
Corporations Act
A Company limited by guarantee

Constitution of SeeBeyondBorders Australia

Adopted on: 16 April 2015



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Corporations Act
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Constitution of SeeBeyondBorders Australia

1. Name of Corporation

The name of the company is SeeBeyondBorders Australia.

2. Status of the Constitution

2.1. Constitution of the Company

This is the constitution of the Company.

2.2. Replaceable rules

This Constitution displaces the replaceable rules, accordingly, none of the replaceable rules apply.

3. Interpretation

3.1. Definitions

In this Constitution:

- (a) *ATO* means the Australian Taxation Office;
- (b) *ATO Endorsed Entity* means an entity which is endorsed by the ATO as a deductible gift recipient in accordance with Division 30 of the *Tax Act*;
- (c) *Auditor* means the person appointed for the time being as the auditor of the Company;
- (d) *Board* means the Directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present;
- (e) *Business Day* means a day which is not a Saturday, Sunday or bank or public holiday in Sydney, Australia;
- (f) *CEO* means the person who is appointed to the office of Chief Executive Officer in accordance with rule 22 of the Company's Constitution;

- (g) *Company* means SeeBeyondBorders Australia;
- (h) *Constitution* means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document;
- (i) *Corporations Act* means the *Corporations Act 2001 (Cth)*;
- (j) *Development* means sustainable development as set out in the Overseas Aid Gift Deduction Scheme Guidelines from time to time;
- (k) *Director* means a person who is a director for the time being of the Company and *Directors* means more than 1 Director, and in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include non-executive Directors and alternates;
- (l) *Member* means a person who is, or who is registered as, a member of the Company and *Members* means more than 1 Member;
- (m) *Members Guarantee Amount* means \$10.00;
- (n) *Membership* means being a Member of the Company;
- (o) *Register of Members* means the register of Members maintained pursuant to the *Corporations Act*;
- (p) *Relief Fund* means the SeeBeyondBorders Australia Overseas Aid Relief Fund established pursuant to clause 5.2 and which is charitable at law and gifts to which can be deducted under Division 30 of the *Income Tax Assessment Act 1997*;
- (q) *Replaceable Rules* means the replaceable rules applicable to a public company limited by guarantee set out in the *Corporations Act*;
- (r) *Seal* means the common seal for the time being of the Company; and
- (s) *Secretary* means any person appointed for the time being as, or to perform the functions of, secretary of the Company.

3.2. Interpretation

In this Constitution:

- (a) the words *including*, *include* and *includes* are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a *person* includes a corporate representative appointed pursuant to Section 250D of the *Corporations Act*;
- (d) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (e) a word or expression defined in the *Corporations Act* and used, but not defined, in this Constitution has the same meaning given to it in the *Corporations Act* when used in this Constitution.

4. Objects and Principal purposes

4.1. Objects and Principal purposes

The Company is established to pursue charitable purposes only. The Company's Objectives and Principal Purposes are:

- (a) for the public benefit, to promote the education (including social, technical and physical training) of people who are in conditions of need, hardship or distress anywhere in the world but principally in developing countries in such ways as the Directors think fit and/or to assist in such ways as the Directors think fit any charity in a developing country whose aims are similar to those of the Company.
- (b) to assist with the Development of communities in developing countries in conjunction with in-country partners principally amongst people in such ways as the Directors think fit and/or to assist in such ways as the Directors think fit any charity in a developing country whose aims are similar to those of the Company.
- (c) the prevention or relief of poverty, financial or health related hardship anywhere in the world but principally amongst people in developing countries in such ways as

the Directors think fit and/or to assist in such ways as the Directors think fit any charity in a developing country whose aims are similar to those of the Company.

- (d) applying the income and property of the Company solely to promote those purposes.

4.2. Limitation of powers

- (a) The Company:
 - (i) is prohibited from making distributions to Members;
 - (ii) is prohibited from paying fees (or other remuneration) to the Directors;
and
 - (iii) must exercise its powers conferred on it under Section 124(1) of the *Corporations Act* in a manner which is consistent with the objectives of the Company set out in **rule 4.1**.
- (b) The Directors must approve all other payments the Company makes to Directors.
- (c) Notwithstanding the provision in rule 4.2(a) this does not prevent the payment of remuneration to any person who is an employee of the Company.

5. Income and property of Company

5.1. Income and property

- (a) The income, property and profits of the Company will only be applied towards the promotion of the objects of the Company set out in **rule 4.1**.
- (b) No income or property may be paid or transferred directly or indirectly to any Member of the Company both while it is operating and on winding up except for payments to a Member in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company.

5.2. Establishment and operation of Relief Fund

The Company must maintain a Relief Fund for the purpose of soliciting and receiving gifts:

- (a) to which the general public is invited to contribute;

- (b) to which gifts of money or property are to be made;
- (c) to which any money received by the Company because of those gifts is to be credited; and
- (d) that does not receive any other money or property.

5.3. Establishment of the SeeBeyondBorders Australia Overseas Aid Relief Fund Account

The Company must establish a bank account called the '**SeeBeyondBorders Australia Overseas Aid Relief Fund Account**' to distinguish it from other accounts held by the Company. Such account will be established to receive only gifts made to the Relief Fund including, without limitation, interest received on any such gift of monies held in the account.

5.4. Receipts issued in the name of the Relief Fund

All receipts for gifts must issue in the name of the Relief Fund. Receipts issued for gifts must include:

- (a) The name of the Relief Fund on behalf of the Company;
- (b) The fact that the receipt is for a gift; and
- (c) The Australian Business number of the Company.

5.5. The Relief Fund must operate on a not-for-profit basis and no portion shall be distributed directly or indirectly to any individual except as bona fide compensation for services rendered or expenses incurred on behalf of the Relief Fund; and

5.6. A Relief Fund Committee of no fewer than three persons will manage and administer the Relief Fund. The Directors or the Board must ensure that the majority of the Relief Fund Committee members are persons having a degree of responsibility to the community by reason of their occupation or standing in the community.

5.7. The Directors are required to notify the Australian Taxation Office of any alterations made to these Relief Fund rules.

5.8. Winding up of the Relief Fund

At the first occurrence of:

- (a) the winding up of the Relief Fund; or
- (b) the Company ceasing to be an ATO Endorsed Entity;

any surplus assets of the Relief 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), as the Board in its discretion determines.

6. Modification or repeal of this Constitution

6.1. Modifying or repealing Constitution

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

6.2. 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.

7. Member's liability

7.1. Liability to contribute

Subject to this Constitution, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

7.2. Limited liability

The amount that each Member or past Member is liable to contribute is limited to the amount of the Member's Guarantee Amount.

8. Members

8.1. Initial membership

Edward Neil Shuttleworth will be the initial Member. The Board may admit further persons as Members in accordance with this Constitution.

8.2. Number of Members

The Company must have at least 1 Member. Subject to rule 8.3 membership of the Company is open to any person.

8.3. Pre-condition to Membership

A person is entitled to become a Member if:

- (a) that person is nominated by a Director;
- (b) that person agrees to assume the liability to pay the Member's Guarantee Amount;
- (c) that person agrees to contribute to the fulfilment of the Company's objects and purpose; and
- (d) the Board has approved that person as a potential Member.

8.4. Becoming a Member

Subject to the *Corporations Act*, a person becomes a Member on the registration of that person's name in the Register of Members.

8.5. Application for Membership

The Board may prescribe the form of the application for Membership.

8.6. Consideration for application for Membership

At the first meeting of the Board after an application for Membership has been received by the Board, the Board must consider the application and either accept or reject the application.

8.7. **Registration as Member**

If the Board accepts an application for Membership, as soon as practicable, the Board must register the name of the person in the Register of Members.

8.8. **Membership fee**

The Board may determine from time to time the amount of an annual membership fee (if any) payable by Members.

9. **Rights of Members are non-transferable**

The rights and obligations of a Member are personal and are not transferable.

10. **Cessation of Membership**

10.1. **Cessation of Membership of a natural person**

A person ceases to be a Member:

- (a) if the person resigns as a Member in accordance with this Constitution;
- (b) if the person is expelled as a Member in accordance with this Constitution;
- (c) if the person dies;
- (d) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Member;
- (e) if the person's whereabouts are unknown for more than 12 months and the Board resolves that the person should cease to be a Member;
- (f) if the person becomes a bankrupt or insolvent; or
- (g) if the person fails to pay the amount of any annual membership fee and the Board in its discretion determines that they shall cease to be a Member.

10.2. **Cessation of Membership of a body corporate**

A body corporate ceases to be a Member:

- (a) if the body corporate resigns as a Member in accordance with this Constitution;

- (b) if the body corporate is expelled as a Member in accordance with this Constitution;
- (c) if the body corporate is placed under external administration or makes any composition or arrangement with its creditors;
- (d) if the body corporate is the subject of an order by a court of competent jurisdiction directing the body corporate to be wound up; or
- (e) if the body corporate fails to pay the amount of any annual membership fee and the Board in its discretion determines that they shall cease to be a Member.

10.3. Resignation of Member

A Member may resign from the Company by giving the Board at least 30 days' notice.

10.4. Expulsion of Member

If the Board resolves that it is not in the best interests of the Company for a person to remain as a Member, that person is automatically expelled as a Member. The Board must give notice to a Member of a meeting at which the resolution for the Member's expulsion is proposed:

- (a) setting out the place, date and time of the meeting;
- (b) setting out the proposed resolution and the grounds for the proposed expulsion; and
- (c) informing the Member that the Member may submit written submissions to the Board before the resolution is put to vote.

11. Maintenance of Register

11.1. Register of Members

The Secretary must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member; and
- (c) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

11.2. Inspection of Register of Members

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

12. General meetings

12.1. Annual general meetings

The Company must hold its first annual general meeting within 18 months after its incorporation.

12.2. Business at annual general meeting

Section 250R of the *Corporations Act* provides that 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 the directors;
- (c) the appointment of the auditor; and
- (d) determination of auditor's remuneration.

12.3. Director convening a general meeting

Any Director may convene a general meeting.

12.4. Meetings requested by Members

- (a) If the Board receives a request from a Member or Members with at least 5% of the votes that may be cast at any general meeting or at least 100 Members who are entitled to vote at that general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than 1 document.

- (c) A general meeting requested by the Members must be held no later than 2 calendar months after the request is received.

12.5. Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and
- (e) contain a statement informing the Members of the right to appoint a proxy.

12.6. Shorter notice of general meeting

Subject to the *Corporations Act*, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to:

- (a) in the case of an annual general meeting, by all Members entitled to attend and vote at the meeting; and
- (b) in the case of any other general meeting, by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting,

and accordingly, any such general meeting will be treated as having been duly convened.

12.7. Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

12.8. General meetings at 2 or more places

A general meeting may be held in 1 place or 2 or more places. If a general meeting is held in 2 or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

12.9. Postponement or cancellation of general meeting

- (a) Subject to this Constitution and the *Corporations Act*, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

12.10. Notice of change, postponement or cancellation of meeting

- (a) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (b) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (c) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

12.11. Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;
- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

13. Proceedings at general meetings

13.1. Quorum

- (a) A quorum at a general meeting is 1 or more Members present in person or by proxy. The quorum must be present at all times during the general meeting.

- (b) If a Member has appointed more than 1 proxy and 2 or more proxies attend a general meeting, only 1 proxy will be counted for the purposes of determining whether there is a quorum.

13.2. Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors or Director at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present or no Director present so determines:
 - (I) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (II) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (III) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

13.3. Chairing general meetings

- (a) The chair for the time being of the Board will serve as chair at each meeting of Members.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole

or any part of that general meeting, the Directors present may elect a Director present to chair that general meeting.

- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

13.4. **Conduct of general meetings**

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

13.5. **Adjournment**

- (a) The chair of a general meeting at which a quorum is present may, with the consent of the Members present in person or by proxy, adjourn the general meeting.
- (b) If a majority of Members present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the meeting to another date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of the adjourned general meeting other than the business left unfinished at the adjourned general meeting.

14. **Proxy**

14.1. **Appointment of proxy**

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may be, but does not have to be, a Member.
- (c) An appointment of a proxy may be a standing one.
- (d) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.

- (e) If a Member is entitled to cast 2 or more votes at a meeting, the Member may appoint 2 proxies. If the Member appoints 2 proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.

14.2. Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

14.3. Proxy to be received by Company

The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:

- (a) the registered office;
- (b) a facsimile number at the registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

14.4. Power to demand poll

A proxy may demand, or join in demanding, a poll.

14.5. Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

14.6. Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned general meeting, before the resumption of the adjourned general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

14.7. No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

15. Body corporate representative

15.1. Appointment of corporate representative

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;

- (ii) at meetings of creditors; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

15.2. Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the body corporate appointing the representative and state:
- (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and
 - (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

15.3. Instrument to be received by Company

- (a) An instrument purporting to appoint the corporate representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
- (i) the registered office;
 - (ii) a facsimile number at the registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

15.4. **Revocation and appointment of corporate representative**

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

15.5. **Validity of votes of corporate representative**

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case on an adjourned general meeting, before the resumption of the adjourned general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member;
or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative;
or
 - (ii) the appointment of a new corporate representative.

15.6. **No liability**

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

16. **Voting**

16.1. **Entitlement to vote**

Each Member entitled to vote at a general meeting may vote in person or by proxy. Each Member has 1 vote, whether on a show of hands, or on a poll.

16.2. **Casting vote**

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair has a casting vote.

16.3. Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

16.4. Voting on resolution

At any general meeting, a resolution put to a vote must be decided by a show of hands unless a poll is demanded in accordance with this Constitution.

16.5. Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A decision made by the chair in relation to a challenge to a right to vote is final.

16.6. Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than 1 document.

16.7. Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,

is conclusive evidence of the fact declared. An entry to that effect made in the minute book of the Company signed by the chair is evidence of that fact unless the contrary is proved.

- (b) Within 1 month after each general meeting, the Directors must record or cause to be recorded in the minute book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within 1 month after the general meeting.
- (d) The minute books must be kept at the registered office.
- (e) Members may inspect the minute books between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

17. Poll

17.1. Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

17.2. Right to demand poll

A poll may be demanded on any resolution at a general meeting by:

- (a) at least 5 Members entitled to vote on the resolution; or
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll.

17.3. Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.

- (b) If a poll is demanded on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) A demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.

18. Appointment and removal of Directors

18.1. Initial Directors and Board

The initial directors of the Company will be:

- (a) Catherine Mary Shuttleworth;
- (b) David Tyrrell Armstrong; and
- (c) Priscilla Catherine Chang.

18.2. Number of Directors

The number of Directors (not counting alternates) must not be less than 3 or more than 5. A majority of the Directors must demonstrate, through their position in the community or public office, that he or she has a degree of responsibility to the community as a whole and ordinarily resides in Australia.

18.3. Appointment of Directors

- (a) Subject to this Constitution, the Company may by resolution at a general meeting appoint a person as a Director except that the majority of Directors must be non-executive members of the Board.
- (b) Subject to this Constitution, the Board may by resolution at a Board meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.
- (c) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment

of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

18.4. Confirmation of appointment

If a person is appointed as a Director by the Board, the Company must confirm the appointment at the next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director at the conclusion of the annual general meeting.

18.5. Removal of Director

- (a) The Company may remove a Director by resolution at a general meeting.
- (b) At least 2 months' notice must be given to the Company of the intention to move a resolution to remove a Director at a general meeting.
- (c) If notice of intention to move a resolution to remove a Director at a general meeting is received by the Company, a Director must be given a copy of the notice as soon as practicable.
- (d) The Director must be informed that the Director may:
 - (i) submit a written statement to the Company for circulation to the Members before the meeting at which the resolution is put to a vote; and
 - (ii) speak to the motion to remove the Director at the general meeting at which the resolution is to be put to a vote.
- (e) At least 21 days' notice must be given to the Members of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

18.6. Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting;
- (b) resigns as a Director in accordance with this Constitution;
- (c) holds office as a Director for a continuous period of 2 years;

- (d) if the person is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (e) dies;
- (f) is disqualified from acting as a Director under the *Corporations Act*; or
- (g) is absent from Board meetings for a continuous period of 12 months without leave of absence from the Board and the Board does not resolve that the Director should not cease to be a Director.

18.7. Tenure of office of Director

- (a) Each Director must resign from the office of Director at the general meeting immediately following that Director holding office as a Director for 2 consecutive years in accordance with **rule 18.8** unless that Director is reappointed by Members at the general meeting in accordance with this Constitution.
- (b) For the avoidance of doubt, a retiring Director is eligible for re-appointment by Members.

18.8. Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

19. Powers and duties of Board

- (a) Subject to this Constitution and the *Corporations Act*, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the *Corporations Act*, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The Board may delegate any of its powers to:
 - (i) a Director;
 - (ii) a committee of Directors;
 - (iii) the Chief Executive Officer;

- (iv) an employee of the Company; or
- (v) any other person.

20. **Negotiable instruments**

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

21. **Chief Executive Officer**

- (a) The Board may appoint a person who must not be a director of the Company to be the CEO.
- (b) The CEO must report to the Board and is responsible for the Company's consistent achievement of its mission and purpose and the overall management and operations of the Company.
- (c) The Board may confer on the CEO any of the powers that the Board may exercise.
- (d) The Board may vary or revoke a conferral of any power on the CEO.
- (e) The Board may at any time vary or revoke an appointment of a CEO.
- (f) Edward Neil Shuttleworth will be the initial CEO of the Company for a period of 3 years.

22. **The Powers and Functions of the Directors and the CEO**

22.1. The CEO must obtain the formal approval of the Board for:

- (a) the company's policies;
- (b) the company's strategic plan;
- (c) the company's annual budgets;
- (d) the terms of any grants;
- (e) the company's financial statements;
- (f) the company's annual reports; and
- (g) such other matters as the directors determine.

22.2. No person, other than the Chair or the CEO may make any public statement on behalf of the Company unless he or she is expressly authorised to do so by the Board or the CEO.

23. **Alternate Directors**

23.1. **Appointment and terms of appointment**

- (a) If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
 - (i) the name, experience and qualifications of the person;
 - (ii) the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms of the notified; and
 - (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend.
- (b) The Board may ask for further information in relation to the alternate's qualifications and experience.
- (c) If the alternate is a Director, the appointment will take effect immediately.
- (d) If the alternate is not a Director, at the first meeting of the Board after the notice of the proposed appointment has been received by the Board, the Board must consider the proposed appointment and either accept or reject the appointment. If the Board accepts the appointment of the alternate, the Director may appoint the person on the terms of appointment.
- (e) Where the alternate is not a Director, an appointment of a person as an alternate is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.
- (f) An alternate is not an agent of the Director appointing the alternate.

23.2. **No liability**

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.

23.3. Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

23.4. Notice and attendance at Board meetings

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice cease to be given to the alternate.

23.5. Voting of alternate

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

23.6. Termination of appointment of alternate

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (c) A termination of appointment does not take effect until the Company has received notice of termination.

23.7. Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

24. Remuneration and reimbursement for expenses

24.1. Remuneration of Director

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.

24.2. Reimbursement of expenses

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 meetings of the Board and committees of the Board only if the Directors have approved the reimbursement for such costs and expenses.

25. Board meetings

25.1. Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.
- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

25.2. Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any) and Edward Neil Shuttleworth whilst he remains CEO of the Company.
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting;
and
 - (iii) any proposed resolutions.

25.3. Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or

- (d) resumption of that adjourned Board meeting.

25.4. **Use of technology**

A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.

25.5. **Quorum at meetings**

A quorum at a Board meeting is at least 2 Directors not counting alternates. The quorum must be present at all times during the Board meeting.

25.6. **Chair of meetings**

- (a) The Directors will appoint a Director to be the chair of the Directors' meetings and determine the period for which the person is elected to hold office.
- (b) If the chair is not present within 15 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

25.7. **Passing resolutions at meetings**

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person or by alternate is entitled to vote and has 1 vote.

25.8. **Casting vote**

If on any resolution an equal number of votes is cast for and against the resolution, the chair has a casting vote.

25.9. **Conduct of meetings**

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

25.10. **Written resolutions**

The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than 1 document.

25.11. **Minutes of meetings**

- (a) Within 1 month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair, or the chair of the next Board meeting, must sign the minutes within 1 month after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

25.12. **Committee meetings**

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

26. **Director's interests**

26.1. **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 give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and

- (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

26.2. Directors and members of the Board, paid staff, and volunteers will make known to the Board any conflict of interest or any affiliation they might have with an actual or potential supplier of goods and services, recipient of grant funds or organisation with competing or conflicting objectives. Members of the Board and paid staff will absent themselves from discussion and abstain from voting or otherwise participating in the decision on any issue in which there is a conflict of interest. Large or otherwise inappropriate gifts to members of the Board or staff for personal use is forbidden.

26.3. **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.

27. **Appointment of Secretary**

- (a) The Company must have at least 1 Secretary. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

28. **Removal and remuneration of Auditor**

28.1. **Remuneration of Auditor**

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

28.2. Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least 2 months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within 7 days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

28.3. Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

29. 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.

30. Financial records

30.1. Member's access to financial records

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company may be inspected by Members.

30.2. Directors' access to financial records

Any Director may at any time access and inspect any financial and any other record of the Company.

30.3. Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.

31. Notices

31.1. General

Any notice, statement or other communication under this Constitution must be in writing, except that any notice convening a Board meeting does not need to be in writing.

31.2. How to give a communication

In addition to any other way allowed by the *Corporations Act*, a notice or other communication may be given by being:

- (a) personally delivered;
- (b) left at the person's current address as recorded in the Register of Members;
- (c) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the person's current fax number for notices; or
- (e) sent by email to the person's current email address for notices.

31.3. **Communications by post**

A communication is given if posted:

- (a) within Australia to an Australian address, 3 Business Days after posting; or
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

31.4. **Communications by fax**

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

31.5. **Communications by email**

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

31.6. **After hours communications**

If a communication is given:

- (a) after 5pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

32. **Indemnity**

32.1. **Definitions**

For the purposes of this Constitution:

- (a) *Officer* means a Director, an alternate Director, a Secretary, an officer as defined by the Act, or the Chief Executive Officer; 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.

32.2. Indemnity

Every Officer and past Officer (with the exception of any auditor) of the Company is hereby 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.

32.3. 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.

32.4. Indemnity to employees

Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
- (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Corporations Act.

33. Winding up

33.1. 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.

33.2. Company wound up

If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to **rule 33.2(b)**, contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,

such amount as may be required, not exceeding the Members Guarantee Amount.

33.3. Surplus on winding up

If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another body corporate which, by its constitution, is:

- (a) required to pursue objects similar to the objects of the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution of its income or property to its members; and
- (d) is an ATO Endorsed Entity,

such corporation 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.