

Constitution

Mercy Education Limited



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1. NAME OF COMPANY

The name of the Company is Mercy Education Limited.

The Company is limited by guarantee, and the liability of the Members is limited as provided in this Constitution.

2. STATUS OF THE CONSTITUTION

2.1 Constitution of the Company

This is the constitution of the Company and comprises its governing document for the purposes of Charity Legislation.

2.2 Replaceable Rules

None of the replaceable rules in the *Corporations Act* apply to this company.

3. INTERPRETATION

3.1 Definitions

In this Constitution:

Charity Legislation means legislation binding the Company that regulates the registration, reporting obligations or governance of the Company as a charity.

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

Board means the Directors present at a meeting, duly convened as a Board meeting, at which a quorum is present.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia.

Chair means Chair of the Board appointed for the time being by the Members.

Charity Legislation means legislation binding the Company that regulates the registration, reporting obligations or governance of the Company as a charity.

Company means Mercy Education Limited

Constitution means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.

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

Council means the Councillors of the Institute elected in accordance with the Institute's constitution.

Deputy Chair means the person appointed in accordance with **clause 19.6**.

Director means a person who is a director for the time being of the Company.

Financial Year means each period of twelve (12) months ending 30 June or on another date that may be approved for the Company under Charity Legislation.

Governance Charter means the Governance Charter from time to time set by the Institute Leader and Council describing governance processes and procedures for incorporated entities responsible for the ministries of the Institute.

Institute means Institute of Sisters of Mercy of Australia and Papua New Guinea, a public juridical person of pontifical right established under the Code of Canon Law of the Catholic Church.

Institute Leader means the Leader of the Institute elected in accordance with the Institute's constitution.

Institute Leader and Council means the Institute Leader acting with the Council.

Member means a person who is, or who is registered as, a member of the Company.

Membership means being a Member of the Company.

Ministry means advancement of the Institute's works by the Company in accordance with the objects set out in clause 4.

Register of Members means the register of Members maintained pursuant to the *Corporations Act*.

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

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

3.2 Interpretation

In this Constitution:

- (a) the words "including", "include" and "includes" are to be construed without limitation;
- (b) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (c) a reference to a "person" includes a corporate representative appointed pursuant to section 250D of the *Corporations Act*;
- (d) a reference to a "\$" or "dollars" is a reference to Australian currency;
- (e) words importing this singular number include the plural or visa versa;
- (f) words importing the masculine gender shall include the feminine gender and the neuter gender;
- (g) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (h) a word or expression defined in the *Corporations Act* or in *Charity Legislation* and used but not defined in this Constitution has the same meaning given to it in the *Corporations Act* or *Charity Legislation* (as the case may be) when used in this Constitution.

4. OBJECTS AND PURPOSE

4.1 Predominant objects

The predominant objects for which the Company is established are:

- (a) to carry on or assist in carrying on and promotion of the charitable activities of the Institute in connection with education and in particular to assist the Education Facilities;
- (b) To operate education entities and facilities of the Institute

The Company will operate at all times as part of the mission of the Catholic Church in conformity with canon law and in strict conformity with the ethical framework of the Institute as determined, in fidelity to the teachings and example of Christ and the teaching of the Catholic Church and the spirit of Catherine McAuley the Founder of the Sisters of Mercy, by the Institute Leader and Council from time to time.

4.2 Further objects

Without limiting **clause 4.1**, the further objects for which the Company is established are:

- (a) carry on any business or activity which may seem to the Company capable of being conveniently carried on in connection with the objects and purposes for which the Company is established; and
- (b) do all such other lawful things as are incidental or conducive to the attainment of the above objects and purposes.
- (c) to provide financial and other assistance to entities that have similar purposes to the Company where assistance is permitted without prejudicing the Company's endorsements held pursuant to the Tax Act.

4.3 Character as not-for-profit entity

In carrying out its Ministry the Company is bound to comply with its purposes and character as a not-for-profit company limited by guarantee that holds any registration required by Charity Legislation. Any provisions that are required from time to time in order to maintain the status of the Company as a taxation concession charity under the Tax Act are considered to form part of this Constitution. If the Company is endorsed as a deductible gift recipient under the Tax Act, any additional provisions that are required from time to time in order to maintain that endorsement are also considered to form part of this Constitution.

4.4 Limitation of powers

All income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no portion will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Members or Directors of the Company. Nothing in this paragraph prevents payment:

- (a) for services actually rendered to the Company including as an employee by any Member or Director or for goods and/or services supplied in the usual and ordinary way of business by any Member or director;
- (b) of interest on money borrowed from any Member at not more than commercial rates;
- (c) of reasonable and proper rent, remuneration or return for the use by the Company of any premises or other property (including intellectual property) of any Member of the Company;
- (d) of reimbursement for reasonable out-of-pocket expenses; or
- (e) of insurance premiums for Directors and officers as permitted by this Constitution.

5. RESERVED POWERS

In addition to any other approvals required under this document, the approval of the Members is required before any decision takes effect to:

- (a) amend the Constitution of the Company

- (b) dissolve or liquidate the Company or any major service provided or performed by the Company;
- (c) consolidate or merge the Company with another organisation, ministry or entity;
- (d) establish any new ministry, joint venture or other corporate affiliation;
- (e) close the Ministry or a major program or work conducted by the Company;
- (f) incur any indebtedness outside the limits set from time to time by the Members; and
- (g) sell, transfer, lease, assign or encumber property dedicated by the Institute for the use of the Ministry or any service provided, or the sub-lease or license of such property outside the limits set from time to time by the Members;
- (h) act beyond the limits and conditions with respect to capital expenditure or other financial arrangements from time to time set by the Members or incur expenditure in excess of any budget approved by the Members;
- (i) appoint and remove any Director (subject to the requirements of the *Corporations Act*) or to change the number of Directors;
- (j) appoint and remove the Chair and any Deputy Chair (subject to the requirements of the *Corporations Act*), and set their terms of office;
- (k) appoint senior executives of the Company having positions specified from time to time by the Members. The Members shall consult with and seek the advice of the Board in relation to the Board's proposed appointees to these positions;
- (l) set or materially amend the strategic, long-range plan of the Company;
- (m) make any agreement pursuant to which a third party obtains the right or obligation to manage all or substantially all of the operations of the Ministry or make any agreement pursuant to which the Ministry manages any entity or institution not sponsored by the Institute;
- (n) acquire land or buildings; and
- (o) grant any power of attorney;

The Institute Leader or another Member nominated by her will give the Board written notice of approvals and refusals of approvals by the Members.

6. MODIFICATION OR REPEAL OF THIS CONSTITUTION

6.1 Modifying or repealing Constitution

This Constitution may be modified or repealed by a special resolution of the Members.

6.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

7. MEMBER'S LIABILITY

7.1 Liability to contribute

Subject to this Constitution, if the Company is wound up and the property of the Company is insufficient, each person who is a Member, and each person who was a Member during the year ending on the day of the

commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:

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

7.2 **Guaranteed amount**

The amount that each Member or past Member is liable to contribute pursuant to **clause 7.1** is limited to \$5.

8. MEMBERS

8.1 **Number of Members**

The Company must have at least one Member.

8.2 **Eligibility for Membership**

The following persons are eligible to be Members of the Company:

- (a) the Institute Leader; and
- (b) members of the Council;

8.3 **Becoming a Member**

Subject to the *Corporations Act*.

- (a) a person eligible to be a Member must sign an application for Membership agreeing to be bound by this Constitution and to pay the amount specified in Clause 7.2; and
- (b) that person becomes a Member on the registration of that person's name in the Register of Members.

8.4 **Registration as Member**

The Secretary must register the name of each Member in the Register of Members.

9. RIGHTS OF MEMBERS ARE NON-TRANSFERABLE

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

10. CESSATION OF MEMBERSHIP

10.1 **Cessation of Membership**

A person ceases to be a Member on ceasing to be the Institute Leader or a member of the Council.

10.2 **Resignation of Member**

A Member may resign from the Company by giving at least 30 days' notice to the Institute Leader and Council and the Board.

10.3 **Removal of Member**

If the Institute Leader and Council decide that it is not in the best interests of the Company for a person to remain as a Member, the Institute Leader may give the relevant Member and the Company written notice of the decision, and that person is removed as a Member with effect from the date of the notice. The Secretary must record that removal in the Register of Members.

11. **MAINTENANCE OF REGISTER**

11.1 **Register of Members**

The Secretary must maintain a Register of Members setting out:

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

11.2 **Inspection of Register of Members**

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of Members at any reasonable time. No amount may be charged for inspection.

12. **MEETINGS OF MEMBERS**

12.1 **Annual general meetings of Members**

The Company must hold an annual general meeting of Members at least once in each calendar year.

12.2 **Convening a meeting of Members**

Any Member may convene a meeting of Members.

12.3 **Meeting at two or more places**

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

12.4 **Omission to give notice of meeting**

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

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

13. PROCEEDINGS AT MEETINGS OF MEMBERS

13.1 Quorum

A quorum for any meeting of Members is more than half the total number of Members.

13.2 Lack of quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting or ceases to be present during the meeting, that meeting is dissolved.

13.3 Chairing meetings of Members

- (a) The Chair of any meeting of Members will be the Institute Leader.
- (b) If the Chair is not present within 15 minutes after the time appointed for any meeting or if the Chair is unwilling or unable to act as chair for the whole or any part of that meeting, a Member nominated by the Institute Leader will chair that meeting. Failing any nomination by the Institute Leader, the Members present may elect a Member present to chair that meeting.

13.4 Conduct of meetings of Members

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

13.5 Adjournment

The Chair of the meeting at which a quorum is present may adjourn the meeting.

14. VOTING

14.1 Entitlement to vote

Each Member has one vote, whether on a show of hands, or on a poll.

14.2 Casting vote

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

14.3 Voting on resolutions

Votes on all decisions of the Members will be taken and recorded as the Chair determines. The Chair will conduct a poll if any Member requires that and any poll will be conducted in a manner directed by the Chair.

14.4 Written resolutions

Members may pass a resolution without a 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.

14.5 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;

- (ii) carried unanimously;
- (iii) carried by a particular majority; or
- (iv) lost or not carried by a particular majority,

A declaration by the Chair that a resolution has been passed and by what majority or lost is conclusive evidence of the fact declared. 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.

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

14.6 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.

15. APPOINTMENT AND REMOVAL OF DIRECTORS

15.1 Number of Directors

The members shall determine from time to time the number of Directors, provided that the number of Directors must not be less than three. At least two Directors must reside ordinarily in Australia.

15.2 Appointment of Directors

Subject to receipt of a signed consent to the appointment as required under the *Corporations Act*, Directors shall be appointed from time to time at the dates and on the terms specified by the Members.

15.3 Removal of Director

Subject to **clause 5**, the Members may remove a Director at any time.

15.4 Cessation of Directorship

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

- (a) is, subject to **clause 5**, removed from office as a Director by a resolution of the Members;
- (b) resigns as a Director in accordance with this Constitution;
- (c) if the person is subject to assessment or treatment under any mental health law and Members resolve that the person should cease to be a Director;

- (d) dies;
- (e) is disqualified from acting as a Director under the *Corporations Act*;
- (f) ceases to meet any conditions under Charity Legislation for being a director of the Company; or
- (g) is absent from Board meetings for three consecutive Board meetings without leave of absence from the Chair.

15.5 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Institute Leader with a copy to the Company at its registered office.

16. POWERS AND DUTIES OF BOARD

- (a) Subject to this Constitution, the Governance Charter, *Charity Legislation* and the *Corporations Act*, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) All Board members must demonstrate a commitment to the mission and ethical framework of the Institute.
- (c) Subject to this Constitution, the Governance Charter and the *Corporations Act*, the Board may exercise all powers of the Company that are not required to be exercised by the Members.
- (d) Subject to **clause 5** and the Governance Charter, the powers of the Board include the power to:
 - (i) borrow or otherwise raise money;
 - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
 - (iii) issue debentures and other securities, and any instrument (including any bond).
- (e) Subject to the Governance Charter, the Board may delegate any of its powers to:
 - (i) a Director;
 - (ii) a committee of Directors; or
 - (iii) an employee of the Company.
- (f) The Directors must comply with any governance standards applying to them under Charity Legislation.

17. FINANCIAL INSTRUMENTS

All negotiable instruments, electronic fund transfers or similar transactions and all receipts for money paid to the Company must be authorised, signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board resolves.

18. REMUNERATION AND REIMBURSEMENT FOR EXPENSES

18.1 Director's fees

The Company must not pay a Director any fee for services performed as a Director except to any extent that the Members have resolved.

18.2 Reimbursement of expenses

Directors may be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board or in carrying out services for the Company authorised by the Board.

19. BOARD MEETINGS

19.1 Convening Board meetings

In the ordinary course, the Secretary will convene Board meetings in accordance with the determinations of the Board.

19.2 Notice of Board meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

19.3 Omission to give notice

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

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

19.4 Use of technology

- (a) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting to the extent appropriate.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.
- (e) A Director may not leave a meeting using technology consented to by all Directors unless the chair consents to that Director leaving.

- (f) A Director is presumed conclusively to have been present and to have formed part of a quorum at all times during a meeting using technology consented to by all Directors, unless the chair consents to that Director leaving in which case that Director will be treated as having been present until that Director leaves.

19.5 Quorum at Board meetings

A quorum at a Board meeting is at least half of the total number of Directors plus one. The quorum must be present at all times during the Board meeting.

19.6 Chair and Deputy Chair of Board meetings

- (a) The Chair of any meeting of the Board will be appointed prior to the meeting by the Members. That person will chair all subsequent meetings unless the Members give written notice to the contrary.
- (b) The Members may appoint (or remove) a Director as the Deputy Chair.
- (c) 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 Deputy Chair shall chair that Board meeting. If neither the Chair nor Deputy Chair are present, the Directors present may elect one of their number to chair that Board meeting.

19.7 Passing resolutions at Board meetings

- (a) If a vote is required on any issue, a resolution of the Board shall be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person is entitled to vote and has one vote.

19.8 Casting vote

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

19.9 Conduct of meetings

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

19.10 Attendance of Non-Directors

The chair or a majority of the Directors may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration. The Secretary may attend and be heard at meetings of the Board, except for any meeting or part of the meeting when the Board resolves the Secretary should not be present.

19.11 Written resolutions

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

19.12 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.

- (b) The Chair of the meeting, or the Chair of the next Board meeting, must sign the minutes within one month after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books between the hours of 9:00 am and 5:00 pm on any Business Day. No amount may be charged for inspection.

20. DIRECTOR'S INTERESTS

20.1 Declaration of interest

- (a) Any Director who has a perceived or actual material conflict of interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which materially conflict or may materially conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material conflict of interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable. Where appropriate, a notice may be a standing notice that will have ongoing effect until revoked or varied.
- (d) A Director must not vote on a matter that is being considered by the Board if the Director has a material conflict of interest. Subject to clause 20.2, if the conflict of interest has been disclosed, the Director may be present at the Board meeting when that matter is being considered, unless the other Directors request the conflicted Director to withdraw while that matter is being considered.

20.2 Material personal interests

A Director who has a conflict of interest that is also a material personal interest (in accordance with the provisions of the *Corporations Act*) in a matter that is being considered at a Board meeting must not:

- (a) vote on the matter at a meeting; or
- (b) be present while the matter is being considered at the meeting, and accordingly will not count for the purposes of determining whether there is a quorum,

unless the processes in the *Corporations Act* have been followed to authorise the Director being present at the meeting and voting.

21. APPOINTMENT OF SECRETARY

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

22. APPOINTMENT, REMOVAL AND REMUNERATION OF AUDITOR

22.1 Appointment of Auditor

The Company must have an Auditor. Subject to **clause 5** and the requirements of the *Corporations Act*, the Company may appoint an Auditor by resolution at a meeting of Members.

22.2 Remuneration of Auditor

The remuneration of the Auditor may be determined by the Directors at a Board meeting.

22.3 Removal of Auditor

Subject to **clause 5** and any requirements of the *Corporations Act* and Charity Legislation, the Company may remove an Auditor by resolution at a meeting of Members.

22.4 Auditor's attendance at annual general meetings

The Auditor must be notified of, and may attend, the annual general meeting.

23. SEAL

The Company will not use a seal.

24. FINANCIAL RECORDS

24.1 Company must keep accounts

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited; and
- (c) otherwise comply with Charity Legislation.

24.2 Financial Reporting

The Board must cause the Company to prepare a financial report, a Director's report and any other reports that comply with Charity Legislation and any other relevant legislation, and must report to the Members as they require from time to time.

24.3 Audit

The Board must cause the Company's financial report for each financial year to be audited by the Auditor and obtain an auditor's report in accordance with any requirements of Charity Legislation and any other relevant legislation. Audited financial reports provided to the Members are conclusive except as regards errors notified to the Company within three months. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

24.4 Member's access to financial records

Any Member may inspect the books of the Company at their request.

24.5 Other access to financial records

The following persons may at any reasonable time access and inspect any financial record of the Company:

- (a) any nominee of the Institute Leader authorised in writing by the Institute Leader, subject to the terms of such authorisation;
- (b) the Auditor; and
- (c) any Director.

24.6 Access to financial records after ceasing to be a Director

Following receipt of a request in writing, the Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record of the Company relating to the time during which the person was a Director for any bona fide purpose relating to their directorship and subject to maintaining confidentiality in relation to records that are inspected.

25. NOTICES

25.1 General

Any notice, statement or other communication under this Constitution must be in writing.

25.2 How to give a communication

Notice of any meeting of the Company, or the Board, or any subcommittee of the Board, is sufficiently given if notice of the meeting is delivered by hand or sent by post or facsimile transmission or E-mail to the last address of each person entitled to receive notification of that meeting which was notified in writing to the Secretary. Notice is deemed to have received when it would have been received in accordance with normal procedures for that mode of transmission.

26. INDEMNITY AND INSURANCE

26.1 Indemnity

To the maximum extent permitted by law, every Director and other officer (as defined in the Corporations Act) of the Company may be indemnified out of the property of the Company against any liability:

- (a) incurred in their capacity as Director or officer of the Company to another person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith or is for a pecuniary penalty order or compensation under the Corporations Act; or
- (b) for costs and expenses incurred by that person in their capacity as Director or officer of the Company in defending any proceedings, whether civil or criminal:
 - (i) in which judgement is given in favour of that person; or
 - (ii) in which the person is acquitted; or
 - (iii) in connection with any application in relation to any such proceedings, in which relief is granted by a Court to that person under the *Corporations Act*.

26.2 Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of any Director. The Board will determine the terms of the indemnity contained in the agreement.

26.3 Insurance

- (a) To the extent permitted by the *Corporations Act* and subject to the *Corporations Act*, the Company may pay any premium in respect of a contract of insurance between an insurer and Director or Member of the Company in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company and the proper performance by the Director or Member of any duty.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

26.4 Former Directors and officers

The indemnity in favour of a Director or officer under clause 28.1 is a continuing indemnity. It applies in respect of all acts done by a person while a Director or officer of the Company even though the person is not a Director or officer at the time the claim is made.

27. REVOCATION OF DEDUCTIBLE GIFT RECIPIENT ENDORSEMENT

If the Company is endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act, and that endorsement is revoked, the Company must transfer any surplus it holds at the time of revocation comprising:

- (a) gifts of money or property for the principal purpose of the Company; and
- (b) contributions described in item 7 or 8 of the table in s30-15 of the Tax Act in relation to a fund-raising event (as defined in the Tax Act) held for that purpose; and
- (c) money received by the Company because of such gifts or contributions,

to a fund, authority or institution to which gifts can be deducted under Division 30 of the Tax Act, as determined by special resolution of the Members.

28. WINDING UP

On the winding up of the Company any property that remains after satisfaction of all debts and liabilities of the Company, the payment of the costs, charges and expenses of winding up and any adjustment of the rights of the contributories among Members must not be paid or distributed to Members but must be given or transferred to some other institution or institutions having objects similar to the objects of the Company and which is exempt from income tax under the Tax Act and whose constitution prohibits the distribution of its income and property among members, as determined by special resolution of the Members. If gifts to the Company are deductible under Subdivision 30-BA of the Tax Act, any institution receiving distributions from the Company must also be endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act.