood banks and the Australian Bone Marrow Donor Registry.

“National Executive Officer” means the national executive officer appointed from time to time under rule 11.1 and who is an executive director.

“New Stakeholder Organisation” means an organisation with an interest in bone marrow transplantation, cord blood collection or related activities invited by the Board to become a new stakeholder organisation.

“Objects” means the objects for which the Company is established as set out in rule 3.

“Officer” has the meaning given by the Law.

“Ordinary resolution” means a resolution of Members other than a special resolution.

“Register” means the register of Members kept as required by the Law.

“Secretary” means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this constitution.

“Special resolution” has the meaning given by the Law.

“Stakeholder Organisations” means the Founding Stakeholder Organisations and any New Stakeholder Organisation.

1.3 Rules for interpreting this constitution

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or notated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
- (d) A word that suggests one gender includes the other genders.
- (e) If a word is defined, another part of speech has a corresponding meaning.

- (f) A reference to something being “written” or “in writing” includes that thing being represented or reproduced in any mode in a visible form.

Words (other than those defined in rule 1.2) which are defined by the Law have the same meaning in this constitution.

A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Law.

2 COMPANY LIMITED BY GUARANTEE

2.1 Company limited by guarantee

The Company is a company limited by guarantee and the liability of Members is limited as provided in this document.

2.2 Member’s liability limited

The liability of Members is limited and each Member undertakes to contribute to the Company’s property if the Company is wound up while he, she or it is a Member or within one year after he, she or it ceases to be a Member, for payment of the Company’s debts and liabilities contracted before he, she or it ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributors among themselves, such amounts as may be required, not exceeding \$10.

2.3 Restriction on application of profits

All profits (if any) and other income and property of the Company must be applied in promoting the Objects and no part of them may be paid, directly or indirectly, by way of dividend, bonus, fee or otherwise, to Members or Directors.

2.4 Certain payments allowed

Rule 2.3 does not prevent the payment in good faith of:

- (a) reasonable out of pocket expenses incurred by a Director in performing a duty as a Director of the Company;
- (b) reasonable and proper remuneration to a Director or a Member in return for goods and services supplied to the Company by that Director or Member in the ordinary and usual course of business or as National Executive Officer of the Company;
- (c) principal and interest at a rate not exceeding the rate for the time being charged by Australian banks for overdrawn accounts, upon money lent by any Member to the Company;
- (d) reasonable and proper rent for premises let by any Member to the Company;
- (e) reimbursement of reasonable travelling and subsistence expenses incurred by a Member when engaged in the affairs or business of the Company;
- (f) any moneys by the Company to the Commonwealth under the terms of any relevant funding agreement or any other contractual arrangements,

where those payments are approved by the Board.

2.5 Surplus on winding up

If the Company is wound up, any surplus assets of the Company remaining after payment of its debts and liabilities will not be paid or distributed among Members but must be paid or transferred to another institution or institutions which meets all of the following requirements:

- (a) having objects similar to the objects of the Company and which are charitable at law;
- (b) is a fund, authority or institution approved by the Commissioner of Taxation as a fund, authority or institution referred to in Subdivision 30-B of the Income Tax Assessment Act 1997; and
- (c) whose constitution prohibits the company from making distributions of its income or property to no lesser extent than imposed on the Company pursuant to Rule 2.3 of this Constitution (restriction on application of profits).

3 OBJECTS

3.1 Objects and Powers

- (a) Solely for the purpose of implementing the Objects in rule 3.1(b), the Company has the legal capacity and powers of an individual both in and outside the jurisdiction of Australia. The Company also has all the powers of a body corporate including power to:
 - (i) issue debentures;
 - (ii) grant a floating charge over the Company's property;
 - (iii) arrange for the Company to be registered or recognised as a body corporate in any place outside this jurisdiction;
 - (iv) do anything that it is authorised to do by any other law (including a law of a foreign country),

Provided that the Company must not:

- (v) amalgamate with any association or organisation unless that association or organisation prohibits the distribution of its income and property among its Members to an extent at least as great as that imposed on the Company under or by virtue of rule 2.3; or
 - (vi) amalgamate with any association or organisation unless that association or organisation has either an authority to conduct fundraising appeals, or an exemption from the requirement for such an authority, under the Charitable Fundraising Act 1991 (NSW); or is an approved research institute as defined in section 73A of the Income Tax Assessment Act 1936 (Cwth).
- (b) The objects for which the Company is established are:

Principal Object

To support and enhance the availability of suitably matched, unrelated voluntary donors of haemopoietic progenitor cells for patients in need of transplantation with such cells.

Ancillary Objects

To assist in achieving the Principal Object, the further objects of the Company are:

- a) to provide management and co-ordination of the national registry of voluntary donors of haemopoietic progenitor cells for transplantation;

- b) to raise public awareness of the contribution that progenitor cell registries and transplantation make to improving the health of patients with leukaemia, other blood cell disorders and other diseases and health conditions;
 - c) to encourage and recruit donors of haemopoietic progenitor cells;
 - d) to develop and maintain partnerships with the Australian Red Cross Blood Service, tissue typing laboratories, blood collection and processing centres, hospitals, health services and health professionals to support and enhance the operation of the registries and availability of haemopoietic progenitor cells for transplantation;
 - e) to work with similar organisations worldwide;
 - f) to support and fund research:
 - i. to promote a greater understanding of the role of haemopoietic progenitor cells in treating health conditions and improving health outcomes;
 - ii. to improve the quality and effectiveness of haemopoietic progenitor cell collection, processing and storage;
 - iii. to improve the quality of the registry and the effectiveness of haemopoietic progenitor cell donor matching and transplantation;
 - iv. to improve the effectiveness of donor recruitment and registry operations; and
 - v. to monitor and analyse the outcomes or consequences of haemopoietic progenitor cell transplants.
 - g) in supporting the research referred to in f), provide funding to organisations and institutes that are able to undertake this research for approved research projects;
 - h) to support the establishment and operation of other haemopoietic progenitor cell registries with similar objects;
 - i) encourage the making of donations and gifts from the public, organisations and philanthropic bodies to further these objects;
 - j) receive funds and to distribute these funds in a manner that best attains the objects of the Company; and
 - k) to do all such things as are incidental or conducive to the attainment of all or any of the objects of the Company.
- (c) If the Company makes amendments to this constitution, then the Company must notify the Commonwealth Deputy Commissioner of Taxation of these amendments.

4 ESTABLISHMENT AND OPERATION OF GIFT FUND

4.1 The Company must establish and maintain a Gift Fund:

- (a) To which gifts or money or property for that purpose are to be made; and
- (b) To which any money received by the Company because of such gifts is to be credited; and
- (c) That does not receive any other money or property.

4.2 Limits on Use of Gift Fund

The Company must ensure that:

- (a) the Gift Fund does not contain any property other than property described in rule 4.1;
- (b) the Gift Fund is only used in furtherance of the Company's Objects;
- (c) no part of the income or property of the Gift Fund is paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise to any of the Members or Directors, other than for out-of-pocket expenses incurred on behalf of the Gift Fund or proper remuneration for administrative services performed in relation to the Gift Fund;
- (d) all money (including interest) derived from property in the Gift Fund is credited to the Gift Fund account;
- (e) receipts for donations of property to the Gift Fund are issued in the name of the Gift Fund and show its Australian Business Number; and
- (f) the Gift Fund is only invested on an arm's length basis in investments that can be managed in a way to ensure that the use of the funds reflect the objects of the fund, and not as a means of excessive accumulation of investment assets.

4.3 Records and Financial Statements

- (a) The Company must keep and maintain proper books of account and records (which are written up in accordance with generally accepted accounting standards and principles consistently applied) relating to all receipts and outgoings of the Gift Fund.
- (b) For each financial year, the Company must have financial statements (including a profit and loss account and balance sheet) prepared by a suitably qualified person (in accordance with generally accepted accounting standards and principles consistently applied) which detail the affairs of the Gift Fund for that financial year including, without limitation, the following matters with respect to the Gift Fund:
 - (i) income;
 - (ii) capital;
 - (iii) costs and disbursements and other outgoings paid or payable and chargeable against income;
 - (iv) capital expenditure and liabilities chargeable to capital;
 - (v) investments and property.
- (c) The financial statements referred to in rule 4.3(b) must be certified by a suitably qualified auditor to be true and proper statements of the affairs of the Gift Fund.

4.4 Winding up

- (a) At the first occurrence of:
 - (i) the winding up of the Gift Fund; or
 - (ii) the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act 1997;

Any surplus assets of the Gift Fund must be transferred to a fund (including any endorsed fund operated by the entity), authority or institution:

- (iii) which is charitable at law; and
- (iv) gifts to which can be deducted under Division 30 of the Income Tax Assessment Act 1997.
- (b) The identity of the fund, authority or institution must be decided by the Board of the Company.
- (c) Where in respect of a fund, authority or institution section 30-15 of the Income Tax Assessment Act 1997 provides that gifts to it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a transfer under this rule to that fund, authority or institution must be in accordance with or subject to those conditions.

5 STAKEHOLDER ORGANISATIONS

5.1 Founding Stakeholder Organisations

- (a) Founding Stakeholder Organisations are not Members of the Company.
- (b) Each Founding Stakeholder Organisation while ever it continues to function as constituted at the time of the adoption of this constitution has the right to nominate an individual to act as a Director on the Board of the Company.
- (c) The individuals nominated by the Founding Stakeholder Organisations shall be appointed to the initial Board of the Company.

5.2 Board's discretion to approach New Stakeholder Organisation

- (a) The Board may invite a New Stakeholder Organisation to participate in the Company;
- (b) The Board in its absolute discretion shall determine the nature of the New Stakeholder Organisation's participation in the Company including the New Stakeholder Organisation's right if any to appoint a Director to the Board;
- (c) An organisation becomes a New Stakeholder Organisation upon receipt by the Company of that organisation's written acceptance of the Board's invitation issued under rule 5.2(a).

6 MEMBERSHIP

6.1 Number of Members

The maximum number of Members is fifteen unless varied by the Company.

6.2 Members

Each person named as a Member in the application for the Company's registration shall be a Member of the Company. Any other person who is admitted in accordance with this constitution is a Member.

6.3 Application for Membership

Any applicant for Membership of the Company must submit an application to the Board, which must be:

- (a) in writing;
- (b) signed by the applicant;

- (c) signed by a proposer and seconder, both of whom must be Members and personally know the applicant; and
- (d) in conformity with any requirement of the Board from time to time, and by applying for Membership the applicant agrees that, if accepted, the applicant will be bound by this constitution and by any code or rules of conduct or any other standard prescribed from time to time by the Board.

6.4 Board to review application

At the next Board meeting after receipt by the Board of an application for Membership, the Board must consider that application and in its absolute discretion and without giving any reason may:

- (a) require the applicant to provide such further information relating to the applicant as the Board determines;
- (b) seek the approval in writing of the existing Members to the application for Membership; and
- (c) accept or reject the application.

6.5 Notification

The Company must as soon as practicable give each applicant a notice stating whether the applicant has been admitted or rejected. The Company need not provide reasons to an applicant if the application is rejected. If an application for Membership is rejected an applicant cannot reapply for 12 months.

6.6 Commencement of Membership

An applicant becomes a Member only if the Board has determined to admit the applicant.

6.7 Application Fee

No application fee will be payable by Members.

6.8 Annual Fee

No annual fee will be payable by Members.

7 TERMINATION OF MEMBERSHIP

7.1 Resignation of Membership

A Member may resign his, her or its Membership at any time by giving the Company notice in writing to that effect.

7.2 Failure to comply with this document or standards

- (a) If the Company by special resolution (whether or not on the recommendation of a Member or the Board) determines that a Member has:
 - (i) wilfully or recklessly breached a provision of this document; or
 - (ii) engaged in conduct that, in the opinion of the Company is prejudicial to the interests of the Company,

in addition to all other remedies of the Company, the Company may direct the Board to censure, fine, suspend or expel that Member.

7.3 Removal of Members by Board

The Board may remove any Member who is not a Director by written notice to the Member and without the need to assign any reasons.

8 DIRECTORS

8.1 Number of Directors

- (a) The minimum number of Directors is six and the maximum number of Directors is fifteen.
- (b) One Director will be the National Executive Officer appointed in accordance with rule 11.1.

8.2 Community Involvement

At all times, a majority of the Directors must be persons having a degree of responsibility to the community being persons who:

- (a) perform a public function and are known to a broad section of the community; or
- (b) have received formal recognition from the Government for their services to the community; or
- (c) belong to a professional body with a professional code of ethics and rules of conduct, including persons who have recognised expertise in:
 - (i) transplantation services;
 - (ii) the area of financial accounting and business management;
 - (iii) the practice of law; or
- (d) are otherwise recognised as having an understanding of transplantation services and have a degree of responsibility to the community as a whole.

8.3 Initial Directors

The initial Board is the persons listed below:

Dr Jeremy Chapman

Dr Jeff Szer

Dr Brenton Wylie

Dr Brian Tait

A/Prof Marcus Vowels

Mr John Opie

Ms Sally Gordon

8.4 Appointment of Subsequent Directors

- (a) Subject to rule 8.1 Directors (other than the National Executive Officer) may be appointed in accordance with rule 8.4(b)
- (b) Subject to rules 8.1 and 8.2:
 - (a) the Company by ordinary resolution; or
 - (b) the Board (except during a general meeting),may appoint a person to be a Director either to fill a casual vacancy or as an addition to the Board.

8.5 Director being a Member

A Director must be a Member of the Company and any Director appointed to the Board is deemed to be a Member.

8.6 Cessation of Director's appointment

- (a) The office of a Director automatically becomes vacant if the person who holds the office:
 - (i) becomes an insolvent under administration;
 - (ii) is disqualified from managing corporations under the Law;
 - (iii) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
 - (iv) fails to attend Board meetings for a continuous period of six months without leave of absence from the Board;
 - (v) resigns by notice in writing to the Company;
 - (vi) is removed from office under rule 8.7;
 - (vii) is replaced as a Director by the Stakeholder Organisation which nominated that person to hold office as a Director;
 - (viii) was appointed to the office for a specified period and that period expires; or
 - (ix) ceases to be a Member pursuant to rule 7.

8.7 Removal from office

The Company by ordinary resolution may remove a Director from office, whether or not the Director's appointment was expressed to be for a specified period.

8.8 Too few Directors

- (a) If the number of Directors is reduced below the minimum required by rule 8.1 the continuing Directors may act as the Board only:
 - (i) to appoint Directors up to that minimum number;
 - (ii) to convene a meeting of Members; and
 - (iii) in emergencies.

8.9 Directors appointed by Stakeholder Organisations

- (a) A Director shall remain in office until such time as a Stakeholder Organisation chooses to replace them. Where a nominated Director is removed from office under rule 8.7 the relevant Stakeholder Organisation shall appoint a replacement Director.

9 POWERS OF THE BOARD

9.1 Powers generally

Except as otherwise required by the Law, any other applicable law, or this constitution, the Board:

- (a) has the power to manage the business of the Company and to carry into effect all or any of the Objects; and
- (b) may exercise every right, power or capacity of the Company except any powers that the Law or this constitution requires the Company to exercise in general meeting.

9.2 Exercise of Powers

A power of the Board can be exercised only:

- (a) by resolution passed, or treated by rule 16 as passed, at a meeting of the Board; or
- (b) in accordance with a delegation of the power under rule 12.

10 EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept or endorse negotiable instruments only in the manner for the time being decided by the Board.

11 NATIONAL EXECUTIVE OFFICER

11.1 Appointment of National Executive Officer

The Board will appoint the National Executive Officer.

11.2 National Executive Officer is Director and Member

The National Executive Officer is deemed to be a Director and Member of the Company but only while continuing to hold the office of National Executive Officer.

11.3 Powers of National Executive Officer

- (a) The Board may delegate any of the powers of the Board to the National Executive Officer:
- (i) on the terms and subject to any restrictions the Board determines; and
- (ii) may alter, vary or revoke the delegation at any time.
- (b) This delegated authority shall only be collateral with the powers of the Board and shall not in any way exclude the powers of the Board, and the National Executive Officer shall be subject to the control of the Board.

- (c) Without affecting the generality of the foregoing the National Executive Officer shall:
- (i) be the National Executive Officer of the Company;
 - (ii) act consistently with the Objects of the Company;
 - (iii) use their best endeavours at all times to enhance the good name of the Company;
 - (iv) in so far as the resources available permit, implement the policies of the Board;
 - (v) prepare an annual report for the Board on the work and activities of the Company during the preceding 12 months ending on 30 June in each year; and
 - (vi) exercise such other functions, duties and responsibilities as may be determined from time to time by the Board.

11.4 Termination of appointment of National Executive Officer

The appointment of a National Executive Officer terminates:

- (a) at the expiration of a fixed term if so defined in a written contract; or
- (b) if the Board removes the National Executive Officer from that office (which, subject to any contract between the Company and the National Executive Officer, the Board has power to do), whether or not the appointment was expressed to be for a specified term; or
- (c) when the person appointed ceases to be a Director.

12 DELEGATION OF BOARD POWERS

12.1 Delegation to committee or attorney

The Board may delegate any of its powers:

- (a) to a committee consisting of at least one Director which may also include people who are not Directors;
or
- (b) to an attorney;

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 126(1) of the Law.

12.2 Terms of delegation

A delegation of powers under rule 12.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

12.3 Powers of attorney

A power of attorney under rule 12.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

12.4 Board committees

The Board may establish Board committees that consist exclusively of Board members or may include any other persons, as the Board considers appropriate.

12.5 Chairperson of Board committees

The chairperson of any Board committee must be a Director of the Company.

12.7 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

13 DIRECTOR'S DUTIES AND INTERESTS

13.1 Compliance with Law

Each Director must comply with their duties and obligations set out in the Law.

13.2 Scope of Director's Duties

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Company's auditor, or being a Member or creditor, of any corporation (including the Company) or partnership other than the auditor;
or
- (b) entering into any agreement with the Company.

13.3 Voting by interested Director

Each Director must comply with section 195 in relation to being present, or voting at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, whether the Company enters into an agreement or proposed agreement in which that Director has an interest;
- (b) the Company may enter into the agreement and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters involving the agreement; and
- (d) if disclosure is made before the agreement is entered into:
 - (i) the Director may retain benefits under the agreement even though the Director has an interest in the agreement; and
 - (ii) the Company cannot avoid the agreement merely because of the existence of the interest.

14 DIRECTOR'S REMUNERATION

14.1 Remuneration of National Executive Officer

Subject to any contract with the Company, the Board may fix the remuneration of the National Executive Officer.

14.2 Remuneration of non-executive Directors

The Company may not pay any Director any amount except as expressly provided for in this constitution.

14.3 Expenses of Directors

The Company may pay a Director all reasonable out-of-pocket expenses incurred by the Director in carrying out that Director's duties as a Director.

15 OFFICER'S INDEMNITY AND INSURANCE

15.1 Indemnity

- (a) Subject to section 199A, the Company must indemnify every officer:
- (b) against any liability incurred as officer, unless the liability is:
 - (i) owed to the Company or a related body corporate; or
 - (ii) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Law; or
 - (iii) owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; and
- (c) for legal costs incurred in defending an action for a liability as an officer of the Company, unless the costs are incurred:
 - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under section 199A (2); or
 - (ii) in defending or resisting criminal proceedings in which the person is found guilty; or
 - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission ("ASIC") or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (iv) in connection with proceedings for relief to the person under the Law in which the court denies the relief.
- (d) The prohibition referred to in rule 15.1(b)(iii) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

15.2 Insurance

Subject to section 199B, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

15.3 Former officers

The indemnity in favour of officers under rule 15.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer at the time the claim is made.

16 BOARD MEETINGS

16.1 Convening Board meetings

A Director may at any time request the Secretary to convene a Board meeting.

16.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

16.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other manner permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairperson of the meeting is located.

16.4 Chairing Board meetings

- (a) The Inaugural Chairperson is appointed for an initial term of three years at which time he will stand down but will be eligible for reappointment.
- (b) After the initial term of the Inaugural Chairperson the Board shall elect a Director to chair its meetings and determine the period for which that Director holds that office.
- (c) If the chairperson is not present within 15 minutes of the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

16.5 Casting vote

The chairperson will have a second or casting vote in addition to the vote they are entitled to as a Member in the event of an equality of votes.

16.6 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is a majority of the Directors holding office at the time of the meeting and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

16.7 Majority decisions

A resolution of the Board must be passed by majority of the votes cast by Directors entitled to vote on the resolution.

16.8 Procedural rules

The Board may adjourn and, subject to the constitution, otherwise regulate its meetings as it decides.

16.9 Written resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is treated as having been passed at a Board meeting at the time when the last Director signs.

16.10 Additional provisions concerning written resolutions

- (a) For the purpose of rule 16.9 or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a fax or e-mail message containing the text of the document expressed to have been signed electronically by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.

16.11 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

17 MEETINGS OF MEMBERS

17.1 Annual general meeting

The Company must hold an annual general meeting as required by section 250N.

17.2 Calling meetings of Members

- (a) 3 Directors may at any time call a meeting of Members.
- (b) The Board must call a meeting of Members when required by sections 249D or 250N or by order made under section 249G.

17.3 Notice of meeting

- (a) Subject to rule 17.4, at least 21 days' written notice of a meeting of Members must be given individually to each Member (whether or not the Member is entitled to vote at the meeting), to each Director and to the auditor (if any).

- (b) The notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

17.4 Short notice

Subject to any requirements of the Law:

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

17.5 Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may postpone or cancel a meeting of Members or change the place for a meeting by written notice individually to each person entitled to be given notice of the meeting.

17.6 Fresh notice

If a meeting of Members is postponed or adjourned for more than one month, the Company must give new notice of the resumed meeting.

17.7 Technology

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

17.8 Accidental omission

The accidental omission to give the notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

17.9 Changing the constitution

The Company may modify or repeal this constitution or a provision of this constitution by special resolution.

18 PROCEEDINGS AT MEETINGS OF MEMBERS

18.1 Member present at meeting

If a Member has appointed a proxy or attorney or (in the case of a Member which is a body corporate or body politic) a representative to act at a meeting of Members, that Member is taken to be present at a meeting at which the proxy, attorney or representative is present.

18.2 Quorum

- (a) The quorum for a meeting of Members is five Members.
- (b) Each individual present may only be counted once toward a quorum. If a Member has appointed more than one proxy or representative only one of them may be counted toward a quorum.

18.3 Quorum not present

If a quorum is not present within 30 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before them, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

18.4 Chairing meetings of Members

- (a) The chairperson of the Board shall also chair meetings of Members.
- (b) If the chairperson of the Board is not present within 15 minutes of the time for which a meeting of Members is called or is not willing to chair the meeting, the Members present at the meeting must elect a Director present to chair the meeting.

18.5 Attendance by auditor and Directors

- (a) Every Member has the right to attend all meetings of Members whether or not they are entitled to vote.
- (b) Every Director has the right to attend and speak at all meetings of Members.
- (c) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

18.6 Adjournment

Subject to rule 17.5, the chairperson of a meeting of Members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

18.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

19 PROXIES, ATTORNEYS AND REPRESENTATIVES

19.1 Appointment of Proxies

- (a) A Member may appoint not more than 2 proxies to attend and act for the Member at meeting of Members. An appointment of proxy must be made by written notice to the Company:
 - (i) that complies with section 250A(1); or
 - (ii) in any other form and mode that is acceptable to the Board, and is signed or acknowledged by the Member in a manner, satisfactory to the Board.

- (b) If a Member appoints 2 proxies and the appointment does not specify the proportion or number of the Member's vote each proxy may exercise, each proxy may exercise half of those votes.

19.2 Member's attorney

A Member may appoint an attorney to act at a meeting of the Members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

19.3 Deposit of proxy forms and powers of attorney

An appointment of a proxy or power of attorney is not effective for a particular meeting of Members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

19.4 Representatives of Bodies Corporate and Bodies Politic

A Member that is:

- (a) a body corporate may appoint an individual to act as its representative at meetings of Members as provided in section 250D; or
- (b) a body politic may appoint an individual to act as its representative at meetings of Members.

19.5 Standing appointments

A Member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a Member.

19.6 Suspension of proxy's or attorney's powers if Member present

A proxy or attorney has no power to act for a Member at a meeting at which the Member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a Member at a meeting at which the Member is present by attorney.

19.7 Priority of conflicting appointments of attorney or representative

If more than one attorney or representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 19.7 (a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

19.8 More than two current proxy appointments

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than two proxies of that Member entitled to act at a meeting. The appointment of proxy made first time is the first to be treated as revoked or suspended by this rule.

19.9 Continuing authority

An act done at a meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

20 ENTITLEMENT TO VOTE

20.1 Number of votes

Subject to section 250A and rules 19 and 20.2, a Member has one vote. The chairperson of a meeting of Members will have a second or casting vote in addition to the vote they are entitled to as a Member in the event of an equality of votes.

20.2 Voting restrictions

If:

- (a) the Law requires that a Member does not vote on a resolution, or that votes cast by a Member be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

that Member has no right to vote on that resolution and the Company must not count any votes purported to be cast by that Member. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), the vote is invalid and the Company must not count it but, in respect of a poll, rule 21.3(c) applies.

20.3 Objections to right to vote

A Director may challenge a person's right to vote at a meeting of Members. A challenge:

- (a) may only be made at the meeting; and
- (b) must be decided by the chairperson, whose decision is final.

21 HOW VOTING IS CARRIED OUT

21.1 Method of voting

A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 21.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairperson's declaration of a decision on a show of hands is final.

21.2 Demands for a poll

A poll may be demanded on any resolution by:

- (a) a Member entitled to vote on the resolution; or
- (b) the chairperson.

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

21.3 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 21.3(c), in the manner that the chairperson of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 21.3(c), in the manner that the chairperson of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

22 SECRETARY

22.1 Appointment and removal of Secretary

The Board must appoint one or more individuals to be a Secretary of the Company either for a specified term or without specifying a term.

22.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

22.3 Removal from office

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

23 MINUTES

23.1 Minutes to be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 12);
- (d) resolutions passed by Directors without a meeting; and
- (e) material personal interests disclosed by Directors;

to be kept in accordance with sections 191, 192 and 251A.

23.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

23.3 Inspection of minute books

The Company must allow Members to inspect, and provide copies of the minute books for the meetings of Members in accordance with section 251B.

24 COMPANY SEALS

24.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

24.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

24.3 Fixing seals to documents

The fixing of a common seal or any duplicate seal to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and either the Secretary or another person authorised by the Board; or
- (c) by any other signatures or in any other way (including the use of facsimile signatures) authorised by the Board.

25 ACCOUNTS AND AUDIT

25.1 Company to keep accounts

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited in accordance with the Law, and must allow a Director to inspect those records at all reasonable times.

25.2 Financial reporting

If required by Part 2M.3, the Board must cause the Company to prepare a financial report and a Directors' report that comply with that Part and must report to Members in accordance with section 314 no later than the deadline set by section 315.

25.3 Audit

Unless excluded by the Law from being required to have the financial report audited, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor if any are regulated by the Corporations Law.

25.4 Inspection of financial records and books

A Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by a resolution of Members.

26 NOTICES BY COMPANY

26.1 Form of notice

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person;
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

26.2 Overseas Members

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

26.3 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5.00pm (local time in the place of receipt) on a business day – on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
- (b) if it is sent by mail:
 - (i) within Australia – three business days after posting; or
 - (ii) to a place outside Australia – five business days after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent, is conclusive evidence of service.

26.4 Business days

For the purposes of rule 26.3, a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent is a business day.

26.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

26.6 Notice to “lost” members

If:

- (a) on 2 or more consecutive occasions notice served on a Member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 26.2,

the Company may give effective notice to that Member by exhibiting the notice at the Company’s registered office for at least 48 hours.

27 BY-LAWS, RULES AND REGULATIONS

The Board will have power from time to time to make such by-laws, rules and regulations not inconsistent with the constitution as in the opinion of the Board are necessary and desirable for the proper control, administration and management of the Company’s operations, finances, affairs, interests, effects and property as to the contributions, duties, obligations and responsibilities of the Members and to amend or rescind from time to time any such by-laws, rules or regulations.