

*Corporations Act 2001 (Cth)*

Company Limited by Guarantee

**CONSTITUTION**

**OF**

**ST CATHERINE'S FOUNDATION LIMITED**

**NAME**

1. The name of the Company is St Catherine's Foundation Limited.

**OBJECTS**

2. The object of the Company is to support and assist the School and the Council, and in furtherance of these purposes:
  - a. to preserve, improve and develop the standards, services, status, property and facilities of the School;
  - b. to provide financial and other assistance to the School in attaining the vision of the School;
  - c. to encourage philanthropic support for the School;
  - d. to provide a financial base to guarantee the School's future independence; and
  - e. to act as a trustee of any fund whose objects are consistent with the object of the Company.

**LIABILITY**

3. The liability of the members is limited. Every member of the Company undertakes to contribute such amount as may be required not exceeding \$10.00 to the assets of the Company if the Company is wound up during the time he or she is a member or within one year afterwards for:
  - a. payment of the debts and liabilities of the Company contracted before the time he or she ceased to be member;
  - b. the costs, charges and expenses of winding up the Company; and
  - c. the adjustment of the rights of the members among themselves.

## **INCOME AND PROPERTY**

4. The Company's income and property is to be applied solely towards the promotion of the Company's objects as set out in this Constitution. No part of the Company's income and property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the members of the Company. However, this clause does not prevent:
  - a. the payment in good faith of remuneration to any employee of the Company or to any member or other person in return for any services actually rendered to the Company;
  - b. the payment to a Director of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the Board;
  - c. the payment to a Director for any service rendered to the Company in a professional or technical capacity where:
    - i. the provision of that service has the prior approval of the Board; and
    - ii. the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;
  - d. the payment to a Director as an employee of the Company where the terms of employment have been approved by a resolution of the Board;
  - e. the payment to members of interest on any money borrowed from such members for the purpose of the Company at a rate not exceeding the lowest rate paid for the time being by the Company's principal bank in New South Wales in respect of term deposits of \$50,000 for six months;
  - f. the payment to members of reasonable market rent for premises leased by any member to the Company.

## **WINDING UP**

5. a. If, on the Company's winding up or dissolution, there remains after satisfaction of all its liabilities any property, such property must not be distributed among the members but must be given to the Council of St Catherine's School, Waverley, provided that it satisfies Clauses 5.a.ii. and 5.a.iii of this Constitution, but if it does not exist at that time to some other similar institution or institutions, provided such other institution or institutions:
  - i. have objects similar to the Company's objects; and

- ii. prohibit the distribution of income and property among its or their members to an extent at least as great as is imposed on the Company under Clause 4; and
  - iii. have been endorsed by the Australian Commissioner of Taxation as Income Tax Exempt Charities.
- b. Such institution or institutions are to be determined by the members of the Company at or before the time of dissolution and, in default, by the Chief Judge in Equity of the Supreme Court of New South Wales or such other Judge of that Court or any other Court as may have or acquire jurisdiction in the matter.
  - c. If effect cannot be given to this provision, then such property must be given to some charitable object which prohibits the payment of any income or property to its members.

## CHANGES TO CONSTITUTION

- 6. No addition, alteration or omission may be made to or from the clauses of this Constitution unless the same have been previously submitted to and approved by the Council and then only by special resolution of the members of the Company.

## DEFINITIONS

- 7. In this Constitution, the following words and expressions have the meanings indicated unless the context requires otherwise.

“**Approved Recipient**” means, in relation to a gift, donation or a pledge, any of the Company, the School or a Qualifying Trust.

“**Auditor**” means the Company's auditor.

“**Board**” means the Company's Board of Directors assembled at a meeting of Directors in accordance with this Constitution.

“**Company**” means St Catherine’s Foundation Limited ACN 002 630 462.

“**Constitution**” means the Constitution of the Company as amended from time to time.

“**Council**” means the governing body of the School.

“**Director**” means a person who is *ex officio* a member of the Board or who has been appointed to the Board, in either case in accordance with Clause 47.

“**Head of School**” means the Headmistress or Headmaster of the School, and includes any Acting Headmistress or Acting Headmaster, as may be in place from time to time.

“**Honorary Member**” means a person who is a member by virtue of Clause 15.c.

“**members**” means the Trustees, Ordinary Members and Honorary Members shown as members on the Company's register of members.

“**Minimum Qualifying Amount**” means, in respect of a gift, donation or pledge, an amount determined by the Board and approved by the Council from time to time. The amount may differ as between the categories of Trustee and Ordinary Member but not within those categories.

“**Notice**” includes all written communications to members.

“**Office**” means the Company's registered office.

“**Ordinary Member**” means a person who becomes an Ordinary Member under Clause 15.b.

“**parent**” includes step-parent, adoptive parent and guardian.

“**pledge**” means either a notice given under Clause 16 or the amount of the gift or donation described in that notice, as the context requires. A pledge is “made” when the notice under Clause 16 is accepted by the Board.

“**Qualifying Trust**” means a trust of which the Company or the Council is a trustee.

“**Register**” means the Company's register of members.

“**Registered address**” means the last known address of a member as noted in the Register.

“**School**” means St Catherine’s School, Waverley located at 26 Albion Street, Waverley, NSW.

“**Seal**” means the Company's Common Seal.

“**Secretary**” means any person appointed by the Board to perform the duties of a secretary of the Company and includes an Honorary Secretary.

“**Trustee**” means a person who becomes a Trustee under Clause 15.a.

## **INTERPRETATION**

8. a. Words importing the singular number include the plural and the converse applies.
- b. Words importing persons include corporations, companies, associations and institutions.
- c. A reference to the Corporations Act is a reference to the Corporations Act as modified or amended from time to time.

- d. Unless the context otherwise requires, headings are for ease of reference only and do not affect the construction of this Constitution.
- e. Where a resolution of the Board is required to be passed by an “absolute three-quarters majority” that resolution is only passed if at least three quarters of all of the Directors then appointed and who are eligible to vote on that resolution, vote in favour of that resolution, even if not all of them are in attendance at the meeting when the vote is taken.

### **APPLICATION OF *CORPORATIONS ACT***

- 9. Unless the contrary intention appears in this Constitution:
  - a. an expression in this Constitution has the same meaning as in that part of the *Corporations Act* which deals with the same matter as this Constitution; and
  - b. an expression which is given a general meaning by the *Corporations Act* has the same meaning in this Constitution; and
  - c. the replaceable rules set out in the *Corporations Act* do not apply.

### **MEMBERSHIP**

- 10. The number of members must not exceed 1,000 but the Board may register an increase of members.
- 11. A member of the Company is a person who:
  - a. is an original subscriber to the Constitution; or
  - b. is elected as a member by the Board.
- 12. The Board may elect as a member of the Company any person who:
  - a. consents in writing to being a member; and
  - b. meets the criteria for one of the categories of membership; and
  - c. signs a commitment to the Company's Objects.
- 13. Memberships are not transferable.

### **CATEGORIES AND DURATION OF MEMBERSHIP**

- 14. The Company has three categories of membership: Trustee, Ordinary Member and Honorary Member.

15. A person qualifies to be:
- a. (**Trustee**) a Trustee if the person has donated or pledged in total at least the Minimum Qualifying Amount for Trustees to any Approved Recipients over any time period. That membership is for life (subject to Clauses 25 to 28);
  - b. (**Ordinary Member**) an Ordinary Member if the person has donated or pledged in total at least the Minimum Qualifying Amount for Ordinary Members to any Approved Recipients over any time period. That membership is for life (subject to Clauses 25 to 28); or
  - c. (**Honorary Member**) an Honorary Member if, not otherwise being a member when appointed to the Board, they are appointed to the Board by:
    - i the Council under Clause 47.e;
    - ii the Old Girls' Union Committee under Clause 47.f; or
    - iii the Parents and Friends' Association Executive Committee under Clause 47.g.

That membership begins simultaneously with their appointment to the Board and expires automatically if and when they cease to be a Director or become a member under another category (subject to Clauses 25 to 28), whichever occurs first.

If any or all parents of a student at the School have made a joint gift, donation or pledge to any Approved Recipients, each parent is eligible for the applicable membership as if he or she had donated the full amount.

16. If a person gives written notice to the Company or the School of his or her intention to contribute a gift of not less than the Minimum Qualifying Amount for Trustees or Ordinary Members (as the case may be) (or a number of gifts of not less than the relevant Minimum Qualifying Amount in aggregate) to any Approved Recipients within a period of five years from the date of that notice, that person is deemed to have made, as at the date of that notice, a gift of the amount or aggregate amount as the case may be referred to in the notice subject to the acceptance of such notice by the Board. The notice must be in a form prescribed by the Board or to like effect or as is acceptable to the Board. If a gift referred to in a notice under this Clause remains unpaid after it becomes payable, the member ceases to be entitled to any of the rights or privileges of membership (including the right to vote at meetings) but these may be reinstated on payment of all arrears if the Board thinks fit.
17. The Board may reassign a member's category of membership if the member's eligibility for a category changes. The Board must notify the member of any change in writing.
18. The Board may decline to accept any gift, donation or pledge, even if to an Approved Recipient, without giving any reason.
19. Gifts, donations and pledges to an Approved Recipient which are accepted by the Board are non-refundable, even if the donor resigns as a member or is expelled under Clause 27.

However, a member who resigns or is expelled is released from any obligation to make any further gift or donation even if previously pledged.

20. To avoid doubt, the expression “Trustee” is honorific and does not imply that a person has the right or obligation to act as a trustee for the Company, the School or any other person. In particular, members who are Trustees are not authorised solely by virtue of that status or title to hold any property of the Company, the School or any other person and have no additional duties or obligations to the Company, the School or any other person beyond those applicable to a member as set out in this Constitution and the law generally as it applies to members of a company limited by guarantee.

### **APPLICATION FOR MEMBERSHIP**

21. Any natural person who is age 18 years or more at the date of application may apply for membership of the Company.
22. An application for membership must be in writing in a form approved by the Board and must indicate the category of membership for which the person is applying.
23. The Board may decline to accept any application for membership without giving any reason.

### **ELECTION TO MEMBERSHIP**

24. As soon as practicable after the Board elects a person as a member of the Company:
  - a. the Secretary must notify the applicant in writing; and
  - b. the Secretary must enter the name, membership category and other relevant details of the applicant in the Register.

### **CESSATION OF MEMBERSHIP**

25. A person ceases to be a member if:
  - a. a pledge referred to in a notice as described in Clause 16 remains unpaid for six months after it becomes payable but the member may be reinstated as a member on payment of all arrears if the Board thinks fit; or
  - b. the member dies; or
  - c. the member resigns under Clause 26; or
  - d. the member is expelled in accordance with Clause 27; or

- e. in the case of an Honorary Member, the term of that person's membership expires in accordance with Clause 15.c (unless they have become a member under another category).
26. Any member may by written notice to the Secretary resign as a member with immediate effect or with effect from a particular date subsequent to, but not being later than six months after, the date of that notice.
27. The Board may by resolution passed by at least an absolute three-quarters majority of Directors expel a member of the Company from the Company if the member:
- a. wilfully refuses or neglects to comply with the provisions of this Constitution; or
  - b. in the Board's opinion ceases:
    - i. to have an active interest in the Company; or
    - ii. to be committed to the Company's Objects.
28. Before resolving to expel a member, the Board must give the member:
- a. at least one week's notice of the Board meeting at which the resolution for expulsion is to be put and of the intended resolution for expulsion, with reasons for the proposed expulsion; and
  - b. an invitation to attend the meeting for that part during which the expulsion resolution is to be discussed and a right to put written submissions to the Board and speak at that meeting by way of explanation or defence.

## **GENERAL MEETINGS**

29. a. The Board may, at any time, convene a general meeting.
- b. The Board must convene in every calendar year a general meeting, to be called the annual general meeting, which is to be held at such time as may be determined by the Board.
- c. A member may requisition, convene, or join in requisitioning or convening a general meeting in accordance with the *Corporations Act*.

## **NOTICE OF GENERAL MEETINGS**

30. a. At least 21 days' notice must be given to members of all general meetings.
- b. A notice convening a general meeting must:

- i. set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
  - ii. state the general nature of any special business to be transacted at the meeting.
- c. For the purposes of the preceding paragraph, special business means any business to be transacted at a meeting other than an annual general meeting and any business to be transacted at an annual general meeting other than the matters listed in paragraphs a. to c. inclusive of the next clause.
- d. The Board may postpone or cancel any general meeting whenever it thinks fit, other than a meeting convened under paragraph c. of the previous clause.
- e. The Board must give notice of the postponement or cancellation to all members.
- f. The failure or accidental omission to send a notice of a general meeting or the adjournment or postponement or cancellation of a general meeting to any member or the non-receipt of a notice by any member does not invalidate the proceedings at or any resolution passed at the general meeting.

## **ANNUAL GENERAL MEETINGS**

31. The business of an annual general meeting is to:
- a. receive and consider the financial report and reports of the Board and the Auditor required by the *Corporations Act*;
  - b. when relevant, appoint the Auditor; and
  - c. transact any other business which under this Constitution may be transacted at a general meeting.

## **QUORUM AT GENERAL MEETINGS**

32. a. No business may be transacted at a general meeting unless a quorum of members is present, in person or by proxy or representative, when the meeting proceeds to business.
- b. A quorum of members is not fewer than eight members entitled to vote.
- c. If a quorum is not present within 30 minutes after the time appointed for a meeting:
- i. if the meeting was convened on the requisition of members, it is automatically dissolved; or

- ii. in any other case:
  - (1) it stands adjourned to the same time and place 7 days after the meeting, or to another day, time and place determined by the Board; and
  - (2) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, a quorum is five members.

### **CHAIRMAN OF GENERAL MEETINGS**

33. The Chairman, or in the Chairman's absence, the Deputy Chairman, presides as Chairman at every general meeting. If neither of such officers is present within 10 minutes after the time appointed for the meeting, the members present must choose one of their number as Chairman of the meeting.

### **ADJOURNMENT OF GENERAL MEETINGS**

34. a. The chairman of a meeting at which a quorum is present:
- i. in his or her discretion may adjourn a meeting with the meeting's consent; and
  - ii. must adjourn a meeting if the meeting directs him or her to do so.
- b. An adjourned meeting may take place at a different venue to the initial meeting.
- c. The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.
- d. A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- e. Notice of an adjourned meeting must only be given if a general meeting has been adjourned for one month or more. If notice is required, it must be at least 21 days' notice.
- f. No poll may be demanded on the question of adjournment of a meeting except by the chairman.

### **RESOLUTIONS AND POLLS AT GENERAL MEETINGS**

35. a. Subject to the *Corporations Act* in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

- b. A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
    - i. the chairman; or
    - ii. any five members who have the right to vote at the meeting and who are present in person or by proxy or representative; or
    - iii. members with at least 5% of the votes that may be cast on the resolution.
  - c. A poll may be demanded:
    - i. before a vote on a show of hands takes place;
    - ii. after a vote on a show of hands takes place but before the declaration of the result of the show of hands; or
    - iii. immediately after the declaration of the result of a show of hands.
  - d. Unless a poll is demanded:
    - i. a declaration by the chairman that a resolution has been carried or lost; and
    - ii. an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
  - e. The demand for a poll may be withdrawn.
  - f. A poll must be taken at the time and in the manner that the chairman directs.
  - g. The result of the poll is the resolution of the meeting at which the poll is demanded.
  - h. A poll demanded on the election of the chairman or the adjournment of a meeting must be taken immediately.
  - i. After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.
36. a. A decision of a general meeting may not be invalidated on the ground that a person voting at the meeting was not entitled to do so.
- b. A challenge to a right to vote at a general meeting may only be made at the meeting.
  - c. The chairman must determine such challenge and such determination, if made in good faith, is final.

## **CHAIRMAN'S CASTING VOTE AT GENERAL MEETINGS**

37. The chairman has a casting vote on a show of hands and on a poll in addition to the chairman's votes as a member, proxy or representative.

## **RIGHT TO VOTE AT GENERAL MEETINGS**

38. Every member has one vote, regardless of category of membership.

## **PROXY**

39. A member may by notice to the Secretary appoint another person as his or her proxy to attend and vote at general meetings instead of him or her and any proxy has the same right as the member to speak at the meeting.
40. The notice must be in a form approved by the Board.
41. The notice must be signed by the appointor or by his or her attorney.
42. The notice may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy must not vote in any other way. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
43. a. The notice and, if the notice is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority must be received by the Company at least 48 hours before the meeting.
- b. If a Company meeting has been adjourned, a notice and any authority received by the company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
44. A proxy instrument received at an electronic address specified in the notice of meeting for the receipt of proxy instruments will be taken to have been signed if the appointment of the proxy:
- a. includes or is accompanied by a personal identification code allocated by the company to the member making the appointment; or
- b. has been authorised by the member in another manner approved by the directors and specified in or with the notice of meeting.

## **MANAGEMENT OF THE COMPANY**

45. The Company's business is managed by or under the direction of the Board which may exercise all the Company's powers which are not required by this Constitution or any law to be exercised by the Company in general meeting.

## **COMPOSITION OF THE BOARD**

46. The maximum number of Directors is fourteen.
47. The Board consists of:
- a. the Head of School (who need not be a member); and
  - b. the Chair of the Council (who need not be a member); and
  - c. two persons who are Trustees, appointed by the Council in consultation with the Head of School (but this is not a limitation, in that it does not prevent a person who is a Trustee from being appointed under any other paragraph of this Clause 47); and
  - d. at least five but not more than seven persons from among the members who are:
    - i Trustees; or
    - ii Ordinary Members who have made a gift, donation or pledge to any Approved Recipient within 5 years before the date of appointment, appointed by the Council in consultation with the Head of School; and
  - e. one person from among the Council, appointed by the Council; and
  - f. one person from among the School's Old Girls' Union, appointed by the Old Girls' Union Committee; and
  - g. one person from among the School's Parents and Friends' Association, appointed by the Parents and Friends' Association Executive Committee.
48. The Director of Community Relations of the School (or a person holding a title that replaces that title) is entitled to attend and speak at every meeting of the Board but is not entitled to vote unless otherwise qualified under this Constitution.

## **TENURE OF DIRECTORS' APPOINTMENTS**

49. The Directors appointed by the Council under Clauses 47.c, 47.d and 47.e are appointed for a term of three years from the time of appointment but are eligible for reappointments for further terms of three years or a shorter period determined by the Council. However:

- a. (***Trustees***) a Director who is a Trustee at the expiration of their current term (whether they were last appointed under Clause 47.c, Clause 47.d or Clause 47.e) is only eligible for reappointment if that would not result in them being a Director for more than 9 consecutive years;
- b. (***Ordinary Members***) a Director who is an Ordinary Member at the expiration of their current term (whether they were last appointed under Clause 47.d or Clause 47.e) is only eligible for reappointment if:
  - (1) they have made a gift, donation or pledge to any Approved Recipient within 5 years before the date of reappointment; and
  - (2) the reappointment would not result in them being a Director for more than 6 consecutive years; and
- c. (***Honorary Member from Council***) a Director who is an Honorary Member at the expiration of their current term and was last appointed under Clause 47.e is only eligible for reappointment if that would not result in them being a Director for more than 6 consecutive years.

For the purposes of this Clause 49, appointments under all categories in Clause 47 are taken into account and years are consecutive unless they are separated by a period of at least one year.

50. The Directors appointed by the Old Girls' Union Committee and Parents and Friends' Association Executive Committee are to be appointed annually. Those Directors are eligible for reappointments for further terms of one year. However, each of those Directors is only eligible for reappointment if that would not result in them being a Director for more than 3 consecutive years. For this purpose, appointments under all categories in Clause 47 are taken into account and years are consecutive unless they are separated by a period of at least one year.
51. The Board may resolve to allow any person to receive notices of Board meetings (and associated documentation), to attend Board meetings and to speak at Board meetings, so long as the Board is satisfied that the person is bound to a confidentiality agreement satisfactory to the Secretary.

#### **CASUAL VACANCIES ON THE BOARD**

52. Any casual vacancy among the Directors appointed by the Council must be filled by the Council. The term of the replacement Director's appointment need not coincide with the remainder of the term of any Director they replaced.
53. Any casual vacancy among the Directors appointed by the Old Girls' Union Committee or by the Parents and Friends' Association Executive Committee must be filled by the relevant committee. The term of the replacement Director's appointment need not coincide with the remainder of the term of the Director they replaced.

54. The Board may act even if there are vacancies on the Board, subject always to the quorum requirements in Clause 64.
55. If at any time the number of Directors in office is fewer than five, the Board may meet and act only:
  - a. to elect a person as a member of the Company; or
  - b. to convene a general meeting.

#### **DEFECT IN APPOINTMENT**

56. If it is discovered that:
  - a. there was a defect in the appointment of a person as a Director or member of a Board committee; or
  - b. a person appointed to one of those positions was or became disqualified during the term of their appointment;

all acts of the Board or the Board committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

#### **REMUNERATION OF DIRECTORS**

57. The Directors may be paid all travelling and other expenses properly incurred by them in attending and returning from Directors' meetings or any committee meetings or General Meetings or otherwise in connection with the Company's business, upon presentation of receipts or other evidence satisfactory to the Secretary.

#### **CHAIRMAN OF THE BOARD**

58. At the first Board meeting after each annual general meeting, the Directors must elect a Director as Chairman and a Director as Deputy Chairman. If the Chairman or Deputy Chairman ceases to be a Director, that person immediately and automatically vacates the office of Chairman or Deputy Chairman, as the case may be.
59. Any casual vacancy occurring in the office of Chairman or Deputy Chairman may be filled by the Directors (but the Board may continue to conduct meetings and its other business despite a vacancy). The newly elected person holds office for the remainder of the term of office of the former Chairman or Deputy Chairman but is eligible for re-election.

## VACATION OF OFFICE OF DIRECTOR

60. The office of a Director is vacated if that Director:
- a. dies;
  - b. resigns as a Director by notice to the Company;
  - c. becomes bankrupt or, as the debtor, becomes a party to a personal insolvency agreement;
  - d. 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 or guardianship or is otherwise incapable of acting as a Director;
  - e. is absent from three consecutive meetings of the Board without leave of the Board and the Board resolves by at least an absolute three-quarters majority that the Directorship should cease;
  - f. except in the case of the Chair of the Council and the Head of School, ceases for any reason to be a member of the Company;
  - g.
    - i. fails to disclose an actual and material conflict of interest in any matter brought for the consideration of the Board and the Board passes a resolution in respect of that matter which, in the opinion of a majority of Directors, would not have been passed if that conflict of interest had been disclosed; and
    - ii. the Board resolves by at least an absolute three-quarters majority that the person's Directorship should cease as a result of that failure;
  - h. has at any time during the preceding 12 months been disqualified from being a responsible person of a registered entity by the Commissioner of the Australian Charities and Not-for-profits Commission (or his or her successor or equivalent);
  - i. is found guilty of any offence punishable under the criminal or company law of any country where the potential penalty is a fine of at least \$5,000 or any term of imprisonment (regardless of the actual penalty suffered) or the law of any country relating to charities or trusts (regardless of the actual penalty suffered); or
  - j. otherwise ceases to be, or becomes prohibited from being, a Director by virtue of the *Corporations Act* or other legislation that regulates the Company or its activities.

## **SECRECY OBLIGATIONS**

61. Every Director and other agent or officer of the Company must keep secret all aspects of all transactions of the Company, except:
- a. to the extent necessary to enable the person to perform his or her duties to the Company;
  - b. as required by law;
  - c. when requested to disclose information by the Board to the Auditor or a general meeting of the Company; or
  - d. as otherwise permitted by the Board.

## **PROCEEDINGS OF THE BOARD**

62. The Board may meet together for the dispatch of business, adjourn or otherwise regulate its meetings and proceedings as it thinks fit.
63. a. A Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- b. The Directors need not all be physically present in the same place for a Board meeting to be held.
- c. A Director who participates in a meeting held in accordance with this clause is taken to be present and entitled to vote at the meeting.

## **BOARD QUORUM**

64. Subject to Clause 69.c, the quorum necessary for the transaction of the business of the Board is five or such higher amount as may be fixed by the Board from time to time.

## **CHAIRMAN OF BOARD MEETINGS**

65. The Chairman or, in his or her absence, the Deputy Chairman must take the chair at all Board meetings. If at any meeting neither of such officers is present within 10 minutes after the time appointed for holding the meeting, the Directors present must choose by simple majority one of their number to be chairman of the meeting.

## **VOTING AT BOARD MEETINGS**

66. Questions arising at a Board meeting are decided by a simple majority of the votes of the Directors present and voting, except where this Constitution provides otherwise. In case of an equality of votes where the matter is to be resolved by a simple majority, the Chairman of the meeting has a casting vote in addition to his or her deliberative vote.

## **CONVENING OF SPECIAL BOARD MEETINGS**

67. Upon the written requisition of any two Directors, the Chairman, or Deputy Chairman, or in their absence the Secretary, must convene a special meeting of Board to be held within 14 days after the receipt of the requisition (although that period may be shortened if at least five Directors agree). The requisition must set out the purposes for which the meeting is required.

## **BOARD RESOLUTIONS WITHOUT A MEETING**

68. a. If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Board meeting held on the day on which the document was last signed by a Director.
- b. For the purposes of paragraph a., two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents.
- c. Any document referred to in this clause may be in the form of electronic mail or facsimile transmission.
- d. The minutes of Board meetings must record that a meeting was held in accordance with this clause.
- e. This clause applies to meetings of Board committees as if all members of the committee were Directors.

## **MATERIAL PERSONAL INTEREST**

69. a. Unless permitted by the *Corporations Act*, a Director who has a material personal interest in a matter that is to be considered at a Board meeting:
- i. must not vote on the matter or be present while the matter is being considered at the meeting; and
- ii. must not be counted in a quorum in relation to that matter.

- b. Paragraph a. does not apply to an interest that the Director has as a member in common with the other members.
- c. The quorum for consideration at a Board meeting of a matter in which one or more Directors have a material personal interest is not fewer than two-thirds of the Directors who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- d. Each Director must disclose to the Company any material contract in which the Director is interested, and must provide the Company with the names of the parties to the contract, particulars of the contract, and the Director's interest in the contract.
- e. A Director's failure to make disclosure under this clause does not render void or voidable a contract in which the Director has an interest.

## **MINUTES**

70. a. The Board must cause minutes to be made of:
- i. the names of the Directors present at all general meetings, Board meetings and meetings of Board committees;
  - ii. all proceedings of general meetings, Board meetings and meetings of Board committees;
  - iii. all appointments of officers;
  - iv. all orders made by the Board and Board committees; and
  - v. all disclosures of interests made pursuant to the previous clause.
- b. Minutes must be signed by the chairman of the meeting or by the chairman of the next meeting of the relevant body and if so signed are as between the members conclusive evidence of the matters stated in such minutes.

## **COMMITTEES**

71. The Board may delegate any of its powers to committees consisting of such persons as it thinks fit and may revoke such delegation. Any committee so formed must conform to any rules imposed upon it by the Board. The meetings and proceedings of any such committee consisting of two or more members are governed by the clauses of this Constitution for regulating the meetings and proceedings of Board so far as the same are applicable and are not superseded by any rule made by the Board under this clause.

## **SECRETARY**

72. The Board must appoint a Secretary for such term, at such remuneration (if any) and upon such conditions as it thinks fit.
73. The Secretary may be removed by the Board.

## **SEAL**

74. The Board must provide for the safe custody of the Seal. Subject to the next paragraph, the Seal must not be used without the authority of the Board and in the presence of at least one Director who must sign every document to which the Seal is affixed and every such document must be countersigned by one other Director or the Secretary or some other person appointed by the Board.
75. Where as a matter of urgency a document is required to be under the Seal, the Chairman or Deputy Chairman may direct the Secretary to affix the Seal to that document and at the first opportunity the Secretary must report to the Board the action taken.

## **FINANCIAL REPORT**

76. If required by the *Corporations Act*:
  - a. the Board must cause the Company to prepare a financial report of the Company's business in accordance with the *Corporations Act*;
  - b. the Board must cause the financial report to be:
    - i. audited; and
    - ii. laid before the annual general meeting of the Company;
  - c. a copy of the financial report must be sent to all persons entitled to it.
77. The financial report when audited or reviewed (and, if required, approved by a general meeting) is conclusive except as regards any material error discovered in the report within 6 months next after its approval. Whenever any material error is discovered within that period, the financial report must immediately be corrected and then it is conclusive.

## **NOTICES**

78. Notices must be in writing.
79. A notice may be served by the Company on a member by any of the following methods:
  - a. by serving it personally on the member;

- b. by leaving it at the registered address;
  - c. by sending it by post in a prepaid envelope addressed to the member at the registered address;
  - d. by sending it by facsimile transmission to a facsimile number nominated by the member for the purpose of serving notices on the member; or
  - e. by sending it by electronic mail to an electronic mail address nominated by the member for the purpose of serving notices on the member.
80. Each member whose registered address is not in Australia may notify the Company of an address in Australia which is taken to be that member's registered address for the purpose of serving notice.
81. Any notice sent by post, air-mail or air courier is taken to have been served on the business day following that on which the envelope containing the notice is posted or delivered to the air courier. In proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier. A certificate in writing signed by any officer of the Company that the envelope containing the notice was so addressed and posted is conclusive.
82. Any notice sent by facsimile transmission or electronic mail is taken to have been served when the transmission is sent.
83. Any notice sent by post to or left at the registered address is taken to have been properly served even if the member is then dead or bankrupt and whether or not the Company has notice of the death or bankruptcy.
84. The signature to any notice given by the Company may be written or printed or a facsimile of the signature may be affixed by mechanical or other means.
85. Where a period of notice is required to be given, the day on which the notice is served and the day of doing the act or other thing is not included in the number of days or other period.

## **INDEMNITY**

86. Each officer is, to the maximum extent permitted by law, indemnified out of the property of the Company against any liability the officer may incur to another person as such an officer, except to the extent the liability is any of the following:
- a. a liability owed to the Company or a related body corporate;
  - b. a liability for a pecuniary penalty order under section 1317G of the *Corporations Act* or a compensation order under sections 1317H or 1317HA of the *Corporations Act*; or

- c. a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith.

This clause does not apply to a liability for legal costs.

87. Each officer is, to the maximum extent permitted by law, indemnified out of the property of the Company against any liability for legal costs the officer may incur as such an officer, except to the extent the liability is a liability for legal costs incurred in defending an action for a liability incurred as such an officer and the costs are incurred:
- a. in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under the previous clause;
  - b. in defending or resisting criminal proceedings in which the officer is found guilty;
  - c. in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - d. in connection with proceedings for relief to the officer under the *Corporations Act* in which the court denies the relief.

Paragraph c. does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

88. For the purposes of the previous clause, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
89. Clause 86 and Clause 87 are separate and independent indemnities and one is not to be read down by reference to the other.
90. The Company may pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against a liability incurred by the person as an officer of the Company except in circumstances prohibited by the *Corporations Act*.

## **TRANSITIONAL MATTERS**

91. The following provisions apply with respect to matters as at the date the resolution adopting this form of the Constitution is passed at a general meeting (“**Adoption Date**”):
- a. a person who is a Trustee on the Adoption Date automatically enjoys the benefits and entitlements of a Trustee as set out in this Constitution;
  - b. a person who is an Ordinary Member on the Adoption Date automatically enjoys the benefits and entitlements of an Ordinary Member as set out in this Constitution;

- c. gifts, donations and pledges made before the Adoption Date are to be taken into account when assessing a person's eligibility for membership of the Company or the category of their membership, and their eligibility for appointment to the Board; and
- d. the tenure of each person who is a Director on the Adoption Date expires in accordance with the original terms of their appointment but:
  - i their eligibility for reappointment, and any reappointment, are governed by the terms set out in this Constitution; and
  - ii time served as a Director before the Adoption Date is to be taken into account when assessing a person's eligibility for appointment or reappointment to the Board under Clauses 49 and 50 (where clause references in those provisions are taken to include references to corresponding provisions in this Constitution in its pre-Adoption Date form).

**CONSTITUTION**

**OF**

**ST CATHERINE'S FOUNDATION**  
**LIMITED**

Constitution dated 23 June 1983

As amended by resolution 14 August 2012

As further amended by resolution 29 March 2016