

DIABETES NSW ACN 001 363 766

T/as Diabetes NSW & ACT

("Company")

Special Resolution to Amend Constitution

(under section 249B(1) of the Corporations Act 2001 (Cwlth))

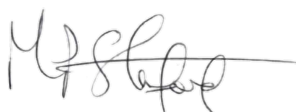
IT WAS RESOLVED by the sole member of the Company that the constitution of the Diabetes NSW ACN 001 363 766 is amended with effect 1 July 2022 by deleting the words struck through and inserting the underlined words in the version of the constitution attached to this special resolution.

**Member (as shown on
register of members)**

Signature

Date of signing

Diabetes Australia Limited
ACN 008 528 461



28 July 2022

.....
Body Corporate Representative

NAME: Michael Stanford, Independent
President & Chair as representative of
Diabetes Australia Limited

Diabetes NSW Constitution

Adoption Date: 29th April 2021

ACN 001 363 766

Table of contents

1	Definitions and interpretation	8
1.1	Definitions.....	8
1.2	Interpretation	2
1.3	Replaceable rules.....	3
2	Objects	3
2.1	Objects	3
2.2	Activities in pursuance of objectives	3
2.3	Approval by DAL	4
3	Limited liability.....	4
3.1	Member liability	4
3.2	Member contributions.....	4
3.3	3.3 Amount of Member contributions.....	4
4	Use of the property by the Company.....	4
4.1	Conduit policy.....	4
4.2	Application of Company property	4
4.3	Payments of Company expenses.....	4
4.4	Remuneration payments	5
4.5	Conflict of interest resolution	5
5	Use of property on winding up and on revocation of endorsement	5
5.1	Surplus	5
5.2	Transfer of surplus	6
5.3	Choice of transferee.....	6
6	Company Funds and Gift Fund	6
6.1	Company Funds	6
6.2	Gift Fund	6
6.3	Maintaining Gift Fund	6
6.4	Limits on use of Gift Fund	6
6.5	Winding up	6
7	Fundraising authority	7
8	Registration as a charity	7
9	Members.....	7
9.1	DAL as Sole Member	7
9.2	Admission of New Members.....	7
9.3	Rights of Categories	7
9.4	Members	7
9.5	Rights of DAL as Member	7
9.6	Rights of Members other than DAL	8
9.7	Application for Membership.....	8
9.8	Members' Obligations.....	8
9.9	Discretion to admit.....	8
9.10	Delegation	8
9.11	Approval by DAL	8
10	Membership Fees.....	9
11	Cessation of Membership	9
11.1	Cessation	9
11.2	No termination of Membership of DAL	9
11.3	Appointment as Member not transferable	9
11.4	Resignation	9
12	Discipline of Members.....	9

12.1	Initial resolution of Directors	10
12.2	Suspended operation	10
12.3	Notice to Member	10
12.4	Confirming resolution of Directors	10
12.5	Immediate or suspended effect	10
12.6	Notice to a Member	11
12.7	Right of appeal	11
13	Register of Members and Notices in Writing.....	11
13.1	Register to be kept	11
13.2	Record of past members	11
13.3	Notices in writing or electronic means	11
14	Meetings of Members	12
14.1	Act to Apply	12
14.2	Calling of meetings	12
14.3	Notice of meeting	12
14.4	Entitlement to notice	12
14.5	Notice period	12
14.6	Proxy voting by Members	12
14.7	Omission to give notice	13
14.8	Consent to short notice	13
14.9	Notice of cancellation or postponement	13
14.10	Venue	13
15	Proceedings at meetings of Members	13
15.1	Quorum	13
15.2	Failure of quorum	13
15.3	Business of Annual General Meeting	13
15.4	Report on Company's activities	14
15.5	Special business	14
15.6	Chairperson of meeting	14
15.7	Passing the chair	14
15.8	Responsibilities of chairperson	14
15.9	Persons entitled to attend	15
15.10	Admission to meetings	15
15.11	Adjournment of meeting	15
15.12	Business at adjourned meeting	15
16	Voting at meetings of Members	16
16.1	Entitlement to vote	16
16.2	Number of votes	16
16.3	Voting restrictions	16
16.4	Method of voting	16
16.5	Declaring result of vote on show of hands	16
16.6	Conduct of poll	16
16.7	Casting vote of Chairperson	16
16.8	Ruling on votes	17
17	Appointment and removal of Board of Directors	17
17.1	Number	17
17.2	Directors qualification	17
17.3	Term of appointment and rotation	17
17.4	Casual appointment	17
17.5	Retirement of casual appointee	17
17.6	Deemed re-appointment	18
17.7	Candidates requiring nomination	18
17.8	Nominations and election	18
17.9	Removal of Directors	18
17.10	Resignation of Director	19
17.11	Vacation of office	19
17.12	Less than minimum number of Directors	19
18	Appointment and removal of office bearers	19
18.1	Office bearers	19
18.2	Secretary	19

19	Proceedings of the Board.....	19
19.1	Mode of meeting and Number of Meetings.....	19
19.2	Quorum	20
19.3	Chairperson calling a meeting.....	20
19.4	Secretary calling a meeting.....	20
19.5	Notice of meeting	20
19.6	Recipients of notice	20
19.7	Appointment of Chairperson.....	20
19.8	Votes of Directors.....	20
19.9	Circular resolution	21
20	Powers and duties of Directors	21
20.1	Powers generally.....	21
20.2	Borrowing	21
20.3	Execution of negotiable instruments.....	21
20.4	Validity of acts	21
20.5	Duty to Act in the Best Interests of DAL	21
21	Committees	22
21.1	Delegation to committees.....	22
21.2	Committee powers and terms of reference	22
21.3	Committee meetings	22
22	Minutes.....	22
22.1	Minutes to be kept.....	22
23	Resolutions	22
23.1	Register of resolutions to be kept.....	22
24	Seal.....	23
25	Accounts and Audit.....	23
25.1	Distribution of documents.....	23
25.2	Inspection	23
25.3	Audit	23
26	Notices	23
26.1	Service of notices.....	23
26.2	Date of deemed service	23
26.3	Signature	24
27	Indemnity.....	24
27.1	Indemnity for officers.....	24
27.2	Insurance premiums.....	24
28	Alteration of Constitution	24
1	<u>Definitions and interpretation.....</u>	6
	<u>Definitions</u>	6
1.2	<u>Interpretation</u>	2
1.3	<u>Replaceable rules</u>	3
2	<u>Objects</u>	3
2.1	<u>Objects.....</u>	3
2.2	<u>Activities in pursuance of objectives.....</u>	3
2.3	<u>Approval by DAL</u>	4
3	<u>Limited liability</u>	4
3.1	<u>Member liability</u>	4
3.2	<u>Member contributions.....</u>	4
3.3	<u>3.3 Amount of Member contributions.....</u>	4
4	<u>Use of the property by the Company.....</u>	4
4.1	<u>Conduit policy.....</u>	4
4.2	<u>Application of Company property</u>	4
4.3	<u>Payments of Company expenses.....</u>	4
4.4	<u>Remuneration payments</u>	5
4.5	<u>Conflict of interest resolution</u>	5
5	<u>Use of property on winding up and on revocation of endorsement.....</u>	5

5.1	Surplus	5
5.2	Transfer of surplus	6
5.3	Choice of transferee	6
6	Company Funds and Gift Fund	6
6.1	Company Funds	6
6.2	Gift Fund	6
6.3	Maintaining Gift Fund	6
6.4	Limits on use of Gift Fund	6
6.5	Winding up	6
7	Fundraising authority	7
8	Registration as a charity	7
9	Members	7
9.1	DAL as Sole Member	7
9.2	Admission of New Members	7
9.3	Rights of Categories	7
9.4	Members	7
9.5	Rights of DAL as Member	7
9.6	Rights of Members other than DAL	8
9.7	Application for Membership	8
9.8	Members' Obligations	8
9.9	Discretion to admit	8
9.10	Delegation	8
9.11	Approval by DAL	8
10	Membership Fees	9
11	Cessation of Membership	9
11.1	Cessation	9
11.2	No termination of Membership of DAL	9
11.3	Appointment as Member not transferable	9
11.4	Resignation	9
12	Discipline of Members	9
12.1	Initial resolution of Directors	10
12.2	Suspended operation	10
12.3	Notice to Member	10
12.4	Confirming resolution of Directors	10
12.5	Immediate or suspended effect	10
12.6	Notice to a Member	11
12.7	Right of appeal	11
13	Register of Members and Notices in Writing	11
13.1	Register to be kept	11
13.2	Record of past members	11
13.3	Notices in writing or electronic means	11
14	Meetings of Members	12
14.1	Act to Apply	12
14.2	Calling of meetings	12
14.3	Notice of meeting	12
14.4	Entitlement to notice	12
14.5	Notice period	12
14.6	Proxy voting by Members	12
14.7	Omission to give notice	13
14.8	Consent to short notice	13
14.9	Notice of cancellation or postponement	13
14.10	Venue	13
15	Proceedings at meetings of Members	13
15.1	Quorum	13
15.2	Failure of quorum	13
15.3	Business of Annual General Meeting	13
15.4	Report on Company's activities	14
15.5	Special business	14

15.6	Chairperson of meeting	14
15.7	Passing the chair	14
15.8	Responsibilities of chairperson	14
15.9	Persons entitled to attend	15
15.10	Admission to meetings	15
15.11	Adjournment of meeting	15
15.12	Business at adjourned meeting	15
16	Voting at meetings of Members	16
16.1	Entitlement to vote	16
16.2	Number of votes	16
16.3	Voting restrictions	16
16.4	Method of voting	16
16.5	Declaring result of vote on show of hands	16
16.6	Conduct of poll	16
16.7	Casting vote of Chairperson	16
16.8	Ruling on votes	17
17	Appointment and removal of Board of Directors	17
17.1	Number	17
17.2	Directors qualification	17
17.3	Term of appointment and rotation	17
17.4	Casual appointment	17
17.5	Retirement of casual appointee	17
17.6	Deemed re-appointment	18
17.7	Candidates requiring nomination	18
17.8	Nominations and election	18
17.9	Removal of Directors	18
17.10	Resignation of Director	19
17.11	Vacation of office	19
17.12	Less than minimum number of Directors	19
18	Appointment and removal of office bearers	19
18.1	Office bearers	19
18.2	Secretary	19
19	Proceedings of the Board	19
19.1	Mode of meeting and Number of Meetings	19
19.2	Quorum	20
19.3	Chairperson calling a meeting	20
19.4	Secretary calling a meeting	20
19.5	Notice of meeting	20
19.6	Recipients of notice	20
19.7	Appointment of Chairperson	20
19.8	Votes of Directors	20
19.9	Circular resolution	21
20	Powers and duties of Directors	21
20.1	Powers generally	21
20.2	Borrowing	21
20.3	Execution of negotiable instruments	21
20.4	Validity of acts	21
20.5	Duty to Act in the Best Interests of DAL	21
	In exercising their duties as a Director of the Company, each Director is expressly authorised to act in the best interests of any holding company of which the Company is a wholly-owned subsidiary	21
21	Committees	22
21.1	Delegation to committees	22
21.2	Committee powers and terms of reference	22
21.3	Committee meetings	22
22	Minutes	22
22.1	Minutes to be kept	22
23	Resolutions	22
23.1	Register of resolutions to be kept	22

<u>24</u>	<u>Seal</u>	<u>23</u>
<u>25</u>	<u>Accounts and Audit</u>	<u>23</u>
	<u>25.1</u> <u>Distribution of documents</u>	<u>23</u>
	<u>25.2</u> <u>Inspection</u>	<u>23</u>
	<u>25.3</u> <u>Audit</u>	<u>23</u>
<u>26</u>	<u>Notices</u>	<u>23</u>
	<u>26.1</u> <u>Service of notices</u>	<u>23</u>
	<u>26.2</u> <u>Date of deemed service</u>	<u>23</u>
	<u>26.3</u> <u>Signature</u>	<u>24</u>
<u>27</u>	<u>Indemnity</u>	<u>24</u>
	<u>27.1</u> <u>Indemnity for officers</u>	<u>24</u>
	<u>27.2</u> <u>Insurance premiums</u>	<u>24</u>
<u>28</u>	<u>Alteration of Constitution</u>	<u>24</u>

1 Definitions and interpretation

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

Act means the *Corporations Act 2001* (Cth) as it applies to the Company for the time being;

Annual General Meeting means an annual General Meeting of the Company in accordance with clause 14.2(c);

Adoption Date means the date this amended Constitution is adopted by the Company being 29 April 2021.

Annual Subscription means the amount determined by the Board from time to time;

Board means the Board of Directors of the Company from time to time;

Chief Executive Officer or **CEO** means any person so appointed by the Board to perform the duties of Chief Executive Officer;

chairperson when used in lower case means the person acting in the capacity of the chair of a meeting;

Chairperson means the person appointed to the position of the Chairperson of the Company and appointed to that role pursuant to clause 18.1 from time to time;

Company means Diabetes NSW (ACN 001 363 766);

Constitution means this constitution;

Corporate Representative means a natural person appointed by a Member which is a body corporate to be that body's representative at specified General Meetings;

DAL means Diabetes Australia (trading as Diabetes Australia Limited) ACN 008 528 461;

DAL Member means a general member of DAL as defined in its constitution;

Directors means the Directors of the Company in office for the time being;

Entrance Fee means the amount (if any) determined by the Board.

General Meeting means a meeting of Members duly called and constituted in accordance with this Constitution and any adjourned holding of it;

ITAA means the *Income Tax Assessment Act 1997* (Cth) as amended or varied from time to time; **Member** means any person entered in the Register as a member for the time being of the Company;

Member means a member of the Company.

Membership means membership of the Company;

New Member means a legal person, individual or company that is admitted as a Member of the Company after the Adoption Date.

Objects of the Company means the objects set out in clause 2;

Officer means

(a) a Director or Secretary of the Company; or

- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the Directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else, as defined in the Dictionary of the Act;

Ordinary Resolution means a resolution where more than 50% of the total eligible votes cast on the resolution are in favour of the resolution;

Register means the Register of Members kept under the Act;

Registered Office means the Registered Office for the time being of the Company;

Residual Member means a Member of the Company in whichever category they are described, that was a Member of the Company immediately prior to the Adoption Date.

remuneration includes, without limitation, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentive schemes or profit sharing schemes;

Seal means the common seal of the Company and includes any official seal of the Company;

Secretary means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily; and

Special Resolution means a resolution passed at a meeting where 75% of the total eligible votes cast on the resolution are in favour of the resolution, and if the context suggests, of which notice has been given in accordance with sections 249H and 249L of the Act, as amended or varied from time to time.

1.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded;
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (c) singular includes plural and vice versa and words importing any gender include all other genders;
- (d) except for the definitions in the preceding clause, 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;

- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force;
- (f) (regulations) a reference to a law includes regulations and instruments made under the law;
- (g) (signed) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmission or in any other manner approved by the Directors;
- (h) (writing) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (i) (currency) a reference to \$ or money amounts is a reference to the lawful currency of Australia.

1.3 Replaceable rules

The operation of each of the sub-sections of the Act which are defined as replaceable rules are displaced by this Constitution and do not apply to the Company.

2 Objects

2.1 Objects

- (a) The objects for which the Company is established are:
 - (i) to advocate on behalf of those affected by diabetes;
 - (ii) to promote, fund and engage in research in relation to diabetes including its causes, prevention and treatment;
 - (iii) to promote community awareness and provide education in relation to the prevention, control and treatment of diabetes including providing information to health professionals, patients and the general community;
 - (iv) to provide and coordinate assistance, relief and support to sufferers, their carers and others affected by diabetes; and
 - (v) to market products suitable for the prevention, control or treatment of diabetes.
- (b) The Company must carry out its objects for the benefit of the public regardless of their gender, marital status, race, ethnic origin, religion, age, sexual orientation or physical and mental capability.

2.2 Activities in pursuance of objectives

For the attainment of its objects, the Company is permitted:

- (a) to cooperate with DAL in the disclosure by the Company of information regarding the Company's business, activities and affairs to DAL that is relevant to DAL's objectives, activities, business and affairs and vice versa;
- (b) to hold and reasonably deal with any property or asset it holds, and apply them for the common objects of DAL and the Company;
- (c) to perform all such acts and things necessarily conducive that support and aid the common objects of DAL and the Company; and

- (d) to do anything allowed by the operation of section 124 of the Corporations Act that is for the purpose of advancing the common Objects of the Company and DAL.

2.3 Approval by DAL

Despite anything to the contrary contained in this Constitution, while DAL is a Member of the Company, the Company cannot make any amendments to the Objects of the Company without the approval of DAL and the DAL Members.

3 Limited liability

3.1 Member liability

The liability of the Member is limited.

3.2 Member contributions

Every Member of the Company undertakes to contribute to the assets of the Company if it is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for:

- (a) the payment of the debts and liabilities of the Company, contracted before the Member ceased to be a Member; and
- (b) the expenses of winding up the Company.

3.3 ~~3.3~~ Amount of Member contributions

The amount of the contribution under clause 3.2 must not exceed \$50 per Member in any circumstances.

4 Use of the property by the Company

4.1 Conduit policy

- (a) Any allocation of funds or property to other institutions, bodies, entities, organisations, government departments or persons must be made in accordance with the established Objects of the Company and not be influenced by the expressed preference or interest of a particular donor or sponsor to the Company.
- (b) The value of any real estate assets to be allocated will be determined by an independent and duly qualified registered valuer approved by the Board.

4.2 Application of Company property

Subject to clauses 4.3, 4.4 and 4.5, all income and property of the Company must be applied for the Objects of the Company. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to the Member.

4.3 Payments of Company expenses

Nothing in clause 4.2 prevents the payment in good faith of reasonable and proper:

- (a) remuneration to any of the officers or employees of the Company or to any Member in return for any services actually rendered by them to the Company;
- (b) interest on money borrowed from any Member for any of the purposes of the Company (provided the interest rate does not exceed the rate charged by the Company's bank on similar borrowings);

- (c) rent for premises let by any Member to the Company; or
- (d) payment for any goods supplied to the Company by any Member.

4.4 Remuneration payments

No remuneration or other benefit may be paid or given by the Company to any Director except:

- (a) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director; or
- (b) for the following payments, which must first be approved by a resolution of the Board and while DAL remains a Member of the Company, the board of DAL:
 - (i) for any service rendered to the Company in a professional or technical capacity, where the terms of service are on reasonable commercial terms;
 - (ii) as an employee of the Company, where the terms of employment are on reasonable commercial terms;
 - (iii) for market rent on any premises let by any Director to the Company at a reasonable market rate not exceeding the Overdraft Rate; or
 - (iv) for attending upon the functions and duties of a Director, or any committee established by the Board on reasonable commercial terms commensurate with similar not for profit organisations and which remuneration:
 - (A) has been approved by a special resolution of the Board; and
 - (B) does not exceed the total amount approved by the Members in General Meeting as the remuneration payable to all Directors for undertaking such functions and duties.

4.5 Conflict of interest resolution

At any General Meeting or meeting of the Board at which a resolution is put for approval of a payment to be made pursuant to clause 4.4 (**conflict of interest resolution**), the Director who is the object of the conflict of interest resolution and any other Director or Member who is related to that Director is not entitled to:

- (a) be heard in discussion on the conflict of interest resolution;
- (b) propose or second the conflict of interest resolution;
- (c) vote on the conflict of interest resolution; or
- (d) be present at the meeting when the conflict of interest resolution is put to the vote other than with the permission of DAL or a majority of the other Directors.

5 Use of property on winding up and on revocation of endorsement

5.1 Surplus

If on the:

- (a) winding up or dissolution of the Company; or
- (b) the revocation of the Company's endorsement as a deductible gift recipient under the ITAA,

after the satisfaction of all its debts and liabilities, any property remains (**Surplus**), the Surplus must not be paid or distributed to the Members unless the Member meets the criteria referred to in clause 5.2.

5.2 **Transfer of surplus**

The Surplus must be given or transferred to an institution, body, entity, or organisation (**Transferee Entity**):

- (a) having objects similar to the Objects of the Company and which is endorsed as a deductible gift recipient under the ITAA; and
- (b) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company.

5.3 **Choice of transferee**

The Transferee Entity must be chosen by the Board (as the Board was constituted at the commencement of the winding up). If the Board does not choose a Transferee Entity within a reasonable time, any Member at the commencement of the winding up or the liquidator may apply to the Supreme Court of New South Wales to choose the Transferee Entity.

6 **Company Funds and Gift Fund**

6.1 **Company Funds**

The funds of the Company will be placed in an account in the name of the Company with a bank or financial institution having trustee status selected by the Board with any two of the Chairperson, Deputy-Chairperson, Secretary or other persons nominated by the Board authorised to act thereon.

6.2 **Gift Fund**

The Company will also initiate and operate a separate bank account in the name of the Company, which must be designated a gift fund account and the following clauses 6.3 to 6.5 will apply to the operation of that account.

6.3 **Maintaining Gift Fund**

The Company will maintain for its principal purposes, a gift fund:

- (a) to which any gifts of money or property for that purpose are to be made;
- (b) to which any money received because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

6.4 **Limits on use of Gift Fund**

The Company must use the following only for its principal purposes:

- (a) gifts made to the gift fund; or
- (b) any money received because of those gifts.

6.5 **Winding up**

At the first occurrence of:

- (a) the winding up of the gift fund; or
- (b) the revocation of the Company's deductible gift recipient endorsement under Division 30 of the ITAA,

any surplus assets of the gift fund must be transferred to another organisation in Australia which is a deductible gift recipient for the purposes of the ITAA.

7 Fundraising authority

If the Company holds an authority to fundraise from any Federal or State or Territory statutory authority, to the extent required by law, no addition, alteration or amendment may be made to clauses 4, 5 or 6 without the prior written approval of the Minister responsible for the administration of the relevant statutory authority.

8 Registration as a charity

If the Company is at any time registered as a charity in any State or Territory of Australia any changes to clauses 4, 5 or 6 must be notified to any relevant Commonwealth or State or Territory statutory authority within a reasonable time of such changes being made.

9 Members

9.1 DAL as Sole Member

- (a) It is acknowledged by the Members that, as at the Adoption Date, DAL is to have and be granted the powers of the sole Member of the Company.
- (b) Despite anything to the contrary contained in this Constitution:
 - (i) the Company is intended to have only one Member, being DAL; and
 - (ii) where DAL is the only Member of the Company:
 - (A) and the Member records in writing the Member's decision to a particular effect, the recording of the decision counts as the passing by the Member of a resolution to that effect and also has effect as minutes of the passing of the resolution; and
 - (B) the provisions in this Constitution relating to the holding of Members' meetings are not applicable.

9.2 Admission of New Members

Despite clause 9.1, persons may be admitted as New Members of the Company by resolution of the Board and approved by the board of DAL while DAL is a Member of the Company.

9.3 Rights of Categories

The Board may determine additional categories or subgroups to each category of Members and the rights attaching to any of the categories or subgroups of each category of Members.

9.4 Members

As at the Adoption Date, the Members are:

- (a) DAL; and
- (b) Residual Members.

9.5 Rights of DAL as Member

DAL, while a Member of the Company, is entitled to:

- (a) know information regarding the Company's business, activities and affairs that is relevant to the objectives, activities, business and affairs of the Member;
- (b) receive notices of meetings of Members;
- (c) be counted towards a quorum of Members present at a General Meeting;
- (d) appoint a proxy or Corporate Representative to vote at a General Meeting;
- (e) vote at a General Meeting;
- (f) attend all General Meetings of Members including any extraordinary General Meeting or Annual General Meeting; and
- (g) receive financial reports and statements of the Company; and
- (h) approve of and appoint Directors.

9.6 Rights of Members other than DAL

To the extent that there are Residual Members of the Company after the Adoption Date (being Members other than DAL), the Residual Members will have all of the rights under clause 9.5 other than those rights under clauses 9.5(a), 9.5(c), 9.5(d), 9.5(e) and 9.5(h).

9.7 Application for Membership

Application for Membership as a New Member must be made in such form and in such manner as the Board may from time to time prescribe.

9.8 Members' Obligations

No applicant may be admitted to Membership and have their name entered in the Register unless the applicant:

- (a) agrees in writing to be bound by this Constitution;
- (b) has paid the relevant Entrance Fee; and
- (c) has had their admission approved by the Board and the board of DAL in accordance with clause 9.2;

9.9 Discretion to admit

The Board may refuse to admit any person as a New Member in its absolute discretion and is not obliged to give reasons for so refusing.

9.10 Delegation

The Board may at any time delegate, on such terms as they think fit, to such persons as they may determine, the power to:

- (a) admit a person as a New Member;
- (b) re-admit such persons; or
- (c) refuse applications for Membership.

9.11 Approval by DAL

For the avoidance of doubt, while DAL is a Member of the Company, the Company cannot make any changes to the Register (other than accepting resignations of Members) without the prior written approval of DAL.

10 Membership Fees

- (a) There is no application or annual membership fee payable by DAL.
- (b) The Annual Subscription payable by New Members (and any other category of Members) is such amount as determined by the Board annually.

11 Cessation of Membership

11.1 Cessation

A Member ceases to be a member of the Company if the Member:

- (a) resigns that Membership;
- (b) is expelled from the Company under this Constitution;
- (c) is a Residual Member and as from the Adoption Date, their Membership:
 - (i) is not renewed; and
 - (ii) comes to an end at the expiry of their current annual membership;
- (d) becomes insolvent or otherwise comes under external administration; or
- (e) is wound up, dissolved or deregistered.

11.2 No termination of Membership of DAL

Subject to clause 11.1, the Board may not terminate or suspend the Membership of DAL for any reason whatsoever.

11.3 Appointment as Member not transferable

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

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates upon cessation of the person's Membership.

11.4 Resignation

Subject to clause 3, a Member may at any time resign their Membership by giving written notice to the Secretary (**Notice**). The resignation is deemed to take effect from the date of receipt of the Notice, or such later date as is provided in the Notice. A Member remains liable to pay all amounts due to the Company up to the date of resignation.

12 Discipline of Members

This clause 12 does not apply to DAL while it is a Member of the Company. It only applies to Residual Members and any New Members as the case may be.

12.1 Initial resolution of Directors

Where the Directors are of the opinion that a Member of the Company:

- (a) has refused or neglected to comply with a provision of the Constitution and any other policies (guidelines, procedures, protocols, practices or processes) prescribed by the Board from time to time; or
- (b) has acted in a manner prejudicial to the reputation or interests of the Company, the Directors may, by Ordinary Resolution (Initial Resolution):
 - (i) reprimand the Member;
 - (ii) suspend the Member from Membership of the Company for a specified period; or
 - (iii) expel the Member from the Company.

12.2 Suspended operation

An Initial Resolution is of no effect unless it is confirmed at a meeting convened by the Board in accordance with the following clauses.

12.3 Notice to Member

The Secretary must, as soon as practicable following the passing of the Initial Resolution, cause a notice in writing to be served on the Member. The notice must:

- (a) set out the Initial Resolution and the grounds on which it is based;
- (b) state that the Member may personally address the Directors in relation to the Initial Resolution at a meeting of the Directors to be held not earlier than 7 days and not later than 21 days after service of the notice;
- (c) state the date, place and time of that meeting of the Directors; and
- (d) inform the Member that the Member may submit to the Directors at or before the date of that meeting a written representation relating to that resolution and speak to the representation.

12.4 Confirming resolution of Directors

At a meeting of the Directors held as referred to in the preceding clause, the Directors must:

- (a) give to the Member an opportunity to speak to the written representation;
- (b) consider any written representation submitted to the Directors by the Member at or before the meeting; and
- (c) by Ordinary Resolution confirm, vary or revoke the Initial Resolution (Confirming Resolution).

12.5 Immediate or suspended effect

The Confirming Resolution may take effect:

- (a) immediately;
- (b) after any period of time stated in the Confirming Resolution; or
- (c) only on conditions as specified in the Confirming Resolution.

12.6 Notice to a Member

The Secretary must as soon as practicable, by notice in writing, inform the Member of:

- (a) the Confirming Resolution and its terms; and
- (b) the Member's right of appeal under the Constitution.

12.7 Right of appeal

- (a) A Member may within 7 days of receiving notice of the Confirming Resolution under clause 12.6, request in writing that an appeal of the Confirming Resolution be heard at a General Meeting convened for the purpose of determining whether to uphold or reject the Confirming Resolution.
- (b) The Directors will convene a General Meeting for the purposes of considering any appeal requested by a Member under clause 12.7(a). The Directors may determine the process for the hearing and consideration of any such appeal at the General Meeting but must provide the Member an opportunity to be heard on their application.

13 Register of Members and Notices in Writing

13.1 Register to be kept

The Company must maintain at the Registered Office a Register containing the following details of each Member:

- (a) full name (including if the Member is a company, its ACN or ABN);
- (b) mailing address;
- (c) facsimile and/or telephone number;
- (d) electronic mail address; and
- (e) date on which the entry of the Member's name in the Register is made.

13.2 Record of past members

The Company must maintain at the Registered Office a record of past members of the Company including:

- (a) details set out at clause 13.1 of each person who ceased to be a Member within the last 7 years; and
- (b) the date on which each such person ceased to be a Member.

13.3 Notices in writing or electronic means

Any notice required to be issued under this Constitution may be issued in writing or by electronic mail or facsimile to the last nominated email address or facsimile number held by the Company in its records. The Member is required to notify the Company of a change of address or contact details. The last notified address will be deemed to be the proper address for all future correspondence. The receipt by the Company of an acknowledgement of correspondence sent by electronic mail or facsimile to the last nominated email address or facsimile number held by the Company in its records will be deemed to have been properly received by the Member at the time of transmission.

14 Meetings of Members

14.1 Act to Apply

A General Meeting of the Company and an Annual General Meeting must be held in accordance with the provisions of the Act unless the provisions of this Constitution provide otherwise.

14.2 Calling of meetings

- (a) A majority of Directors may call a General Meeting.
- (b) General Meetings will be convened on such requisition by the Member as provided by the Act.
- (c) The Company must convene an Annual General Meeting at least annually and within 5 months after the end of its financial year.

14.3 Notice of meeting

- (a) Notice of a General Meeting may be given by post or by electronic mail.
- (b) Every notice of a General Meeting must:
 - (i) set out the place, date and time of meeting;
 - (ii) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the Special Resolution;
 - (iii) in the case of an election of Directors, give the names of the candidates for election; and
 - (iv) contain a statement setting out that in relation to voting and voting by proxy, the Member has a right to appoint a proxy or Corporate Representative.

14.4 Entitlement to notice

Notice of a General Meeting must be given to:

- (a) each Member, apart from a Member who under this Constitution is not entitled to the notice;
- (b) the auditor of the Company; and
- (c) each Director.

14.5 Notice period

Notice of a General Meeting must be given in accordance with section 249H of the Act and where those provisions no longer apply, must be given in writing upon no less than 21 days notice unless 75% of the Members agree to a shorter period.

14.6 Proxy voting by Members

A Member may appoint a proxy to attend and vote at any General Meeting at which the Member is entitled to attend and vote. To be valid, a proxy appointment must be in writing in the form prescribed by the Company from time to time (Form). The Form must be delivered to the place nominated by the Board in the notice of General Meeting (or, if no place is nominated, the Office) at least 48 hours before the scheduled commencement of the General Meeting. A proxy appointment may be delivered by post, electronic mail or facsimile transmission.

14.7 Omission to give notice

The accidental omission to give notice of a General Meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such General Meeting, does not invalidate the proceedings at, or any resolution passed at, any such General Meeting.

14.8 Consent to short notice

With the consent in writing of the Member entitled to vote at a General Meeting, any General Meeting may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly.

14.9 Notice of cancellation or postponement

The Board may notify the Member of a cancellation or postponement of a General Meeting by such means as they see fit, but must provide notice of the cancellation or postponement at least two business days prior to the time of the meeting as specified in the notice of meeting. If any General Meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Member of the postponed General Meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed General Meeting.

14.10 Venue

Despite any other rule, the Company may hold a General Meeting of Members at two or more venues using any such technology that gives the Member a reasonable opportunity to participate in the General Meeting, provided that there is a quorum and each Member has a reasonable opportunity to participate in the meeting.

15 Proceedings at meetings of Members

15.1 Quorum

No business is to be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as provided in clause 15.2, DAL as a Member must be present at the General Meeting, in person or by Corporate Representative, proxy, attorney or via technology under clause 14.10, to constitute a quorum.

15.2 Failure of quorum

If a quorum is not present within 15 minutes from the time appointed for a General Meeting:

- (a) where the meeting was called by, or in response to, the requisition of the Member made under the Act, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the Chairperson determines.

If no determination of an adjourned meeting is made by the Directors, the meeting stands adjourned to the same day in the second week following, at the same time and place. If at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting the meeting is dissolved.

15.3 Business of Annual General Meeting

- (a) The business of an Annual General Meeting is:
 - (i) to receive the Company's financial report, the Directors' report and the auditor's report on the financial statements;
 - (ii) to elect Directors;

- (iii) if required at that particular Annual General Meeting, the appointment of auditors and the fixing of the auditor's remuneration;
 - (iv) to transact any other business which under this Constitution or the Act ought to be transacted at the Annual General Meeting; and
 - (v) consider any matters referred by the Member to the Company at least 21 days before the meeting, to be included in the agenda.
- (b) The Chairperson of the Annual General Meeting must allow a reasonable opportunity for the Member at the meeting to ask questions about, or make comments on, the management of the Company.

15.4 Report on Company's activities

At each Annual General Meeting, the Board must submit to the Members a report on the activities and affairs of the Company, including any remuneration or payments made to Directors, in the period since the previous General Meeting.

15.5 Special business

No special business may be transacted at any General Meeting other than that stated in the notice calling the General Meeting unless:

- (a) it is a matter that is required by this Constitution or the Act to be transacted at the General Meeting; or
- (b) notice in writing of the agenda item is provided to the Board or the Member (as the case may be) at least 21 days before the General Meeting.

15.6 Chairperson of meeting

The Chairperson will preside as chairperson at every General Meeting of the Company or if the Chairperson is not present within fifteen minutes after the time appointed for the holding of the meeting, the Deputy-Chairperson will preside as the chairperson of the meeting. If the Deputy-Chairperson is not present or is unwilling to act, the Member present will elect the chairperson of the meeting.

15.7 Passing the chair

If the Chairperson is unwilling or unable to be the chairperson for any part of the business of the meeting:

- (a) that chairperson may withdraw as chairperson for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairperson. The prior chairperson is then entitled to resume as the chairperson of the meeting.

15.8 Responsibilities of chairperson

The Chairperson is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning any item of business which is properly before the meeting. For these purposes the chairperson of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) prescribe, vary or revoke procedures;

- (c) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (d) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

15.9 Persons entitled to attend

Only the following persons may attend a General Meeting:

- (a) each Member, apart from any Member who under this Constitution is not entitled to attend;
- (b) each Director, Secretary and auditor of the Company;
- (c) each person, whether a Member or not, who is a proxy, Corporate Representative or attorney of the Member; and
- (d) other persons only with leave of the meeting or its chairperson and then only while the leave has not been revoked in accordance with the terms of the leave.

15.10 Admission to meetings

The Chairperson may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under this Constitution to attend the meeting.

15.11 Adjournment of meeting

The Chairperson may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting) adjourn the meeting from time to time and from place to place as the Chairperson determines. When a meeting is adjourned for 20 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

15.12 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and no notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting. However, when a meeting is adjourned for 20 business days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

16 Voting at meetings of Members

16.1 Entitlement to vote

Subject to this Constitution, the Members present at a General Meeting may vote if they are a Member having the right to vote at the meeting or a proxy or Corporate Representative of a Member having the right to vote at the meeting.

16.2 Number of votes

A Member who is, under the preceding clause, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote; and
- (b) on a poll, one vote.

16.3 Voting restrictions

If permitted or contemplated by the Act or this Constitution, the Board may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.

16.4 Method of voting

- (a) Every resolution put to a vote at a General Meeting (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the chairperson of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.
- (b) If DAL is the sole Member of the Company with a right to vote, written notice provided by DAL to the Company at any time prior to or during a General Meeting will be taken to be DAL's vote in relation to any resolutions to be considered at the General Meeting (**Written Vote**), unless the Written Vote is withdrawn by DAL at any time prior to the conclusion of the General Meeting.

16.5 Declaring result of vote on show of hands

In respect of any General Meeting (unless a poll is so demanded):

- (a) a declaration by the chairperson that a resolution has on a show of hands been carried (or carried by a particular majority), or lost (or has not been carried by a particular majority); and
- (b) an entry made in the book containing the minutes of the proceedings of the Company,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

16.6 Conduct of poll

If a poll is duly demanded it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll will be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of the chairperson or on a question of adjournment will be taken immediately.

16.7 Casting vote of Chairperson

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting will not be entitled to a second or casting vote.

16.8 Ruling on votes

The chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairperson is final and conclusive.

17 Appointment and removal of Board of Directors

17.1 Number

- (a) The Board comprises at least 53 and not more than 9 Directors or such other number as the Members may determine from time to time.
- (b) The Directors are appointed by DAL.
- (c) As at the Adoption Date, the Board comprises those individuals listed in Schedule 1.

17.2 Directors qualification

- (a) A Director must be:
 - (i) a natural person;
 - (ii) over the age of 18 years;
 - (iii) not a person disqualified from managing a corporation, within the meaning of the Act;
 - (iv) a person approved in writing by DAL; and
 - (v) a current director of DAL, unless DAL approves in writing that the Director need not be a current director of DAL (which approval may be provided by DAL signing the Director's nomination form as required under clause 17.8(b)(i)).
- (b) The Board may from time to time identify the skills requirements and needs of the Board to establish a skills-based Board in accordance with good governance structure to give effect to the Objects of the Company.

17.3 Term of appointment and rotation

- (a) The maximum aggregate term of office of any Director will be in accordance with the maximum aggregate term of a Director as set out in the DAL constitution from time to time.
- (b) The Directors to retire at each Annual General Meeting must be in accordance with the retirement and rotation provision set out in the DAL constitution from time to time. For the purposes of clause 17.3(a), each Director's term of office will be deemed to have commence and be calculated from the Adoption Date, even in circumstances where the Director was originally appointed as a Director prior to that date.

17.4 Casual appointment

The Board may at any time appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board. Until that person is re-elected at a General Meeting, that Director is a "casual appointee". Any such 'casual appointee' must first be approved in writing by DAL.

17.5 Retirement of casual appointee

A casual appointee, following their appointment by the Board in accordance with clause 17.4, holds office only until the conclusion of the next Annual General Meeting and is then eligible for re-election. A casual appointee is not taken into account in determining the number of Directors, if any, who are to retire by rotation at such meeting.

17.6 Deemed re-appointment

If there are fewer persons standing for election or re-election than vacancies, all persons are deemed to be elected without the need for an actual election.

17.7 Candidates requiring nomination

No person is eligible for election to the office of Director at any General Meeting unless duly nominated, other than in relation to:

- (a) a Director retiring by rotation under clause 17.3;
- (b) a casual appointee; or
- (c) a person nominated by the Board for election under clause 17.8(c).

17.8 Nominations and election

- (a) Nominations must be made to the Secretary at the Registered Office 21 days before the date for the holding of the meeting.
- (b) For a nomination to be valid:
 - (i) the nomination must name the candidate and be signed by DAL;
 - (ii) the person nominated must consent to act if elected;
 - (iii) the nomination and consent must be received before the close of nominations;
 - (iv) the nomination must provide information as to how the nominee satisfies the skills requirements of the Board (if any);
 - (v) at least 14 days before the holding of the meeting, the nomination must be reviewed by the Board and the Board must confirm the nominee satisfies the skill requirements and needs of the Company from time to time, and in doing so:
 - (A) DAL must formally provide its consent to a nomination and confirm if the nomination satisfies the skills requirements and needs of the Company;
 - (B) no nominee may appeal against any determination by DAL in relation to any nomination; and
 - (C) if DAL does not provide its consent to a nomination, the nominee will not be eligible for election as a Director.
- (c) The Board by resolution may nominate a person to be a Director, but such person must satisfy the requirements in clause 17.2 and both that person and DAL must consent to the nomination.
- (d) A consent is sufficient if the person signs a form of consent on the nomination paper. The Secretary may accept any other form of consent, including consent conveyed by electronic mail, whether or not occupied by the nomination paper, that the Secretary deems satisfactory, and such acceptance is final.
- (e) The Board must indicate on the voting ballot of a nomination whether and how the nominee satisfies the skills requirements of the Company as described in clause 17.8(b)(iv) and clause 17.8(b)(v).

17.9 Removal of Directors

DAL may remove any Director before the expiration of their period of office and may appoint another person in their stead. The person appointed will hold office in accordance with clause 17.5.

17.10 Resignation of Director

Any Director may retire from office by giving notice in writing to the Company of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time.

17.11 Vacation of office

A Director will cease to be a Director if the Director:

- (a) ceases to be a Director by virtue of the Act or any order under the Act;
- (b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) resigns their office by notice in writing to the Company;
- (e) is absent without permission of the Board for more than two consecutive meetings of the Board;
- (f) holds any office of profit under the Company without the consent of the Board; or
- (g) is disqualified from managing a corporation, within the meaning of the Act.

17.12 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in the Board. If the number falls below the minimum number fixed in accordance with this Constitution, the Board may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a General Meeting; or
- (c) in emergencies.

18 Appointment and removal of office bearers

18.1 Office bearers

DAL must elect from the Board:

- (a) a Chairperson; and
- (b) a Deputy-Chairperson,

and may determine the period for which each is to hold office.

18.2 Secretary

The Secretary will be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit. Any Secretary so appointed may be removed by the Board or by DAL.

19 Proceedings of the Board

19.1 Mode of meeting and Number of Meetings

- (a) The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

- (b) Without limiting the general power conferred on the Board by the provisions of this clause, a meeting of the Board may be held using any means of audio or audio-visual communication, by which each Director participating can hear and be heard by each other Director participating or in any other means using any technology consented to by the Board. Such consent to the use of technology may be a standing consent and a Director may only withdraw their consent within a reasonable period before a meeting.

(c) A meeting of the Board held solely or in partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in two or more places, at the place where the Chairperson of the meeting is located.

~~(e)~~(d) The Board shall meet not less than 2 times in each calendar year.

19.2 Quorum

The quorum necessary for the transaction of the business of the Board is two thirds of the Directors in office at the date of the meeting. For the avoidance of doubt, the Directors present at the meeting pursuant to clause 19.1(b) will count towards a quorum.

19.3 Chairperson calling a meeting

The Chairperson may at any time call a meeting of the Board to be held at such time and place as the Chairperson chooses.

19.4 Secretary calling a meeting

The Secretary, upon the request of two Directors, must call a meeting of the Directors to be held at such time and place as is convenient to the Board.

19.5 Notice of meeting

Notice of each meeting of the Board:

- (a) may be given by such means as is convenient, including by email or electronic transmission; and
- (b) must be given to all eligible Directors.

19.6 Recipients of notice

For the purposes of the preceding clause:

- (a) eligible Directors are all Directors for the time being and excluding those given leave of absence; and
- (b) the accidental omission to give notice of any meeting of the Board to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

19.7 Appointment of Chairperson

- (a) The Chairperson will preside as chairperson at every meeting of the Board.
- (b) If at any meeting of the Board the Chairperson is not present at the time appointed for holding the meeting, the Deputy-Chairperson will act as chairperson but otherwise, the Directors present must choose one of their number to be chairperson of such meeting.

19.8 Votes of Directors

- (a) Subject to this Constitution, questions arising at any meeting of the Board will be decided by a majority of votes. Each Director has one vote. A determination by a majority of the Directors will for all purposes be deemed a determination of the Board. In case of an equality of votes the resolution will be deemed to have not been passed.

The Chairperson, or whoever may act as chairperson of the meeting, will not have a second or casting vote.

- (b) Despite anything in this clause, a Director's entitlement to vote, or be present, at a meeting of the Board of any Director who has a material personal interest in a matter that is being considered at the meeting is restricted in accordance with section 195 of the Act (and every other mandatory law) as it may apply from time to time to the Company.

19.9 Circular resolution

- (a) A resolution in writing signed by a majority of the Directors will be as valid and effectual as if it has been passed at a meeting of the Board duly convened and held on the date of the last signing of the resolution. Any such resolutions may consist of several documents in like form each signed by one or more Directors.
- (b) If the Directors sign the documents on different days, then a resolution is treated as having been passed on the day on which the document was last signed by a Director thereby constituting a majority in number on the Board. A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier date.
- (c) A resolution under clause 19.9 can be effected electronically by the Directors responding to an email in respect of any resolution put to the Directors.

20 Powers and duties of Directors

20.1 Powers generally

Subject to the Corporations Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the Board who may exercise all such powers of the Company and do all such acts or things not expressly required by this Constitution or by the Corporations Act to be exercised or done by a General Meeting. No clause adopted or resolution passed by a General Meeting invalidates any prior act of the Directors Board which would have been valid if that clause or resolution had not been adopted or passed.

20.2 Borrowing

The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property or any part thereof and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the Company.

20.3 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted and endorsed or otherwise executed as the case may be by any two Directors or in such other manner as the Board from time to time may determine.

20.4 Validity of acts

All acts done by any meeting of the Board or of a committee or by any person acting as a Director will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid, or that the Directors or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or committee member.

20.5 Duty to Act in the Best Interests of DAL

In exercising their duties as a Director of the Company, each Director is expressly authorised to act in the best interests of any holding company of which the Company is a wholly-owned

[subsidiary.¹](#)

21 Committees

21.1 Delegation to committees

- (a) The Board may from time to time establish such committees as it sees fit to assist it in carrying out its functions.
- (b) The Board may:
 - (i) delegate any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit; and
 - (ii) establish panels (or other committees or panels not having delegated power of Directors) consisting of such person or persons as they think fit.

21.2 Committee powers and terms of reference

- (a) The Board may determine from time to time the functions, purpose and objectives of each governance committee.
- (b) Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Board.

21.3 Committee meetings

A chairperson must be nominated for any committee established and that chairperson must be a Director. The meetings and proceedings of any committee are to the extent possible, be conducted in accordance with the principles of meetings of the Board.

22 Minutes

22.1 Minutes to be kept

The Board will cause minutes to be made:

- (a) of all appointments of statutory officers;
 - (b) of names of Directors present at all meetings of the Company and of the Board;
 - (c) recommendations made by any committee of the Company; and
 - (d) of all proceedings at all meetings of the Company and of the Board,
- and such minutes must be signed by the chairperson of the meeting.

23 Resolutions

23.1 Register of resolutions to be kept

The Company must maintain a register and record of all resolutions put and votes cast at:

- (a) a General Meeting; and
- (b) a meeting of the Board.

¹ In order to rely on this provision, under section 187 of the Corporations Act a Director must act in good faith and the Company must not be insolvent at the time the provision is relied upon.

24 Seal

24.1 Seal

The Board will provide for the safe custody of the Seal which must only be used by the authority of the Board or of a committee of Directors authorised by the Board in that behalf and every instrument to which the Seal is affixed must be signed by a Director and must be countersigned by the Secretary or by a second Director or by some other person appointed by the Board for the purpose.

25 Accounts and Audit

25.1 Distribution of documents

The Board will cause proper accounting and other books of account to be kept and will distribute to the Members with the notice of the Annual General Meeting all accounts and other documents required by law to be so distributed in accordance with relevant legislation and the Board will table at each Annual General Meeting all accounts and other documents required by law to be tabled. Accounts may be distributed by post, electronic mail or be made available on the Company's website.

25.2 Inspection

The Board will determine in accordance with this clause at what times and places, under what conditions or regulations the accounting and other records of the Company will be open to the inspection of the Member of the Company and no Member will have any right of inspecting any accounts or documents of the Company, except as conferred by law or authorised by the Board or by the Company in General Meeting.

25.3 Audit

The Company must in accordance with the Act and any State or Territory legislation applicable to charities, or charitable fundraising arrange for the accounts to be audited in accordance with the Act and the applicable State or Territory legislation.

26 Notices

26.1 Service of notices

Where this Constitution, the Corporations Act or other legislation require or permit a document to be served on, given or sent to any person, whether any such expression or any other expression is used (in this clause referred to as **served**), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by sending it, whether by post, contractor, agent, electronic means or otherwise, to:
 - (i) the address of the place of residence last notified and recorded by the Company as entered on the Register; or
 - (ii) the facsimile or email address of the Member as entered in the Register.

26.2 Date of deemed service

A document served under clause 26.1 is treated as having been duly served, regardless of whether it is actually received:

- (a) where delivered personally – on the day of delivery; and

- (b) where sent by post or electronic means - on the day following the day when dispatch occurred.

26.3 **Signature**

The signature to any document to be given by the Company may be written, printed or stamped personally or electronically.

27 **Indemnity**

27.1 **Indemnity for officers**

To the extent that the Act allows it, each Officer of the Company and each Officer of a related body corporate of the Company, must be indemnified by the Company against any liability incurred by that person in that capacity.

27.2 **Insurance premiums**

- (a) The Company may at any time pay premiums in respect of a contract insuring a person (whether with others or not) who is an Officer of the Company against a liability incurred by the person as such an Officer, or as an officer of a related body corporate.
- (b) The liability insured against may not include that which the Act prohibits.
- (c) Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration approved by the Member under this Constitution.

28 **Alteration of Constitution**

This Constitution may only be amended, added to, or rescinded by a Special Resolution of the Members of both:

- (a) the Company; and
- (b) DAL.