



Constitution

Bernie Banton Foundation

ACN 137 783 441

A company limited by guarantee

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1 INTERPRETATION

1.1 Definitions

In this constitution unless the context otherwise requires:

ACN means Australian Company Number.

Act means the *Corporations Act 2001* (Cth).

ASIC means the Australian Securities & Investments Commission or any successor body.

Board means the board of Directors.

Chairman means the person appointed by the Directors under clause 18.1.

Company means the company named above.

Director means a person appointed as a director of the Company or who is appointed to the position of an alternate director and is acting in that capacity.

Member means a member of the Company admitted under clause 6.1.

Office means the registered office of the Company.

Personal Representative means, in respect of a Member, a person who becomes entitled to exercise the rights of membership of the Company held by a Member by reason of the death, mental ill health, legal incapacity or bankruptcy of the Member.

Register means the register of Members to be kept pursuant to the Act.

Regulations means the *Corporations Regulations 2001* (Cth).

Replaceable Rules means the replaceable rules under the Act.

Seal means the common seal of the Company (if it has one).

Secretary means any person appointed to perform the duties of secretary of the Company.

Special Resolution has the meaning given in the Act.

Subsidiary has the meaning given in the Act.

1.2 Interpretation

In this constitution:

- (a) words importing the singular number include the plural number and vice versa, words importing any gender include every other gender;
- (b) words referring to a person include a corporation;
- (c) where a word or an expression is defined, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (d) any reference to a clause is a reference to a clause of this constitution;
- (e) headings to clauses, and italicised notes in brackets following some clauses, are added for convenience only and do not affect interpretation;
- (f) annotations or words which refer to sections of the Act, Regulations or to Replaceable Rules do not form part of this constitution;
- (g) where a word or an expression is defined in the Act, it has the same meaning in this constitution unless the context otherwise requires;
- (h) a reference to this constitution, any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it and any regulation or other statutory instrument issued under it;
- (i) **includes** means includes without limitation; and
- (j) **writing** includes printing, lithography, photography and other modes of reproducing or representing words in a visible form.

1.3 **Replaceable Rules**

The Replaceable Rules do not apply in respect of the Company except when they are expressly stated to apply.

1.4 **Determining percentage of votes**

Where a clause of this constitution requires the percentage of votes a Member has to be worked out, that percentage must be worked out as at the midnight before the relevant event.

(This reflects various sections of the Act.)

1.5 **Written notice**

Written notice includes notice given by way of:

- (a) facsimile; and
- (b) electronic transmission.

1.6 Representatives

A representative appointed by a Member that is a corporation may, unless otherwise specified in the appointment, exercise on that corporation's behalf all of the powers that the corporation could exercise at a meeting or in voting on a resolution.

(Mandatory. This reflects section 250D(4A) of the Act.)

2 PUBLIC COMPANY LIMITED BY GUARANTEE

The Company is a public company limited by guarantee and does not have share capital.

3 OBJECTS OF THE COMPANY

3.1 The objects of the Company are to:

- (a) Facilitate community awareness and education regarding asbestos and its' dangers;
- (b) Advocate on behalf of asbestos related disease (ARD) sufferers and their families, as well as associated entities such as ARD researchers, allied health workers and educators;
- (c) Promote research within Australia into asbestos related diseases, including lobbying as regards funding for this purpose;
- (d) Work with other asbestos related disease support organisations; and
- (e) Undertake fundraising activities for the procurement of contributions and sponsorship to support the fulfilment of the objectives of the Company.

4 POWERS OF THE COMPANY

4.1 Legal capacity and powers of the Company

The Company has the legal capacity and powers of an individual anywhere in the world. The Company also has all the powers of a body corporate, including the power to:

- (a) grant a floating charge over the Company's property;
- (b) arrange for the Company to be registered or recognised as a body corporate in any place outside New South Wales; and
- (c) do anything that it is authorised to do under any law (including a law of a foreign country).

(This reflects section 124 of the Act.)

4.2 Company may have a Seal

- (a) The Company may, but need not, have a Seal. If the Company does have a Seal it must have set out on it:
 - (i) if the Company has its ACN in its name - the Company's name; or
 - (ii) otherwise, the Company's name and either:
 - (A) the expression "Australian Company Number" or "ACN" and the Company's ACN; or
 - (B) if the last 9 digits of the company's ABN are the same, and in the same order, as the last 9 digits of its ACN, the expression "Australian Business Number" or "ABN" and the company's ABN.

(Mandatory. This reflects sections 123 of the Act.)

- (b) If the Company has a Seal, the Directors must provide for the safe custody of the Seal, which may only be used on the authority of the Directors or of a committee of the Directors authorised by the Directors.

4.3 Agent exercising the Company's power to make contracts

Subject to the operation of a law that requires a particular procedure to be complied with in relation to a contract, the Company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the Company's express or implied authority and on behalf of the Company. The power may be exercised without using the Seal.

(Mandatory. This reflects section 126 of the Act.)

4.4 Execution of documents by the Company

- (a) The Company may execute a document without using the Seal if the document is signed by:
 - (i) 2 Directors; or
 - (ii) a Director and Secretary.
- (b) If the Company has a Seal, the Company may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by:
 - (i) 2 Directors; or
 - (ii) a Director and a Secretary.

(Mandatory. This reflects section 127 of the Act.)

5 INCOME AND PROPERTY OF THE COMPANY

5.1 Income and property to be applied towards objects

The Company must apply all income and property of the Company towards the promotion of the objects of the Company.

5.2 No payments to Members

Subject to clause 5.3, the Company must not pay by way of dividend, bonus or otherwise any income or property of the Company to the Members of the Company.

5.3 Payments in good faith

Nothing in this constitution prevents the Company from making payment in good faith:

- (a) of reasonable and proper remuneration to any employees of the Company;
- (b) to any Member in relation to any contract, right or claim in which that Member is interested or which arises other than by virtue of the Member's membership of the Company;
- (c) of reasonable interest on any money lent to the Company by any Member;
or
- (d) of reasonable or proper rent for premises let by any Member to the Company.

6 MEMBERSHIP

6.1 Entry as a Member

- (a) A general meeting of the Members may:
 - (i) set requirements to be satisfied to become a member; and
 - (ii) provided a person meets those requirements (if any), invite that person to become a Member.
- (b) Every applicant for membership of the Company must sign an undertaking to be bound by the provisions of this constitution.
- (c) Admission to membership of the Company will only become effective upon the passing of a resolution of the Directors that the Member's name be entered into the Register. The Directors must not unreasonably delay consideration of such a resolution.
- (d) The rights and privileges of a Member are personal, non transferable and cease on the death of a Member or on the cessation of a Member's membership.

6.2 **Expulsion of Members**

- (a) If any Member has wilfully refused or neglected to comply with the provisions of this constitution or anything done by the Member has brought discredit upon the Company, subject to this clause the Directors may resolve to expel that Member from the Company and remove that Member's name from the Register.
- (b) At least 10 business days before the directors are to decide on a resolution under this clause, the Directors must notify the Member of:
 - (i) the Directors' meeting at which the resolution is to be considered; and
 - (ii) the conduct which is the subject of the resolution,and give the Member, at the Member's election, an opportunity, to:
 - (iii) attend the meeting and speak to the resolution; or
 - (iv) give a written explanation or defence in relation to the resolution (which must be tabled at the meeting).

6.3 **Cessation of membership**

A Member will cease to be a Member:

- (a) if the Member gives written notice of its resignation to the Company; ;
- (b) in the case of a member who is an individual, if the member:
 - (i) dies;
 - (ii) becomes of unsound mind or whose person or estate becomes liable to be dealt with in any way under the laws relating to mental health; or
 - (iii) is convicted of an indictable offence;
- (c) in the case of a member who is not an individual, a member will cease to be a member if:
 - (i) a liquidator is appointed in connection with the winding up of the member; or
 - (ii) an order is made by a Court for the winding up or deregistration of the member.

7 CIRCULATING RESOLUTIONS OF MEMBERS

7.1 Circulating resolutions when more than 1 Member

- (a) Except in the case of a resolution under section 329 of the Act to remove an auditor, or any other resolution which the Act or this Constitution requires to be passed at a general meeting, the Company 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.
- (b) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Member signs the document.
- (d) This clause does not affect any rule of law relating to the assent of Members not given at a general meeting.

(Mandatory. This reflects section 249A of the Act.)

7.2 Resolutions of Company when 1 Member

If the Company has only 1 Member, that Member may pass a resolution by the Member recording it and signing the record.

(Mandatory. This reflects section 249B of the Act.)

8 CALLING MEETINGS OF MEMBERS

8.1 Calling of meetings of Members by a Director

A Director may call a meeting of the Members.

(This reflects section 249C of the Act which is a Replaceable Rule.)

8.2 Calling of general meeting by Directors when requested by Members

- (a) The Directors must call and arrange to hold a general meeting on the request of:
 - (i) at least 5% of the Members; or
 - (ii) at least 100 Members (or such different number as may be prescribed by the Regulations) who are entitled to vote at the general meeting.

(Mandatory. This reflects section 249D(1) of the Act.)

- (b) The request must:
 - (i) be in writing;
 - (ii) state any resolution to be proposed at the meeting;
 - (iii) be signed by the Members making the request; and
 - (iv) be given to the Company.

(Mandatory. This reflects section 249D(2) of the Act.)

- (c) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

(Mandatory. This reflects section 249D(3) of the Act.)

- (d) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.

(Mandatory. This reflects section 249D(5) of the Act.)

8.3 Failure of Directors to call a general meeting

- (a) More than 50% of the Members who make a request under clause 8.2 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.

(Mandatory. This reflects section 249E(1) of the Act.)

- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called. The meeting must be held not later than 3 months after the request is given to the Company.

(Mandatory. This reflects section 249E(2) of the Act.)

- (c) To call the meeting the Members requesting the meeting may ask the Company for a copy of the Register. The Company must give the Members a copy of the Register within 7 days after the request without charge.

(Mandatory. This reflects section 249E(3) of the Act.)

- (d) The Company must pay the reasonable expenses the Members incurred because the Directors failed to call and arrange the meeting.

(Mandatory. This reflects section 249E(4) of the Act.)

- (e) The Company may recover the amount of the expenses from the Directors. However, a Director is not liable for the amount if the Director proves that the Director took all reasonable steps to cause the Directors to comply with clause 8.2. The Directors who are liable are jointly and individually liable for the amount. If a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

(Mandatory. This reflects section 249E(5) of the Act.)

8.4 Calling of general meeting by Members

- (a) At least 5% of Members may call, and arrange to hold, a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.

(Mandatory. This reflects section 249F(1) of the Act.)

- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called.

(Mandatory. This reflects section 249F(2) of the Act.)

8.5 Amount of notice of meetings

- (a) Subject to clause 8.5(b) at least 21 days notice must be given of a meeting of the Members.

(Mandatory. This reflects section 249H(1) of the Act.)

- (b) The Company may call on shorter notice:
 - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

(Mandatory. This reflects section 249H(2) of the Act.)

- (c) The Company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 8.5(d).

(Mandatory. This reflects section 249H(2) of the Act.)

- (d) At least 21 days notice must be given of a meeting of the Company at which a resolution will be moved to:
 - (i) remove an auditor under section 329 of the Act; or
 - (ii) remove a Director under section 203D of the Act or appoint a Director in place of a Director removed under that section.

(Mandatory. This reflects sections 249H(3) and (4) of the Act.)

8.6 Notice of meetings of Members to Members and Directors

- (a) Written notice of a meeting of the Members must be given individually to each Member entitled to vote at the meeting and to each Director.

(Mandatory. This reflects section 249J(1) of the Act.)

- (b) The Company may give the notice of a meeting to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by the Member;
 - (iii) by sending it to the facsimile number or electronic address (if any) nominated by the Member; or
 - (iv) by any other means permitted under the Act.

(Mandatory. This reflects section 249J(3) of the Act.)

- (c) A notice of meeting sent by post is taken to be given 2 days after it is posted. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

(This reflects section 249J(4) of the Act which is a Replaceable Rule.)

8.7 Auditor entitled to notice and other communications

The Company must give the Company's auditor, if any:

- (a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member is entitled to receive.

(Mandatory. This reflects section 249K of the Act.)

8.8 Contents of notice of meetings of Members

A notice of a meeting of the Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:

- (i) that the Member has a right to appoint a proxy; and
- (ii) whether or not the proxy needs to be a Member.

(Mandatory. This reflects section 249L of the Act.)

8.9 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

(This substitutes section 249M of the Act which is a Replaceable Rule.)

8.10 Meeting not invalidated

The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.

(Mandatory. This reflects section 1322(3) of the Act.)

8.11 Cancel meetings

Where notice of a meeting has been given, the Board may, by notice given to all persons entitled to be given notice of the meeting, postpone or cancel the meeting. Notice under this clause 8.11 must be given in the same manner as other notices set out in this clause 8.

9 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS

9.1 Members' resolutions

- (a) The following Members may give the Company notice of a resolution that they propose to move at a general meeting:
 - (i) at least 5% of the Member votes; or
 - (ii) at least 100 Members (or some different number as may be prescribed by the Regulations) who are entitled to vote at a general meeting.

(Mandatory. This reflects section 249N(1) of the Act.)

- (b) The notice must:
 - (i) be in writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Members proposing to move the resolution.

(Mandatory. This reflects section 249N(2) of the Act.)

- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

(Mandatory. This reflects section 249N(3) of the Act.)

9.2 Company giving notice of Members' resolutions

- (a) If the Company has been given notice of a resolution under clause 9.1, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.

(Mandatory. This reflects section 249O(1) of the Act.)

- (b) The Company must give all of its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(Mandatory. This reflects section 249O(2) of the Act.)

- (c) The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.

(Mandatory. This reflects section 249O(3) of the Act.)

- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Company does not receive the Members notice in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

(Mandatory. This reflects section 249O(4) of the Act.)

- (e) The Company need not give notice of the resolution if:
 - (i) it is more than 1,000 words long or defamatory; or
 - (ii) the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

(Mandatory. This reflects section 249O(5) of the Act.)

10 MEMBERS' STATEMENTS TO BE DISTRIBUTED

10.1 Grounds for statement

Members may request the Company to give to all of its Members a statement provided by the Members making the request about:

- (a) a resolution that is proposed to be moved at a general meeting; or
- (b) any other matter that may be properly considered at a general meeting.

(Mandatory. This reflects section 249P(1) of the Act.)

10.2 Who may request

The request must be made by:

- (a) Members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 Members (or such different number as may be prescribed by the Regulations) who are entitled to vote at the meeting.

(Mandatory. This reflects sections 249P(2) and (3) of the Act.)

10.3 How request to be made

The request must be:

- (a) in writing;
- (b) signed by the Members making the request; and
- (c) given to the Company.

(Mandatory. This reflects section 249P(3) of the Act.)

10.4 Copies for signing

Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

(Mandatory. This reflects section 249P(4) of the Act.)

10.5 Distribution of statement

After receiving the request, the Company must distribute to all of the Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

(Mandatory. This reflects section 249P(6) of the Act.)

10.6 When Company bears cost

The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

(Mandatory. This reflects section 249P(7) of the Act.)

10.7 When Members bear cost

The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

(Mandatory. This reflects section 249P(8) of the Act.)

10.8 When Company need not comply with request

The Company need not comply with the request if:

- (a) the statement is more than 1,000 words long or defamatory; or
- (b) the Members making the request are responsible for the expenses of the distribution, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

(Mandatory. This reflects section 249P(9) of the Act.)

11 HOLDING MEETINGS OF MEMBERS

11.1 Purpose

A meeting of Members must be held for a proper purpose.

(Mandatory. This reflects section 249Q of the Act.)

11.2 Time and place for meetings of Members

A meeting of Members must be held at a reasonable time and place.

(Mandatory. This reflects section 249R of the Act.)

11.3 Technology

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

(Mandatory. This reflects section 249S of the Act.)

11.4 Quorum

- (a) No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by:
 - (i) if there is only 1 Member, that Member; or
 - (ii) if there are 2 or more Members, then subject to clause 11.4(b), 2 Members.

For the purposes of this clause and clause 11.4(b) "Member" includes a person attending as a proxy, Personal Representative or a body corporate representative.

- (b) If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine and, if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Member or Members present constitute a quorum.

(This substitutes for section 249T of the Act which is a Replaceable Rule.)

11.5 Chairing meetings of Members

- (a) The Chairman, if any, of the Board is to be the chair at every general meeting of the Company. If the Chairman of the Board cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting, the Directors present may elect one of their number to be the chair of the meeting but, if they do not do so, the Members present must elect the chair of the meeting.
- (b) The chair must adjourn a meeting of the Members if the Members present with a majority of votes at the meeting agree or direct that the chair must do so.

(This substitutes for section 249U of the Act which is a Replaceable Rule.)

11.6 Auditor's right to be heard at general meetings

- (a) The Company's auditor (if any) is entitled to attend any general meeting of the Company.

(Mandatory. This reflects section 249V(1) of the Act.)

- (b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in the auditor's capacity as auditor.

(Mandatory. This reflects section 249V(2) of the Act.)

- (c) The auditor is entitled to be heard even if:
 - (i) the auditor retires at the meeting; or
 - (ii) the meeting passes a resolution to remove the auditor from office.

(Mandatory. This reflects section 249V(3) of the Act.)

- (d) The auditor may authorise a person in writing as the auditor's representative for the purpose of attending and speaking at any general meeting.

(Mandatory. This reflects section 249V(4) of the Act.)

11.7 **Adjourned meetings**

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(Mandatory. This reflects section 249W(1) of the Act.)

- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

(Mandatory. This reflects section 249W(2) of the Act.)

11.8 **Annual general meetings**

(a) **Holding of annual general meetings**

The Company must, if required by the Act, hold an annual general meeting:

- (i) within 18 months of registration; and
- (ii) at least once each calendar year and within 5 months after the end of its financial year.

(Mandatory. This reflects sections 250N and 112(1) of the Act.)

(b) **Business of annual general meeting**

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

- (i) the consideration of the annual financial report, Directors' report and auditor's report;
- (ii) the election of Directors; and
- (iii) the appointment of the auditor.

(Mandatory. This reflects section 250R(1) of the Act.)

(c) **Questions at annual general meetings**

- (i) The chair of an annual general meeting must allow a reasonable opportunity for Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

(Mandatory. This reflects section 250S(1) of the Act.)

- (ii) If the Company's auditor or the auditor's representative is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

(Mandatory. This reflects section 250T(1) of the Act.)

12 VOTING AT MEMBERS' MEETINGS

12.1 How many votes a Member has

- (a) On a show of hands each Member has 1 vote.
- (b) On a poll, each Member has 1 vote.
- (c) The chair does not have a casting vote in addition to any vote the chair has as a Member.

(This substitutes for section 250E of the Act which is a Replaceable Rule.)

12.2 Objections to right to vote at a meeting of the Members

A challenge to a right to vote at a Members' meeting:

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

(This reflects section 250G of the Act which is a Replaceable Rule.)

12.3 How voting is carried out

- (a) A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.
- (c) Subject to this constitution and the Act, resolutions of Members are to be decided by simple majority of votes cast in respect of the relevant resolution.

(This in part reflects and in part substitutes section 250J of the Act which is a Replaceable Rule.)

12.4 Matters on which a poll may be demanded

- (a) A poll may be demanded on any resolution proposed at a Members' meeting.
- (b) Without limiting clause 12.4(a), a poll can be demanded on any resolution concerning:
 - (i) the election of the chair of a meeting; or
 - (ii) the adjournment of a meeting.
- (c) A demand for a poll may be withdrawn.

(Mandatory. This reflects section 250K of the Act.)

12.5 When a poll is effectively demanded

- (a) At a Members' meeting a poll may be demanded by:
 - (i) at least 5 Members entitled to vote on the resolution;
 - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chair.

(Mandatory. This reflects section 250L(1) of the Act.)

- (b) The poll may be demanded:
 - (i) before a vote is taken on the proposed resolution;
 - (ii) before the voting results on a show of hands on the proposed resolution are declared; or
 - (iii) immediately after the voting results on a show of hands on the proposed resolution are declared.

(Mandatory. This reflects section 250L(3) of the Act.)

12.6 When and how polls must be taken

- (a) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

(Mandatory. This reflects section 250M(1) of the Act which is a Replaceable Rule.)

- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

(This reflects section 250M(2) of the Act which is a Replaceable Rule.)

- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

12.7 Personal Representative's right to vote

A Personal Representative of a Member may vote at any general meeting in the same manner as if the Personal Representative was the Member if, at least 48 hours before the time of holding the meeting (or adjourned meeting), at which the Personal Representative proposes to vote, the Personal Representative has satisfied the Directors of the Personal Representative's entitlement or the Directors have previously admitted the Personal Representative's right to vote at a general meeting and have not been notified that the right has been withdrawn.

13 PROXIES

13.1 Who can appoint a proxy

Each Member who is entitled to attend and vote at a meeting of the Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

(Mandatory. This reflects section 249X(1) of the Act.)

13.2 Rights of proxies

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

- (a) to speak at the meeting, except while the Member is present;
- (b) to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

(Mandatory. This reflects section 249Y(1) of the Act.)

13.3 Company sending appointment forms or lists of proxies must send to all Members

If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list, the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise, the Company must send the form or list to all the Members entitled to appoint a proxy to attend and vote at the meeting.

(Mandatory. This reflects section 249Z(1) of the Act.)

13.4 Appointing a proxy

- (a) An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the Regulations, by the Member making the appointment and contains the following information:
 - (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 meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

(Mandatory. This reflects section 250A(1) of the Act.)

- (b) The chair of the Board may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 13.4(a).

(Mandatory. This reflects section 250A(2) of the Act.)

- (c) An undated appointment is taken to have been dated on the day it is given to the Company.

(Mandatory. This reflects section 250A(3) of the Act.)

- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (iii) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
 - (iv) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

(Mandatory. This reflects section 250A(4) of the Act.)

- (e) If a proxy is also a Member, this clause does not affect the way that the person can cast any votes they hold as a Member.

(Mandatory. This reflects section 250A(4) of the Act.)

- (f) An appointment does not have to be witnessed.

(Mandatory. This reflects section 250A(6) of the Act.)

- (g) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

(Mandatory. This reflects section 250A(7) of the Act.)

13.5 Proxy documents

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (i) the proxy's appointment; and
- (ii) if the appointment is signed or otherwise authenticated in a manner prescribed by the Regulations by the appointor's attorney, the authority under which the appointment was signed or authenticated or a certified copy of the authority.

(Mandatory. This reflects section 250B(1) of the Act.)

- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

(Mandatory. This reflects section 250B(2) of the Act.)

- (c) The Company receives an appointment or an authority when it is received at any of the following:
 - (i) the Office;
 - (ii) a fax number at the Office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.

(Mandatory. This reflects section 250B(3)(a) of the Act.)

- (d) If the notice of meeting specifies other electronic means by which a Member may give the appointment or authority, then the appointment or authority will be received by the Company as prescribed by the Regulations.

(Mandatory. This reflects section 250B(3)(b) of the Act.)

13.6 Validity of proxy vote

- (a) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

(Mandatory. This reflects section 250C(1) of the Act.)

- (b) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Member dies;
 - (ii) the Member is mentally incapacitated;
 - (iii) the Member revokes the proxy's appointment; or
 - (iv) the Member revokes the authority under which the proxy was appointed by a third party.

(Mandatory. This reflects section 250C(2) of the Act.)

14 DIRECTORS

14.1 Number of Directors

The Company must have at least 3 Directors (not counting alternate Directors) of which at least 2 must be ordinarily resident in Australia, and a person to be appointed as a Director must first provide the Company a written consent to act as a Director.

(This reflects section 201A of the Act).

14.2 Appointment and removal of Directors

(a) Directors may appoint other Directors

The Directors may appoint a person as a Director. A person can be appointed as a Director in order to make up a quorum for a Directors meeting even if the total number of Directors of the Company is not enough to make up a quorum. Any person so appointed must be confirmed in office at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the annual general meeting.

(This substitutes for section 201H of the Act which is a Replaceable Rule.)

(b) Company may remove and appoint Directors

The Company in general meeting may by resolution:

- (i) remove a Director from office despite anything in this constitution, any agreement between the Company and the Director or any agreement between any or all Members and the Director; and

(Mandatory. This reflects section 203D(1) of the Act.)

- (ii) appoint a new Director.

(This reflects section 201G of the Act which is a replaceable rule.)

(c) Proportion of the Board to resign each year

- (i) At each annual general meeting one third of the directors, or, if their number is not 3 or a multiple of 3, then the number nearest one third, and any other director who has held office for 3 years or more since their last election, must retire from office. The directors to retire at the annual general meeting under this rule 14.2(c)(i) must be those who have been longest in office since their last election, but, as between persons who were elected as directors on the same day, those to retire must be determined by lot, unless they otherwise agree between themselves.

- (ii) Unless re elected, a director due to retire at an annual general meeting retains office until the conclusion of the meeting.

- (iii) In determining the number of directors to retire at an annual general meeting, no account is to be taken of;
 - (A) A director appointed by the directors in accordance with clause 14.2 (a); or
 - (B) The Chairman, who is exempted from retirement by rotation.
- (iv) A retiring director is eligible for re election.
- (v) The Company may, at a general meeting at which a director retires, by resolution fill the vacated office by electing a person to that office.
- (vi) A person is eligible for election as a director at a general meeting of the Company only if:
 - (A) The person is in office as a director immediately before that meeting;
 - (B) The person has been nominated for election at that meeting by the directors in accordance with clause 14.2 (a); or
 - (C) A nomination for election of the person as a director signed by a Member, and a consent to nomination signed by the person, has been tabled at the general meeting.

(d) **Resolution for appointment**

A resolution passed by the Company in general meeting appointing or confirming the appointment of 2 or more Directors is void unless:

- (i) a resolution is passed that the appointments or confirmations may be voted on together; and
- (ii) no votes are cast against the resolution.

(Mandatory. This reflects section 201E(1) of the Act.)

14.3 Interested Directors

(a) **Director may enter into certain contracts**

Notwithstanding any rule of law or equity to the contrary, a Director may contract, transact or enter into an arrangement with the Company and no such contract, transaction or arrangement entered into by or on behalf of the Company or any other contract, transaction or arrangement in which a Director is in any way interested is avoided or rendered voidable because of that person being a Director.

(Mandatory. This reflects section 191(4) of the Act.)

(b) **Disclosure of material interest**

A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless section 191(2) of the Act says otherwise.

(Mandatory. This reflects section 191(1) of the Act.)

(c) **Voting by interested Directors**

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

(A) be present while the matter is being considered at the meeting; or

(B) vote on the matter

unless;

(C) subclauses 14.3 (c) (ii) or 14.3 (c) (iii) allow the Director to be present; or

(D) the interest does not need to be disclosed under section 191 of the Act.

(Mandatory. This reflects sections 195(1) and 1(A) of the Act.)

(ii) The Director may be present and vote if Directors who do not have a material personal interest in the matter have passed a resolution that:

(A) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and

(B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.

(Mandatory. This reflects section 195(2) of the Act.)

(iii) The Director may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Act.

(Mandatory. This reflects section 195(3) of the Act.)

(iv) If there are not enough Directors to form a quorum for a Directors' meeting because of subclause 14.3(c)(i)(A) or 14.3(c)(i)(B), 1 or more of the Directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

(Mandatory. This reflects section 195(4) of the Act.)

14.4 Remuneration of Directors

- (a) The Directors are entitled to be:
 - (i) reimbursed for all expenses properly incurred in attending or in connection with their attendance at any meeting of the Company or of the Board or any committee of Directors.
- (b) In addition to the remuneration referred to in clause 14.4(a) a Director may receive a special remuneration and expense reimbursement for performing extra services in and about the Company's business.

(This substitutes for section 202A of the Act which is a Replaceable Rule.)

- (c) Notwithstanding anything in this Constitution to the contrary, a Director may only receive remuneration or other benefits, as contemplated by Section 48 of the Charitable Fundraising Act 1991 (Act) if such remuneration or benefits are authorised or approved as provided in Section 48 of the Act and otherwise in accordance with the requirements of Office of Liquor, Gaming and Racing, and any other applicable laws or regulations which may from time to time be in force.

14.5 Vacation of office

The office of a Director automatically becomes vacant if the Director:

- (a) resigns by giving written notice to the Company at its Office or to the annual general meeting in accordance with clause 14.2(c)(i);
- (b) is removed pursuant to the provisions of section 203D of the Act;

(Mandatory. This reflects section 203(D) of the Act.)

- (c) is removed from office in accordance with this constitution or the Act; or
- (d) is disqualified from managing corporations under Part 2D.6 of the Act; or

(Mandatory. This reflects section 203B of the Act.)

- (e) in the case of a Member Director, ceases to be a Member for any reason.

14.6 Financial benefits

The Company must not provide financial benefits to a Director except as permitted by, and in accordance with, the provisions of the Act.

14.7 Defect in appointment

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or a member of a committee of Directors, or to act as a Director, or that a person so appointed was disqualified, all acts done by any meeting of the Directors or of the committee or by any person acting as a Director are valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

(Mandatory. This reflects section 201M(1) of the Act.)

15 POWERS AND DISCRETIONS OF DIRECTORS

15.1 Business of the Company

The business of the Company must be managed by or under the direction of the Directors who may exercise all the powers of the Company except any powers that the Act or this constitution require to be exercised by the Company in general meeting. No resolution made by the Company in general meeting invalidates any prior act of the Directors which would have been valid if the resolution had not been made.

(Mandatory. This reflects section 198A(1) of the Act.)

15.2 Appointment of attorneys and auditors

- (a) The Directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors), for the period and subject to such conditions as the Directors think fit.

(Mandatory. This reflects section 198D of the Act.)

- (b) The Company must appoint an auditor of the Company at its first general meeting and appoint an auditor to fill any vacancy in the office of auditor at each subsequent general meeting.

(Mandatory. This reflects section 327B(1) of the Act.)

15.3 Directors may execute security over the assets of the Company

If the Directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of such liability.

15.4 Negotiable instruments

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time determine.

(This substitutes for section 198B of the Act which is a Replaceable Rule.)

15.5 Directors discretion

Unless otherwise provided, if the Directors are given a power or discretion under this constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

15.6 Delegation

(a) Power to delegate

The Directors may delegate any of their powers to:

- (i) a committee of Directors;
- (ii) a Director;
- (iii) an employee of the Company; or
- (iv) any other person.

(Mandatory. This reflects section 198D(1) of the Act.)

(b) Delegate to act in accordance with directions

The delegate must exercise the powers delegated in accordance with any directions of the Directors.

(Mandatory. This reflects section 198D(2) of the Act.)

(c) Effectiveness of exercise of delegates power

The exercise of the power by the delegate is as effective as if the Directors had exercised it.

(Mandatory. This reflects section 198D(3) of the Act.)

(d) Meetings of committees

The meetings and proceedings of a committee must be carried out in accordance with the provisions in this constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.

(Mandatory. This reflects section 198D(2) of the Act.)

(e) Directors liable for delegate

If the Directors delegate a power under clause 15.6(a), a Director is responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves unless exonerated under section 190(2) of the Act.

(Mandatory. This reflects section 190 of the Act.)

16 DIRECTORS RESOLUTIONS AND MEETINGS

16.1 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' 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.

(Mandatory. This reflects section 248A(1) of the Act which is a Replaceable Rule.)

- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

(Mandatory. This reflects section 248A(2) of the Act which is a Replaceable Rule.)

- (c) The resolution is passed when the last Director signs.

(This reflects section 248A(3) of the Act which is a Replaceable Rule.)

16.2 Calling Directors' meetings

A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

(This substitutes section 248C of the Act which is a Replaceable Rule.)

16.3 Use of technology

A Directors' meeting may be called or held by telephone, facsimile, electronic mail or by using any other technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

(Mandatory. This reflects section 248D of the Act.)

16.4 Chairing Directors' meetings

The Chairman, if any, of the Board is to be the chair at every Director's meeting. If the Chairman of the Board cannot or will not chair a Director's meeting or is not present within 15 minutes after the time appointed for holding the meeting, the Directors may elect one of their number present to chair the meeting.

(This substitutes for section 248E of the Act which is a Replaceable Rule.)

16.5 Quorum at Directors' meetings

- (a) Subject to clause 14.3(c) a quorum for a meeting of the Board is constituted by 2 Directors or such other number determined by the Board.
- (b) The quorum must be present at all times during the meeting.

(This substitutes for section 248F of the Act which is a Replaceable Rule.)

16.6 Passing of Directors' resolutions

Questions arising at any Board meeting must be decided by a majority of votes. Each Director present at a Board meeting has 1 vote. In the case of an equality of votes, the chair does not have a second or casting vote.

(This substitutes for section 248G of the Act which is a Replaceable Rule.)

17 ALTERNATE DIRECTORS

- 17.1 A Director may appoint an alternate to exercise some or all of the Director's powers for a specified period.
- 17.2 If the appointing Director requests the Company to give the alternate Director notice of Directors' meetings, the Company must do so.
- 17.3 The exercise of a Director's power by an alternate Director has the same effect as would the exercise of the power by the Director.
- 17.4 The appointing Director may terminate the alternate Director's appointment at any time.
- 17.5 An appointment or its termination must be in writing. A copy must be given to the Company.
- 17.6 An alternate Director automatically vacates office if the appointor vacates office as a Director or terminates the alternate Director's appointment.

(This substitutes for section 201K of the Act which is a Replaceable Rule.)

18 CHAIRMAN

18.1 Appointment

The Directors may appoint 1 of themselves to the office of Chairman of the Company for the period and on the terms (including as to remuneration) as the Directors see fit.

(This substitutes for section 201J of the Act which is a Replaceable Rule.)

18.2 Effect of cessation of Directorship

A person ceases to be the Chairman if they cease to be a Director.

18.3 Powers

The Directors may confer on the Chairman any of the powers that the Directors can exercise.

19 SECRETARY

19.1 Requirement for Secretary

The Company must have at least 1 Secretary.

(Mandatory. This reflects section 204A(2) of the Act.)

19.2 Appointment of Secretary

A Secretary must be appointed by the Directors.

(Mandatory. This reflects section 204D of the Act.)

19.3 Natural person not a minor as Secretary

A Secretary must be a natural person who has attained the age of 18 years.

(Mandatory. This reflects section 204B(1) of the Act.)

19.4 Australian resident as Secretary

The Secretary, or 1 of the Secretaries if there are more than 1, must be a person who ordinarily resides in Australia.

(Mandatory. This reflects section 204A(2) of the Act.)

19.5 Acting Secretary

- (a) If there is no Secretary, or no Secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the Secretary may be done by or in relation to any assistant or deputy Secretary.
- (b) If there is no assistant or deputy Secretary, or no assistant or deputy Secretary is capable of acting, by or in relation to any act or thing required or authorised to be done by, or in relation to, the Secretary, an officer authorised by the Directors to act as Secretary may do so, either generally or in relation to the doing of that act or thing.

19.6 Terms and conditions of office of Secretary

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.

(This substitutes for section 204(F) of the Act which is a Replaceable Rule.)

- (b) The Board may terminate or suspend any appointment of a person as a Secretary.

20 MINUTES

20.1 Company must keep minute books

The Company must keep minute books in which it records within 1 month:

- (a) proceedings and resolutions of meetings of the Members;
- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

(Mandatory. This reflects section 251A(1) of the Act.)

20.2 Minutes to be signed

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

(Mandatory. This reflects section 251A(2) of the Act.)

20.3 Resolution without meeting

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

(Mandatory. This reflects section 251A(3) of the Act.)

20.4 Location of minute books

The Company must keep the minute books of the Company at:

- (a) the Office;
- (b) the Company's principal place of business in Australia; or
- (c) another place approved by the ASIC.

(Mandatory. This reflects section 251A(5) of the Act.)

20.5 Inspection by Members

The Company must ensure that the minute books for the meetings of its Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

(Mandatory. This reflects section 251B(1) of the Act.)

20.6 Requests by Members

- (a) A Member may ask the Company in writing for a copy of:
 - (i) any minutes of a meeting of the Members or an extract of the minutes; or

- (ii) any minutes of a resolution passed by Members without a meeting.

(Mandatory. This reflects section 251B(2) of the Act.)

- (b) If the Company does not require the Member to pay for the copy, the Company must send it:

- (i) within 14 days after the Member asks for it; or
- (ii) any longer period that ASIC approves.

(Mandatory. This reflects section 251B(3) of the Act.)

- (c) If the Company requires payment for the copy, the Company must send it:

- (i) within 14 days after the Company receives the payment; or
- (ii) within any longer period that ASIC approves.

(Mandatory. This reflects section 251B(4) of the Act.)

21 INSPECTION OF BOOKS

The Directors may, but are not required to, authorise a Member to inspect books of the Company.

(This substitutes for section 247D of the Act which is a Replaceable Rule.)

22 INSPECTION OF ACCOUNTS

The Directors may determine whether, to what extent, at what times and places and under what conditions or regulations the accounting and other records of the Company, or any of them, are to be opened to the inspection of Members who are not Directors. No Member (who is not a Director) has any right to inspect any account, book or paper of the Company, except as conferred by statute or authorised by the Directors.

23 NOTICES

23.1 When notice is given

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given, nor the day on which the action is to be taken may be counted in calculating the period.

23.2 Notice by Members of address for service

Each Member must notify the Company in writing of an address in Australia for service of notices. Subject to this constitution and the Act, if the Member fails to do so, the Member is not entitled to any notice.

(Mandatory. This reflects Reg 12.4.03(5).)

23.3 How notices are given

Subject to the Act and this constitution, the Company may give notice and a person may give notice to the Company:

- (a) personally;
- (b) by post, to the last known address of the recipient;
- (c) by facsimile number or electronic address (if any) nominated by the recipient; or
- (d) by any other means consented to by the sender or the recipient, as applicable.

(Mandatory. This reflects section 249J of the Act.)

23.4 When notices are taken to be given

A notice sent by post is taken to be given 3 days after it is posted. A notice by facsimile or other electronic means is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission. In the case of delivery by email, at the time sent.

(This reflects section 249J(4) of the Act which with respect to notice by post or fax is a Replaceable Rule.)

24 LIABILITY OF MEMBERS

The liability of the Members is limited.

(Mandatory. This reflects section 517 of the Act.)

25 WINDING UP

25.1 If the Company is wound up during the time of a Member's membership or within 1 year afterwards, each Member undertakes to contribute to the assets of the Company for payment of:

- (a) debts and liabilities of the Company contracted before the Member's membership ceases;
- (b) costs, charges and expenses of the winding up of the Company; and
- (c) adjustment of the rights of the contributories amongst themselves,

the amount required but not exceeding \$10.

(Mandatory. This reflects sections 517 and 521 of the Act.)

25.2 If, upon the winding up or dissolution of the Company, there remains after the satisfaction of all its debts and liabilities any property, that property must not be paid to or distributed among the Members of the Company.

- 25.3 All remaining property of the Company under clause 25.2 must be paid and applied by the Company to any one or more entities which have similar objects to the Company and which have rules prohibiting the distribution of its assets and income to its members.
- 25.4 The Directors must before or at the time of dissolution or winding up of the Company select the entity or entities to which property will be transferred under clause 25.3.
- 25.5 If, after the dissolution or winding up of the Company, the Members have not made a selection under clause 25.4, the selection will be determined by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.
- 25.6 If effect cannot be given to clauses 25.3 to 25.5, the property under clause 25.2 must be given to a charitable purpose.

26 INDEMNITY

26.1 Indemnity against proceedings

Subject to clause 26.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
- (b) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Act by the court.

(See section 199A(3) of the Act.)

26.2 Indemnity against liabilities

Subject to clause 26.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability incurred by the person as such a Director, Secretary or executive officer to another person (other than the Company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

(See sections 199A(1) and (2) of the Act.)

26.3 Insuring officers of the Company

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate against:

- (a) any liability incurred by that person as such a Director, Secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of section 182 or 183 of the Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever the outcome provided the costs and expenses are not incurred for the reasons set out in section 199A(3) of the Act.

(See section 199A and B of the Act.)

26.4 Company may make separate contracts and bring separate actions

- (a) The Company may confirm the indemnities in clauses 26.1 and 26.2 by separate contract with, or on behalf of, 1 or more of the persons indemnified.
- (b) The indemnities given by the Company in clauses 26.1 and 26.2 do not affect the right of the Company to bring any demand or action against any Director, Secretary or executive officer of the Company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

26.5 Directors may resolve to not indemnify

Provided the Company has not confirmed the indemnity under clause 26.4(a) by a contract which is in force, the Directors may resolve that the indemnities in clauses 26.1 and 26.2 are not to apply to a specified person or class of persons.

26.6 Interpretation

Nothing in clauses 26.1 to 26.4 is to be taken to limit the power of the Company, as permitted by the Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the Company or its related bodies corporate.

26.7 Payments not remuneration

Any payment made by the Company under clauses 26.1 to 26.3 does not constitute remuneration for the purposes of this constitution.

(Mandatory. This clause is a positive reflection of sections 199A, 199B and 199C of the Corporations Act.)

27 BRANCH REGISTERS

27.1 Company may keep branch registers

The Company may establish and cause to be kept outside the state (including outside of Australia) where its Register is kept a branch register of Members in accordance with the provisions of the Act.

27.2 Directors to determine manner in which branch registers are kept

Subject to the provisions of the Act and of the provisions of this constitution, any branch register must be established and kept in the manner the Directors determine.

27.3 Delegation

The Directors may empower any officer of the Company or any other person to establish and keep any branch register in a manner that the Directors determine.

28 AMENDING THIS CONSTITUTION

28.1 Special Resolution

Subject to the Act the Company may modify or repeal this constitution or a provision of this constitution, by Special Resolution.

(Mandatory. This reflects section 136(2) of the Act.)

28.2 Date effective

A Special Resolution modifying or repealing this constitution takes effect:

- (a) if no later date is specified in the resolution, the date on which the resolution is passed; or
- (b) on a later date specified in or determined in accordance with the resolution.

(Mandatory. This reflects section 136(3) of the Act.)

29. INTERNAL DISPUTES

In the event of a dispute arising (Dispute) between any of the Members of the Company or between the Directors of the Company, any party to the Dispute, is entitled to give written notice to the Company (Dispute Notice) requiring the Dispute to be resolved in accordance with the following provisions:

- (a) The Company must give written notice to all parties to the Dispute and shall invite them to attend a meeting at a date and place nominated by the Company for that purpose to facilitate the early resolution of the Dispute;
- (b) If the Dispute is not resolved within 30 days following the date of the Dispute Notice, then the Company shall appoint an independent person (Independent Person) agreed upon by the Board for that purpose but failing such agreement by the Board, appointed at the written request of the Company by Australian International Disputes Centre (AIDC);
- (c) The parties to the Dispute must comply with the requirements, if any, of AIDC;

- (d) Each party to the Dispute is entitled to make reasonable submissions to the Independent Person and must be given a full and fair opportunity of presenting their argument to the Independent Person;
- (e) The Independent Person will act as an expert and not as an arbitrator and is entitled to obtain such information and documents as the Independent Person considers to be appropriate;
- (f) The determination of the Independent Person will be final and binding on the parties who must carry out and give effect to the determination of the Independent Person;
- (g) All costs and expenses of AIDC and of the Independent Person must be borne and paid by the Company unless the Independent Person otherwise directs in which event such costs and expenses must be borne and paid as directed by the Independent Person.

Following determination or resolution of the Dispute, the Board shall review the policies and procedures of the Company, which may have contributed to the Dispute in order to minimise the risk of a recurrence of the same or a similar dispute in the future.

30. COMPLAINTS

The following provisions apply for the purpose of dealing with any complaints which may be made to or in relation to the Company by members of the public or grievances from employees of the Company in relation to fundraising activities or other related matters:

- (a) The Operations Manager of the Company, or such other person as may from time to time be designated by the Board for that purpose shall be the "Complaints Officer";
- (b) The Complaints Officer shall maintain a register which shall include the date of each complaint made together with the name, address and telephone number of the complainant, the nature of the complaint, the name of the person or persons who were the subject of the complaint as well as the action taken to investigate the complaint, details of the findings and the date and manner by which the complainant was informed of the outcome;
- (c) If the complaint requires investigation then a *pro forma* action sheet shall be developed by the Complaints Officer which shall include details of any interviews with any person who is the subject of the complaint;
- (d) If the Company is at fault, then steps must be taken to endeavour to avoid a recurrence of the complaint in question;
- (e) Appropriate action shall be taken as directed by the Board where a particular individual has been the offender in more than one complaint;

- (f) If the complaint has resulted from false or misleading information being provided to the Complainant, then the company must accept full responsibility for such false or misleading information. If the person responsible for the false or misleading information continues to offend in a like manner then appropriate disciplinary action, as directed by the Board must be taken;
- (g) The Complaints Officer shall prepare a monthly report which shall be submitted to the Board, summarising details of all complaints received;
- (h) The Board shall be required to analyse complaints to reveal any recurrences or trends in the form of the complaints received.

The mechanism for handling complaints will be reviewed from time to time in consultation with any staff representatives who may be appointed for that purpose. The detailed mechanism for handling complaints may be modified from time to time by resolution of the Board.

31. CONFLICTS

- 31.1 The Company recognises that conflicts of interest within the organisation may reflect on the integrity of the Directors, management and staff as well as the organisation itself. Conflicts of interest may be of a monetary kind or of a non-monetary kind. Such conflicts of interest may include, without limitation:
 - (a) The sale of an asset by the Company to a Member or the purchase of an asset by the Company from a Member;
 - (b) The payment of remuneration to a Director;
 - (c) A vote by a Director on a matter which directly affects that Director.
- 31.2 The Board shall establish and maintain a register of pecuniary interests in which there shall be recorded, all pecuniary interests of Directors or employees which may give rise to any conflict of interests with the Company. The register shall be maintained in accordance with the directions of the Board but otherwise in accordance with the guidelines published by the Office of Liquor, Gaming and Racing.
- 31.3 The following policies and procedures apply to any conflicts of interests which may arise and such policies and procedures may from time to time be modified, added to or varied as the Board may from time to time determine:
 - (a) If goods or services are provided by a Member, Director or employee to the Company, a proper tendering process is to be established which will include obtaining at least 3 competitive quotations;
 - (b) Members of the Board should absent themselves from proceedings at meetings where decisions are taken which may benefit themselves or any member of their family (including family companies);

- (c) If a member of the Board is to receive a salary, fee or other benefit (other than reimbursement for reasonable out-of-pocket expenses) then application must be lodged in writing with the Company for such benefit;
- (d) A person should not accept a professional appointment (for example auditor or solicitor) to the Company where that person serves on the Board of the Company or is directly related to a member of the Board so as to ensure that the professional person concerned avoids conflicts of interest. However, such an appointment may be made if full and frank disclosure of the conflict or potential conflict of interest is made in writing and recorded in the Minutes of the Board.