

CONSTITUTION  
OF  
Sustainable Development International  
(Ltd.)

Australian Company Number (ACN) 625 603 956  
Australian Business Number (ABN) 54 625 603 956

A not-for-profit company limited by guarantee

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## Definitions and interpretation

### Definitions

- (a) **Australian government agency** refers to the Commonwealth, a state or a territory, an authority of the Commonwealth, a state or a territory.
- (b) **ACNC Act** means the **Australian** Charities and Not-for-profits Commission Act 2012 (Cth).
- (c) **Charitable Services Institution (CSI)** refers to an **institution** that would be a public benevolent institution, except that it also undertakes either (or both) promoting the prevention or the control of diseases in human beings (but not as a principal activity), and/or promoting the prevention or the control of behaviour that is harmful or abusive to human beings (but not as a principal activity).
- (d) **company** means the **company** referred to in clause 1.1
- (e) **Corporations Act** means the **Corporations** Act 2001 (Cth)
- (f) **elected chairperson** means a person **elected** by the directors to be the **company's** chairperson under clause 8.3
- (g) **general meeting** means a meeting of **members** and includes the annual **general meeting**, under clause 5.3.1
- (h) **initial member** means a person who is named in the application for registration of the **company**, with their consent, as a proposed member of the **company**
- (i) **member present** means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting
- (j) **Not-for-profit (NFP)** refers to an **organisation** that is operating for its purpose and not for the profit or gain (either direct or indirect) of its individual members.
- (k) **Public Benevolent Institution (PBI)** refers to a charity whose main purpose is to relieve poverty, sickness, suffering, distress or disability. **Examples** of PBIs include, but not limited to, disability support services, some not-for-profit homes for the aged, housing bodies that provide low rental or subsidised accommodation to underprivileged persons affected by poverty, sickness or disability.
- (l) **public fund** is a fund that is **intended** that the public will contribute to it, the public or a significant part of the public does in fact contribute, and/or the public participates in administration of the fund.
- (m) **registered charity** means a **charity** that is registered under the ACNC Act
- (n) **special resolution** means a **resolution**:
  - a. of which notice has been given under clause 5.4.5 (c), and
  - b. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and

- (o) **surplus assets** mean any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.
- (p) **tax act** means the Income Tax **Assessment Act** 1997 (Cth).

## Interpretation

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

## Reading this constitution with the Corporations Act

- (a) The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- (b) While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.
- (c) If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 1 Preliminary

### 1.1 Name of the company

The name of the company is **Sustainable Development International** (the **company**).

### 1.2 Type of company

The **company** is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a PBI and a charity.

### 1.3 Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 1.4.

### 1.4 The guarantee

Each member must contribute an amount not more than \$1 (the **guarantee**) to the property of the **company** if the **company** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the company incurred before the member stopped being a member, or
- (b) costs of winding up.

### 1.5 Definitions

In this constitution, words and phrases have the meaning set out in the definitions section.

## 2 Charitable purposes and powers

### 2.1 Object and activities

- 2.1.1 The **company's** objects are to carry out public benevolence social and welfare programs, humanitarian & relief and vocational training projects.
- 2.1.2 The **company** may carry out its objects for the benefit of people included in but not limited to the following categories:
- (a) the poor, and those in need as a result of natural disasters such as earthquake, flood, tidal wave, volcanic eruption and the like, or famine, drought, oppression and acts of warfare;
  - (b) the elderly, and those unable to support themselves by reason of illness or disability, whether temporary or permanent;
  - (c) children and youth-at-risk in need of support and care, including but not limited, to medical aid or material support or the provision of education or day to day care giving; and
  - (d) refugees.
- 2.1.3 In carrying out its objects, the **company** may use and promote the use of sustainable development principles and ethos. The **company** may also carry its objects in a manner consistent with promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia or overseas.
- 2.1.4 The **company** may undertake and pursue all such other similar, related or compatible objects as may from time to time be considered appropriate by the board of directors.
- 2.1.5 The **company** may also do anything which is ancillary or incidental to the above objects.
- 2.1.6 None of the above objects shall be construed so as to limit or be limited by any other object.

### 2.2 Powers

- 2.2.1 Subject to clause 2.3, the **company** has the following powers, which may only be used to carry out its purpose(s) set out in clause 2.1:
- (a) the powers of an individual, and
  - (b) all the powers of a company limited by guarantee under the Corporations Act.

### 2.3 Not-for-profit

- 2.3.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 2.3.2 and 18.2.
- 2.3.2 Clause 2.3.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or

- (b) making a payment to a member in carrying out the company's charitable purpose(s).

## 2.4 Amending the constitution

- 2.4.1 Subject to clause 2.4.2, the members may amend this constitution by passing a **special resolution**.
- 2.4.2 The members must not pass a special **resolution** that amends this constitution if passing it causes the **company** to no longer be a charity.

## 3 Members

### 3.1 Membership and register of members

- 3.1.1 The members of the **company** are:
  - (a) initial members, and
  - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 3.1.2 There shall be two classes of membership for which the qualifications shall be as follows:
  - (a) a person is qualified to be a **full member** of the company only if the person:
    - (i) has been an associate member of the company:
      - 1. for at least one year; or
      - 2. for the period between two succeeding annual general meetingswhichever is the longer, unless this requirement for associate membership has been unanimously waived by the directors of the board in respect of that person; and,
    - (ii) has been nominated and approved for full membership of the company as provided by clause 3.3.
  - (b) a person is qualified to be an **associate member** of the company only if the person:
    - (i) is a natural person; and
    - (ii) has been nominated and approved for associate membership of the **company** as provided by clause 3.3.
- 3.1.3 All **initial members** of the **company** at the time of its incorporation are full members.
- 3.1.4 The **company** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
  - (a) for each current member:
    - (i) name
    - (ii) class of membership
    - (iii) address

- (iv) any alternative address nominated by the member for the service of notices, and
    - (v) date the member was entered on to the register.
  - (b) for each person who stopped being a member in the last 7 years:
    - (i) name
    - (ii) class of membership
    - (iii) address
    - (iv) any alternative address nominated by the member for the service of notices, and
    - (v) dates the membership started and ended.
- 3.1.5 The **company** must give current members access to the register of members.
- 3.1.6 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.
- 3.1.7 If a member requests that any information contained on the register about the member (other than the member's name) not be available for inspection, that information must not be made available for inspection unless that is required by law.

### **3.2 Who can be a member**

- 3.2.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 3.3.
- 3.2.2 In this clause, 'person' means an individual or incorporated body.

### **3.3 How to become a member**

- 3.3.1 A person may only become a member of the **company** via nomination. Nomination of a person for full or associate membership of the **company**:
- (a) must be made by a full member of the company in writing in the form approved by the directors; and
  - (b) must be lodged with the secretary of the company.
- 3.3.2 As soon as practicable after receiving a nomination for full or associate membership, as applicable, the secretary must refer the nomination to the directors, who are to determine whether to approve or reject the nomination in accordance with clause 3.4. They may do so in their absolute discretion.

### **3.4 Directors decide whether to approve membership**

- 3.4.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 3.4.2 If the directors approve an application, the secretary must as soon as practicable notify the nominee of that approval.



- 3.4.3 The secretary must as soon as practicable following approval of the application by the directors:
- (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 3.5).
- 3.4.4 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- 3.4.5 If the directors reject the nomination of a nominee, the nominee has the right to appeal that determination by a lodging a notice to that effect with the secretary of the **company**. The notice is to be given in writing no later than seven days before the date of the annual general meeting following the determination, and if a special resolution is passed by the full members of the **company** to approve the nomination at the general meeting, the secretary must enter or cause to be entered the nominee's name in the register, and on being so entered, the nominee becomes a full member or an associate member of the association, as applicable.

### **3.5 When a person becomes a member**

- 3.5.1 Other than **initial members**, an applicant will become a member when they are entered on the register of members.

### **3.6 When a person stops being a member**

- 3.6.1 A person immediately stops being a member if they:
- (a) die
  - (b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
  - (c) resign, by writing to the secretary
  - (d) are expelled under clause 4.2, or
  - (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

### **3.7 Fees and subscriptions**

- 3.7.1 A member of the company must pay to the company an annual membership fee of A\$100 or, if some other amount is determined by the directors, that other amount:
- (a) except as provided by subclause (b), on or before 31 December in each calendar year; or
  - (b) if the member becomes a member on or after 1 January in any calendar year - on becoming a member and on or before 31 December in each succeeding calendar year.
- 3.7.2 The directors may determine different amounts payable by a full member and an associate member under clause 3.7.1.

## **4 Dispute resolution and disciplinary procedures**

### **4.1 Dispute resolution**

- 4.1.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
  - (b) one or more directors, or
  - (c) the company.
- 4.1.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 4.1 until the disciplinary procedure is completed.
- 4.1.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 4.1.4 If those involved in the dispute do not resolve it under clause 4.1.3, they must within 10 days:
- (a) tell the directors about the dispute in writing
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 4.1.5 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - (i) for disputes between members, a person chosen by the directors, or
    - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the company has its registered office.
- 4.1.6 A mediator chosen by the directors under clause 4.1.5 (b)(i):
- (a) may be a member or former member of the company
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 4.1.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
  - (b) allow those involved a reasonable chance to review any written statements
  - (c) ensure that those involved are given natural justice, and
  - (d) not make a decision on the dispute.

## 4.2 Disciplining members

- 4.2.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:
- (a) the member has breached this constitution, or

- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the company.
- 4.2.2 At least 14 days before the directors' meeting at which a resolution under clause 4.2.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
  - (c) what the member is said to have done or not done
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 4.2.3 Before the directors pass any resolution under clause 4.2.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
  - (b) speaking at the meeting.
- 4.2.4 After considering any explanation under clause 4.2.3, the directors may:
- (a) take no further action
  - (b) warn the member
  - (c) suspend the member's rights as a member for a period of no more than 12 months
  - (d) expel the member
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a general meeting.
- 4.2.5 The directors cannot fine a member.
- 4.2.6 The secretary must give written notice to the member of the decision under clause 4.2.4 as soon as possible.
- 4.2.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 4.2.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 4.2.9 A member may appeal a decision made under clause 4.2.4 in the following manner:
- (a) within 7 days after notice of the decision is served on the member, the member must lodge with the secretary a notice to that effect;
  - (b) On receipt of a notice from a member under subclause (a), the secretary must notify the directors who are to convene a general meeting of the company to be held within 28 days after the date on which the secretary notified the directors of the notice;

- (c) At the general meeting caused for the purposes of this clause:
  - (i) no business other than the question of the appeal is to be transacted;
  - (ii) the directors and the member must be given the opportunity to state their respective cases orally or in writing, or both; and
  - (iii) the full members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- (d) If at the general meeting the full members pass a special resolution in favour of the confirmation of the directors' decision, the decision is confirmed. If at the general meeting the full members pass a special resolution against confirmation of the decision, the decision is confirmed.

## 5 General meetings of members

### 5.1 General meetings called by directors

- 5.1.1 The directors may call a **general meeting**.
- 5.1.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **company** for a **general meeting** to be held, the directors must:
  - (a) within 21 days of the members' request, give all members notice of a general meeting, and
  - (b) hold the **general meeting** within 2 months of the members' request.
- 5.1.3 The percentage of votes that members have (in clause 5.1.2) is to be worked out as at midnight before the members request the meeting.
- 5.1.4 The members who make the request for a **general meeting** must:
  - (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the **company**.
- 5.1.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 5.2 General meetings called by members

- 5.2.1 If the directors do not call the meeting within 21 days of being requested under clause 5.1.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 5.2.2 To call and hold a meeting under clause 5.2.1 the members must:
  - (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
  - (b) call the meeting using the list of members on the **company's** member register, which the **company** must provide to the members making the request at no cost, and

(c) hold the **general meeting** within three months after the request was given to the **company**.

5.2.3 The **company** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.

### 5.3 Annual general meeting

5.3.1 A **general meeting**, called the annual **general meeting**, must be held:

- (a) within 18 months after registration of the **company**, and
- (b) after the first annual **general meeting**, at least once in every calendar year.

5.3.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:

- (a) a review of the **company's** activities
- (b) a review of the **company's** finances
- (c) any auditor's report
- (d) the election of directors, and
- (e) the appointment and payment of auditors, if any.

5.3.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual **general meeting**.

5.3.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

### 5.4 Notice of general meetings

5.4.1 Notice of a **general meeting** must be given to:

- (a) each member entitled to vote at the meeting
- (b) each director, and
- (c) the auditor (if any).

5.4.2 Notice of a **general meeting** must be provided in writing **at least 21 days** before the meeting.

5.4.3 Subject to clause 5.4.4, notice of a meeting **may be provided less** than 21 days before the meeting if:

- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
- (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

5.4.4 Notice of a meeting **cannot** be provided less than 21 days before the meeting if a resolution will

be moved to:

- (a) remove a director;
- (b) appoint a director in order to replace a director who was removed, or
- (c) remove an auditor.

5.4.5 Notice of a **general meeting** must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
- (b) the general nature of the meeting's business
- (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
  - (i) the proxy does not need to be a member of the **company**
  - (ii) the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
  - (iii) the proxy form must be delivered to the **company** at least 48 hours before the meeting.

5.4.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## 5.5 Quorum at general meetings

5.5.1 For a **general meeting** to be held, at least two full members (a quorum) must be present (in person, online, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

5.5.2 No business may be conducted at a **general meeting** if a quorum is not present.

5.5.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week;
- (b) if the time is not specified – the same time, and
- (c) if the place is not specified – the same place.

5.5.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 5.6 Auditor's right to attend meetings

- 5.6.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 5.6.2 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

## 5.7 Representatives of members

- 5.7.1 A full member may appoint as a representative:
- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 6.2, and
  - (b) the same individual or another individual for the purpose of being appointed or elected as a director.
- 5.7.2 The appointment of a representative by a member must:
- (a) be in writing
  - (b) include the name of the representative
  - (c) be signed on behalf of the member, and
  - (d) be given to the **company** or, for representation at a meeting, be given to the chairperson before the meeting starts.
- 5.7.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.
- 5.7.4 The appointment may be standing (ongoing).

## 5.8 Using technology to hold meetings

- 5.8.1 The **company** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 5.8.2 Anyone using this technology is taken to be present in person at the meeting.

## 5.9 Chairperson for general meetings

- 5.9.1 The elected chairperson is entitled to chair general meetings.
- 5.9.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
- (a) there is no elected chairperson, or
  - (b) the **elected chairperson** is not present within 30 minutes after the starting time set for the meeting, or

- (c) the **elected chairperson** is present but says they do not wish to act as chairperson of the meeting.

## 5.10 Role of the chairperson

- 5.10.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 5.10.2 In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.

## 5.11 Adjournment of meetings

- 5.11.1 If a quorum is present, a **general meeting** must be adjourned if a majority of full **members present** direct the chairperson to adjourn it.
- 5.11.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

# 6 Members' resolutions and statements

## 6.1 Members' resolutions and statements

- 6.1.1 Members with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the **company** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
  - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 6.1.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 6.1.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 6.1.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 6.1.5 The percentage of votes that members have (as described in clause 6.1.1) is to be worked out as at midnight before the request or notice is given to the **company**.
- 6.1.6 If the **company** has been given notice of a members' resolution under clause 6.1.1 (a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 6.1.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.



## 6.2 Company must give notice of proposed resolution or distribute statement

- 6.2.1 If the **company** has been given a notice or request under clause 6.1:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 6.2.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1,000 words long
  - (b) the directors consider it may be defamatory
  - (c) clause 6.1.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
  - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

## 6.3 Circular resolutions of members

- 6.3.1 Subject to clause 6.3.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 6.3.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 6.3.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
  - (b) for passing a **special resolution**, or
  - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 6.3.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 6.3.5 or clause 6.3.6.
- 6.3.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording is the same in each copy.

- 6.3.6 The **company** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## 7 Voting at general meetings

### 7.1 How many votes a member has.

- 7.1.1 Each full member has one vote and each associate member has no vote but is entitled to receive notice of and attend the meeting.

### 7.2 Questions decided by majority

- 7.2.1 Subject to the requirements of the **Corporations Act** and **ACNC Act**, a resolution will be taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half.

### 7.3 Challenge to member's right to vote

- 7.3.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 7.3.2 If a challenge is made under clause 7.3.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 7.4 How voting is carried out

- 7.4.1 Voting must be conducted and decided by:
- (a) a show of hands
  - (b) a vote in writing, or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 7.4.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 7.4.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 7.4.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### 7.5 When and how a vote in writing must be held

- 7.5.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **members present**
  - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or

(c) the chairperson.

7.5.2 A vote in writing must be taken when and how the chairperson directs, unless clause 7.5.3 applies.

7.5.3 A vote in writing must be held immediately if it is demanded under clause 7.5.1:

(a) for the election of a chairperson under clause 5.9.2, or

(b) to decide whether to adjourn the meeting.

7.5.4 A demand for a vote in writing may be withdrawn.

## 7.6 Appointment of proxy

7.6.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.

7.6.2 A proxy does not need to be a member.

7.6.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

(a) speak at the meeting

(b) vote in a vote in writing (but only to the extent allowed by the appointment), and

(c) join in to demand a vote in writing under clause 7.5.1.

7.6.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:

(a) the member's name and address

(b) the **company's** name

(c) the proxy's name or the name of the office held by the proxy, and

(d) the meeting(s) at which the appointment may be used.

7.6.5 A proxy appointment may be standing (ongoing).

7.6.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 5.4.5(d) or at the **company's** registered address at least 48 hours before a meeting.

7.6.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

7.6.8 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:

(a) dies

(b) is mentally incapacitated

(c) revokes the proxy's appointment, or

(d) revokes the authority of a representative or agent who appointed the proxy.

7.6.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## 7.7 Voting by proxy

7.7.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).

7.7.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
- (b) if the way they must vote is specified on the proxy form, must vote that way, and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## 8 Directors

### 8.1 Number of directors

8.1.1 The **company** must have at least three and no more than seven directors.

### 8.2 Election and appointment of directors

8.2.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.

8.2.2 Apart from the initial directors and directors appointed under clause 8.2.5, the members may elect a director by a resolution passed in a **general meeting**.

8.2.3 Each of the directors must be appointed by a separate resolution, unless:

- (a) the members present have first passed a resolution that the appointments may be voted on together, and
- (b) no votes were cast against that resolution.

8.2.4 A person is eligible for election as a director of the **company** if they:

- (a) are a full member of the **company**, or a representative of a full member of the **company** (appointed under clause 5.7), and have been a full member of the **company**, or a representative of a full member of the **company** for at least two consecutive years prior to their nomination,
- (b) are a person of good character and integrity,
- (c) are nominated by two full members or representatives of full members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting),
- (d) the nomination is delivered to the secretary of the **company** at least 28 days before the date fixed for holding the general meeting at which the election is to take place,
- (e) give the **company** their signed consent to act as a director of the **company**, and

(f) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

8.2.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

(a) is a full member of the **company**, or a representative of a full member of the **company** (appointed under clause 5.7),

(b) gives the **company** their signed consent to act as a director of the **company**, and

(c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

8.2.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

### 8.3 Election of chairperson

8.3.1 The directors must elect a director as the **company's elected chairperson**.

### 8.4 Term of office

8.4.1 At each annual **general meeting**:

(a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and

(b) any director can be re-elected to any position in the board, including resuming the same position.

### 8.5 When a director stops being a director

8.5.1 A director stops being a director if they:

(a) give written notice of resignation as a director to the **company**

(b) die

(c) are removed as a director by a resolution of the members

(d) stop being a member of the **company**

(e) are a representative of a member, and that member stops being a member

(f) are a representative of a member, and the member notifies the **company** that the representative is no longer a representative

(g) are absent for more than 5 consecutive directors' meetings without approval from the directors, or

(h) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

## 9 Powers of directors

## 9.1 Powers of directors

- 9.1.1 The directors are responsible for managing and directing the activities of the **company** to achieve the purposes set out in clause 2.1.
- 9.1.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 9.1.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 9.2, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 9.1.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

## 9.2 Delegation of directors' powers

- 9.2.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 9.2.2 The delegation must be recorded in the **company's** minute book.

## 9.3 Payments to directors

- 9.3.1 The **company** must not pay fees to a director for acting as a director.
- 9.3.2 The **company** may:
- (a) Pay a director a salary for work they do as a staff member employed by the **company**, if the amount is no more than a reasonable salary paid for similar employment role,
  - (b) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (c) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.
- 9.3.3 Any payment made under clause 9.3.2 must be approved by the directors.
- 9.3.4 The **company** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

## 9.4 Execution of documents

- 9.4.1 The **company** may execute a document without using a common seal if the document is signed by:
- (a) two directors of the **company**, or
  - (b) a director and the secretary.

## 10 Duties of directors

### 10.1 Duties of directors

- 10.1.1 The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
  - (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the **company** set out in clause **Error! Reference source not found.**
  - (c) not to misuse their position as a director
  - (d) not to misuse information they gain in their role as a director
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 10.2
  - (f) to ensure that the financial affairs of the **company** are managed responsibly, and
  - (g) not to allow the **company** to operate while it is insolvent.

### 10.2 Conflicts of interest

- 10.2.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors, or
  - (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 10.2.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 10.2.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 10.2.4:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 10.2.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 17.2)
  - (c) their interest relates to a payment by the **company** under clause 17.1 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**

- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the **company**, and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## 11 Directors' meetings

### 11.1 When the directors meet

11.1.1 The directors may decide how often, where and when they meet.

### 11.2 Calling directors' meetings

11.2.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

11.2.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 11.3 Chairperson for directors' meetings

11.3.1 The **elected chairperson** is entitled to chair directors' meetings.

11.3.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **elected chairperson** is:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) present but does not want to act as chairperson of the meeting.

### 11.4 Quorum at directors' meetings

11.4.1 Unless the directors determine otherwise, the quorum for a directors' meeting is 51% of the directors or three directors, whichever is less.

11.4.2 A quorum must be present for the whole directors' meeting.

### 11.5 Using technology to hold directors' meetings

11.5.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

11.5.2 The directors' agreement may be a standing (ongoing) one.

11.5.3 A director may only withdraw their consent within a reasonable period before the meeting.

### 11.6 Passing directors' resolutions



11.6.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

## 11.7 Circular resolutions of directors

11.7.1 The directors may pass a circular resolution without a directors' meeting being held.

11.7.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 11.7.3 or clause 11.7.4.

11.7.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

11.7.4 The **company** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

11.7.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 11.7.3 or clause 11.7.4.

## 12 Secretary

### 12.1 Appointment and role of secretary

12.1.1 The **company** must have at least one secretary, who may also be a director.

12.1.2 A secretary must be appointed by the directors (after giving the **company** their signed consent to act as secretary of the **company**) and may be removed by the directors.

12.1.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

12.1.4 The role of the secretary includes:

- (a) maintaining a register of the **company's** members, and
- (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

## 13 Minutes and records

### 13.1 Minutes and records

13.1.1 The **company** must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of **general meetings**
- (b) minutes of circular resolutions of members
- (c) a copy of a notice of each **general meeting**, and

(d) a copy of a members' statement distributed to members under clause 6.2.

13.1.2 The **company** must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
- (b) minutes of circular resolutions of directors.

13.1.3 To allow members to inspect the **company's** records:

- (a) the **company** must give a member access to the records set out in clause 13.1.1, and
- (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 13.1.2 and clause 13.2.1.

13.1.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:

- (a) the chairperson of the meeting, or
- (b) the chairperson of the next meeting.

13.1.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## 13.2 Financial and related records

13.2.1 The **company** must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance, and
- (b) enable true and fair financial statements to be prepared and to be audited.

13.2.2 The **company** must also keep written records that correctly record its operations.

13.2.3 The **company** must retain its records for at least 7 years.

13.2.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

## 14 By-laws

### 14.1 By-laws

14.1.1 The directors may pass a resolution to make by-laws to give effect to this constitution.

14.1.2 Members and directors must comply with by-laws as if they were part of this constitution.

## 15 Notice

### 15.1 What is notice

15.1.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 15.2 to 15.4, unless specified otherwise.

15.1.2 Clauses 15.2 to 15.4 do not apply to a notice of proxy under clause 7.6.6.

## 15.2 Notice to the company

- 15.2.1 Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:
- (a) delivering it to the **company's** registered office
  - (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
  - (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
  - (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

## 15.3 Notice to members

- 15.3.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person
  - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
  - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
  - (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
  - (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 15.3.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

## 15.4 When notice is taken to be given

- (a) A notice:
- (b) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (c) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (d) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (e) given under clause 15.3.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## 16 Financial year

## 16.1 Company's financial year

16.1.1 The **company's** financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

## 17 Indemnity, insurance and access

### 17.1 Indemnity

17.1.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.

17.1.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

17.1.3 In this clause, 'to the relevant extent' means:

- (a) to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

17.1.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.

### 17.2 Insurance

17.2.1 To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

### 17.3 Directors' access to documents

17.3.1 A director has a right of access to the financial records of the **company** at all reasonable times.

17.3.2 If the directors agree, the **company** must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors, and
- (b) any other documents referred to in those documents.

## 18 Winding up

### 18.1 Surplus assets not to be distributed to members

18.1.1 If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 18.2.1.

## 18.2 Distribution of surplus assets

- 18.2.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** including 'gift funds' as defined in clause 18.2.4, that remain after the **company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause **Error! Reference source not found.**, and
  - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**; and
  - (c) that is or are deductible gift recipients within the meaning of the **tax act**.
- 18.2.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.
- 18.2.3 If the **company's** deductible gift recipient endorsement is revoked (whether or not the **company** is to be wound up), and surplus gift funds must be transferred to one or more charities that meet the requirements of clause 2, as decided by the directors.
- 18.2.4 For the purpose of this clause:
- (a) 'gift funds' means:
    - (i) gifts of money or property for the principal purpose of the **company**;
    - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the **company**; and
    - (iii) money received by the **company** because of such gifts and contributions.
  - (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the **tax act**.

## 19 Developing Country Relief Fund

### 19.1 Developing Country Relief Fund

- 19.1.1 The **company** can establish and maintain a public fund. The **company** shall seek donations to the public fund from the public.
- 19.1.2 The **company** shall apply as soon as the directors consider it practicable for the public fund to be a developing country relief fund and to be a deductible gift recipient under Division 30 of the **tax act**, if that has not already occurred.
- 19.1.3 Donations must be deposited into the public fund and that money and any interest on or accretion to it must be kept separate from other funds of the **company** and must only be used to further the principal purpose of the **company** to the extent that purpose is a qualifying purpose under section 30-85 of the **tax act**. Investment of money in the public fund must be in accordance with guidelines for public funds prescribed from time to time by the Australian Taxation Office in accordance with the **tax act**.

- 19.1.4 The public fund must be administered by the directors. However, the directors may establish a committee under this constitution (with such name as the directors may decide from time to time). The directors may delegate the administration of the fund to that committee subject to this constitution.
- 19.1.5 For so long as the public fund is, or is applying to be, a developing country relief fund and deductible gift recipient under Division 30 of the **tax act**, the majority of the directors (or of any committee to whom administration is delegated) must, because of their tenure of some public office or their professional standing, have an underlying community responsibility, so that the fund complies with the requirements of the **tax act** including any guidelines for public funds prescribed from time to time by the Australian Taxation Office in accordance with the **tax act** in respect of the governance of public funds.
- 19.1.6 No money or assets of the public fund may be distributed to members or office bearers of the **company**, except as reimbursement of out-of-pocket expenses incurred on behalf of the public fund or proper remuneration for administrative services.
- 19.1.7 The department responsible for the administration of the register of approved organisations in respect of developing country relief funds, and the Australian Taxation Office, must be notified of any proposed amendments or alterations to the provisions for the public fund in this constitution, to assess the effect of any amendments on the public fund's continuing deductible gift recipient status under the **tax act**.
- 19.1.8 Receipts for gifts to the public fund must state:
- (a) the name of the public fund and that the receipt is for a gift made to the public fund;
  - (b) the Australian Business Number of the Company;
  - (c) the fact that the receipt is for a gift; and
  - (d) any other matter required to be included on the receipt pursuant to the requirements of the **tax act**.
- 19.1.9 The directors may decide to wind up or dissolve the public fund at any time.
- 19.1.10 Upon the first to occur of:
- (a) the public fund being wound up; or
  - (b) the public fund's endorsement as a deductible gift recipient being revoked,
  - (c) the public fund must not be paid to or distributed among members of the **company**, but must be given or transferred to some other fund, authority or institution chosen by the Members or in default thereof by the Supreme Court of New South Wales (**Recipient**).  
The Recipient:
    - (d) must be charitable at law, have objects similar to the objects of the public fund, and its rules must prohibit the distribution of its income and property among its members; and
    - (e) must be eligible for tax deductibility of donations under Division 30 of the **tax act**.