

# transplant australia

## Constitution of Transplant Australia

**Adopted 2018**

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# Transplant Australia

## Constitution

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### 1. Preliminary

#### 1.1 Definitions and interpretation

Schedule 1 applies and forms part of this Constitution.

#### 1.2 Nature of the Company

- (a) The Company is a public company limited by guarantee.
- (b) Each Member undertakes to contribute an amount not exceeding \$2.00 to the property of the Company if the Company is wound up:
  - (i) at a time when that person is a Member; or
  - (ii) within one year of the time that person ceased to be a Member,  
for:
    - (iii) payment of the debts and liabilities of the Company contracted before that person ceased to be a Member;
    - (iv) payment of the costs, charges and expenses of winding up the Company;  
and
    - (v) adjustment of the rights of the contributories among themselves.

#### 1.3 Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Company.

#### 1.4 Objects

- (a) The objects of the Company, being charitable purposes, are:
  - (i) to provide assistance to
    - A. persons who are awaiting for, or who have received, organ or tissue transplantation and their families;
    - B. Donor Families;
    - C. Living Donors; or
    - D. persons who are otherwise affected by or involved in transplantation,  
  
with a view to providing relief from sickness, suffering and distress, promoting quality of life and enhancing the physical, emotional and intellectual wellbeing of those persons;
  - (ii) to educate the community and increase awareness for the need for, and the benefits of, organ and tissue donation and to advance, propagate, publish or disseminate knowledge and information in that regard;

- (iii) to provide assistance to organisations (including medical and research organisations) to find cures to diseases, prevent illness and find more effective medical treatment using organ, tissue and cell transplantation techniques;
    - (iv) to provide for, promote and encourage sporting and recreational activities as a means of pursuing those objects set out in Article 1.4(a)(i), 1.4(a)(ii) and 1.4(a)(iii); and
    - (v) to do all other things necessary or required to satisfy the objects set out in this Article 1.4.
  - (b) In providing the assistance set out in Article 1.4(a)(i), the Company will endeavour to do so:
    - (i) as expeditiously as possible; and
    - (ii) with a view to minimising, to the extent possible, the adverse effects of the transplantation process on those persons.
  - (c) The Company will pursue its objects in all states and territories in Australia.
  - (d) Notwithstanding anything else set out in this Article 1.4, the Company will only pursue charitable purposes and will only apply the income and property of the Company in promoting the objects of the Company.
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## **2. Members**

### **2.1 Exercise of powers**

The powers of the Company under this Article 2 may only be exercised by the Directors.

### **2.2 Applications**

- (a) Any person is eligible to apply to become a Member.
- (b) Each applicant to become a Member must sign and deliver to the Company an application in the form which the Directors determine, and pay any initial fee which the Directors determine.
- (c) The Company determines whether an applicant may become a Member.
- (d) The Company is not required to give any reason for the rejection of any application to become a Member.
- (e) If an application to become a Member is accepted, the Company must:
  - (i) give written notice of the acceptance to the applicant; and
  - (ii) enter the applicant's name in the Register.
- (f) If an application to become a Member is rejected, the Company must:
  - (i) give written notice of the rejection to the applicant; and
  - (ii) refund in full the fee (if any) paid by the applicant.

- (g) A determination of an application to become a Member is not invalid if the Company does not comply with Article 2.2(e)(i) or 2.2(f)(i).

### **2.3 Honorary Members**

- (a) The Company may offer honorary membership to each
  - (i) Living Donor;
  - (ii) Donor Families, and
  - (iii) Health Care Professionals
- (b) Those persons who apply to become Members under this Article 2.3, and whose application for Membership is approved will be awarded honorary membership, be known as Honorary Members and will not be required to pay an initial fee pursuant to Article 2.2(b) or any other Fee as contemplated by Article 3.2.

### **2.4 Life Members**

Life membership may be awarded by the Company, subject to the following:

- (a) Life membership will only be offered, and upon acceptance, awarded to those persons who have contributed long and meritorious service to the Company;
- (b) Names of nominees for life membership, together with supporting details, may be submitted to the Secretary from time to time who will deal with such nomination in accordance with the direction of the Directors;
- (c) Acceptance of a nomination for the awarding of life membership must be made by the passing of a unanimous resolution of the Directors;
- (d) Those persons to whom life membership has been awarded will be known as Life Members, and will not be required to pay an initial fee pursuant to Article 2.2(b) or any other Fee as contemplated by Article 3.2.

### **2.5 Additional categories of Membership**

Notwithstanding Article 2.2, the Company may offer Membership on any terms (including as to name), at any time and for any consideration, as the Directors resolve.

### **2.6 No transfers**

The rights of being a Member are not transferable whether by operation of law or otherwise.

### **2.7 Ceasing to be a Member**

- (a) A person will cease to be a Member if:
  - (i) the Member resigns in accordance with Article 2.8;
  - (ii) the Member is expelled under Article 2.9; or
  - (iii) a Cessation Event occurs in respect of the Member.
- (b) The estate of a deceased Member is not released from any liability in respect of that person being a Member.

## 2.8 Resignation

- (a) A Member may resign as a Member by giving the Company notice in writing.
- (b) Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.

## 2.9 Expulsion

- (a) Subject to Article 2.9(c), the Company may expel a Member by a resolution of the Directors if:
  - (i) an Expulsion Event occurs in respect of the Member; and
  - (ii) the Company gives that Member at least 10 Business Days notice in writing:
    - A. stating the Expulsion Event and that the Member is liable to be expelled; and
    - B. informing the Member of its right under Article 2.9(c).
- (b) The Company may expel a Member by a resolution of Directors if the Member does not pay a Fee within 30 Business Days after the due date for its payment.
- (c) Before the passing of any resolution under Article 2.9(a), a Member is entitled to give the Directors, either orally or in writing, any explanation or defence of the Expulsion Event the Member may think fit.
- (d) If a resolution is passed under Article 2.9(a) or 2.9(b), the Company must give that Member notice in writing of the expulsion within 5 Business Days of the resolution.
- (e) A Member may by notice in writing to the Company within 10 Business Days of receipt of the notice referred to in Article 2.9(d), request that a resolution under Article 2.9(a) be reviewed by the Company at the next general meeting.
- (f) If a request under Article 2.9(e) is made, the Company must propose at the next general meeting of the Company that a resolution be moved to confirm the expulsion of the Member concerned.
- (g) A resolution under Article 2.9(f) must be passed by at least 50% of the votes cast by Members entitled to vote on the resolution.
- (h) A resolution under Article 2.9(a) takes effect:
  - (i) if the Member gives a notice under Article 2.9(e), on the date (if any) the resolution is confirmed by a general meeting of the Company; or
  - (ii) if the Member does not give a notice under Article 2.9(e), on the date of the resolution.
- (i) A resolution under Article 2.8(b) takes effect on the date of the resolution.
- (j) The Company may reinstate an expelled Member on any terms and at any time as the Directors resolve, including a requirement that all amounts due but unpaid by the expelled Member are paid.

## **2.10 Variation of classes and class rights**

- (a) Subject to the Corporations Act and the terms of a particular class of Members, the Company may vary or cancel rights of Members of that class by special resolution of the Company and:
  - (i) a special resolution passed at a meeting of the Members included in that class; or
  - (ii) the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of Members of that class.
- (b) The provisions in this Constitution concerning meetings of Members (with the necessary changes) apply to a meeting held under Article 2.10(a)(i) .

## **2.11 Certificates/evidence of Membership**

The Company may, in its sole discretion, issue to a Member, free of charge, a certificate or some other item evidencing that person as a Member, an honorary Member, commendatory Member or life Member.

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## **3. Fees and other payments**

### **3.1 Exercise of powers**

The powers of the Company under this Article 3 may only be exercised by the Directors.

### **3.2 Payment of Fees**

- (a) Subject to Articles 2.3(b), 2.4(d) and 2.5, the Company may require the payment of fees or levies by Members in the amounts and at the times as the Directors resolve, including payments by instalments ("**Fees**").
- (b) The Company may make Fees payable for one or more Members for different amounts and at different times.
- (c) The Company may revoke or postpone Fees or extend the time for payment of Fees.
- (d) The Company must give Members at least 20 Business Days notice of Fees.
- (e) A notice of Fees must be in writing and specify the amount of the Fee, the due date for payment of the Fee and the manner in which payment of the Fee must be made.
- (f) A Fee is not invalid if either or both a Member does not receive notice of the Fee or the Company accidentally does not give notice of the Fee to a Member.
- (g) A Member must pay to the Company the amount of each Fee payable by the Member on the date and in the manner specified in the notice of the Fee.
- (h) If a Fee is payable in one or more fixed amounts on one or more fixed dates, the relevant Member must pay to the Company those amounts on those dates.

- (i) A Member must pay to the Company:
  - (i) interest at the rate specified in Article 3.4(a) on any amount referred to in Article 3.2(g) or 3.2(h) which is not paid on or before the time appointed for its payment, from the time appointed for payment to the time of the actual payment; and
  - (ii) expenses incurred by the Company because of the failure to pay or late payment of that amount.
- (j) The Directors may waive payment of all or any part of an amount payable under Article 3.2(i).

### **3.3 Company payments on behalf of a Member**

- (a) A Member or, if the Member is deceased, the Member's Personal Representative, must indemnify the Company against any liability which the Company has under any law to make a payment (including payment of a tax) in respect of that Member.
- (b) A Member or, if the Member is deceased, the Member's Personal Representative, must pay to the Company immediately on demand:
  - (i) the amount required to reimburse the Company for a payment referred to in Article 3.3(a); and
  - (i) pay to the Company interest at the rate specified in Article 3.4(a) on any amount referred to in Article 3.3(a) paid by the Company, from the date of payment by the Company until and including the date the Company is reimbursed in full for that payment.
- (b) The powers and rights of the Company under this Article 3.3 are in addition to any right or remedy that the Company may have under the law which requires the Company to make a payment referred to in this Article 3.3.
- (c) The Company may waive any or all of its rights under Article 3.3.

### **3.4 Interest**

- (a) A person must pay interest under this Article 3 to the Company:
  - (i) at a rate the Directors resolve; or
  - (ii) if the Directors do not resolve, at an annual rate equal to the Penalty Interest Rate in Victoria as fixed by the Attorney-General from time to time by notice published in the Government Gazette.
- (b) Interest payable to the Company under Article 3 accrues daily.
- (c) The Company may capitalise interest payable under this Article 3 at any interval the Directors resolve.

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## **4. Proceedings of Members**

### **4.1 Who can call meetings of Members**

- (a) Subject to the Corporations Act, the Directors may call a meeting of Members at a time and place as the Directors resolve.
- (b) The Directors must call and arrange to hold a general meeting of the Company on the request of Members made in accordance with the Corporations Act.
- (c) The Members may call and arrange to hold a general meeting of the Company as provided by the Corporations Act.

### **4.2 Annual General Meeting**

- (a) The Company must hold an AGM if required by, and in accordance with, the Corporations Act.
- (b) The business of an AGM may include any of the following, even if not referred to in the notice of the meeting:
  - (i) the consideration of the annual financial report, director's report and auditor's report for the Company;
  - (ii) the election of Directors;
  - (iii) the appointment of the auditor of the Company; and
  - (iv) the fixing of the remuneration (if any) of the auditor of the Company.

### **4.3 How to call meetings of Members**

- (a) The Company must give not less than Prescribed Notice of a meeting of Members.
- (b) Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director and any auditor of the Company.
- (c) Subject to Article 4.11(h), a notice of a meeting of Members must:
  - (i) 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);
  - (ii) state the general nature of the business of the meeting; and
  - (iii) set out or include any other information or documents specified by the Corporations Act.
- (d) A person may waive notice of any meeting of Members by notice in writing to the Company to that effect.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.

#### **4.4 Right to attend meetings**

- (a) Each Member and any auditor of the Company is entitled to attend and speak at any meetings of Members.
- (b) Subject to this Constitution, each Director is entitled to attend and speak at all meetings of Members.

#### **4.5 Meeting at more than one place**

- (a) A meeting of Members may be held in 2 or more places linked together by any technology that:
  - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chairperson to be aware of proceedings in each place; and
  - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in 2 or more places under Article 4.5(a):
  - (i) a Member present at one of the places is taken to be present at the meeting; and
  - (ii) the chairperson of that meeting may determine at which place the meeting is taken to have been held.

#### **4.6 Quorum**

- (a) A quorum for a meeting of Members is 5 Members entitled to vote at that meeting.
- (b) In determining whether a quorum for a meeting of Members is present:
  - (i) where more than one proxy, attorney or representative of a Member is present, only one of those persons is counted;
  - (ii) where a person is present as a Member and as a proxy, attorney or representative of another Member, that person is counted separately for each appointment provided that there is at least one other Member present; and
  - (iii) where a person is present as a proxy, attorney or representative for more than one Member, that person is counted separately for each appointment provided that there is at least one other Member present.
- (c) A quorum for a meeting of Members must be present at the commencement of the meeting. If a quorum is present at the commencement of a meeting of Members, it is taken to be present throughout the meeting unless the chairperson otherwise determines.
- (d) If a quorum is not present within 30 minutes after the time appointed for a meeting of Members:
  - (i) if the meeting was called under Article 4.1(b) or Article 4.1(c), the meeting is dissolved; and

- (ii) any other meeting is adjourned to the date, time and place as the Directors may by notice to the Members appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- (e) If a quorum is not present within 30 minutes after the time appointed for an adjourned meeting of Members, the meeting is dissolved.

#### **4.7 Chairperson**

- (a) The chairperson of Directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members.
- (b) The chairperson may, prior to a meeting of Members, nominate another Director to act as deputy chairperson to chair a meeting of Members which the chairperson will not be able to attend.
- (c) If at a meeting of Members:
  - (i) there is no chairperson of Directors;
  - (ii) the chairperson of Directors or the deputy chairperson appointed in accordance with Article 4.7(b), is not present within 15 minutes after the time appointed for the holding of a meeting of Members; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,the Directors present may, by majority vote, elect a person present to chair all or part of the meeting of Members.
- (d) Subject to Articles 4.7(a) 4.7(b) and 4.7(c), if at a meeting of Members:
  - (i) a chairperson of that meeting has not been elected by the Directors under Article 4.7(c); or
  - (ii) the chairperson elected by the Directors is not willing to chair all or part of a meeting of Members,the Members present must elect another person present and willing to act to chair all or part of that meeting.

#### **4.8 General conduct of meetings**

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Members may delegate any power conferred by this Article to any person.
- (c) The powers conferred on the chairperson of a meeting of Members under this Article 4.8 do not limit the powers conferred by law.

## **4.9 Resolutions of Members**

- (a) Subject to the Corporations Act, a resolution at a meeting of Members is passed if the number of votes cast in favour of the resolution by Members entitled to vote on the resolution exceeds the number of votes cast against the resolution by Members entitled to vote on the resolution.
- (b) Unless a poll is requested in accordance with Article 4.10, a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- (c) A declaration by the chairperson of a meeting of Members that a resolution on a show of hands is passed, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, are sufficient evidence of that fact, unless proved incorrect.

## **4.10 Polls**

- (a) A poll may be demanded on any resolution at a meeting of Members except:
  - (i) the election of a chairperson of that meeting; or
  - (ii) the adjournment of that meeting.
- (b) A poll on a resolution at a meeting of Members may be demanded by:
  - (i) at least 5 Members present and entitled to vote on that resolution;
  - (ii) one or more Members present and who are together entitled to at least 5% of the votes that may be cast on that resolution on a poll; or
  - (iii) the chairperson of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:
  - (i) before a vote on that resolution is taken; or
  - (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.
- (d) A demand for a poll may be withdrawn.
- (e) A poll demanded on a resolution at a meeting of Members, other than for the election of a chairperson of that meeting or the adjournment of that meeting must be taken in the manner and at the time and place the chairperson directs.
- (f) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (g) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

#### **4.11 Adjourned, cancelled and postponed meetings**

- (a) Subject to the Corporations Act, the chairperson:
  - (i) may adjourn a meeting of Members to any day, time and place; and
  - (ii) must adjourn a meeting of Members if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. The chairperson may adjourn that meeting to any day, time and place.
- (b) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (c) The Company is only required to give notice of a meeting of Members resumed from an adjourned meeting if the period of adjournment exceeds 21 days.
- (d) Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.
- (e) Subject to the Corporations Act and this Article 4.11, the Directors may at any time postpone or cancel a meeting of Members by giving notice not less than 5 Business Days before the time at which the meeting was to be held to each person who is, at the date of the notice:
  - (i) a Member;
  - (ii) a Director or Alternate Director; or
  - (iii) auditor of the Company.
- (f) A general meeting called under Article 4.1(b) must not be cancelled by the Directors without the consent of the Members who requested the meeting.
- (g) A general meeting called under Article 4.1(c) must not be cancelled or postponed by the Directors without the consent of the Members who called the meeting.
- (h) A notice under Article 4.11(c) of a meeting of Members resumed from an adjourned meeting and a notice postponing a meeting of Members must set out the place, date and time for the revised meeting (and if the revised meeting is to be held in 2 or more places, the technology that will be used to facilitate this).

#### **4.12 Number of votes**

- (a) Subject to this Constitution and any rights or restrictions attached to a class of Members, on a show of hands or on a poll at a meeting of Members, every Member present has one vote.
- (b) In the case of an equality of votes on a resolution at a meeting of Members, the chairperson of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the chairperson of that meeting has in respect of that resolution.
- (c) A Member present at a meeting of Members is not entitled to vote on any resolution if any amount due and payable to the Company by that person in their capacity as a Member has not been paid.

- (d) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (e) The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.
- (f) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member is present in person at that meeting.

#### **4.13 Objections to qualification to vote**

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
  - (i) before that meeting, to the Directors; or
  - (ii) at that meeting (or any resumed meeting if that meeting is adjourned), to the chairperson of that meeting.
- (b) Any objection under Article 4.13(a) must be decided by the Directors or the chairperson of the meeting of Members (as the case may be), whose decision, made in good faith, is final and conclusive.

#### **4.14 Proxies, attorneys and representatives**

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
  - (i) in person or, if the Member is a body corporate, by its representative appointed in accordance with the Corporations Act;
  - (ii) by not more than one proxy; or
  - (iii) by not more than one attorney.
- (b) A proxy, attorney or representative of a Member need not be a Member.
- (c) A Member may appoint a proxy, attorney or representative for a particular meeting of Members.
- (d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:
  - (i) the name and address of that Member;
  - (ii) the name of the Company;
  - (iii) the name of the proxy or the name of the office of the proxy; and
  - (iv) the meetings of Members at which the proxy may be used.
- (e) The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Article 4.14(d).

- (f) An instrument appointing an attorney or representative must be in a form as the Directors may prescribe or the chairperson of a meeting of Members may accept.
- (g) Subject to the Corporations Act, the decision of the chairperson of a meeting of Members as to the validity of an instrument appointing a proxy, attorney or representative is final and conclusive.
- (h) Unless otherwise provided in the Corporations Act or in the instrument appointing a proxy or attorney, a proxy or attorney may:
  - (i) agree to a meeting of Members being called by shorter notice than is required by the Corporations Act or this Constitution;
  - (ii) agree to a resolution being either or both proposed and passed at a meeting of Members of which notice of less than 21 days is given;
  - (iii) speak on any resolution at a meeting of Members on which the proxy or attorney may vote;
  - (iv) vote at a meeting of Members (but only to the extent allowed by the appointment);
  - (v) demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
  - (vi) attend and vote at any meeting of Members which is rescheduled or adjourned.
- (i) Unless otherwise provided in the Corporations Act or in the instrument appointing a proxy or attorney, a proxy or attorney may vote on:
  - (i) any amendment to a resolution on which the proxy or attorney may vote;
  - (ii) any motion not to put that resolution or any similar motion; and
  - (iii) any procedural motion relating to that resolution, including a motion to elect the chairperson of a meeting of Members, vacate the chair or adjourn that meeting,even if the appointment directs the proxy or attorney how to vote on that resolution.
- (j) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is:
  - (i) the person specified by the Company in the form of proxy in the case the Member does not choose; or
  - (ii) if no person is so specified, the chairperson of that meeting.
- (k) A Member may specify the manner in which a proxy or attorney is to vote on a particular resolution at a meeting of Members.

- (l) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than:
    - (i) 48 hours before the time scheduled for commencement of that meeting; or
    - (ii) in the case of a meeting which has been adjourned, 48 hours before the time scheduled for resumption of the meeting.
  - (m) Unless the Company has received notice in writing of the matter not less than 48 hours before the time scheduled for the commencement of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy, attorney or representative is, subject to this Constitution, valid even if, before the person votes:
    - (i) a Cessation Event occurs in respect of that Member;
    - (ii) that Member revokes the appointment of that person; or
    - (iii) that Member revokes the authority under which the person was appointed by a third party.
- 

## **5. Directors**

### **5.1 Number of Directors**

- (a) The Company must have not less than 5 Directors.
- (b) Subject to Article 5.1(a) the Directors may, from time to time, unanimously alter the number of Directors, provided that the Directors cannot reduce the number of Directors below the number in office at the time that determination takes effect.
- (c) If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except in emergencies, for appointing one or more directors in order to make up a quorum for a meeting of Directors, or to call and arrange to hold a meeting of Members.

### **5.2 Appointment of Directors**

- (a) Subject to Article 5.1, the Directors may appoint any person as a Director.
- (b) The Company may by ordinary resolution at any AGM appoint any person as a Director.
- (c) A Director must be a Member.

### **5.3 Term of appointment**

- (a) The term of appointment of any person appointed by the Company as a Director pursuant to Article 5.2(a) will be for a period ending:
  - (i) on the date of the next AGM following the date of appointment; or
  - (ii) subject to Article 5.3(c), 3 years from the date of appointment.

- (b) The term of appointment of any person appointed by the Company as a Director pursuant to Article 5.2(b) will cease at the end of the third AGM following the date of appointment.
- (c) Where the Directors appoint a person as a Director pursuant to Article 5.2(a), for the term set out in Article 5.3(a)(ii), that appointment must be confirmed by the Company at the next AGM by ordinary resolution. If the appointment is not confirmed, the person ceases to be a director of the Company at the end of the AGM whereupon, subject to Article 5.1 the number of directors of the Company will be deemed to have been reduced by the number of appointments which were not confirmed.
- (d) A Director whose office ceases in accordance with Article 5.3(a)(i) or Article 5.3(b), will hold office until the end of the relevant AGM, but nothing in this Article 5.3 will prevent that Director from being eligible for re-appointment.
- (e) The maximum term of appointment for a Director is ten years from the date of first election at the AGM.

#### **5.4 Rotation of original Directors**

- (a) The office of each Director, appointed otherwise than in accordance with Article 5.3 ceases at the end of the third AGM after their respective date of appointment.
- (b) A Director whose office ceases under Article 5.4(a), will hold office until the end of the relevant AGM, but nothing in this Article 5.4 will prevent that Director from being eligible for re-appointment.
- (c) The re-appointment of the Directors whose office ceases pursuant to this Article 5.4, must comply with the provisions set out in Article 5.3(b).

#### **5.5 Vacation of office**

- (a) A Director may resign from office by giving the Company notice in writing.
- (b) Subject to the Corporations Act, the Company may by ordinary resolution passed at a general meeting remove any Director, and if thought fit, appoint another person in place of that Director.
- (c) A Director ceases to be a Director if:
  - (i) the Director becomes of unsound mind or a person whose property is liable to be dealt with under a law about mental health;
  - (ii) the Director is absent without the consent of the Directors from all meetings of the Directors held during a period of 6 months;
  - (iii) the Director resigns or is removed under this Constitution;
  - (iv) the Director is an Executive Director and ceases to be an employee of the Company or of a related body corporate of the Company;
  - (v) the Director becomes an insolvent under administration; or
  - (vi) the Corporations Act so provides.

## 5.6 Remuneration of Directors

- (a) The Company must not pay any fees to a Director for performing that person's duties and responsibilities as a Director.
- (b) The Company must not pay any amount to a Director under this Article 5.7 unless that payment has been approved by the Directors.
- (c) Subject to Articles 5.7(a) and 5.7(b), the Company may pay to its Directors any remuneration that the Company determines by ordinary resolution.
- (d) The Company may pay all reasonable travelling, accommodation and other expenses that a Director or Alternate Director properly incurs:
  - (i) in attending meetings of Directors or any meetings of committees of Directors;
  - (ii) in attending any meetings of Members; and
  - (iii) in connection with the business of the Company.
- (e) Subject to the Corporations Act, any Director may participate in any fund, trust or scheme for the benefit of:
  - (i) past or present employees or Directors of the Company or a related body corporate of the Company; or
  - (ii) the dependants of, or persons connected with, any person referred to in Article 5.7(e)(i).
- (f) Subject to the Corporations Act, the Company may give, or agree to give, a person a benefit in connection with that person's, or someone else's, retirement from a board or managerial office in the Company or a related body corporate of the Company.

## 5.7 Interests of Directors

- (a) A Director may:
  - (i) hold an office or place of profit (except as auditor) in the Company, on any terms as the Directors resolve;
  - (ii) hold an office or otherwise be interested in any related body corporate of the Company or other body corporate in which the Company is interested; or
  - (iii) act, or the Director's firm may act, in any professional capacity for the Company (except as auditor) or any related body corporate of the Company or other body corporate in which the Company is interested,and retain the benefits of doing so if the Director discloses in accordance with the Corporations Act the interest giving rise to those benefits.
- (b) If a Director discloses the interest of the Director in accordance with the Corporations Act:
  - (i) the Director may contract or make an arrangement with the Company, or a related body corporate of the Company or a body corporate in which

the Company is interested, in any matter in any capacity;

- (ii) the Director may, subject to the Corporations Act, be counted in a quorum for a meeting of Directors considering the contract or arrangement;
- (iii) the Director may, subject to the Corporations Act, vote on whether the Company enters into the contract or arrangement, and on any matter that relates to the contract or arrangement;
- (iv) the Director may sign on behalf of the Company, or witness the affixing of the common seal of the Company to, any document in respect of the contract or arrangement;
- (v) the Director may retain the benefits under the contract or arrangement; and
- (vi) the Company cannot avoid the contract or arrangement merely because of the existence of the Director's interest.

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## **6. Officers**

### **6.1 Managing Director**

- (a) The Directors may appoint one of themselves, who is nominated by the chairperson as managing director, as a managing director, for any period and on any terms (including, subject to Article 5.7, as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the Company and a managing director, the Directors may remove or dismiss a managing director at any time, with or without cause.
- (c) The Directors may delegate any of their powers (including the power to delegate) to a managing director.
- (d) The Directors may revoke or vary:
  - (i) the appointment of a managing director; or
  - (ii) any power delegated to a managing director.
- (e) A managing director must exercise the powers delegated to him or her in accordance with any directions of the Directors.
- (f) The exercise of a delegated power by a managing director is as effective as if the Directors exercised the power.
- (g) A person ceases to be a managing director if the person ceases to be a Director and is not eligible for reappointment for a period of three years.
- (h) A person ceases to be a Director if the person ceases to be a managing and is not eligible for reappointment for a period of three years.
- (i) The managing director is exempt from article 5.3 (Term of appointment) and article 5.4 (Rotation of directors).

## **6.2 Secretary**

- (a) The Directors may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time, with or without cause.
- (c) The Directors may revoke or vary the appointment of a Secretary.

## **6.3 Indemnity and insurance**

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (b) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (c) To the extent permitted by law, the Company may pay, or agree to pay, a premium for a contract insuring a Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (d) To the extent permitted by law, the Company may enter into an agreement or deed with:
  - (i) a Relevant Officer; or
  - (ii) a person who is, or has been an officer of the Company or a subsidiary of the Company,under which the Company must do all or any of the following:
  - (iii) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - (iv) indemnify that person against any Liability of that person;
  - (v) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
  - (vi) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

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## **7. Powers of the Company and Directors**

### **7.1 General powers**

- (a) The Company may exercise in any manner permitted by the Corporations Act any power which a public company limited by guarantee may exercise under the Corporations Act.
- (b) The business of the Company is managed by or under the direction of the Directors.
- (c) The Directors may exercise all the powers of the Company except any powers that the Corporations Act or this Constitution requires the Company to exercise in general meeting.

### **7.2 Execution of documents**

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by:
  - (i) 2 Directors;
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Directors for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by:
  - (i) 2 Directors;
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Directors for that purpose.
- (c) The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Article 7.2(a) or 7.2(b).
- (d) The Directors may resolve, generally or in a particular case, that any signature on certificates for Members may be affixed by mechanical or other means.
- (e) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner and by the persons as the Directors resolve.

### **7.3 Committees and delegates**

- (a) The Directors may delegate any of their powers (including this power to delegate) to a committee, task force or branch of Directors, a Director, an employee of the Company or any other person.
- (b) The Directors may revoke or vary any power delegated under Article 7.3(a).
- (c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.

- (d) The exercise of a delegated power by the committee or delegate is as effective as if the Directors exercised the power.
- (e) Article 8 applies with the necessary changes to meetings of a committee of Directors.

#### **7.4 Attorney or agent**

- (a) The Directors may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- (c) The Directors may revoke or vary:
  - (i) an appointment under Article 7.4(a); or
  - (ii) any power delegated to an attorney or agent.

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### **8. Proceedings of Directors**

#### **8.1 Written resolutions of Directors**

- (a) The Directors may pass a resolution without a meeting of the Directors being held if all the Directors entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document referred to in Article 8.1(a) may be used for assenting to by Directors if the wording of the resolution and the statement is identical in each copy.
- (c) A Director may signify assent to a document under this Article 8.1 by signing the document or by notifying the Company of the assent of the Director:
  - (i) in a manner permitted by Article 9.3; or
  - (ii) by any technology including telephone.
- (d) Where a Director signifies assent to a document under Article 8.1(c) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of Directors attended by that Director.
- (e) The resolution the subject of a document under Article 8.1(b) is not invalid if a Director does not comply with Article 8.1(d).

#### **8.2 Meetings of Directors**

- (a) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of Directors may be held using any technology consented to by a majority of the Directors.
- (c) The consent of a Director under Article 8.2(b):

- (i) may be for all meetings of Directors or for any number of meetings; and
  - (ii) may only be withdrawn by that Director within a reasonable period before a meeting of Directors.
- (d) If a meeting of Directors is held in 2 or more places linked together by any technology:
- (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing her or her participation in the meeting; and
  - (ii) the chairperson of that meeting may determine at which place the meeting will be taken to have been held.

### **8.3 Who can call meetings of Directors**

- (a) A Director may call a meeting of Directors at any time.
- (b) On request of any Director, a Secretary of the Company must call a meeting of the Directors.

### **8.4 How to call meetings of Directors**

- (a) Notice of a meeting of Directors must be given to each Director and Alternate Director.
- (b) A notice of meeting of Directors must:
  - (i) 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); and
  - (ii) state the general nature of the business of the meeting.
- (c) The Company must give not less than [48] hours notice of a meeting of Directors, unless all Directors agree otherwise.
- (d) A Director or Alternate Director may waive notice of a meeting of Directors by notice in writing to the Company to that effect.

### **8.5 Quorum**

- (a) Subject to the Corporations Act, a quorum for a meeting of Directors is:
  - (i) if the Directors have fixed a number for the quorum, that number of Directors; and
  - (ii) in any other case, 2 Directors entitled to vote on a resolution that may be proposed at that meeting.
- (b) In determining whether a quorum for a meeting of Directors is present:
  - (i) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present;
  - (ii) where a person is present as Director and an Alternate Director for

another Director, that person is counted separately provided that there is at least one other Director or Alternate Director present; and

- (iii) where a person is present as an Alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.
- (c) A quorum for a meeting of Directors must be present at all times during the meeting.
- (d) If there are not enough persons to form a quorum for a meeting of Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

## **8.6 Chairperson**

- (a) The Directors may elect a Director as chairperson of Directors or, subject to Article 8.6(d), deputy chairperson of Directors for any period they resolve, or if no period is specified, until that person ceases to be a Director.
- (b) The Directors may remove the chairperson of Directors or deputy chairperson of Directors at any time.
- (c) The chairperson of Directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.
- (d) The chairperson may, prior to a meeting of Directors, nominate another Director to act as deputy chairperson to chair a meeting of Directors which the chairperson will not be able to attend.
- (e) If:
  - (i) there is no chairperson of Directors; or
  - (ii) the chairperson of Directors or the deputy chairperson appointed in accordance with Article 8.6(d), is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,then if the Directors have elected a deputy chairperson of Directors, the deputy chairperson of Directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair all or part of the meeting of Directors.
- (f) Subject to Articles 8.6(c), 8.6(d) and 8.6(e), if:
  - (i) there is no deputy chairperson of Directors; or
  - (ii) the deputy chairperson of Directors is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the deputy chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,

the Directors present must elect one of themselves to chair all or part of the meeting of Directors.

- (g) A person does not cease to be a chairperson of Directors or deputy chairperson of Directors if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.

## **8.7 Resolutions of Directors**

- (a) A resolution of Directors is passed if more votes are cast in favour of the resolution than against it.
- (b) Subject to Article 5.8 and this Article 8.7, each Director has one vote on a matter arising at a meeting of the Directors.
- (c) In determining the number of votes a Director has on a matter arising at a meeting of Directors:
  - (i) where a person is present as Director and an Alternate Director for another Director, that person has one vote as a Director and, subject to Article 5.6(e), one vote as an Alternate Director; and
  - (ii) where a person is present as an Alternate Director for more than one Director, that person has, subject to Article 5.6(e), one vote for each appointment.
- (d) Subject to the Corporations Act, in case of an equality of votes on a resolution at a meeting of Directors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution.

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## **9. Notices**

### **9.1 Notice to Members**

- (a) The Company may give Notice to a Member:
  - (i) in person;
  - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member; or
  - (iii) by sending it to the fax number or electronic address (if any) nominated by that Member.
- (b) If the address of a Member in the Register is not within Australia, the Company must send all documents to that Member by email to the electronic address nominated by that Member (if any), and alternatively by air-mail, air carrier or by fax.
- (c) Subject to the Corporations Act, a Notice to a Member is sufficient, even if:
  - (i) a Cessation Event occurs in respect of that Member; or
  - (ii) that Member is an externally administered body corporate,and regardless of whether or not the Company has notice of that event.

- (d) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

## **9.2 Notice to Directors**

The Company may give Notice to a Director or Alternate Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the Company and that person.

## **9.3 Notice to the Company**

A person may give Notice to the Company:

- (a) by leaving it at the registered office of the Company;
- (b) by sending it by post to the registered office of the Company;
- (c) by sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) by any other means permitted by the Corporations Act.

## **9.4 Time of service**

- (a) A notice sent by post to an address within Australia is taken to be given:
  - (i) in the case of a notice of meeting, one Business Day after it is posted; or
  - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (b) A notice sent by post or air-mail to an address outside Australia is taken to be given:
  - (i) in the case of a notice of meeting, 1 Business Day after it is posted; or
  - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (c) A notice sent by air courier to a place outside Australia is taken to be given 3 Business Days after delivery to the air courier.
- (d) A notice sent by fax is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct fax number.

- (e) A notice sent by email is taken to be given on the Business Day it is sent, provided that the sender does not receive notice that such delivery was unsuccessful.
- (f) The giving of a notice by post, air-mail or air courier is sufficiently proved by evidence that the notice:
  - (i) was addressed to the correct address of the recipient; and
  - (ii) was placed in the post or delivered to the air courier.
- (g) A certificate by a Director or Secretary of a matter referred to in Article 9.4(f) is sufficient evidence of the matter, unless it is proved to the contrary.

## **9.5 Signatures**

The Directors may decide, generally or in a particular case, that a notice given by the Company be signed by mechanical or other means.

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## **10. Company distributions**

### **10.1 No distributions to Members**

- (a) Subject to Article 10.1(b), the Company must not make any distributions to any Members, whether by way of dividend, surplus on winding up or otherwise.
- (b) Subject to Article 5.7, the Company may make the following payments to a Member of:
  - (i) reasonable remuneration to any Member in consideration for services rendered or goods supplied by that Member to the Company in the ordinary course of business;
  - (ii) interest at a reasonable rate on money borrowed by the Company from any Member;
  - (iii) reasonable rent for premises leased to the Company by any Member; or
  - (iv) any other reasonable amount of a similar character to those described in this Article 10.1(b).

### **10.2 Winding up**

- (a) If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, that surplus must be paid or distributed to one or more companies, associations or institutions having objects similar to the objects of the Company, and which is a fund, authority or institution approved by the Commissioner of Taxation as a fund, authority or institution referred to in Item 4.1.1 of subsection 30-45(1) of the Income Tax Assessment Act 1997 to whom the liquidator must give or transfer any surplus on winding up.
- (b) Notwithstanding Article 10.2(a) if the endorsement (if any) of the Company as a deductible gift recipient is revoked, or if the Company's Gift Fund is wound up, any surplus assets of the Gift Fund must be transferred to a fund, authority or institution to which income tax deductible gifts can be made. Gift Fund means the bank account into which donations from the public are required to be paid into.

## Schedule 1 Definitions and interpretation

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### 1. Definitions

In this Constitution:

**"Alternate Director"** means a person for the time being holding office as an alternate director of the Company under Article 5.6.

**"Business Day"** means a day except a Saturday, Sunday or public holiday in Victoria.

**"Cessation Event"** means:

- (a) if a Member is an individual:
  - (i) death or bankruptcy of that Member; or
  - (ii) that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health;
- (b) if a Member is a body corporate, the deregistration of that Member under the laws of the jurisdiction of its registration.

**"Corporations Act"** means the *Corporations Act* 2001 (Commonwealth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the Company.

**"Directors"** means the directors of the Company for the time being.

**"Donor Families"** means any spouse, child, sibling, parent or grandparent of a cadaveric donor.

**"Expulsion Event"** means, in respect of a Member:

- (a) the Member has intentionally, recklessly or negligently breached a provision of this Constitution;
- (b) the conduct of the Member, in the opinion of the Directors, is unbecoming of the Member or prejudicial to the interests or reputation of the Company; or
- (c) the Member is, or any step is taken for the Member to become, either an insolvent under administration or an externally administered body corporate.

**"Legal Costs"** of a person means legal costs incurred by that person in defending an action for a Liability of that person.

**"Liability"** of a person means any liability incurred by that person as an officer of the Company or a subsidiary of the Company.

**"Living Donor"** means a living person who has donated their organs or tissue for use in transplantation procedures.

**"Member"** means a person whose name is entered in the Register as a member of the Company.

**"Notice"** means a notice give pursuant to, or for the purposes of, this Constitution or the Applicable Law.

**"Personal Representative"** means the legal personal representative, executor or administrator of the estate of a deceased person.

**"Prescribed Notice"** means 21 days or any shorter period of notice for a meeting allowed under the Corporations Act.

**"Register"** means the register of Members kept under the Corporations Act and, where appropriate, includes any branch register.

**"Relevant Officer"** means a person who is, or has been, a Director or Secretary.

**"Secretary"** means a company secretary of the Company for the time being.

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## 2. Interpretation

- (a) In this Constitution:
- (i) a reference to a meeting of Members includes a meeting of any class of Members;
  - (ii) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy, attorney or representative; and
  - (iii) a reference to a notice or document in writing includes a notice or document given by fax or another form of written communication.
- (b) In this Constitution, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (i) words importing the singular include the plural (and vice versa);
  - (ii) words indicating a gender include every other gender;
  - (iii) the word **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (iv) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (v) the word **"includes"** in any form is not a word of limitation.
- (c) Unless the context indicates a contrary intention, in this Constitution:
- (i) a reference to an Article or a schedule is to an article or a schedule of this Constitution;
  - (ii) a reference in a schedule to a clause is to a clause of that schedule;
  - (iii) a schedule is part of this Constitution; and
  - (iv) a reference to this Constitution is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.
- (d) Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-

enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.

- (e) Unless the context indicates a contrary intention:
  - (i) an expression in a provision of this Constitution that deals with a matter dealt with by a provision of the Applicable Law has the same meaning as in that provision of the Applicable Law; and
  - (ii) an expression in a provision of this Constitution that is defined in section 9 of the Corporations Act has the same meaning as in that section.

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### **3. Exercise of powers**

Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

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### **4. Severing invalid provisions**

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.