

10.5. Nutcote Trust - Approval of Casual Appointments

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ENDORSED BY: Ken Gouldthorp, General Manager

ATTACHMENTS:

1. Nutcote Constitution 2021 [18B7] [10.5.1 - 34 pages]

PURPOSE:

This report seeks Council endorsement of five new directors to the Nutcote Board. Approval is also sought for an amendment to Nutcote's Constitution.

EXECUTIVE SUMMARY:

The Constitution of Nutcote Trust Pty Ltd (ACN 003 963 148) was approved by the shareholders at the Annual General Meeting 7 November 2019.

It allows existing directors to appoint new directors to fill a casual vacancy with approval by the members by ordinary resolution.

The confidential report provides information on the new directors and their endorsement is recommended.

At its meeting on 21 September 2017, Council adopted a recommendation that Council (as a legal person) is to be the Member and hold both shares. This was to amend the practice at that time whereby the General Manager who held a share on a personal basis was required on leaving Council to transfer the share to the next General Manager.

The transfer of the General Manager's share to Council took place and ASIC/ACNC were notified. However, a drafting error in a subsequent report updating the Constitution meant the General Manager continued to be named in the Constitution as a Member.

This report corrects the error and reinstates Council's intention that it holds both shares.

If the Council wishes to discuss the report, the meeting should be closed to the public to do so in accordance with Section 10A(2) of the Local Government Act:

- (a) personnel matters concerning particular individuals (other than councillors).

FINANCIAL IMPLICATIONS:

Council's Grants & Subsidies budget 2021/22 allocated a cash subsidy of \$40,900 as a contribution towards Nutcote's operating costs and to sharing the cost of business and public liability insurance premiums (of which Council's contribution is approximately 50%).

RECOMMENDATION:

- 1. THAT** Council approves The Nutcote Trust's casual appointments to the Board as specified in this report
- 2. THAT** Council resolves to approve the amended Constitution of Nutcote Trust Ltd (ACN 003 963 148) dated 16 September 2021
- 3. THAT** the confidential report be treated as confidential and remain confidential until Council determines otherwise.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

4. Our Social Vitality

4.4 North Sydney's history is preserved and recognised

BACKGROUND

Under Nutcote's 1990 Constitution the only shares in the Company were held by:

- (i) Council (as a legal person); and
- (ii) the then General Manager (in a personal capacity).

This allowed that the share could continue to be held by the General Manager even after leaving Council's employment. Therefore, between 2014 and 2017 it was necessary to transfer the share repeatedly from the General Manager to several Acting General Managers.

CONSULTATION REQUIREMENTS

Community engagement is not required.

DETAIL

At its meeting on 20 November 2017, Council resolved:

- 1. THAT Council has the A/General Manager's share in Nutcote Trust Pty Ltd (CAN 003 963 148) transferred to North Sydney Council, and*
- 2. THAT in the event either or both the General Manager and Director, Community and Library Services are unable to attend general meetings of the Nutcote Trust, the Manager Library Services and the Council Historian be granted delegation to vote on Council's behalf.*

This share transfer was enacted on 21 December 2017 and Nutcote Trust advised ASIC/ACNC.

A new Constitution adopted in September 2019 was supposed to confirm this transfer. A drafting error in the report meant that the General Manager continued to be named in the Constitution as a Member.

Therefore, the Nutcote Constitution needs to be amended. For the amended constitution to be adopted at the upcoming Annual General Meeting, Council needs to grant its approval.

Attached is a marked-up copy of the Constitution showing the change to clause 6.1:

- cl 6.1(a) to now read "North Sydney Council"- instead of "General Manager, North Sydney Council."

This change was approved by the Nutcote Board of Directors at the July 2019 Board meeting.

The General Manager has delegation to vote on Council's behalf at the Annual General Meeting. In the General Manager's absence, delegation goes to the Director Community & Library Services. The Member also determines the maximum number of directors at any one time. In the absence of either the General Manager or Director of Community & Library Services, delegation is granted to Manager Library Services and the Council Historian to vote on Council's behalf.

Appointments to fill four Casual Vacancies

Nutcote's Constitution allows existing directors to appoint new directors to fill a casual vacancy but requires them to be approved by the Member. The current limit on the number of directors is seven, the minimum number is three. Currently there are five. Under the Constitution Council is empowered to set the number of directors.

Details of the new directors are provided in separate report and their appointment is recommended.

**Constitution of
Nutcote Trust Pty Ltd
(ACN 003 963 148)**

16 September 2021

Constitution of Nutcote Trust Pty Ltd

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Constitution

Nutcote Trust Pty Ltd (ACN 003 963 148)

1. Preliminary

1.1. ACNC Act and the Act

- (a) All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this Constitution.
- (b) Part 1.6 of the Act applies to the Company if it is registered as a charity under the ACNC Act.

1.2. Definitions

The following expressions in this Constitution have the meaning below:

- (a) *ACNC Act* means the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*;
- (b) *Act* means the *Corporations Act 2001 (Cth)* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
- (c) *at any time* means at any time or times and from time to time;
- (d) *ATO* means the Australian Taxation Office;
- (e) *ATO Endorsed Entity* means an entity which is charitable at law and which is endorsed by the ATO as a deductible gift recipient in accordance with Division 30 of the Tax Act;
- (f) *Board* means the directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present;
- (g) *common seal* means the common seal of the Company and includes any duplicate seal of the Company;
- (h) *Company* means the company named at the beginning of this Constitution;
- (i) *Constitution* means the rules that comprise the constitution of the Company in force for the time being;

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- (j) *corporate representative* means a natural person appointed by a member which is a body corporate to be that body's representative to exercise all or any of the powers the body may exercise at meetings of members of the Company;
- (k) *Council* means the North Sydney Council;
- (l) *Deductible Contribution* means a contribution of money or property as described in item 7 or item 8 of the table in Section 30-15 of the Tax Act;
- (m) *director* means a director of the Company and *directors* means more than one of them;
- (n) *Gift* means a gift as described in item 1 or item 2 of the table in Section 30-15 of the Tax Act to the Company;
- (o) *Gift Fund* means the fund referred to in **rule 3.2**;
- (p) *meeting of members* or *general meeting* means a meeting of members duly called and constituted in accordance with this Constitution and any adjourned holding of it;
- (q) *member, shareholder* or *holder* means any person entered in the register as a member for the time being of the Company;
- (r) *member present* means a member present at any meeting of members, in person or by proxy or attorney or, in the case of a body corporate, by its corporate representative;
- (s) *objects* has the meaning set out in **rule 2.1**;
- (t) *ordinary resolution* means:
 - (i) while the Company is not a Single Shareholder Company, a resolution of a meeting of members where more than one half of the total votes cast on the resolution are in favour of the resolution;
 - (ii) while the Company is a Single Shareholder Company, a decision of the single shareholder;
- (u) *proxy* means a person duly appointed under a proxy form by a member who is entitled to attend and vote at a meeting of members, to attend and vote instead of the member at the meeting;

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- (v) *proxy form* means an instrument for appointing a proxy, that instrument complying with this Constitution;
- (w) *register* means the register of members kept under the Act;
- (x) *registered office* means the registered office for the time being of the Company;
- (y) *secretary* means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as such temporarily;
- (z) *shares* means the shares into which the capital of the Company is at any time divided;
- (aa) *Single Shareholder Company* means a proprietary company which has only one member or shareholder;
- (bb) *special resolution* means:
 - (i) while the Company is not a Single Shareholder Company, a resolution of a meeting of members:
 - (A) of which notice as set out in the Act and the ACNC Act has been given; and
 - (B) where at least 75% of the total votes cast on the resolution are in favour of the resolution;
 - (ii) while the Company is a Single Shareholder Company, a decision of the single shareholder;
- (cc) *Tax Act* means the *Income Tax Assessment Act 1997 (Commonwealth)* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
- (dd) *Trust* means the trust established by Deed of Settlement establishing "The Nutcote trust" dated 25 July 1990.

1.3. Interpretation

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.

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- (c) Words or expressions defined in the Act and/or the ACNC Act have those meanings.
- (d) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) A reference to:
 - (i) a party includes its administrators, successors, substitutes by novation, and assigns;
 - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
 - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
 - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

2. Objects and purpose

2.1. The Company is established as corporate trustee of the Trust and, in doing so, to pursue the following charitable purposes:

- (i) administer the Trust;
- (ii) promote the cultural important of May Gibbs, her life and work and the historic, architectural significance of her home, Nutcote;
- (iii) engage with a wide community particularly schools by offering memorable experiences and rewarding learning opportunities, focusing on Australian children's literature generally.

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2.2. Limitation of powers

- (a) The Company:
 - (i) is a proprietary company limited by shares;
 - (ii) is prohibited from making distributions or declaring dividends to any member;
 - (iii) is prohibited from paying fees (or other remuneration) to the directors; and
 - (iv) must exercise its powers conferred on it under Section 124(1) of the Act in a manner which is consistent with the objectives of the Company set out in **rule 2.1**.
- (b) The Board must approve all other payments the Company makes to directors.
- (c) To the extent of any inconsistency between this **rule 2, 3** and/or **4** on the one hand and any other provision of this Constitution on the other hand, **rules 2, 3** and **4** prevail.

3. Income and property of Company

3.1. Income and property

The Company is established as, and must operate as, a not-for-profit entity and as such:

- (a) the income, property and profit of the Company will be applied solely towards the promotion of the objects of the Company set out in **rule 2.1**; and
- (b) the Company must not pay and a director is not entitled to receive any fee (or other remuneration) from the Company for services performed as a director;
- (c) no income or property may be paid or transferred directly or indirectly to any member or director of the Company both while it is operating and on winding up, except:
 - (i) for payments to a member or director in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company or as provided for and allowed by this Constitution; or
 - (ii) directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at Board meetings only if the directors have approved the reimbursement for such costs and expenses.

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3.2. Establishment and operation of Gift Fund

If the Company as a whole is at any stage an ATO Endorsed Entity, the Company may maintain for the purpose of pursuing its objects and purpose a fund:

- (a) to which Gifts and Deductible Contributions can be made;
- (b) to which any money received by the Company because of those Gifts and Deductible Contributions may be credited;
- (c) that does not receive any other money or property; and
- (d) in respect of which the Company will maintain a separate bank account.

3.3. Winding up of the Gift Fund and revocation of status as an ATO Endorsed Entity

At the first occurrence of:

- (a) the winding up of the Gift Fund (including where the Company ceases to operate a fund, authority or institution that is an ATO Endorsed Entity); or
- (b) the Company ceasing to be an ATO Endorsed Entity (including the revocation of the Company's endorsement as a deductible gift recipient under Subsection 30-BA of the ITAA 1997) ,

any surplus assets of the Gift Fund, remaining after payment of liabilities attributable to it must be transferred to 1 or more ATO Endorsed Entities, (whether or not such ATO Endorsed Entities are Members) that satisfy the requirements of **rules 4.2(e)** and **4.2(f)**, as the Board in its discretion determines.

4. Winding up

4.1. Winding up

The Company may only be wound up if:

- (a) 75% of Members have approved the winding up; and
- (b) a simple majority of directors have approved the winding up.

4.2. Surplus on winding up

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Upon the winding up of the Company the surplus of the following assets:

- (a) gifts of money or property for the principal purpose of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; or
- (c) money received by the Company because of such gifts and contributions,

will not be paid to or distributed amongst the members, but will after compliance with any transfer obligations outstanding under **rule 3.3** in respect of the Gift Fund, be given or transferred to another body corporate which, by its constitution, is:

- (d) charitable at law;
- (e) required to pursue objects similar to the objects of the Company;
- (f) required to apply its profits (if any) or other income in promoting its objects; and
- (g) prohibited from making any distribution of its income or property to its members; and
- (h) if the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the ITAA 1997 at the time of winding up, an ATO Endorsed Entity,

such body corporate to be determined by the Board at or before the winding up, and in default, by application to the Supreme Court of New South Wales for determination.

5. Takeovers provisions in Chapter 6 inapplicable

The members of the Company agree that the provisions of Chapter 6 of the Act do not apply with respect to the acquisition of shares in the Company.

6. Share capital and members

6.1. Membership

(a) The members of the Company as at the date of this Constitution **is North Sydney Council. are:**

- (i) ~~North Sydney Council;~~ and
- (ii) ~~General Manager, North Sydney Council.~~

(b) The Company must have at least 1 member.

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6.2. Control of the shares

Subject to the provisions of this Constitution and the Act, and without prejudice to any special rights previously conferred on the holders of any existing shares:

- (a) the shares in the Company are under the control of the members; and
- (b) the members may allot, grant options over, or otherwise dispose of, the shares to such persons, at such times, on such terms, and having attached to them such preferred, deferred or other rights, and at such issue price, for cash or non-cash consideration, with the issue price paid or part unpaid, as the members think fit.

6.3. Certificates of title

The Company must issue certificates of title for shares of the Company in accordance with the Act.

6.4. Replacement of certificates

If a certificate is lost, destroyed, worn out or defaced, then upon production of the document (if available) to the Board the Board may order it to be cancelled and may issue a new certificate in substitution subject to the conditions prescribed by the Act.

7. Transfer of shares

7.1. Transferability

Except where required:

- (a) by law; or
- (b) by other provisions of this Constitution; or
- (c) by the terms of issue of the shares concerned,

the directors must register each transfer of shares which complies with this Constitution, and do so without charging a fee.

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7.2. Instrument of transfer

Subject to this Constitution, a member may transfer all or any of the member's shares by instrument in writing which is:

- (a) a sufficient instrument of transfer of marketable securities under the Act; or
- (b) in any other usual or common form; or
- (c) in any other form approved by the directors.

7.3. Delivery of transfer and certificate

A document of transfer must be:

- (a) delivered to the registered office of the Company or the address of the register last notified to members by the Company; and
- (b) accompanied by the certificate for the shares to be transferred where a certificate has been issued unless the Board waives production of the certificate on receiving evidence of the loss or destruction of the certificate.

The Board may require other evidence of the transferor's right to transfer the shares.

7.4. Transferor remains holder until transfer registered

A transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the register in respect of the share.

8. Maintenance of Register

8.1. Register

The secretary must maintain the register setting out:

- (a) the name and address of each member;
- (b) the date on which each person became a member;
- (c) in respect of each person who has ceased to be a member, the date on which that person ceased to be a member; and
- (d) any other information required by the Act or the ACNC Act.

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8.2. Inspection of register

The register must be kept at the Company's registered office or the principal place of business. A member may inspect the register between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

9. Single Shareholder Company

9.1. Sole Shareholder

All the shares can be held by a sole shareholder.

9.2. Recording resolutions

- (a) While the Company is a Single Shareholder Company, if the shareholder records in writing (in accordance with the Act or the ACNC Act) the shareholder's resolution or decision to a particular effect, and signs the record, the record of the resolution or decision counts as the passing by the shareholder of a resolution to that effect.
- (b) A written record under **rule 9.2(a)** constitutes minutes and must be entered in the minute book.

9.3. Application of other rules of the Constitution

While the Company is a Single Shareholder Company, **rule 10** (Circulating resolution of members), **rule 11** (Meetings of members), **rule 12** (Representation at meetings), **rule 13** (Proceedings at meetings of members) and **rule 14** (Voting at meetings of members) are suspended from operation.

10. Circulating resolutions of members

If all the members of the Company entitled to vote on the resolution have signed a document (or 2 or more separate documents in identical terms) containing a statement that they are in favour of a resolution (other than to remove an auditor under Section 329 of the Act), the resolution in those terms is deemed to have been passed. The resolution is passed when the last member signed. The document constitutes a minute and must be entered into the minute book.

11. Meetings of members

11.1. Annual general meeting must be held

Despite the fact that the Act may not require the Company to hold an annual general meeting:

- (a) the Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year;
- (b) an annual general meeting must be held in addition to any other meetings of members held by the Company in the calendar year.

11.2. Calling of meetings

- (a) The directors may at any time call a meeting of members.
- (b) A member or members may call a meeting of members.

11.3. Period of notice

Subject to the **rule 11.4**, at least 21 clear days' notice must be given of a meeting of members. This means that you exclude both the day the notice was deemed to be given and the day of the meeting of members itself.

11.4. Consent to short notice

With the consent in writing of the requisite number of members, any meeting of members (except where a resolution will be moved to remove an auditor under Section 329 of the Act) may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly. The required number is that member or those members having a right to attend and vote at that meeting who, between them, hold at least 95% of the votes that may be cast at the meeting.

11.5. Notice of meeting

Every notice of a meeting of members must:

- (a) set out the place, date and time of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) in the case of special business, state the general nature of the meeting's business;

- (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;
- (d) in the case of an election of directors, give the names of the candidates for election; and
- (e) contain a statement of the right to appoint a proxy, being to the effect that:
 - (i) a member entitled to attend and vote has a right to appoint a proxy;
 - (ii) a proxy need not be a member;
 - (iii) a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise. If there is no such specification, each proxy may exercise half of the votes.

11.6. Business of annual general meeting

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report;
- (b) the election of directors;
- (c) the appointment of the auditor;
- (d) the fixing of the auditor's remuneration.

11.7. Entitlement to notice

Written notice of a meeting of members must be given individually to:

- (a) each member (apart from any member who under this Constitution or by the terms of issue of any share is not entitled either to the notice or to vote at the meeting);
- (b) the auditor; and
- (c) each director.

11.8. Entitlement to proxy form

A proxy form (in a form determined by the directors) must be given to each member entitled to attend and vote at the meeting of members.

11.9. Omission to give notice

The accidental omission to give notice of a meeting of members (or proxy form) to, or the non-receipt of any such notice (or proxy form) by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

11.10. Cancellation or postponement of meeting

The directors may cancel or postpone the holding of any meeting of members except a meeting called by a member or members. If the meeting was called by requisitioning members or in response to a requisition by members the directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning members. The directors must notify the members of such cancellation or postponement. If any meeting is postponed for one month or more then no less than 5 days' notice must be sent to the members of the postponed meeting but it is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

12. Representation at meetings

12.1. Persons entitled to attend

The right to attend a meeting of members is as follows:

- (a) each member may attend, apart from any member who under this Constitution or by the terms of issue of any share is not entitled to attend;
- (b) each director, secretary and auditor may attend;
- (c) each person, whether a member or not, who is a proxy, corporate representative or attorney of a member may attend;
- (d) other persons may attend only with leave of the meeting or its chair and then only while the leave is on foot and in accordance with the terms of the leave.

The right to attend is subject to the powers of the chair of the meeting both at law and under this Constitution.

12.2. Proxy eligibility

A proxy need not be a member.

12.3. Proxy recognition

A proxy is recognised as having been duly appointed by a member and entitled to act as a proxy for that member if, and only if, the proxy form complies with the requirements of this Constitution in relation to form, execution and lodgement.

12.4. Proxy form

The proxy form:

- (a) must contain the member's name and address;
- (b) must contain the proxy's name or the office held by the proxy;
- (c) may make provision for the chair of the meeting of members to act as the proxy either in the absence of any other appointment or if the proxy primarily appointed fails to attend the meeting of members;
- (d) must contain the company's name and either identify the meetings of members at which the proxy form may be used or be identified as a standing one;
- (e) may enable the member to at least instruct the proxy to vote for or against each notified resolution.

12.5. Chair as fall-back proxy

If a proxy form is otherwise effective except that it does not specify the proxy, the member is treated as validly appointing the chair of the meeting of members in respect of all shares of that member.

12.6. Proxy execution

A proxy form must be executed:

- (a) in the case of a member who is a natural person:
 - (i) under the hand of the member (or where there are joint members, any one of them); or

- (ii) under the hand of the attorney of the member;
- (b) in the case of a member which is a body corporate:
 - (i) under the common seal of the body;
 - (ii) under the hand of a duly authorised officer of the body; or
 - (iii) under the hand of the attorney of the body.

12.7. Proxy lodgement

A proxy form must be lodged:

- (a) as an original, at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members), by the start of the meeting;
- (b) as a fax, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members), by the start of the meeting;
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members, by the start of the meeting; or
- (d) as an original, with the chair of the meeting, at any time prior to the proxy voting on behalf of the appointor at the meeting.

12.8. Original proxy form

Subject to **rule 12.7**, the original executed proxy form must be lodged. A photocopy of it, a fax of it, or other form of electronic transmission of it, is taken not to be lodgement of the original.

12.9. Proxy executed by attorney

If a proxy form is executed by the attorney of the member the relevant power of attorney (or a photocopy of it or a fax of it) must also be lodged at the place, and by the deadline, required for the proxy form.

12.10. Corporate representative recognition

A corporate representative is recognised as having been appointed by a member (which is a body corporate) and entitled to act as a corporate representative of that member if the appointment is evidenced by a document lodged at the registered office, served on the Company in accordance with **rule 23** or lodged with the chair of the meeting by the start of the meeting in a form satisfactory to the Board, which:

- (a) must contain the member's name;
- (b) must specify at least one natural person, by name or by reference to a position held, to act as the body's corporate representative (but if more than one is appointed only one may exercise the body's powers at any one time);
- (c) may specify another natural person, by name or by reference to a position held, to act as the body's corporate representative if the person primarily nominated fails to attend;
- (d) must contain the Company's name and either identify the meetings of members at which the representative may act, or be identified as a standing one;
- (e) may set out restrictions on the corporate representative's powers.

13. Proceedings at meetings of members**13.1. Quorum**

No business may be transacted at any meeting of members unless a quorum of members is present at the time when the meeting proceeds to business. Except as provided in **rule 13.2**, 1 member present is a quorum.

13.2. Failure of quorum

If a quorum is not present within 15 minutes from the time appointed for a meeting of members:

- (a) where the meeting was called by, or in response to, the requisition of members made under the Act, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the second week following at the same time and place. If at the

adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the meeting is dissolved.

13.3. Special business

No special business may be transacted at any meeting of members other than that stated in the notice calling the meeting unless:

- (a) it is a matter that is required by this Constitution or the Act to be transacted at such meeting; or
- (b) consent in writing has been obtained from the majority of members.

13.4. Chair of meeting

The chair of the directors, or in that person's absence the deputy chair of the directors (if any), is entitled to take the chair at each meeting of members. If neither of those persons is present at any meeting of members within 15 minutes after the time appointed for holding such meeting, or neither of them is willing to take the chair, the directors present may choose one of their number as a chair and if no director present is willing to take the chair the directors may choose a person, whether a member or not, as chair of the meeting, failing which the members present must elect a person, whether a member or not, to be chair of the meeting.

13.5. Passing the chair

If the chair of a meeting of members is unwilling or unable to be the chair for any part of the business of the meeting:

- (a) that chair may withdraw as chair for that part of the business and may nominate any person who would be entitled under **rule 13.4** to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chair and the prior chair is entitled to resume as the chair of the meeting.

13.6. Responsibilities of chair

The chair of a meeting of members is responsible for the general conduct of the meeting and to ascertain the sense of the meeting in relation to the business transacted at it. For these purposes the chair of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

13.7. Admission to meetings

The chair of a meeting of members may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chair to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the persons possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
or
- (f) who is not entitled under this Constitution to attend the meeting.

This power may be exercised in respect of a person regardless of whether that person otherwise would have been entitled to attend the meeting or not.

13.8. Adjournment of meeting

The chair of a meeting of members at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

13.9. Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for one month or more, in which event notice of the adjourned meeting must be given.

14. Voting at meetings of members

14.1. Entitlement to vote

Subject to this Constitution and the terms of issue of any shares, each natural person who is present at a meeting of members may vote if he or she is a fully paid up member or a recognised proxy, attorney or corporate representative of such a member.

14.2. Number of votes

Each natural person who is, under **rule 14.1**, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote, regardless of how many members the person may represent; and
- (b) on a poll one vote for each share (on which the total issue price is paid) held by the person or held by members for whom the person is the recognised proxy, attorney or corporate representative.

14.3. Attendance of member suspends the proxy

If a member is present at any meeting of members in person (or in the case of a body corporate, by its corporate representative) the proxy or attorney of that member may not exercise the voting rights of the member while the member is present.

14.4. Revocation of proxies

A vote given or act done in accordance with the terms of a proxy form or power of attorney is valid despite the previous death or mental incapacity of the principal, or revocation of the

proxy or power of attorney, or transfer of the share in respect of which the vote is given, or act done, provided no intimation in writing of the death or mental incapacity, revocation or transfer has been received at the registered office or by the chair of the meeting before the vote is given or act done. Any proxy may be revoked at any time. A later appointment revokes an earlier one if both appointments would not be validly exercised at the meeting. The decision of the chair as to whether a proxy has been revoked is final and conclusive.

14.5. Proxy must vote on a poll as directed

A proxy form may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands (or on the voices), but if the proxy does so, the proxy must vote that way;
- (b) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
- (c) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

Nothing in this **rule 14.5** affects the way that the person who is a proxy can cast any votes they hold as member.

14.6. Proxy must abstain if directed

A proxy form may specify that the proxy is to abstain from voting on a particular resolution. If it does the proxy must not vote on that resolution.

14.7. Method of voting

Every resolution put to a vote at a meeting of members (except where there is an election of directors by ballot) must be determined by the voices or a show of hands (as determined by the chair of the meeting) unless a poll is properly demanded.

14.8. Who may demand a poll

At a meeting of members a demand for a poll may be made by:

- (a) the chair of the meeting;
- (b) at least 2 persons present having the right to vote on the resolution; or
- (c) any person or persons present having the right to vote at least 5% of the votes that may be cast on the resolution on a poll.

14.9. When poll may be demanded

The poll may be demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

14.10. Declaring result of vote on show of hands

At any meeting of members (unless a poll is so demanded) a declaration by the chair of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

14.11. Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

14.12. Joint holders' vote

In the case of joint holders, any one of them may vote. If on a particular occasion more than one of the joint holders' votes, only the first to vote is counted. If it is not practical to determine which was first, the earliest named in the register to exercise such right (to the exclusion of those named later) prevails. Any such determination (by the chair or returning officer as the case may be) is final and conclusive. Several executors or administrators of a deceased member are, for the purposes of this **rule**, treated as joint holders of the share.

14.13. Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the register held in the

registered office must be adopted and acted on as the voting roll in respect of members and their shares on such register.

14.14. Ruling on votes

The chair of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chair is final and conclusive.

15. Appointment and removal of directors

15.1. Number of directors

The number of directors must be neither less than 3 nor more than such number as the members at any time determine.

15.2. No share qualification

There is no share qualification for directors.

15.3. Australian resident

All directors must be residents of Australia.

15.4. Appointment and removal of directors

The directors holding office at the date of adoption of this Constitution continue in office subject to this Constitution. The members may at any time elect or remove any director by ordinary resolution.

15.5. Casual appointment

- (a) The directors may at any time appoint any person as a director, to fill a casual vacancy, but only with the consent of a majority of the members to be obtained by the directors within 3 months.
- (b) Any person appointed by the directors to be a director to fill a casual vacancy must retire at the annual general meeting following the appointment.

15.6. Retirement

- (a) Each director continues in office until that director dies, resigns, is removed from office, or the office of the director is vacated under either this Constitution or the Act.

15.7. Retirement by rotation

- (a) At each third annual general meeting of the company after the annual general meeting held in 2009, one half of the directors shall retire from office. If the number of directors, excluding casual vacancy directors due to retire, at the time when an annual general meeting is convened is an odd number, then the number to retire is one half of number which is 1 greater than odd number.
- (b) A retiring director is eligible for nomination for re-election.

15.8. Resignation of director

Any director may retire from office by giving notice in writing to the Company of the director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date 3 months from the giving of the notice, whichever is the earlier.

15.9. Vacation of office

In addition to the circumstances in which the office of director becomes vacant by virtue of the Act or other provisions of this Constitution, the office of director, by the very fact, is vacated if the director:

- (a) becomes an insolvent under administration;
- (b) cannot manage the company because of their mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
- (c) is absent from meetings of directors for a continuous period of 6 months without leave of absence from the directors;
- (d) fails to pay any call due on any shares held by that director for the space of one month, or such further time as the directors allow, after the time when the call has been made; or
- (e) is removed from office by an ordinary resolution.

15.10. Less than minimum number of directors

The continuing directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the directors may act only:

- (a) to appoint directors up to that minimum number;
- (b) to call a meeting of members; or
- (c) in emergencies.

16. Powers and duties of directors

16.1. Powers generally

Subject to the Act, the ACNC Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the directors who may exercise all such powers of the Company and do all such acts or things as are not by this Constitution or by the Act expressly required to be exercised or done by a meeting of members. No ordinary resolution, special resolution, or change in this Constitution, invalidates any prior act of the directors which would have been valid if that resolution or change in this Constitution had not been adopted or passed.

16.2. Appointment of attorney

The directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

16.3. Delegation

The directors may at any time confer upon any director, or such other person or committee as they may select, such of the powers exercisable under this Constitution by the directors as they may think fit for such time and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers

of the directors in that respect. They may at any time revoke, withdraw, alter or vary all or any of such powers.

16.4. Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid unless it is proved to the satisfaction of the directors or a majority of them that such omission has directly prejudiced any member financially. The decision of the directors is conclusive and final and binds all members.

17. Proceedings of directors

17.1. Mode of meeting

The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The directors may conduct their meetings by telephone or other form of communication without a director being in the physical presence of another director or other directors.

17.2. Quorum

A quorum for a Board meeting is 3 directors.

17.3. Chair calling a meeting

The chair of the directors may at any time call a meeting of the directors to be held at such time and place as the chair chooses and such meeting is not invalidated by reason only of lack of convenience if a quorum of directors forms.

17.4. Secretary calling a meeting

The secretary, upon the request of any other director, must call a meeting of the directors to be held at such time and place as is convenient to the directors.

17.5. Notice of Board meeting

- (a) Notice of each Board meeting may be given by such means as is convenient, including by telephone or electronic transmission and must be given to all directors and alternate directors.

- (b) The accidental omission to give notice of any Board meeting to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

17.6. Appointment of chair

The directors may elect one of their number to be chair of their meetings and may determine the period for which that person is to hold that office. If no chair is elected or if at any meeting of the directors the chair is not present within 15 minutes of the time appointed for holding the meeting, subject to **rule 17.7**, the directors present must choose one of their number to be chair of such meeting.

17.7. Appointment of deputy chair

The directors may elect one of their number to be the deputy chair of their meetings and may determine the period for which that person is to hold that office. In the absence of the chair at a meeting of the directors, the deputy chair may exercise all the powers and authorities of the chair.

17.8. Votes of directors

Questions arising at any meeting of the directors must be decided by a majority of votes cast and each director has one vote. A person who is an alternate director is entitled (in addition to his or her own vote if a director) to one vote on behalf of each director whom the alternate represents (as an alternate director at the meeting) and who is not personally present. If there is an equality of votes the chair has a casting vote.

17.9. Circulating resolution of directors

- (a) If a majority in number of the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the directors held on the day on which the document was signed or, if the directors sign the documents on different days, on the day on which the document was last signed by a director thereby constituting a majority in number of the directors unless the document, by its terms, is said to take effect from an earlier date.
- (b) The document or documents referred to in **rule 17.9** is/are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

17.10. Validity of acts of directors

All acts done at any meeting of the directors or of a committee of directors or other persons or by any person acting as a director or any person purporting to act as an attorney under power of the Company are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a director or attorney and was entitled to vote.

18. Minutes

Any minutes of a meeting of members or of the directors, if purporting to be signed by any person purporting to be either the chair of such meeting, or the chair of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

19. Alternate directors

19.1. Power to appoint alternate director

Each director may at any time appoint any person approved for that purpose by a majority of his or her co-directors to act as an alternate director in the appointor's place.

19.2. Suspension of appointment

The appointor may vary, suspend, or terminate the appointment of any alternate.

19.3. Notice of appointment

Notice of each such appointment, suspension or termination must be made in writing to the alternate, signed by the appointor, and a copy served on the Company.

19.4. Electronic notifications

Any notice under **rule 19.3** or **rule 19.5** may be served by electronic transmission and any such transmission purporting to be signed by a director is treated as being in writing signed by such director.

19.5. Role of alternate director

An alternate director:

- (a) is not entitled to receive notice of meetings of the directors unless the appointor has, by notice in writing to the Company, required it do so either generally or in particular circumstances;
- (b) may attend and vote at a meeting of the directors if the appointor is not present at that meeting;
- (c) may sign a circulating resolution under **rule 17.9** unless the appointor has, by notice in writing to the Company, suspended that right either generally or in particular circumstances;
- (d) when acting as such at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a director;
- (e) does not have a conflict of interest solely by reason of the fact that the appointor has (or vice versa); and
- (f) is not taken into account in determining either the number of directors or rotation of directors.

19.6. Multiple votes

A director or any other person may act as alternate director to represent more than one director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one director.

19.7. Termination of appointment

The appointment of an alternate director, by the very fact, is terminated:

- (a) if, by writing under the hand of the alternate, left at the registered office, the alternate resigns such appointment;
- (b) if the appointment of the alternate is terminated by the appointor;
- (c) if a majority of the co-directors of the appointor withdraw the approval of the person to act as an alternate;

- (d) if the appointment is to act as alternate for one or more directors and all of those named directors have vacated office as directors; or
- (e) on the happening of any event which, if the alternate were a director, would cause the alternate to vacate the office of director.

20. Director's interests

20.1. Declaration of interest

- (a) Any director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the director might have duties or interests which conflict or may conflict either directly or indirectly with the director's duties or interests as a director, must as soon as practicable give the directors notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out the nature and extent of the interest and the relation of the interest to the affairs of the Company.

20.2. Voting by interested directors

A director who has a material personal interest in a matter that is being considered at a Board meeting:

- (a) must not vote on the matter at a meeting; and
- (b) must not be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum.

21. Secretary

24.1 Appointment of secretary

The secretary must be appointed by the directors and holds office until the secretary's services are terminated by the directors.

24.2 Duties of secretary

The secretary must perform such duties as are required of that person by the Act and this Constitution and, in addition, must perform such duties and exercise such powers as may at any time be directed by the directors.

21.1. Assistant secretary

The directors may also appoint an assistant secretary or assistant secretaries and temporary substitutes for the secretary. Any such assistant secretary or temporary substitute is, for the purposes of this Constitution, treated as and may fulfil the duty of the secretary subject to any limitation prescribed by the directors.

22. Seal

- (a) If the Company has a seal the directors must provide for the safe custody of the seal (and any duplicate of it).
- (b) The seal (and any duplicate of it) must not be used without the prior authority of the Board, and when used, the seal must be used in accordance with any direction of the Board.
- (c) If a document is to be executed by the use of the seal, the fixing of the seal must be witnessed by 2 directors or a director and secretary.

23. Notices**23.1. Service of notices**

Where this Constitution, the Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this **rule 23.1** referred to as *served*), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to the address of the place of residence or business of the person last known to the person serving the document or, in the case of a member, to the address of the member entered in the register and the document, by such dispatch, is regarded as left at that address and is treated as having been duly served, irrespective of whether it is actually received, on the day following the day when dispatch occurred.

23.2. Notices to joint holders

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

23.3. Counting of days

Subject to the Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

23.4. Binding on others

Every person who by operation of law, transfer or other means whatever becomes entitled to any shares is bound by every notice in respect of such shares which, previous to that person's name and address being entered on the register, has been duly given to the person from whom that person derives that person's title and to every previous holder of such shares.

23.5. Service on the Company or its officers

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the registered office.

24. Indemnity

24.1. Definitions

For the purposes of this Constitution:

- (a) *Officer* means a director, an alternate director, a secretary, or an officer as defined by the Act; and
- (b) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company.

24.2. Indemnity

Every Officer and past Officer (with the exception of any auditor) of the Company may be indemnified by the Company to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

24.3. Insurance premiums

The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by law.

25. Modification or repeal of this Constitution

25.1. Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.

25.2. Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.