

**CONSTITUTION**

of

**LIFE WITHOUT  
BARRIERS**

ACN 101 252 171

## Index to Constitution

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1	Definitions.....	1
2	Interpretation.....	2
3	Name of the Company .....	3
4	Status of the Constitution and Replaceable Rules.....	3
5	Purpose and Objects.....	3
6	Not-for-profit.....	4
7	Powers of the Company.....	4
8	Amending the Constitution.....	4
9	Financial Records.....	5
10	Membership and Membership rights .....	5
11	Applications for Membership .....	6
12	Register of Members .....	7
13	Liability of Members .....	7
14	Governance Charter and Code of Conduct .....	8
15	Removal of a Member.....	8
16	Cessation of Membership.....	8
17	Annual General Meeting .....	9
18	Business at Annual General Meeting .....	9
19	Calling General Meetings .....	10
20	Notice of Meetings.....	10
21	Quorum at Members' Meetings.....	11
22	Chairing Meetings of Members .....	12
23	Adjourned Meetings .....	12
24	Voting.....	12
25	Written Resolutions .....	13
26	Minutes .....	13
27	Disputes to be resolved by chair .....	14
28	Appointment of proxy .....	14
29	Proxy Instruments.....	14
30	Powers of the Board.....	16
31	Board of Directors.....	16
32	Election of Directors .....	17
33	Cessation of Directorship.....	18
34	Formal execution .....	19
35	Conflicts of Interest.....	19
36	Board Meetings.....	20
37	Chairing Directors' meetings .....	21
38	Passing resolutions .....	21
39	Quorum at Board Meetings .....	21
40	Committees .....	22
41	Appointment of Officers, Employees, etc.....	22
42	Appointment of Secretary .....	22
43	Minutes .....	22
44	Indemnity .....	23
45	Remuneration of Auditor .....	23
46	Removal of Auditor .....	23
47	Auditor's attendance at general meetings.....	24
48	Winding up .....	24

# CONSTITUTION

## GENERAL

### 1 Definitions

In this Constitution, unless otherwise stated, the following terms commencing with capital letters mean:

**ACNC Act** means *The Australian Charities and Not-for-Profits Commission Act 2012* (Cth);

**AGM** means an annual general meeting of Members;

**Associate Member** means a Member that is not entitled to vote in accordance with **paragraph 10.1(b)**;

**Auditor** means the person appointed for the time being as the auditor of the Company;

**Board** means the board of Directors of the Company;

**Chair** means a chairperson of a meeting;

**Charitable Fundraising Law** means a Law applying to the Company as a charity including the Charitable Fundraising Act 1991 (NSW);

**Code of Conduct** means the code of conduct adopted by the Board from time to time as referred to and further described in **paragraph 14.2**;

**Company** means Life Without Barriers ACN 101 252 171;

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

**Director** means a duly appointed director of the Company;

**EMT** means the Company's executive management team led by the Company's chief executive officer, as further described in the Governance Charter;

**Executive Director** means a Director employed as part of the EMT whether on a part time or full time basis;

**Governance Charter** means the Company's charter for its corporate governance as referred to and further described in **paragraph 14.1**;

**Law** means the ACNC Act and Corporations Act (as applicable);

**Member** means a person who is, or who is registered as, a member of the Company and includes an Ordinary Member and an Associate Member;

**Members Guarantee Amount** means \$50;

**Membership** means being a Member;

**Ordinary Member** means a Member that is entitled to vote in accordance with **paragraph 10.1(a)**;

**Secretary** means any person appointed for the time being as, or to perform the functions of, the secretary of the Company;

**Special Majority Board Resolution** means a resolution of the Board which has been passed by at least 75% of the Directors present and entitled to vote on the resolution;

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth); and

**Vulnerable Persons** means:

- (a) persons affected by physical, intellectual or mental disability;
- (b) elderly persons requiring care and support services both in and out of the home;
- (c) persons experiencing social disadvantage or discrimination, including refugees and the homeless; or
- (d) children at risk of entering or being cared for by a statutory child protection system.

## 2 Interpretation

In this Constitution except to the extent that the context otherwise requires:

- (a) the words 'including', 'include' and 'includes' are to be construed without limitation;
- (b) reference to legislation or a provision of legislation includes any change or re-enactment of the legislation or a legislative provision substituted for, and legislation and statutory instruments and regulations issued under the legislation;
- (c) words denoting the singular include the plural and vice versa;
- (d) words denoting individuals or persons include firms, bodies corporate and trusts and vice versa;
- (e) headings are for convenience only and do not affect interpretation;
- (f) reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Constitution;
- (g) reference to a document, agreement or Code of Conduct includes reference to that document, agreement or Code of Conduct as amended, novated or replaced from time to time;
- (h) words denoting any gender include all genders;
- (i) where a word or phrase is given a definite meaning in this Constitution a part of speech or other grammatical form for that word or phrase has a corresponding meaning;
- (j) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act;

- (k) reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (l) reference to a time and date concerning the performance of an obligation by a Member is a reference to the time and date in Newcastle, New South Wales, even though the obligation is to be performed elsewhere; and
- (m) where the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday then that thing will be done on the next succeeding business day.

## **THE COMPANY**

### **3 Name of the Company**

The name of the company is Life Without Barriers. The Company is a public company limited by guarantee.

### **4 Status of the Constitution and Replaceable Rules**

This is the Constitution of the Company. This Constitution displaces the replaceable rules applicable to a public company limited by guarantee as set out in the Corporations Act. Accordingly, none of the replaceable rules apply.

### **5 Purpose and Objects**

The purpose of the Company is the benevolent relief of disadvantage, distress, misfortune or helplessness experienced by Vulnerable Persons. Without the limiting the generality of the Company's purpose, the objects of the Company include:

- 5.1 to carry on business as a financially self-sufficient, not for profit company comprised of Members;
- 5.2 to provide care and support (including in-home and out-of-home care and support) to, and promote and encourage the personal development of, Vulnerable Persons, thereby assisting them to grow, develop and live with agency, dignity, self-determination and acceptance in their communities;
- 5.3 to research, develop, promote, advocate for and/or encourage opportunities and activities that provide better living conditions and care for Vulnerable Persons, including opportunities and programs in various social, community, sporting and employment activities thereby assisting them to achieve a better quality and enjoyment of life;
- 5.4 to work with relevant entities including, but not limited to, government, semi-government, non-government, public, private and other authorities, instrumentalities, businesses, companies, individuals, charities and other bodies or interest groups wishing to assist and promote the interests and dignity of, and opportunities for, Vulnerable Persons; and

- 5.5 to provide funding to other entities for the purposes of one or more of the above objects.

## **6 Not-for-profit**

- 6.1 Subject always to **paragraph 6.2**, the Company will operate as a not-for-profit entity and will only apply the income and property of the Company, however derived, towards the promotion of the purpose and objects of the Company set out in **paragraph 5**.
- 6.2 No income or property of the Company may be distributed or transferred directly or indirectly by way of dividend, bonus or otherwise to any Member or Director except as:
- (a) proper and fair remuneration to any Member or Director employed by the Company in return for services actually rendered in a professional or technical capacity to or for the Company in accordance with competitive fee or cost estimates or quotations;
  - (b) payment to a Member or Director in return for goods or services supplied to the Company for fair value and in the ordinary course of business;
  - (c) interest (at a rate not exceeding interest at the rate for the time being charged by the Company's bank for overdrawn accounts on similar amounts lent) on money borrowed by the Company from a Member or Director; or
  - (d) reasonable and fair market rent for premises let by any Member or Director to the Company.
- 6.3 No payments will be made by the Company to any of the Directors otherwise than in accordance with this Constitution.

## **7 Powers of the Company**

- 7.1 Subject to this Constitution, the Company has the legal capacity and powers to do anything that it is authorised to do by Law.
- 7.2 The powers of the Company will be directed solely for the purpose of carrying out the Company's purpose and objects.

## **8 Amending the Constitution**

- 8.1 This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.
- 8.2 Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

## 9 Financial Records

- 9.1 The Company must keep proper financial and accounting records to correctly record and explain the Company's business transactions (including any transactions as trustee) and the financial position of the Company.
- 9.2 The Company must keep its financial and accounting records in a manner that will enable:
- (a) the preparation of true and fair accounts of the Company; and
  - (b) the accounts of the Company to be conveniently and properly audited.
- 9.3 Each Director and Member has the right to inspect the Company's financial records. The Board may reasonably restrict the manner and times at which such inspections may take place.
- 9.4 Any person who is to cease or has ceased to be a Director may, upon request to the Board, continue to have reasonable access to and inspect any financial record and any other record of the Company relating to the time during which the person was a Director.
- 9.5 The accounts of the Company must be audited each financial year as required by Law.
- 9.6 The Board must put in place procedures to comply with any reporting obligations, including those required by Law.

## MEMBERS

### 10 Membership and Membership rights

- 10.1 The Company will have two types of Membership, namely:
- (a) **Ordinary Members** being persons who will:
    - (1) be entitled to receive information about the Company's activities, including all annual reports;
    - (2) be entitled to receive notice of, attend and vote at all general meetings of the Company (including AGMs);
    - (3) be eligible for election or appointment to the Board; and
    - (4) have all the voting and other rights as provided for by this Constitution.

- (b) **Associate Members** being persons who the Board recognises as supporters of the purpose and objects of the Company who will:
- (1) be entitled to receive information about the Company's activities, including all annual reports; and
  - (2) be entitled to receive notice of, attend and speak and ask questions at (but not vote at) all general meetings of the Company (including AGMs).

For the avoidance of doubt, Associate Members:

- (3) will not have any voting rights at any general meeting (including AGMs) or otherwise; and
- (4) will not be eligible for election or appointment to the Board, unless otherwise resolved by the Board.

10.2 Only a natural person may be a Member.

10.3 The rights and obligations of Members are personal and non-transferable.

## 11 Applications for Membership

11.1 A person may become a Member if that person:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) applies and is approved for membership in accordance with this **paragraph 11**; and
- (c) in the case of Ordinary Members, agrees to become a Director.

11.2 Applications for Membership must be on a form similar to that set out in Appendix 1 and be:

- (a) signed by the applicant;
- (b) supported by the signatures of two Ordinary Members; and
- (c) lodged with the Company.

11.3 The Board will consider an application for Membership as soon as practicable after receipt of a duly completed application form and must only admit the applicant as a Member if the application for Membership has been approved by a Special Majority Board Resolution.



- 11.4 Without limiting the Board's discretion to approve, defer or decline any applications, to qualify for Membership the applicant must, in the Board's opinion, be a person:
- (a) who will be committed to supporting the purpose and objects of the Company;
  - (b) who will agree to be bound by and comply with the Code of Conduct, Constitution and, in the case of an application for Ordinary Membership, Governance Charter; and
  - (c) whose Membership will enhance and benefit the Company and its purpose and objects.
- 11.5 Where the Board approves an application for Membership, the Company will, as soon as practicable after that decision, notify the applicant accordingly and, upon the applicant satisfying any conditions of their acceptance, the Company will enter the applicant's name in the Company's register of members in accordance with **paragraph 12**. A person becomes a Member on the registration of that person's name in the register of members.
- 11.6 In case of any application for Ordinary Membership where the applicant is not a Director:
- (a) the applicant must provide to the Company a signed consent to his or her appointment as a Director; and
  - (b) if the Board wishes to approve the application, it must do so on the condition that it is subject to the applicant becoming a Director within 30 days, or such other time as the Board determines.

## **12 Register of Members**

- 12.1 The Company must maintain separately a register of Ordinary Members and a register of Associate Members. These registers must contain the name and address of each person that is a Member together with the date on which they became a Member and otherwise comply with all requirements under Law.
- 12.2 The registers must be kept at the registered office or principal place of business of the Company and be open for inspection, free of charge, by any Member upon reasonable prior notice at any reasonable hour.

## **13 Liability of Members**

- 13.1 Subject to **paragraph 13.2**, each person who is a Member, and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, must each contribute to the property of the Company for:

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

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

## **14 Governance Charter and Code of Conduct**

14.1 The Board will maintain and keep up to date a Governance Charter to be used as a day to day guide, information resource and statement of Company policy to assist the Board, the Board's committees and the EMT to deliver best practice corporate governance for the Company including:

- (a) defining the respective roles, responsibilities and authorities of the Board and the EMT in setting, monitoring, reviewing and achieving the Company's purpose and objects, strategic direction and performance; and
- (b) dealing with such other corporate governance issues, policies and procedures as the Board may from time to time determine in accordance with, and as may required by, this Constitution and the Law,

provided always that to the extent of any contradiction or inconsistency between this Constitution and the Governance Charter then the provisions of this Constitution will prevail and take precedence.

14.2 For the purpose of promoting its purpose and objects and protecting its integrity the Company will maintain a Code of Conduct (either as part of its Governance Charter or separately), the principles of which must be applied by the Directors and the Company's employees in their relationships and dealings with each other, the Company, the Company's clients and other members of the public according to minimum standards prescribed by the Code of Conduct.

## **15 Removal of a Member**

Where the Board forms the opinion that it is not in the best interests of the Company for that person to remain as a Member, the Board may remove a Member by passing a Special Majority Board Resolution.

## **16 Cessation of Membership**

A person ceases to be a Member of the Company:

- 16.1 if the person resigns as a Member by giving notice in writing addressed to the Company at its registered office and such resignation shall be effective from the later of the date specified in the notice and the date of receipt of the notice by the Company;
- 16.2 if the person is removed as a Member in accordance with **paragraph 15** above, which will be effective on and from the date of the resolution of the Board; or
- 16.3 in the case of an Ordinary Member, if the person is no longer a Director.

## **MEMBERS MEETINGS**

### **17 Annual General Meeting**

- 17.1 An Annual General Meeting must be held at least once in every calendar year;
  - (a) within five (5) months of the end of the Company's financial year; and
  - (b) in addition to any other meetings held in the year.
- 17.2 The Company may hold a meeting of Members at two or more venues simultaneously using any technology that gives the Members as a whole reasonable opportunity to participate in the meeting.

### **18 Business at Annual General Meeting**

- 18.1 The business of the AGM may include any of the following, even if not referred to in the notice of meeting:
  - (a) the consideration of the annual financial report, Directors' report and Auditor's report;
  - (b) the election of Directors;
  - (c) the appointment of the Auditor;
  - (d) determination of the Auditor's remuneration;
  - (e) dealing with any other business included in the notice of meeting.
- 18.2 A copy of the accounts, statements and reports prescribed by Law are to be presented at each AGM and must be provided to Members at least twenty one (21) days prior the AGM.
- 18.3 The Chair of the AGM must allow a reasonable opportunity for the Members as a whole at the AGM to ask questions about or make comments on the management of the Company.

- 18.4 If the Auditor is at the AGM, the Chair must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

## 19 Calling General Meetings

- 19.1 General meetings may be called by any Director.
- 19.2 If the Board receives a request from a Member or Members with at least 5% percent of the votes that may be cast at any general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- 19.3 The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- 19.4 A general meeting requested by the Members must be held no later than two calendar months after the request is received.
- 19.5 If the Directors fail to call the meeting in accordance with **paragraph 19.2**, Ordinary Members with at least 5% of the votes of the Ordinary Members who made the request may call and arrange to hold a general meeting. This meeting must be held within three (3) months of the request being given to the Company. The Company must pay the reasonable expenses incurred in calling this meeting.
- 19.6 Any Court of competent jurisdiction may order a meeting of the Members to be called if it is impractical to call the meeting in any other way. The Court may make the order on application by any Director or any Ordinary Member who would be entitled to vote at the meeting.

## 20 Notice of Meetings

- 20.1 Written notice of a meeting of Members must be given individually to each Member, to each Director and to the Auditor.
- 20.2 At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:
- (a) state the date, time and place (or places) of the meeting;
  - (b) state the general nature of the business to be conducted at the meeting;
  - (c) state any proposed resolutions;
  - (d) state the names of proxies that have been appointed (if any); and

- (e) contain a statement informing the Members of the right to appoint a proxy.

20.3 Notice of any general meeting may be given:

- (a) personally;
- (b) by sending it by post to the address for the Member in the register of Members or the alternative address nominated by the Member; or
- (c) by sending it to the fax number, email or other electronic address nominated by the Member.

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

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

20.5 The period of notice required for the calling of a meeting of Members is twenty one (21) days unless:

- (a) in the case of an AGM, all the Ordinary Members entitled to attend and vote at the AGM agree to a shorter period of notice for that meeting beforehand; or
- (b) in the case of any other general meeting, Ordinary Members with 95% of the votes that may be cast at the general meeting agree to a shorter period of notice for that meeting beforehand.

20.6 The shorter periods of notice permitted under **paragraph 20.4(a)** are not permitted for meetings at which a Director or the Auditor is to be removed.

20.7 Any period of notice is exclusive of the day upon which notice is served but inclusive of the day on which the meeting is to be held.

## 21 Quorum at Members' Meetings

21.1 Five (5) Ordinary Members present in person or by proxy will constitute a quorum for a general meeting.

- 21.2 If a quorum is not present within half an hour after the appointed time for the commencement of a general meeting, then:
- (a) the meeting, if convened upon the requisition of Ordinary Members, is to be dissolved; or
  - (b) in any other case, the meeting is to be adjourned to a date, time and place determined by Chair.
- 21.3 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the meeting is dissolved.

## **22 Chairing Meetings of Members**

- 22.1 The Board may elect an Ordinary Member to Chair meetings of Members.
- 22.2 If an individual has not been previously elected or is unavailable to Chair, a meeting the Directors present at the meeting must elect an Ordinary Member to Chair the meeting of Members.
- 22.3 The Ordinary Members present at a meeting of Members must elect an Ordinary Member present to Chair the meeting if a Chair has been previously elected by the Directors but is not available or declines to act.
- 22.4 Provided that a quorum is present, the Chair must adjourn a meeting if the Ordinary Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

## **23 Adjourned Meetings**

- 23.1 No business can be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment meeting took place.
- 23.2 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 23.3 If a general meeting is adjourned for 30 days or more, at least 30 days' notice must be given to the Members, Directors and Auditor of the day, time and place (or places) for the resumption of the adjourned general meeting.

## **24 Voting**

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

- 24.2 Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.
- 24.3 At a general meeting a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is demanded by the Chair or at least three (3) Ordinary Members entitled to vote on the resolution.
- 24.4 If there is an equality of votes the Chair has a casting vote in addition to his or her vote as an Ordinary Member.
- 24.5 Unless a poll is demanded, a declaration by the Chair on a show of hands is conclusive evidence of the result, provided that the declaration reflects the show of hands. An entry to that effect made in the minutes book of the Company signed by the Chair is evidence of that fact unless the contrary is proved. Neither the Chair nor the minutes need to state the number or proportion of votes recorded in favour or against.
- 24.6 If a poll is demanded it must be taken in the manner determined by the Chair. A poll may be demanded:
- (a) before a vote on a show of hands is taken;
  - (b) before the result of a vote on a show of hands is declared;  
or
  - (c) immediately after the result of a vote on a show of hands is declared.
- 24.7 A demand for a poll may be withdrawn.

## **25 Written Resolutions**

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

## **26 Minutes**

- 26.1 Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:
- (a) proceedings and resolutions of each general meeting;
  - (b) any declarations at each general meeting; and
  - (c) all resolutions passed by Members without a general meeting.

26.2 The Chair, or the Chair of the next meeting, must sign the minutes within one month after the general meeting.

26.3 Subject to reasonable prior notice, Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

## **27 Disputes to be resolved by chair**

The Chair will determine any dispute in relation to any vote, and the determination of the Chair is binding on all Members and is final.

## **28 Appointment of proxy**

28.1 An Ordinary Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.

28.2 A proxy may be, but does not have to be a Member.

28.3 An appointment of a proxy may be a standing one.

## **29 Proxy Instruments**

29.1 An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:

- (a) the Member's name and address;
- (b) the Company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.

29.2 Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.

29.3 An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

29.4 If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:



- (a) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote;
  - (b) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.
- 29.5 The instrument appointing a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 24 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:
- (a) the registered office;
  - (b) a facsimile number at the registered office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.
- 29.6 A proxy may demand, or join in demanding, a poll.
- 29.7 The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.
- 29.8 A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned general meeting, before the resumption of the adjourned general meeting) at which a proxy votes:
- (a) the Member who appointed the proxy ceases to be an Ordinary Member; or
  - (b) the Company receives notice of:
    - (1) the revocation of the instrument appointing the proxy;
    - (2) the appointment of a new proxy; or
    - (3) the revocation of any power of attorney under which the proxy was appointed.
- 29.9 The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

## DIRECTORS

### 30 Powers of the Board

- 30.1 Subject to this Constitution and the Law, the activities of the Company are to be managed by, or under the direction of, the Board.
- 30.2 Subject to this Constitution and the Law, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- 30.3 The Board may delegate any of its powers to:
- (a) a Director;
  - (b) a committee of Directors;
  - (c) an employee of the Company; or
  - (d) any other person.

### 31 Board of Directors

- 31.1 Subject to this Constitution:
- (a) the Company may by resolution at a general meeting appoint a person as a Director;
  - (b) the Board may by resolution at a Board meeting appoint a person as a Director to fill a casual vacancy or as an additional Director until the next AGM; and
  - (c) the Board may by resolution at a Board meeting appoint a member of the EMT as an Executive Director.
- 31.2 Notwithstanding any other provisions in this Constitution, any member of the EMT appointed by the Board as an Executive Director is not required to be an Ordinary Member.
- 31.3 An appointment of a person as a Director is not effective unless:
- (a) the person is an Ordinary Member, has been approved for Ordinary Membership in accordance with **paragraph 11** or is a member of the EMT; and
  - (b) a signed consent to the appointment as a Director is provided by that person to the Company.
- 31.4 The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

- 31.5 The Board must comprise not less than five (5) and not more than nine (9) Directors:
- (a) each of whom must be a natural person at least 18 years of age;
  - (b) not less than two thirds of whom must be Ordinary Members appointed at a general meeting of Members;
  - (c) no more than a third of whom may be Executive Directors appointed by the Board; and
  - (d) who will elect their own Chair and appoint one or more Secretaries.
- 31.6 The Directors of the Company may be paid a fee for their services as determined at a general meeting of Members. The Company shall reimburse Directors for reasonable travel and out of pocket costs and expenses incurred by a Director in the performance of a duty as a Director.
- 31.7 Nothing in **paragraph 31.6** limits:
- (a) a Director's ability to receive remuneration as an employee of the Company;
  - (b) the Board's ability to determine the remuneration payable to an employee of the Company in accordance with **paragraph 41**.

## **32 Election of Directors**

- 32.1 The term of office of each Director (not being an Executive Director) will be not more than three (3) years ending at the closure of the third AGM after their election or appointment to the Board.
- 32.2 Each Director (excluding an Executive Director) may only hold the office of Director for a maximum period of nine (9) years. For the purposes of calculating this maximum period only, each Director holding office as at the date this Constitution was adopted is not required to retire and vacate office until the date that is nine (9) years following the date this Constitution was adopted.
- 32.3 Notwithstanding **paragraph 32.1**:
- (a) any Director who has been appointed since the previous AGM to fill a casual vacancy or as an additional Director must vacate their office as a Director at the next AGM; and
  - (b) at least one third of the other Directors (not being an Executive Director) must vacate their office as Directors at each AGM in the following order:

- (1) firstly any Director wishes to voluntarily vacate their office;
- (2) next the Directors who still remain in office starting and continuing with the next longest serving Director since their last election or appointment to the Board until at least one third of the elected Directors have vacated their office; and
- (3) next if more than two thirds of the elected Directors still remain in office then those Directors who received least votes at their last election will vacate their office in order starting with the Director with the least votes and continuing until at least one third of the elected Directors have vacated their office.

32.4 The election of Directors is to take place at AGMs in the following manner:

- (a) any Director who has retired or vacated their office as Director (including any Director who was appointed by the Board to fill a casual vacancy or as an additional Director) will be eligible to stand with any other candidates for re-election to the Board;
- (b) any two Ordinary Members may nominate any other Ordinary Member as a candidate for election to the Board;
- (c) the nomination must be in writing, signed by the candidate, the proposer and the seconder and lodged with the Secretary at least 7 days before the meeting at which the election is to take place;
- (d) each Ordinary Member present at the meeting is entitled to vote for any number of candidates not exceeding the number of vacancies; and
- (e) in situations where insufficient advance nominations are received to fill all elected Board positions, nominations may be accepted from the floor of the meeting in relation to the unfilled Board positions only.

32.5 The Company may, by resolution at a general meeting, remove any Ordinary Member of the Board before the expiration of the Ordinary Member's period of office and may, by resolution at a general meeting, appoint another person in the Ordinary Member's place. The person so appointed will hold office until the next AGM.

### **33 Cessation of Directorship**

33.1 The office of a Director will become vacant if the Director:

- (a) dies;

- (b) is removed from office as a Director by a resolution of the Company at a general meeting;
- (c) is convicted of an offence against a person and the Board resolves that the person should cease to be a Director;
- (d) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (e) is disqualified from acting as a Director under Law;
- (f) ceases to be a Director by operation of Law;
- (g) resigns by giving notice in writing to the Board at its registered office;
- (h) is absent from Board meetings for more than four (4) consecutive meetings without written permission of the Board and the Board does not resolve that the Director should not cease to be a Director;
- (i) ceases to be an Ordinary Member;
- (j) holds any office of profit in the Company, except if that Director's appointment to such office has been approved pursuant to any applicable Charitable Fundraising Law and the other requirements of this Constitution; or
- (k) is directly or indirectly interested in any contract or proposed contract with the Company in breach of relevant Charitable Fundraising Law.

### **34 Formal execution**

- 34.1 The Company will have no common seal and will execute any instrument and other deeds and agreements by conforming with the requirements of the Law which may occur by a Director and the Secretary or by any two Directors signing the same document.
- 34.2 The Company will keep a register of documents which it formally executes.

### **35 Conflicts of Interest**

- 35.1 A Director must disclose to the Board the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered by the Board and must not, except as provided under **paragraph 35.2**:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.

- 35.2 A Director may still be present and vote if:
- (a) their interest arises because they are a Member and the other Members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a director of the Company;
  - (c) their interest relates to a payment by the Company under **paragraph 44**, or any contract relating to an indemnity that is allowed under Law;
  - (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
  - (e) the Directors who do not have a material personal interest in the matter resolve that they are satisfied that the interest should not stop the Director from voting or being present.

## **BOARD MEETINGS**

### **36 Board Meetings**

- 36.1 A Board meeting may be called by any Director giving at least one (1) week's notice individually to every other Director unless all the Directors agree in writing to a shorter notice of meeting.
- 36.2 Each notice must state:
- (a) the date, time and place (or places) of the Board meeting;
  - (b) the general nature of the business to be conducted at the Board meeting; and
  - (c) any proposed resolutions.
- 36.3 No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:
- (a) that Board meeting;
  - (b) any change of place (or places) of that Board meeting;
  - (c) postponement of that Board meeting; or
  - (d) resumption of that adjourned Board meeting.
- 36.4 A Board meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing

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

### **37 Chairing Directors' meetings**

- 37.1 The Directors will elect a Director to be the Chair at Board meetings.
- 37.2 The Directors may determine the period for which the Director is to be the Chair. The Directors will elect a Director present to chair a meeting or part of it if, a Director has not already been elected to Chair the meeting or a previously elected Chair is not available or declines to act.
- 37.3 If the Chair is not present within 15 minutes after the time appointed for a Board meeting or if the Chair is unwilling or unable to act as Chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

### **38 Passing resolutions**

- 38.1 A resolution of Directors must be passed by a majority vote cast by the Directors present and entitled to vote on the resolution, except where a provision of this Constitution requires a Special Majority Board Resolution.
- 38.2 Each Director present and entitled to vote has one vote. For the purposes of **paragraph 38.1**, if there is an equal number of votes for and against the resolution, the Chair has a casting vote in addition to his or her vote as a Director.
- 38.3 The Directors may pass a resolution without a Directors' meeting being held if 75% of the Directors entitled to vote on the proposed resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.
- 38.4 A copy of the signed document must be circulated to all Directors and noted at the next Board meeting.

### **39 Quorum at Board Meetings**

- 39.1 Unless the Board determines otherwise, the quorum for Board meetings is three (3) Directors or not less than thirty five percent (35%) of all Directors, whichever is the greater, and:
- (a) not less than two thirds of those Directors present must be Ordinary Members; and
  - (b) the quorum must be present at all times during the meeting.

39.2 The Board may function validly provided its number is not reduced below the quorum. Should the number of Directors fall below the quorum, the remaining Directors may act only in relation to the appointment of additional Directors.

#### **40 Committees**

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures. The Board may determine that any Associate Members may sit on any committee of the Board and be entitled to vote on decisions of that committee.

#### **41 Appointment of Officers, Employees, etc**

41.1 The Board has the power to appoint, remove or suspend employees, agents and contractors, and to fix their powers, duties and remuneration.

41.2 The Board may delegate any of its powers under the above paragraph to an officer or employee of the Company, subject to any conditions or limitations which the Board sees fit to impose.

41.3 The Board may, at any time, revoke or vary a delegation made under **paragraph 41.2**.

41.4 Notwithstanding any delegation made under this **paragraph 41**, the Board may continue to exercise all or any of its powers.

#### **42 Appointment of Secretary**

The Board may, in accordance with the Law, appoint one or more Secretaries for such term, upon such conditions as the Board thinks fit. The Board may remove any Secretary so appointed.

#### **43 Minutes**

43.1 The Board and any committee established by the Board must keep minutes of its meetings made in books or electronic format provided and maintained for the purpose, and, in particular:

- (a) of all appointments of officers and employees made by the Board;
- (b) of the names of the Directors present at each meeting of the Board and of any committee of the Board;
- (c) of all resolutions and proceedings at all meetings of the Board and of committees.
- (d) of all resolutions passed without a Board meeting.

43.2 The Chair, or the Chair of the next meeting, must sign the minutes within one month after the Board meeting.



- 43.3 Minutes must be recorded in the minute book within 1 month of the date of the meeting to which they relate. The minute books must be kept at the registered office or principal place of business of the Company. Minutes of meetings may be maintained in electronic format.

#### **44 Indemnity**

- 44.1 To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may indemnify each officer, Director and Secretary of the Company out of the assets of the Company in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, Director or Secretary in or arising out of the conduct of any activity of the Company or the proper performance of any duty of that officer, Director or Secretary.
- 44.2 This indemnity is not intended to indemnify any officer, Director or Secretary in respect of any liability in respect of which the Company must not give an indemnity, and should be construed and, if necessary, read down accordingly.
- 44.3 The Company may enter into an agreement containing an indemnity in favour of any officer, Director or Secretary. The Board will determine the terms of the indemnity contained in the agreement.
- 44.4 The Company may take out, and pay any premium in respect of, adequate policies of directors and officers insurance against liability of its officers, Directors and Secretary of the Company as referred to in this paragraph.

### **REMOVAL, REMUNERATION AND ATTENDANCE OF AUDITOR**

#### **45 Remuneration of Auditor**

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

#### **46 Removal of Auditor**

- 46.1 The Company may remove an Auditor by resolution at a general meeting.
- 46.2 At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- 46.3 If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.

46.4 The notice of an intention must also inform the Auditor that the Auditor:

- (a) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
- (b) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

#### **47 Auditor's attendance at general meetings**

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

### **WINDING UP**

#### **48 Winding up**

48.1 If the Company is wound up, or if the Company's endorsement as a deductible gift recipient is revoked (whichever first occurs), any surplus of:

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

must be transferred to a fund, authority or institution that is a charity which is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act or equivalent provisions.

48.2 If the Company is wound up, any surplus assets remaining after payment of the amounts referred to in **paragraph 48** and applying its assets to satisfaction of all debts and liabilities of the Company and the payment of the costs, charges and expenses of winding up must be transferred to another organisation in Australia which:

- (a) if the Company is or was previously endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act or equivalent provisions; and

(b) has similar objects to the objects of the Company and whose constitution prohibits the distribution of its income and property among members.

48.3 The Company must not pay, distribute or transfer any amount referred to in **paragraph 48** directly or indirectly to the Company's Members.

**APPENDIX 1**

**LIFE WITHOUT BARRIERS**

**APPLICATION FOR MEMBERSHIP**

I, .....  
(full name of applicant)

of .....  
(address and occupation)

**HEREBY APPLY:**

For Ordinary\* / Associate Membership\* of Life Without Barriers and agree that upon admission as a Member, I will be bound by the Company's Constitution and rules for the time being in force.

.....  
*Signature of applicant*

.....  
*Date*

I ..... , being an Ordinary Member of the Company, nominate the above applicant, who is personally known to me, for Ordinary\* / Associate Membership\* of the Company.

.....  
*Signature of proposer*

.....  
*Date*

I ..... , being an Ordinary Member of the Company, second the nomination of the applicant, who is personally known to me, for Ordinary\* / Associate Membership\* of the Company.

.....  
*Signature of seconder*

.....  
*Date*