

**Corporations Act, 2001  
A Company Limited by Guarantee  
and Not for Profit**

**CONSTITUTION**  
**of**  
**BAPTIST WORLD AID AUSTRALIA LTD**

(ACN 164 099 736)

(Adopted on registration: 4 June 2013)  
(Amended: 22 May 2015)

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## 1. GENERAL

### 1.1 Definitions

(a) In this Constitution:

**ABM** means Australian Baptist Ministries (being the name by which The Baptist Union of Australia Incorporated, an association incorporated in the Australian Capital Territory, is more commonly known) and which is the national representative body of the Baptist denomination in Australia and through which State and Territory Baptist Unions and local Baptist churches partner together in support of key national and international ministries.

**ABM National Council** means the ABM body known as the National Council constituted under clause 7 of the constitution of ABM, and which governs the national and international ministries of ABM.

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

**Auditor** means any auditor of the Company appointed from time to time.

**Board** means the board of Directors.

**Business Day** means a day which is not a Saturday, a Sunday or a public holiday in Sydney.

**Company** means Baptist World Aid Australia Ltd (ACN 164 099 736) or as it may otherwise be named from time to time, registered under the Act as a company limited by guarantee and which is a wholly-owned subsidiary of TAI.

**Constitution** means the constitution of the Company as contained in this document and as may be amended from time to time.

**Director** means a director of the Company from time to time.

**Member** means a person who is a member of the Company under the Act.

**Register** means the register of Members.

**Registered Office** means the registered office of the Company from time to time.

**Responsible Person** means an individual with a degree of responsibility to the Australian community as a whole, in accordance with the requirements in this regard as prescribed in the Public Ancillary Fund Guidelines from time to time.

**Seal** means the common seal of the Company (if any) and includes any duplicate common seal and official seal of the Company.

**Secretary** means any person appointed to perform the duties of a secretary of the Company and includes an assistant secretary and any person appointed temporarily to perform the duties of secretary or assistant secretary.

**TAI** means Transform Aid International Ltd (ACN 092 125 203) or as it may otherwise be named from time to time, and which is registered under the Act as a company limited by guarantee (consequent upon a transfer of its registration as

an incorporated association under the *Associations Incorporation Act, 2009* (NSW) when it was registered as 'Australian Baptist World Aid Incorporated') and which is the affiliated aid and development agency of ABM.

- (b) Except so far as the contrary intention appears, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

## 1.2 Interpretation

In the interpretation of this Constitution, unless any contrary intention appears:

- (a) a reference to a clause, sub-clause, paragraph or Schedule is to a clause, sub-clause, paragraph or Schedule of this Constitution;
- (b) a reference to gender includes all genders;
- (c) words importing the singular include the plural and vice versa;
- (d) a reference to a person (except where the reference relates to a Director or other officeholder) includes a corporation;
- (e) headings are for convenience only and do not affect interpretation;
- (f) a reference to a body (including an institute, association, authority, union, board or committee), whether statutory or not:
- (1) which ceases to exist;
  - (2) whose powers or functions are transferred to another body; or
  - (3) whose name is changed from the name it had at the date this Constitution is adopted,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions or as such body may then become named, as applicable.

## 1.3 Section 46(1) instrument

Section 46(1) of the *Acts Interpretation Act, 1901* (Cth) applies in relation to this Constitution as if it were an instrument made under the Act as in force on the day when this Constitution became effective.

## 1.4 Exclusion of replaceable rules

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

## 1.5 Limited liability

The liability of the Members is limited.

## 1.6 Guarantee by Members

Every Member undertakes to contribute to the assets of the Company, in the event of it being wound up while it is a Member, or within 1 year after it ceases to be a Member, for

payment of the debts and liabilities of the Company contracted before it ceases to be a Member, and of the costs, charges and expenses of winding up the Company and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding ten dollars (\$10.00).

## 1.7 Objects of Company

The objects for which the Company is established are:

- (a) to act as an affiliated aid and development agency of ABM, as a wholly-owned subsidiary of TAI:
  - (i) by standing as a Christian non-government organisation (NGO) on behalf of the Baptist denomination in Australia and internationally, to faithfully, effectively and professionally facilitate and co-ordinate sustained transformation of individuals, communities and nations out of poverty and injustice across the developing world;
  - (ii) by forging relationships with Baptist churches, leadership and individual supporters across Australia to encourage their participation in addressing poverty and its impact on communities and nations across the developing world;
  - (iii) by establishing and assisting in the capacity-building of alliances with other organisations in various countries in the developing world to conduct development and disaster relief programs to achieve sustained transformation of individuals and communities out of poverty and injustice;
  - (iv) by engagement in advocacy and educational programs with individuals, churches, corporate and political leadership, to lift awareness of, and engagement with, the issues which perpetuate poverty and injustice in the developing world, and to seek solutions to address these problems;
  - (v) by participating in the development of aid and development capacity and activities of the Baptist denomination globally, including representation with various Asia / Pacific regional and global Baptist aid and development groups.
- (b) to establish a public ancillary fund for the purposes of raising funds to promote the objects of the Company;
- (c) to accept or refuse any grant of financial assistance from any government authority or person, whether for capital costs or recurrent expenses, or otherwise, and to enter into any agreement, covenant or undertaking relating to the grant or supply of financial assistance or other moneys;
- (d) to enter into any arrangements with any government or authority, Commonwealth, State, local, municipal or otherwise, that may seem conducive to the Company's objects as set out in this **clause 1.7** or any of them; and to obtain from any such government or authority any rights, privileges and concessions as the Company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

- (e) to undertake and execute any trusts for the purpose of directly or indirectly carrying out the objects of the Company set out in this **clause 1.7** and, as part of that object, to act as a trustee with all the powers vested in trustees in New South Wales under the general law, the *Trustee Act, 1925* (NSW) and any other applicable legislation in New South Wales; and
- (f) to do all such other acts, matters and things as may appear to be incidental or conducive to the attainment of the above objects or any of them or any objects of a like or similar nature.

## **1.8 Non-profit character of Company**

The assets and income of the Company shall be applied solely and exclusively in the furtherance of its abovementioned objects and no portion shall be either distributed directly or indirectly (by way of dividend, bonus or otherwise) to the Members or be paid by way of directors' fees to the Directors. However, this clause does not prevent:

- (a) the payment in good faith of remuneration to any employee of the Company or to any Member or other person in return for any services actually rendered to the Company; or
- (b) the payment to a member of the Board of out-of-pocket expenses incurred in carrying out the duties of a Director where the payments do not exceed an amount previously approved by the Board.

## **2. MEMBERSHIP OF COMPANY**

### **2.1 Sole Member**

TAI is the sole Member at the date of the Company's registration.

### **2.2 Register of Members**

- (a) Upon any person having become a Member, the Secretary shall enter the name of such person in the Register.
- (b) Upon any person having ceased to be a Member, the Secretary shall record that person's cessation of membership in the Register.

### **2.3 Membership entitlements not transferable**

A right, privilege or obligation which a person has by reason of being a Member: (a)

is not capable of being transferred or transmitted to another person; and

- (b) terminates upon cessation of the person's membership.

### **2.4 No membership fee**

A Member shall not be obliged to pay any membership fee or subscription.

### **3. RESOLUTIONS OF MEMBER**

The sole Member acts by resolution, which it may pass in any manner permitted by the Act.

### **4. THE BOARD**

#### **4.1 Number of Directors**

- (a) The number of Directors who comprise the Board shall be a minimum of 3 and a maximum of 7.
- (b) While ever the Company is the trustee of a public ancillary fund, a majority of the Board shall be Responsible Persons.
- (c) Subject to fulfilment of the requirement in paragraph (b), the Board shall consist of:
  - (i) the chair of the board of TAI from time to time; and
  - (ii) a minimum of 2 and a maximum of 6 additional persons (each being a director of TAI) appointed by the sole Member by written notice to the Company.
- (d) The sole Member may, by resolution, and subject to the Act and to fulfilment of the requirement in paragraph (b):
  - (i) appoint a new Director to replace a Director whose office has been vacated;
  - (ii) subject to any maximum number of Directors, appoint an additional Director; and
  - (iii) remove a Director from office.

#### **4.2 Qualification of Directors**

Each Director must be a director of TAI.

#### **4.3 First Board**

The first Board of the Company shall comprise the following persons:

- (a) Michael Raymond TURNBULL;
- (b) David Allan ROWE; and
- (c) Paul Antony OATES.

The above persons shall hold office in accordance with the provisions of this Constitution.

#### **4.4 Vacation of office**

Without in any way limiting the circumstances in which a Director vacates office by virtue of the Act, the office of a Director becomes vacant if the Director:



- (a) is removed from office by a resolution of Members passed in accordance with the Act;
- (b) dies or becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns his office by notice in writing to the Company;
- (d) is absent without the consent of the Directors from 3 consecutive meetings of the Board;
- (e) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (f) is convicted on indictment of an offence (other than as referred to in paragraph (i) below) and the Directors do not within 1 month after that conviction resolve to confirm the Director's appointment to the office of Director;
- (g) becomes prohibited from being a director of a body corporate or of the Company (specifically) by any law, finding, order or decision of a Court or the Australian Securities and Investments Commission;
- (h) ceases to be a director of TAI; or
- (i) (while ever the Company is a trustee of a public ancillary fund) has been or is convicted of a taxation offence (within the meaning of Part III of the *Taxation Administration Act, 1953*) that is an indictable offence.

#### 4.5 Powers of the Board

- (a) The business of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company, and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting (that is, by resolution of the sole Member), subject nevertheless to: any of the provisions of this Constitution, the provisions of the Act, and to such regulations (being not inconsistent with the aforesaid regulations or provisions) as may be prescribed by the Company in general meeting; provided that any rule, regulation or by-law of the Company made by the Board may be disallowed by the Company in general meeting and provided further that no resolution of or regulation made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.
- (b) Without limiting the generality of paragraph (a), the Board may:
  - (i) exercise all the powers of the Company:
    - (A) to borrow money;
    - (B) to charge any property or business of the Company;
    - (C) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;

- (D) in relation to any Seal;
- (ii) by power of attorney, appoint any person to be the attorney of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board when acting in the capacity of trustee, fiduciary, on its own account or otherwise), for such period and subject to such conditions as the Board thinks fit and any such power of attorney may contain any provisions for the protection and convenience of persons dealing with the attorney that the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- (c) The Board may determine the manner in which cheques, promissory notes, bank drafts, bills of exchange, other negotiable instruments and receipts for money paid to the Company may be signed, drawn, accepted, endorsed or executed and the people who may do so. In the absence of a contrary determination, any 2 Directors may do so.
- (d) No resolution passed or provision inserted into the Constitution invalidates any prior act of the Board which would otherwise have been valid.

#### 4.6 Proceedings of the Board

- (a) In addition to the appointments referred to in **clause 4.7**, the Board may appoint from amongst its members such other officers as the Board may from time to time determine.
- (b) The Board may meet, adjourn and, subject to this Constitution, otherwise regulate its meetings as it thinks fit.
- (c) A Director may at any time, and a Secretary shall on the requisition of a Director, convene a meeting of the Board.
- (d) Reasonable notice shall be given to every Director of the place, date and hour of every meeting of the Board except that notice need not be given to a Director who is for the time being out of Australia.
- (e) A Director may participate in a meeting of the Board by any communication system which enables the Director to hear and be heard by each of the other Directors participating in the meeting and which is approved by the Board and made known to each Director for the purpose of any meeting of the Board.
- (f) No business shall be conducted at a meeting of the Board unless a quorum of Directors is present at the time when the meeting proceeds to business and at the time the relevant business is considered.
- (g) The number of Directors who constitute a quorum for a meeting of the Board shall be that number which is equivalent to two-thirds of the total number of Directors, rounded up (where the result would otherwise be a fraction) to the nearest whole number, or such other number as is determined by the Directors from time to time, and provided that a majority of the quorum are Responsible Persons.

- (h) Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes and, in the case of an equality of votes, the chair of the meeting shall have a casting vote in addition to a deliberative vote.
- (i) The Board may act notwithstanding any vacancy in its composition except that if the number of Directors falls below the minimum number fixed pursuant to **clause 4.1(a)** the Board may only act:
  - (i) in an emergency;
  - (ii) to call a general meeting; or
  - (iii) to fill vacancies.

#### **4.7 Chair and vice-chair of meetings**

- (a) The Board shall elect one of the Directors as chair of its meetings and may determine the period for which that person holds office.
- (b) The Board may elect one of the Directors as vice-chair and may determine the period for which that person holds office.
- (c) Where a Board meeting is held and:
  - (i) a chair has not been elected; or
  - (ii) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,
 the vice-chair, if any, may act as chair.
- (d) Where a Board meeting is held at which the vice-chair may act as chair and:
  - (i) a vice-chair has not been elected; or
  - (ii) the vice-chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of their number as chair of that meeting.

#### **4.8 Disclosure of interest**

- (a) A Director is not disqualified by the holding of that office from contracting with the Company in any capacity notwithstanding any rule of law or equity to the contrary.
- (b) A contract or arrangement made by the Company with a Director or in which a Director is in any way, directly or indirectly, interested shall not be avoided merely because the Director is a party to or interested in it.
- (c) A Director who has duly declared the nature of his interest in a contract or arrangement with the Company is not liable to account to the Company for any profit derived by him from that contract or arrangement merely because of his office as director or the resulting fiduciary relationship.
- (d) A Director who is interested in a contract or arrangement with the Company and who has declared that interest may affix or witness the affixing of the Seal to a

document (or otherwise take part in its execution) evidencing that contract or arrangement without affecting its validity, and whether or not that Director is entitled to vote or does vote in relation to the contract or arrangement.

- (e) Subject to the applicable provisions of the Act, a Director who has a material personal interest in a matter that is being considered at a meeting of the Board must not be present while the matter is being considered at the meeting or vote on the matter.
- (f) A reference in this **clause 4.8** to the declaring of an interest of a Director means a declaration or disclosure in accordance with the applicable provisions of the Act.
- (g) While ever the Company is a wholly-owned subsidiary, a Director may act in the best interests of the Company's holding company (TAI) and, subject to the Act, thereby be taken to act in good faith in the best interests of the Company.

#### 4.9 Alternate Directors

- (a) Each Director may, with the approval of the Board, appoint a person to be an alternate director in his place for any period or until the appointment is revoked.
- (b) An alternate director must be:
  - (i) a Director (and hence a director of TAI); and
  - (ii) while ever the Company is the trustee of a public ancillary fund, a Responsible Person.
- (c) An alternate director, in his capacity as such, is not entitled to notice of meetings of the Board unless his appointor has, by notice in writing to the Board, required it to provide such notices either generally or in particular circumstances.
- (d) An alternate director, in his capacity as such, may attend and vote at a meeting of the Board only if his appointor is not present at that meeting.
- (e) An alternate director, in his capacity as such, may exercise any powers that the appointor may exercise (except the power to appoint an alternate director) and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.
- (f) The appointment of an alternate director:
  - (i) may be terminated at any time by the appointor even if the period of the appointment of the alternate director has not expired; and
  - (ii) terminates if the appointor ceases to be a Director.
- (g) An appointment, or the termination of an appointment, of an alternate director shall be effected by service on the Company of a notice in writing signed by the Director who makes or made the appointment.
- (h) An alternate director shall be entitled under **clause 4.13** to reimbursement of expenses reasonably incurred for the purpose of attending any meeting of the Directors at which his appointor is not present and at which he is entitled to be present and to vote.

- (i) An alternate director is entitled to a separate vote for each Director who the alternate director represents in addition to any vote the alternate director has as a Director in his own right.
- (j) While acting as a Director, an alternate director is:
  - (i) an officer of the Company and not the agent of the appointor; and
  - (ii) responsible to the exclusion of the appointor for the alternate director's own acts and defaults.
- (k) An alternate director is not to be taken into account separately from the appointor in determining the number of Directors.
- (l) An alternate director does not have a conflict of interest solely by reason of the fact that his appointor has (or vice versa).

#### **4.10 Committees**

- (a) The Board may delegate any of its powers to a committee consisting of at least 2 Directors and may from time to time revoke that delegation.
- (b) A committee must exercise its powers in accordance with any direction of the Board.
- (c) A quorum for a meeting of a committee is the number of members of the committee that is determined by the Board, or in the absence of a determination, 2 members.
- (d) The chair of a committee meeting at which only 2 Directors are present shall not have a casting vote (but otherwise shall).
- (e) Determinations and proceedings of every committee and minutes of all the proceedings of such committees shall be made, conducted, entered and signed in the same manner in all respects as determinations and proceedings of the Board and minutes of proceedings of the Board (subject to any direction to the contrary made by the Board under this clause).

#### **4.11 Circulating resolutions**

- (a) The Directors may pass a circular resolution without a Directors' meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in paragraph (c) or (d) below, provided that the persons signing the resolution or otherwise agreeing to it would constitute a quorum at a Board meeting.
- (c) Each Director may sign:
  - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (ii) separate copies of that document, as long as the wording of the resolution is identical in each copy.

- (d) A circular resolution may be sent by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect and which includes the text of the resolution in such reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in paragraph (c) or (d), and a resolution in such terms shall be deemed to have then been passed at a meeting of the Board.

#### **4.12 Defects in appointments**

The acts of a person acting as a Director or committee member and the resolutions of the Board and of a committee comprising that person are as valid as if the person had been appointed as a Director or a committee member notwithstanding that it may subsequently be discovered that there is a defect in that person's appointment or that the person was disqualified from acting as such.

#### **4.13 Reimbursement of expenses**

The Board may refund to any Director out of the funds of the Company any outlay or expense properly incurred by him on behalf of the Company.

### **5. SECRETARY**

#### **5.1 Appointment**

The Board shall appoint a Secretary on such terms as it thinks fit.

#### **5.2 Termination**

The Board may at any time terminate the appointment of a Secretary.

### **6. SEALS AND EXECUTION OF DOCUMENTS**

#### **6.1 Safe custody**

The Board shall provide for the safe custody of any Seal.

#### **6.2 Use of Seals**

- (a) A Seal shall only be used by the authority of the Board.
- (b) Every document to which a Seal is affixed shall be signed by a Director and be countersigned by another Director, Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

#### **6.3 Seal not required for valid execution**

The Company may execute a document in any manner permitted by the Act or as authorised by the Board and nothing in this clause should be read as requiring execution by the Company under Seal.

## **7. FINANCE AND ACCOUNTS**

### **7.1 General funds**

The general funds of the Company shall be under the control of the Board.

### **7.2 Deposit of funds**

All funds of the Company shall be deposited in the first instance to the credit of the Company at such bank or banks as may be approved by the Board. All cheques shall be signed as may be directed from time to time by the Board. Bank accounts shall be kept in the name of the Company into which all moneys received shall be paid. It shall be the duty of the Secretary or other officer appointed by the Board to receive any moneys/subscriptions, donations and contributions due by Members and to apply them to the credit of the Company at the bank appointed. Accounts shall be approved for payment at any meeting of the Board, or if the Board so determines, by a committee of the Board appointed for the purpose.

### **7.3 Official receipts**

Official receipts for subscriptions, donations or other payments to the Company shall be given by the Secretary or other officer of the Company duly authorised by the Board.

### **7.4 Availability of funds**

All funds or property of the Company not impressed with a trust for any particular purpose shall be available at the discretion of the Board for the purpose of the Company in any part of the Company's sphere of operation.

### **7.5 Records**

The Board shall cause proper records to be kept with respect to all matters required by the Act, including:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure take place;
- (b) all sales and purchases of goods and services by the Company; and
- (c) the assets and liabilities of the Company.

The records must be such that they correctly record and explain the Company's transactions and financial position and performance and enable true and fair financial statements to be prepared and audited.

In preparing such accounts, separate accounts shall be kept of each distinct activity of the Company.

### **7.6 Books of account kept at Registered Office**

The books of account shall be kept at the Registered Office or at such place or places as the Board thinks fit.

## **7.7 Annual financial reports**

Subject to (and in accordance with) the Act, the Board shall cause to be prepared, for each financial year, a financial report and a Directors' report and shall (where required by the Act) cause the financial report to be audited annually by the Auditor.

## **7.8 Financial report laid before annual general meeting**

If the Company holds an annual general meeting (subject to the provisions of the Act from time to time in respect of the holding of annual general meetings of companies with only 1 member), the Board shall lay before the Company the financial report, the Directors' report and the Auditor's report (where applicable) for the last financial year that ended before the current annual general meeting.

## **7.9 Errors in financial report**

Every financial report, when audited, and considered by a general meeting (that is, by resolution of TAI) shall be conclusive except as regards any error discovered therein within 3 months following such consideration. Whenever such error is discovered within that period, the financial report shall forthwith be corrected and shall then be conclusive.

## **7.10 Provision of financial report to persons entitled**

Subject to (and in accordance with) the Act, a copy of every financial report (including every document required by the Act to be annexed or attached thereto) which is to be laid before the Company in general meeting (where applicable) shall be sent to all persons entitled to receive notices of general meetings of the Company in accordance with the timing requirements prescribed by the Act.

## **7.11 Public ancillary fund**

The provisions in this **clause 7** are concerned only with the Company acting in respect of funds received in its own right and not as trustee of any public ancillary fund. The treatment of funds received by or for any such public ancillary fund, or by the Company as trustee of such fund, will be in accordance with the rules and regulations applicable to such public ancillary fund and, in particular, the terms of any trust deed in respect of any applicable public ancillary fund.

## **8. AUDIT**

An Auditor(s) shall be appointed and his or their duties regulated, as may be required by and in accordance with the Act.

## **9. MINUTES AND RECORDS**

### **9.1 Keeping of minutes**

The Board and any committee thereof shall cause minutes to be duly entered in the books provided for the purpose:

- (a) of all appointments of officers of the Company;



- (b) of the names of the Directors present at each meeting of the Board and of any committee of the Directors;
- (c) of all orders made by the Board and committees of Directors; and
- (d) of all resolutions and proceedings of general meetings and of meetings of the Board and committees.

## 9.2 Evidence

Minutes of a meeting purporting to be signed by the chair of that meeting or by the chair of the next succeeding meeting and any document purporting to be signed by a Director pursuant to **clause 4.11** are, unless the contrary is proved, evidence:

- (a) of the matters stated; and
- (b) in the case of minutes of a meeting:
  - (i) the meeting having been duly convened and held; and
  - (ii) the validity of all proceedings at the meeting.

## 10. NOTICES AND PAYMENTS

### 10.1 Notices

- (a) The Company may give a notice to a Member by:
  - (i) serving it personally;
  - (ii) sending it by post to the address as shown in the Register or the address supplied by that person to the Company for the giving of notices;
  - (iii) sending a facsimile to the facsimile number supplied by that person to the Company for the giving of notices; or
  - (iv) sending it by electronic means to an electronic address supplied by that person to the Company for the giving of notices.
- (b) A notice to a person whose address for notices is outside Australia must be sent by airmail, facsimile or electronic means.
- (c) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice and to have been effected on the day following the posting (or on the sixth day following the posting if sent by airmail).
- (d) Where a notice is sent by facsimile, service of the notice shall be deemed to be effected at the time of its successful transmission as indicated by the transmission report generated by the sender's facsimile machine.
- (e) Where a notice is sent electronically, service of the notice shall be deemed to be effected at the time that it is sent by the Company.

- (f) The fact that a person has supplied a facsimile number or electronic address to the Company for the giving of notices does not oblige the Company to give notices to that person by facsimile or electronically.
- (g) The signature to any notice to be given by the Company may be written, printed or typed.
- (h) The date on which a notice is given shall be disregarded for the purpose of calculating periods of notice.

## **10.2 Other documents**

**Clause 10.1** applies, to the extent possible, to the service of any communication or document.

## **11. GENERAL**

### **11.1 Jurisdiction**

Each Member submits to the non-exclusive jurisdiction of the Courts of New South Wales in relation to any matter arising:

- (a) under this Constitution; and
- (b) between the Company and that person.

### **11.2 Proper law**

Any matter arising:

- (a) under this Constitution; or
- (b) between the Company and the Member,

shall be determined in accordance with the law of New South Wales.

### **11.3 Enforceability**

- (a) Any provision, or the application of any provision, of this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision, or the application of any provision, of this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in any other place.
- (c) If a provision of this Constitution is illegal, ineffective or unenforceable:
  - (i) if the provision would not be illegal, ineffective or unenforceable if a word or words were omitted, that word is or those words are omitted; and
  - (ii) in any other case, the whole provision is severed,

and the remainder of this Constitution continues in force.

## 12. OFFICERS' INDEMNITY AND INSURANCE

### 12.1 Indemnity

- (a) To the maximum extent permitted by law, every officer and former officer of the Company must be indemnified out of the property of the Company (or of a related body corporate) against any liability (including a liability for legal costs) incurred as a result or in consequence of the holding or performance of that office, including:
- (i) in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted; or
  - (ii) in connection with any application in relation to any such proceedings in which relief is granted under the law to him by the Court.
- (b) The Board may cause the Company to provide a separate contractual indemnity to an officer of the Company.

### 12.2 Insurance

- (a) The Board may cause the Company to effect, at the Company's (or a related body corporate's) expense, insurance indemnifying an officer or former officer of the Company against claims arising from the holding or performance of that person's office, to the maximum extent permitted by law.
- (b) A policy of insurance permitted under paragraph (a) must not provide an indemnity which is prohibited by law.

## 13. DISSOLUTION OF THE COMPANY

- (a) If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, such property shall not be paid to or distributed amongst the Members but shall be given or transferred to some other institution or institutions, provided such other institution or institutions:
- (i) has or have objects similar to the Company's objects;
  - (ii) prohibit(s) the distribution of income and property among its or their members to an extent at least as great as is imposed on the Company under **clause 1.8**;
  - (iii) is or are exempt from income tax under section 50-5 of the *Income Tax Assessment Act, 1997* (Cth) or some equivalent provision; and
  - (iv) is or are ones to which tax deductible gifts can be made under Item 1 of the Table in Section 30-15 of the *Income Tax Assessment Act, 1997* (Cth) or some equivalent provision.

- (b) Such institution or institutions are to be determined by the Members at or before the time of dissolution.
- (c) If effect cannot be given to this provision, then such property shall be given to some charitable object that prohibits the payment of any income or property to its members.

#### 14. REVOCATION OF DEDUCTIBLE GIFT RECIPIENT STATUS (where applicable)

- (a) If the endorsement of the Company as a deductible gift recipient (where applicable) is revoked at a time prior to the winding up or dissolution of the Company, the Affected Assets remaining after the satisfaction of all of the Company's debts and liabilities shall be given or transferred to some other institution, fund or authority, provided such other institution, fund or authority is one to which tax deductible gifts can be made under Item 1 of the Table in Section 30-15 of the *Income Tax Assessment Act, 1997* (Cth) or some equivalent provision.
- (b) Such institution, fund or authority is to be determined by the Members at, before or as soon as reasonably practicable after the time the endorsement of the Company as a deductible gift recipient is revoked.
- (c) If effect cannot be given to this provision, then the Affected Assets remaining after the satisfaction of all of the Company's debts and liabilities shall be given to some charitable object that prohibits the payment of any income or property to its members.
- (d) For the purpose of this **clause 14**, the term "**Affected Assets**" has the following meaning:
  - (i) gifts of money or property to the Company for the principal purpose of the Company;
  - (ii) contributions made to the Company in relation to an eligible fundraising event held for the principal purpose of the Company; and
  - (iii) money received by the Company because of such gifts or contributions.

#### 15. AMENDMENT OF CONSTITUTION

This Constitution may be altered, amended or repealed only by a special resolution of the Members, provided that no such resolution shall take effect unless and until it is approved by the ABM National Council.