

Notes regarding this Constitution

1. This Constitution includes provisions which the *Corporations Law* requires public companies to observe although they are not required to be included in a company's constitution. The provisions are included in this Constitution so that the Constitution provides a reasonably complete code of the matters which it covers.
2. The annotations to the Constitution (referring to various provisions of the Law) do not form part of the Constitution.
3. Annotations which state that a clause reflects a section of the Law, which is not a Replaceable Rule, mean that the clause states (as at the date of adoption of the Constitution) provisions of the *Corporations Law* which cannot be varied by the Constitution.
4. Clauses which have no annotation, or which refer to a section of the Law which is a Replaceable Rule, are provisions which the *Corporations Law* does not require and which may be varied by amendments to the Constitution from time to time.
5. This Constitution does not deal with the duties and liabilities of members of the Board and officers of the company under the general law or the *Corporations Law*.

CONSTITUTION

OF

THE NORTHERN NURSERY SCHOOL LIMITED

ACN 001 830 002

**A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE
CAPITAL**

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THE NORTHERN NURSERY SCHOOL LIMITED ACN 001 830 002

1. INTERPRETATION

1.1 Definitions

In this Constitution unless the context otherwise requires:

"**ACN**" means Australian Company Number.

"**ASIC**" means the Australian Securities & Investments Commission or any successor body.

"**Board**" means the body comprising the persons listed in clause 14.1.2 and known as the "management board" or "management committee" or such other name as the Board may determine from time to time.

"**Chairman**" means the person appointed to that position on the Board as contemplated under this Constitution.

"**company**" means The Northern Nursery School Limited ACN 001 830 002.

"**Constitution**" means this document and includes any variation or replacement of it.

"**Deputy Chairman**" means a person appointed to that position on the Board as contemplated under this Constitution.

"**Director**" means the person appointed by the Board to oversee the operation of the Preschool and the instruction of pupils and known as the "Director of Teaching" or by such other name as the Board may determine from time to time.

"**includes**" means includes without limitation.

"**joint member**" means, as the context requires, where two or more persons are admitted as a member under clause 7.6, those persons jointly and severally.

"**Law**" means the *Corporations Law* as amended or re-enacted from time to time and includes any statutory instruments issued under the Corporations Law.

"**List**" means the list of pupils enrolled in or attending the Preschool from time to time.

"**member**" means a member of the company appointed under clause 7.1 and whose name is entered in the Register.

"**Office**" means the registered office of the company.

"**Parents' Club**" means the auxiliary organisation of the Preschool known as the "Parents' Club" or its successor.

"**personal representative**" means, in respect of a member, a person who becomes entitled to membership in the company held by the member by reason of the death, mental ill health or bankruptcy of the member.

"**Preschool**" means the preschool known as The Northern Nursery School located at 41 Wyong Road Mosman, New South Wales.

"**President**" means the president of the Parents' Club from time to time.

"**Replaceable Rules**" means the replaceable rules under, or as referred to in, the Law as amended or re-enacted from time to time.

"**Register**" means the register of members to be kept pursuant to the Law.

"**Seal**" means the common seal of the company.

"**secretary**" means any person appointed to perform the duties of secretary of the company including the Secretary.

"**Secretary**" means the person appointed to that position on the Board as contemplated under this Constitution.

"**special resolution**" has the same meaning as in the Law.

"**subsidiary**" has the same meaning as in the Law.

"**Treasurer**" means the person appointed to that position on the Board as contemplated under this Constitution.

"**writing**" or "**written**" include printing, lithography, photography and other modes or reproducing or representing words in a visible form.

1.2 **Replaceable Rules**

The Replaceable Rules do not apply in respect of the company except when they are expressly stated to apply.

1.3 **Determining percentage of votes**

Where a clause of this Constitution requires the percentage of votes a member has to be worked out, that percentage must be worked out as at the midnight before the relevant event.

(This reflects various sections of the Law.)

1.4 **Written notice**

Written notice includes notice given by way of:

1.4.1 facsimile; and

1.4.2 electronic transmission.

1.5 **Member of the Board as a "director"**

For the avoidance of doubt, each person appointed as a member of the Board or who is appointed to the position of an alternate for a member of the Board and is acting in that capacity is a "director" under the Law.

1.6 **General interpretive provisions**

1.6.1 Words importing:

- (a) the singular number include the plural number and vice versa;
- (b) any gender include every other gender;
- (c) or referring to a person include corporations.

1.6.2 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

1.6.3 In this Constitution, any reference to a clause is a reference to a clause of this Constitution.

1.6.4 Headings to clauses in this Constitution are added for convenience only and do not affect interpretation.

1.6.5 Annotations to this Constitution by reference to sections of the Law or to Replaceable Rules do not form part of the Constitution.

1.6.6 Where an expression used in this Constitution is defined in the Law it has the same meaning in this Constitution unless the context otherwise requires.

1.6.7 A reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument.

1.6.8 A reference to a statutory or other body or government department that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:

- (a) that replaces it; or
- (b) to which the powers and functions relevant to this Constitution are transferred.

2. PUBLIC COMPANY LIMITED BY GUARANTEE

The company is a public company limited by guarantee and does not have share capital.

3. OBJECTS OF THE COMPANY

The objects for which the company is established are:

- 3.1 To provide preschool education and training for children in the Lower North Shore area at the Preschool;
- 3.2 To provide and maintain buildings facilities and premises in which the Preschool can be conducted;
- 3.3 To establish or acquire and carry on any branch or subsidiary preschool;
- 3.4 To purchase, buy or lease all equipment, furniture, plant, toys and other items which may be required to operate the Preschool;
- 3.5 To employ persons to operate the Preschool, insure such persons and to provide for the payment of superannuation on their behalf;
- 3.6 To sell, let, mortgage or dispose of any property of the Preschool as may be thought expedient;
- 3.7 To invest moneys not immediately required in such investments and in such manner as may from time to time be determined;
- 3.8 To accept by way of gift from the Parents' Club or any other person or entity and to apply such property for the benefit of the Preschool including to purchase, lease or otherwise acquire any property real or personal;
- 3.9 To borrow or raise money for the purposes of the Preschool's business and to mortgage and charge shares, debentures, mortgage debentures or debenture stock payable to bearer or otherwise and to secure any securities of the company by a trust deed or other assurance;
- 3.10 To join or become members of any association, company or society formed or to be formed for the advancement of and the protection of the interest of the Preschool and persons engaged in preschool teaching or to subscribe to or subsidise any such association, company or society whose objects may include such purposes;
- 3.11 To enter into partnership or amalgamate with any other association, company or society having similar objects, whether by sale, purchase or otherwise;
- 3.12 To establish or promote any other company whose objects include the acquisition and taking over of all or any of the assets and liabilities of the company and which will advance directly or indirectly the objects or interests of the company;

- 3.13 To promote preschool interests and activities within the community and to liaise with community groups in the Lower North Shore area;
- 3.14 To do all such other lawful things as may be deemed incidental or conducive to the above objects or any of them; and
- 3.15 To satisfy and do all things necessary to operate the Preschool including comply with all lawful requirements of the NSW Department of Community Services for the operation of the Preschool.

4. POWERS OF THE COMPANY

4.1 Legal capacity and powers of the company

The company has the legal capacity and powers of an individual anywhere in the world. The company also has all the powers of a body corporate, including the power to:

- 4.1.1 issue debentures whether irredeemable or redeemable;
- 4.1.2 grant a floating charge over the company's property;
- 4.1.3 arrange for the company to be registered or recognised as a body corporate in any place outside New South Wales; and
- 4.1.4 do anything that it is authorised to do under any law (including a law of a foreign country).

(This reflects section 124 of the Law.)

4.2 Company may have a common seal

- 4.2.1 The company may, but need not, have a Seal. If the company does have a Seal it must have set out on it:
 - (a) if the company has its ACN in its name - the company's name; or
 - (b) otherwise, the company's name, the expression "Australian Company Number" or "ACN" and the company's ACN.

(This reflects sections 123 and 149(1) of the Law.)

- 4.2.2 If the company has a Seal, the Board must provide for the safe custody of the Seal, which may only be used on the authority of the Board or of a committee of the Board authorised by the Board.

4.3 Agent exercising the company's power to make contracts

Subject to the operation of a law that requires a particular procedure to be complied with in relation to the contract, the company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with

the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal.

(This reflects section 126 of the Law.)

4.4 Execution of documents by the company

4.4.1 The company may execute a document without using a common seal if the document is signed by:

- (a) 2 members of the Board; or
- (b) a member of the Board and the secretary.

4.4.2 If the company has a Seal, the company may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by:

- (a) 2 members of the Board; or
- (b) a member of the Board and a secretary.

(This broadly reflects section 127 of the Law.)

5. INCOME AND PROPERTY OF THE COMPANY

5.1 Income and property to be applied towards objects

All income and property of the company must be solely applied towards the promotion of the objects of the company.

5.2 No payments to members

Subject to clause 5.3, no part of the income or property of the company may be paid by way of dividend, bonus or otherwise to the members of the company.

5.3 Payments in good faith

Nothing in this Constitution prevents the company from making payment in good faith:

- 5.3.1 of reasonable and proper remuneration to any employees of the company;
- 5.3.2 to any member of the company in relation to any contract, right or claim in which that member is interested or which arises other than by virtue of the member's membership of the company;
- 5.3.3 of reasonable interest on any money lent to the company by any member of the company; or
- 5.3.4 of reasonable or proper rent for premises let by any member to the company.

6. GUARANTEE

Each member undertakes to the company during the time of the member's membership or within one year afterwards to contribute to the assets of the company on the winding up of the company for the payment of:

- 6.1 debts and liabilities of the company contracted before the member ceased to be a member;
- 6.2 costs, charges and expenses of the winding up of the company; and
- 6.3 adjustment of the rights of the contributories amongst themselves, such amount as may be required but not exceeding \$4.

7. MEMBERSHIP

7.1 Member

A member is a person who:

- 7.1.1 is admitted as a member under clause 7.3;
- 7.1.2 agrees to be bound by the constitution; and
- 7.1.3 who has not ceased to be a member.

7.2 Eligibility to become a member

7.2.1 To be eligible to become a member, a person must:

- (a) be the parent of a child entered in the List at the date the person applies to become a member; or
- (b) be at least eighteen years of age; and
- (c) deliver an application for membership to the company in accordance with clause 7.3.2.

7.2.2 A person does not cease to be a member because the person does not retain, subsequently, eligibility for being a member under clause 7.2.1.

7.2.3 A person including a joint member may only hold one membership in the company, notwithstanding that the person may have more than one child entered in the List.

7.3 Admission as a member

7.3.1 A person eligible to be a member under clause 7.2 may, subject to this clause 7.3, apply for membership of the company.

7.3.2 Subject to clause 7.3.3 and 7.3.6, any person who applies to be a member under clause 7.3.1 must comply with the conditions or requirements as may be stipulated from time to time by the Board or approved by the members in general meeting including that the person complete and submit a written application in the form and in the manner specified from time to time by the Board signed by:

- (a) each parent of a child recorded in the List; or
- (b) where any parent of a child recorded in the List is deceased, by one parent only.

7.3.3 The company may in circumstances which it considers appropriate dispense with the requirement that each parent of children attending the school should sign the application form contemplated in clause 7.3.2.

7.3.4 Every applicant for membership of the company must sign an undertaking to be bound by the provisions of this Constitution.

7.3.5 Unless the company in general meeting otherwise determines, there will be no subscription or fees payable by members by reason only of them being members. Nothing in this clause will limit the ability of the company to seek payment from members for or in relation to the tuition or care of children at the Preschool.

7.3.6 Admission to membership will only become effective upon the passing of a resolution of the Board that the member's name be entered into the Register.

7.3.7 The Board must not unreasonably delay consideration of a resolution contemplated under clause 7.3.6.

7.3.8 Notwithstanding clause 7.3.7, the Board must no earlier than 49 days and no later than 21 days before the annual general meeting meet to consider the admission of new members.

7.3.9 The rights and privileges of a member are personal, non transferable and cease on the death of a member or on the cessation of a member's membership.

7.4 Cessation of membership

7.4.1 A member will cease to be a member if:

- (a) the member gives written notice of his, her or their resignation to the company;
- (b) at the end of the first annual general meeting following the date the member ceases to have a child entered in the List; or

- (c) the member, dies or is expelled.

7.5 Expulsion of members

- 7.5.1 If any member wilfully refuses or neglects to comply with the provisions of this Constitution or has conducted himself or herself in a way which has brought discredit upon the company the company may by resolution expel that member from the company and remove that member's name from the Register. The company may expel one joint member whilst permitting the remaining joint member or joint members to remain members.
- 7.5.2 The member in respect of which a resolution under clause 7.5.1 is proposed, must be given at least 14 days notice of the company meeting at which the resolution is to be considered and must be given an opportunity to:
 - (a) attend the meeting; and
 - (b) give a written explanation or defence in relation to the resolution proposed under clause 7.5.1.

7.6 Joint Members

- 7.6.1 The board may admit 2 or more persons as a joint member.
- 7.6.2 Where more than one parent applies to be a member under clause 7.3, the parents will be joint members.
- 7.6.3 The persons constituting the joint member may determine the order in which their names are to appear in the Register.
- 7.6.4 If the persons do not determine the order as permitted under clause 7.6.3, the company may at any time determine the order in which their names are to appear in the Register but otherwise the order is as is recorded in the Register.
- 7.6.5 The person named first in the Register is the primary joint member.
- 7.6.6 Any notice which the company is required to send to a joint member is to be taken as duly sent to each joint member if sent to the primary joint member.
- 7.6.7 The primary joint member only is entitled to vote on behalf of the joint member.
- 7.6.8 A joint member is regarded as one member, regardless of the number of persons who may constitute that joint member.
- 7.6.9 These provisions do not disentitle a person who constitutes a joint member from obtaining all documents, or copies of documents, or

information which a member is entitled to obtain under the Law from the company.

8. CALLING MEETINGS OF MEMBERS

8.1 Calling of meetings of members

The Board may call a meeting of the company's members.

(This reflects section 249C of the Law which is a Replaceable Rule.)

8.2 Calling of general meeting by Board when requested by members

8.2.1 The Board must call and arrange to hold a general meeting on the request of:

- (a) members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 members (or such different number as may be prescribed by the regulations) who are entitled to vote at the general meeting.

8.2.2 The request must:

- (a) be in writing;
- (b) state any resolution to be proposed at the meeting;
- (c) be signed by the members making the request; and
- (d) be given to the company.

8.2.3 Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

8.2.4 The Board must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

(This reflects section 249D of the Law.)

8.3 Failure of Board to call a general meeting

8.3.1 Members with more than 50% of the votes of all of the members who make a request under clause 8.2 may call and arrange to hold a general meeting if the Board do not do so within 21 days after the request is given to the company.

8.3.2 The meeting must be called in the same way, so far as is possible, in which general meetings of the company may be called. The meeting

must be held not later than 3 months after the request is given to the company.

- 8.3.3 To call the meeting the members requesting the meeting may ask the company for a copy of the Register. The company must give the members the copy of the Register within 7 days after request without charge.
- 8.3.4 The company must pay the reasonable expenses of the members incurred because the Board failed to call and arrange the meeting.
- 8.3.5 The company may recover the amount of the expenses from the Board. However, a member of the Board is not liable for the amount if they prove that they took all reasonable steps to cause the Board to comply with clause 8.2. The members of the Board who are liable are jointly and individually liable for the amount. If a member of the Board who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.

(This reflects section 249E of the Law.)

8.4 Calling of general meeting by members

- 8.4.1 Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
- 8.4.2 The meeting must be called in the same way, so far as is possible, in which general meetings of the company may be called.

(This reflects section 249F of the Law.)

8.5 Amount of notice of meetings

- 8.5.1 Subject to clause 8.5.2 at least 21 days notice must be given of a meeting of the company's members.
- 8.5.2 The company may call on shorter notice:
 - (a) an annual general meeting, if all the members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 8.5.3 A company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 8.5.4.

8.5.4 At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to:

- (a) remove an auditor under section 329 of the Law; or
- (b) remove a member of the Board under clause 14.2.2 or appoint a member of the Board in place of a member of the Board removed under that clause.

(This reflects section 249H of the Law.)

8.6 **Notice of meetings of members to members and members of the Board**

8.6.1 Written notice of a meeting of the members must be given individually to each member entitled to vote at the meeting and to each member of the Board.

(This reflects section 249J(1) of the Law.)

8.6.2 The company may give the notice of a meeting to a member:

- (a) personally;
- (b) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the member.

(This reflects section 249J(3) of the Law.)

8.6.3 A notice of meeting sent by post is taken to be given two days after it is posted. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

8.6.4 Personal service on a member will be deemed to include the deposit by the Director or a teacher employed by the company of a notice in the school case or other bag of the child of a member who is recorded in the List.

(This substitutes for section 249J(4) of the Law which is a Replaceable Rule.)

8.7 Auditor entitled to notice and other communications

The Board must give the company's auditor, if any:

- 8.7.1 notice of a general meeting in the same way that a member is entitled to receive notice; and
- 8.7.2 any other communications relating to the general meeting that a member is entitled to receive.

(This reflects section 249K of the Law.)

8.8 Contents of notice of meetings of members

A notice of a meeting of the members must:

- 8.8.1 set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- 8.8.2 state the general nature of the meeting's business;
- 8.8.3 if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- 8.8.4 if a member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (a) that the member has a right to appoint a proxy;
 - (b) whether or not the proxy needs to be a member; and
 - (c) that a member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

(This reflects section 249L of the Law.)

8.9 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resume meeting must be given in the meeting is adjourned for one month or more.

(This reflects section 249M of the Law which is a Replaceable Rule.)

8.10 Invalidity of Meetings

The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or the ASIC, declares proceedings at the meeting to be void.

(This reflects section 1322(3) of the Law.)

9. MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS

9.1 Members' resolutions

9.1.1 The following members may give the company notice of a resolution that they propose to move at a general meeting:

- (a) members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 members (or some different number as may be prescribed by the regulations) who are entitled to vote at a general meeting.

9.1.2 The notice must:

- (a) be in writing;
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the members proposing to move the resolution.

9.1.3 Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

(This reflects section 249N of the Law.)

9.2 Company giving notice of members' resolutions

9.2.1 If the company has been given notice of a resolution under clause 9.1, the resolution is to be considered at the next general meeting that occurs more than two months after the notice is given.

9.2.2 The company must give all of its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

9.2.3 The company is responsible for the cost of giving members notice of the resolution if the company receives the notice in time to send it out to members with the notice of meeting.

9.2.4 The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving members notice of the resolution if the Board do not receive the members notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

9.2.5 The company need not give notice of the resolution if:

- (a) it is more than 1,000 words long or defamatory; or
- (b) the members making the request are to bear the expenses of sending the notice out, unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

(This reflects section 249O of the Law.)

10. MEMBERS' STATEMENTS TO BE DISTRIBUTED

10.1 Grounds for statement

Members may request the company to give to all of its members a statement provided by the members making the request about:

10.1.1 a resolution that is proposed to be moved at a general meeting; or

10.1.2 any other matter that may be properly considered at a general meeting.

10.2 Who may request

The request must be made by:

10.2.1 members with at least 5% of the vote that may be cast on the resolution; or

10.2.2 at least 100 members (or such different number as may be prescribed by the regulations) who are entitled to vote at the meeting.

10.3 How request to be made

The request must be:

10.3.1 in writing;

10.3.2 signed by the members making the request; and

10.3.3 given to the company.

10.4 Copies for signing

Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

10.5 Distribution of statement

After receiving the request, the company must distribute to all of the company's members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

10.6 When company bears cost

The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to members with the notice of meeting.

10.7 When members bear cost

The members making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

10.8 When company need not comply with request

The company need not comply with the request if:

10.8.1 the statement is more than 1,000 words long or defamatory; or

10.8.2 the members making the request are responsible for the expenses of the distribution, unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

(This reflects section 249P of the Law.)

11. HOLDING MEETINGS OF MEMBERS

11.1 Purpose

A meeting of members must be held for a proper purpose.

(This reflects section 249Q of the Law.)

11.2 Time and place for meetings of members

A meeting of members must be held at a reasonable time and place.

(This reflects section 249R of the Law.)

11.3 Technology

The company may hold a meeting of its members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

(This reflects section 249S of the Law.)

11.4 Quorum

11.4.1 No business may be transacted at any general meeting unless a quorum of members entitled to vote is present at the time when the

meeting proceeds to business. A quorum is constituted by 50% of members, subject to clause 11.4.2.

For the purposes of this clause and clause 11.4.2 "member" includes a person attending as a proxy. If a person has appointed more than one proxy, only one of those proxies is to be counted in determining whether a quorum is constituted.

11.4.2 If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the member or members present constitute a quorum.

(This substitutes for section 249T of the Law which is a Replaceable Rule.)

11.5 Chairing meetings of members

11.5.1 The Chairman is to be the chair at every general meeting of the company. If the Chairman cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting then one of the Deputy Chairmen will chair the general meeting. Where there is more than one Deputy Chairman at the meeting, the members of the Board present will elect which Deputy Chairman will chair the meeting. If neither the Chairman or a Deputy Chairman are present within 15 minutes of the time appointed for holding of the meeting, the members of the Board present may elect one of their number to be the chair of the meeting but if they do not do so the members present must elect the chair of the meeting.

11.5.2 The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

(This substitutes for section 249U of the Law which is a Replaceable Rule.)

11.6 Auditor's right to be heard at general meetings

11.6.1 The company's auditor (if any) is entitled to attend any general meeting of the company.

11.6.2 The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

11.6.3 The auditor is entitled to be heard even if:

(a) the auditor retires at the meeting; or

- (b) the meeting passes a resolution to remove the auditor from office.

11.6.4 The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

(This reflects section 249V of the Law.)

11.7 **Adjourned meetings**

11.7.1 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(This reflects section 249W(1) of the Law.)

11.7.2 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

(This substitutes for section 249W(2) of the Law which is a Replaceable Rule.)

11.8 **Annual general meetings**

11.8.1 **Holding of annual general meetings**

- (a) The company must, if required by the Law, hold an annual general meeting.
- (b) Where the Law requires an annual general meeting to be held, the annual general meeting must be held at least once in each calendar year and within five months after the end of its financial year.

(See the requirements of section 250N of the Law.)

11.8.2 **Business of annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, "directors" report and auditor's report;
- (b) the election of members of the Board;
- (c) the appointment of the auditor; and
- (d) the fixing of the auditor's remuneration.

(This reflects section 250R of the Law.)

11.8.3 **Questions at annual general meetings**

- (a) The chair of an annual general meeting must allow a reasonable opportunity for members as a whole at the meeting to ask

questions about or make comments on the management of the company.

- (b) If the company's auditor or their representative is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct the audit and the preparation and content of the auditor's report.

(This reflects sections 250S and 250T of the Law.)

12. VOTING AT A MEMBERS' MEETINGS

12.1 How many votes a member has

12.1.1 On a show of hands each member has 1 vote.

12.1.2 On a poll, each member has 1 vote.

12.1.3 The chair has a casting vote in addition to any vote they have as a member.

(This substitutes for section 250E of the Law which is a Replaceable Rule. Refer also to clause 7.6 regarding joint members.)

12.2 Objections to right to vote at a meeting of members

A challenge to a right to vote at a members' meeting:

12.2.1 may only be made at the meeting; and

12.2.2 must be determined in good faith by the chair, whose decision is final.

(This substitutes for section 250G of the Law which is a Replaceable Rule.)

12.3 How voting is carried out

12.3.1 A resolution put to the vote at a members' meeting must be decided on a show of hands unless a poll is demanded.

12.3.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

12.3.3 Subject to this Constitution and the Law, resolutions of members are to be decided by simple majority of votes cast in respect of the relevant resolution.

(This substitutes for section 250J of the Law which is a Replaceable Rule.)

12.4 Matters on which a poll may be demanded

12.4.1 A poll may be demanded on any resolution proposed at a members' meeting.

12.4.2 Without limiting clause 12.5.1, a poll can be demanded on any resolution concerning:

- (a) the election of the chair of a meeting; or
- (b) the adjournment of a meeting.

12.4.3 A demand for a poll may be withdrawn.

(This reflects section 250K of the Law.)

12.5 When a poll is effectively demanded

12.5.1 At a members' meeting a poll may be demanded by:

- (a) at least 2 members entitled to vote on the resolution;
- (b) members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chair.

12.5.2 The poll may be demanded:

- (a) before a vote is taken on the proposed resolution;
- (b) before the voting results on a show of hands on the proposed resolution are declared; or
- (c) immediately after the voting results on a show of hands on the proposed resolution are declared.

(This reflects section 250L of the Law.)

12.6 When and how polls must be taken

12.6.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

12.6.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

(This substitutes for section 250M of the Law which is a Replaceable Rule.)

12.6.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

12.7 Personal representative's right to vote

A personal representative of a member may vote at any general meeting in the same manner as if the personal representative was the member, if at least 48 hours before the time of holding the meeting (or adjourned meeting), at which the personal representative proposes to vote, the personal representative has satisfied the Board of the personal representative's entitlement or the Board have previously admitted the personal representative's right to vote at such meeting.

12.8 Rules for general meetings of members

The company, subject to this Constitution and the Law, may from time to time in general meeting pass resolutions to set out rules which will apply to the conduct of members' meetings.

13. PROXIES

13.1 Who can appoint a proxy

Each member of the company who is entitled to attend and vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

(This reflects section 249X of the Law.)

13.2 Rights of proxies

A proxy appointed to attend and vote for a member has the same rights as the member:

13.2.1 to speak at the meeting, except while the member is present;

13.2.2 to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and

13.2.3 to join in a demand for a poll.

(This reflects section 249Y(1) of the Law.)

13.3 Company sending appointment forms or lists of proxies must send to all members

If the company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

13.3.1 if the member requested the form or list, the company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or

13.3.2 otherwise, the company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

(This reflects section 249Z of the Law.)

13.4 Appointing a proxy

13.4.1 An appointment of a proxy is valid if it is signed by the member making the appointment and contains the following information:

- (a) the member's name and address;
- (b) the company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

13.4.2 The chair may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 13.4.1.

13.4.3 An undated appointment is taken to have been dated on the day it is given to the company.

13.4.4 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
- (c) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
- (d) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

13.4.5 If a proxy is also a member, this clause does not affect the way that the person can cast any votes they hold as a member.

13.4.6 An appointment does not have to be witnessed.

13.4.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

(This reflects section 250A of the Law.)

13.5 Proxy documents

13.5.1 For an appointment of a proxy for a meeting of members to be effective, the following documents must be received by the company at least 24 hours before the meeting:

- (a) the proxy's appointment; and
- (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.

13.5.2 If a meeting of members has been adjourned, an appointment and any authority received by the company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

13.5.3 The company receives an appointment or an authority when it is received at any of the following:

- (a) the company's registered office;
- (b) a fax number at the company's registered office; or
- (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

(This reflects section 250B of the Law.)

13.6 **Validity of proxy vote**

13.6.1 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

(This reflects section 250C(1) of the Law.)

13.6.2 Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing member dies;
- (b) the member is mentally incapacitated;
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party.

(This substitutes for section 250C(2) of the Law which is a Replaceable Rule.)

14. **BOARD**

14.1 Composition of the Board

14.1.1 The company must have at least three but no more than 14 members of the Board (not counting alternates appointed under clause 17) of which at least two must be ordinarily resident in Australia.

(This broadly reflects section 201A of the Law).

14.1.2 Subject to clause 14.1.1, the Board will comprise all or some of the following:

- (a) the Chairman;
- (b) two Deputy Chairman;
- (c) the Secretary;
- (d) the Treasurer;
- (e) not less than three and not more than seven ordinary members of the Board;
- (f) if the President is not otherwise a member of the Board, the President; and
- (g) the Director, subject to any legal requirements which do not permit the Director to be a member of the Board.

14.2 Appointment and removal of a member of the Board

14.2.1 Board may appoint other members to the Board

The Board may appoint a person eligible pursuant to clause 14.9 as a member of the Board including to any of the positions specified in clause 14.1.2(a) to 14.1.2(e). A person can be appointed as a member of the Board in order to make up a quorum for a meeting of the Board even if the total number of members of the Board is not enough to make up a quorum. Any person so appointed must be confirmed in office at the company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a member of the Board at the end of the company's next annual general meeting.

(This substitutes for section 201H of the Law which is a Replaceable Rule.)

14.2.2 Company may remove and appoint a member of the Board

The company in general meeting may by resolution:

- (a) remove a member of the Board from office despite anything in this Constitution, any agreement between the company and the member of the Board or any agreement between any or all members and the member of the Board;

(This reflects section 203D(1) of the Law.)

(b) appoint a new member of the Board.

(This substitutes for section 201G of the Law which is a Replaceable Rule.)

(As to further provisions regarding removal see sections 203D(2) to (7) and section 203E) of the Law.)

14.2.3 Resolution for appointment

A motion for the appointment of two or more persons as members of the Board by a single resolution must not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being cast against it. However, this does not prevent the election of two or more members of the Board by ballot or poll.

(This reflects sections 225(1) and 225(6) of the Law.)

14.3 Directors over 72

A person who has turned 72 years must not be appointed as a member of the Board or of a company that is a subsidiary of the company except in accordance with the requirements of section 201C of the Law.

14.4 Interested members of the Board

14.4.1 A member of the Board may hold certain offices

A member of the Board may not hold any office or position of profit (other than that of auditor or Director) under the company or under any company promoted by the company or in which the company is a shareholder or otherwise interested.

14.4.2 A member of the Board may enter into certain contracts

Notwithstanding any rule of law or equity to the contrary, a member of the Board may contract, transact, or enter into an arrangement with the company and no such contract, transaction or arrangement entered into by or on behalf of the company or any other contract, transaction or arrangement in which a member of the Board is in any way interested is avoided or rendered voidable because of that person being a member of the Board.

14.4.3 Disclosure of material interest

A member of the Board who has a material personal interest in a matter that relates to the affairs of the company must give the other members of the Board notice of the interest unless section 191(2) of the Law says otherwise.

(This reflects section 191(1) of the Law.)

14.4.4 Voting by interested members of the Board

A member of the Board who has a material personal interest in a matter that is being considered at a meeting of the Board must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter

unless;

- (c) subclauses 14.4.5 or 14.4.6(b) allow that member of the Board to be present; or
- (d) the interest does not need to be disclosed under section 292 of the Law.

14.4.5 Approval of an interested member of the Board to vote

The member of the Board may be present and vote if members of the Board who do not have a material personal interest in the matter have passed a resolution that:

- (a) identifies the member of the Board, the nature and extent of the member of the Board's interest in the matter and its relation to the affairs of the company; and
- (b) states that those members of the Board are satisfied that the interest should not disqualify the director from voting or being present.

14.4.6 Other grounds where an interested member of the Board may vote

- (a) The member of the Board may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Law;
- (b) If there are not enough members of the Board for form a quorum for a meeting of the Board because of subclause 14.4.4(a) or 14.4.4(b), one or more of the members of the Board (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

(See the provisions of sections 195 and 196 of the Law.)

14.5 Remuneration of members of the Board

14.5.1 Subject to clauses 14.5.2 and 14.5.3, the members of the Board are not entitled to be paid for their services or reimbursed for any expenses incurred in performing their duties.

14.5.2 A member of the Board may where determined by the Board receive a special remuneration and expense reimbursement for performing extra services in and about the company's business.

14.5.3 Clause 14.5.1 will not apply to the Director to the extent that the Director is paid for his or her services as an employee of the company.

(This substitutes for section 202A of the Law which is a Replaceable Rule.)

14.6 Vacation of office

The office of a member of the Board automatically becomes vacant if the member of the Board:

14.6.1 resigns by giving written notice to the company at the Office;

14.6.2 is removed pursuant to the provisions of section 203D of the Law;

14.6.3 is removed from office in accordance with this Constitution or the Law;

14.6.4 is disqualified from managing corporations under Part 2D.6 of the Law; or

(This reflects section 203B of the Law.)

14.6.5 is absent from two or more consecutive meetings of the Board without leave of absence from the Board and the Board resolves that his or her office is vacated; or

14.6.6 in the case of the Director, the Director ceases to hold the position of Director.

14.6.7 in the case of the President who is a member of the Board solely because they are the President, if the President ceases to be the President.

14.7 Financial benefits

The company must not provide financial benefits to a member of the Board except as permitted by, and in accordance with, the provisions of the Law.

(See in particular, but not exclusively, Chapter 2E of the Law.)

14.8 Defect in appointment

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a member of the Board, or a member of a committee of the Board, or to act as a member of the Board, or that a person so appointed was disqualified, all acts done by any meeting of the Board or of a committee of Board or by any person acting as a member of the Board are valid as if the person had been duly appointed and was qualified to be a member of the Board or to be a member of the committee.

14.9 Qualification of members of the Board

14.9.1 Subject to 14.9.4, a member of the Board must be a member.

14.9.2 Subject to clause 14.9.3 and 14.9.4, a person is not eligible to be a member of the Board if the person:

- (a) is an employee of the company;
- (b) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration for their benefit;
- (c) is prohibited from being a director of a body corporate by the Law; or
- (d) has been convicted in the last 10 years of:
 - (i) an indictable offence in relation to the promotion, formation or management of a body corporate;
 - (ii) an offence involving fraud or dishonesty; or
 - (iii) any offence prescribed under the Law.

14.9.3 Subject to clause 14.10.2, a member of the Board may be re-elected and continue in office until the expiration of 24 months from the date that he or she ceases to be a member.

14.9.4 Clauses 14.9.1 and 14.9.2(a) do not apply to the Director.

14.10 Term of Office

14.10.1 Subject to clause 14.11.1, the term of office for a member of the Board:

- (a) starts at the end of the annual general meeting at which the election of that member of the Board is announced; and
- (b) ends at the end of the first annual general meeting after the annual general meeting at which the election of the member of the Board is announced.

14.10.2 At the annual general meeting to be held each year all the members of the Board must retire. Any retiring member of the Board who is qualified in accordance with clause 14.9 is eligible for re-election.

14.10.3 Clause 14.10.1 will not apply to the Director or the President.

14.11 Notification for candidate

14.11.1 Subject to clause 14.11.3, no person will be eligible for election as a member of the Board at any general meeting unless a signed written notice signifying his or her candidature to be a member of the Board or the intention of such member to propose him or her as a member of the Board is left at the Office:

- (a) at least twenty one days before the meeting; or
- (b) in the case of a person recommended for election by the Board, at least sixteen days before the meeting.

14.11.2 Subject to clause 14.11.3, notice of each and every candidate shall be given to the members of the company fourteen days prior to the meeting at which the election is to take place.

14.11.3 Where nominations for any of the positions referred to in clauses 14.1.2(a) to 14.1.2(g) have not been received as contemplated under clause 14.11.1, a person may nominate their candidate at the general meeting at which the company proposes to appoint members of the Board for the positions for which no nominations under clause 14.11.1 has been received.

14.11.4 A person who is a candidate for Chairman, Deputy Chairman, Secretary or Treasurer may also nominate to be an ordinary member of the Board. If the person is not elected as the Chairman, Deputy Chairman, Secretary or Treasurer, they are a candidate for a position as an ordinary member of the Board. where the person is elected as the Chairman, Deputy Chairman, Secretary or Treasurer, they will not be considered as a candidate for a position as an ordinary member of the Board.

15. POWERS AND DISCRETIONS OF DIRECTORS

15.1 Business of the company

15.1.1 The business of the company must be managed by or under the direction of the Board who may exercise all the powers of the company except any powers that the Law or this Constitution, require to be exercised by the company in general meeting.

15.1.2 In managing the ordinary business of the company, the Board must attempt to generate a surplus of income over expenditure (excluding abnormal or extraordinary expenditure) in each financial year of the company.

15.1.3 No resolution made by the company in general meeting invalidates any prior act of the Board or any of them which would have been valid if the resolution had not been made.

(This substitutes for section 198A of the Law which is a Replaceable Rule.)

15.2 **Appointment of attorneys**

The Board may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board), for the period and subject to such conditions as the Board think fit.

15.3 **Appointment of auditor**

The Board must appoint an auditor of the company if an auditor has not been appointed by the company in general meeting within 1 month after the day on which the company was incorporated.

(This reflects section 327(1) of the Law.)

(For other requirements see sections 327, 328 and 329 of the Law.)

15.4 **Board may execute security over the assets of the company**

If the Board or any of them or any other person becomes personally liable for the payment of any sum primarily due from the company, the Board may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the company by way of indemnity to secure the Board or persons so becoming liable from any loss in respect of such liability.

15.5 **Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the company:

15.5.1 by two members of the Board;

15.5.2 one member of the Board and the Director (if the Director is not a member of the Board); or

15.5.3 in such manner as the Board may from time to time determine.

(This substitutes for section 198B of the Law which is a Replaceable Rule.)

15.6 **Directors discretion**

Unless otherwise provided, if the Board are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

15.7 **Delegation**

15.7.1 **Power to delegate**

The Board may delegate any of their powers to:

- (a) a committee of Board; or
- (b) a member of the Board; or
- (c) an employee of the company; or
- (d) any other person.

15.7.2 Delegate to act in accordance with directions

The delegate must exercise the powers delegated in accordance with any directions of the Board.

15.7.3 Effectiveness of exercise of delegates power

The exercise of the power by the delegate is as effective as if the Board had exercised it.

15.7.4 Meetings of committees

The meetings and proceedings of a committee must be carried out in accordance with the provisions in this Constitution relating to the meetings and proceedings of Board, subject to any necessary changes and any directions made by the Board.

(This reflects section 198D of the Law.)

15.7.5 Board liable for delegate

If the Board delegate a power under clause 15.7.1, a member of the Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board itself unless exonerated under section 190(2) of the Law.

(This reflects section 190(1) of the Law.)

16. BOARD RESOLUTIONS AND MEETINGS

16.1 Circulating resolutions

16.1.1 The Board may pass a resolution without a meeting of the Board being held if all the members of the Board present in Australia entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

16.1.2 Separate copies of a document may be used for signing by members of the Board if the wording of the resolution and statement is identical in each copy.

16.1.3 The resolution is passed when the last member of the Board signs.

(This substitutes for section 248A of the Law which is a Replaceable Rule.)

16.2 Calling Board meetings

The Chairman may at any time and the Secretary on the request of two members of the Board must convene a meeting of the Board.

(This substitutes for section 248C of the Law which is a Replaceable Rule.)

16.3 Use of technology

A meeting of the Board may be called or held by telephone, facsimile, electronic mail or by using any other technology consented to by all the members of the Board. The consent may be a standing one. A member of the Board may only withdraw their consent within a reasonable period before the meeting.

(This reflects section 248D of the Law.)

16.4 Chairing Board meetings

The Chairman will chair the meetings of the Board but if at any meeting the Chairman is unable to attend or is not present within 15 minutes after the time appointed for holding the meeting then a Deputy Chairman will chair the meeting. Where there is more than one Deputy Chairman at the meeting, the members of the Board present will elect which Deputy Chairman will chair the meeting. If the Chairman or Deputy Chairman are unable to attend or are not present within 15 minutes after the time appointed for holding the meeting, the Board may elect one of their number present to chair the meeting.

(This substitutes for section 248E of the Law which is a Replaceable Rule.)

16.5 Quorum at Board meetings

16.5.1 Subject to clauses 14.4.4 and 16.5.2 a quorum for a meeting of the Board is constituted by two members of the Board.

16.5.2 The Director is not counted for the purpose of determining a quorum for the meeting of the Board.

16.5.3 The quorum must be present at all times during the meeting.

(This substitutes for section 248F of the Law which is a Replaceable Rule.)

16.6 Passing of Board resolutions

Questions arising at any meeting of the Board must be decided by a majority of votes. Each member of the Board present at the meeting has one vote. In the case of an equality of votes, the chair has a second or casting vote.

(This substitutes for section 248G of the Law which is a Replaceable Rule.)

16.7 Attendance of Director

If the Director is not a member of the Board, the Director must be notified of and may attend all meetings of the Board. If the Director is not a member of the Board, the Director may be asked his or her views on matters being considered by the Board but is not entitled to vote on any resolution of the Board.

16.8 Rules for Board Meetings

The Board, subject to this Constitution and the Law, may from time to time resolve to adopt rules which apply to the conduct of meetings of the Board.

17. ALTERNATE DIRECTORS

17.1 A member of the Board may appoint an alternate to exercise some or all of the member of the Board's powers for a specified period.

17.2 If the appointing member of the Board requests the company to give the alternate notice of Board meetings, the company must do so.

17.3 The exercise of a member of the Board's power by his or her alternate has the same effect as would the exercise of the power by the member of the Board.

17.4 The appointing member of the Board may terminate the alternate's appointment at any time.

17.5 An appointment or its termination must be in writing. A copy must be given to the company.

17.6 An alternate member of the Board automatically vacates office if the appointor vacates office as a member of the Board or terminates the alternate's appointment..

(This substitutes for section 201K of the Law which is a Replaceable Rule.)

18. TREASURER

18.1 Duties of Treasurer

The duties of the Treasurer are to:

18.1.1 prepare the accounts of the company;

18.1.2 assist and provide information to the auditor;

18.1.3 draw cheques on the company's account; and

18.1.4 undertake such activities as the Board reasonably delegates to the Treasurer.

18.2 Acting Treasurer

If there is no Treasurer, or no Treasurer capable of acting, a member of the Board authorised by the Board may undertake that act or thing required or authorised to be done by the Treasurer.

19. SECRETARY

19.1 Requirement for secretary

The company must have at least 1 secretary.

(This reflects section 204A(2) of the Law.)

19.2 Appointment of secretary

19.2.1 A secretary must be appointed by the Board.

(This reflects section 204D of the Law.)

19.2.2 Where the company in general meeting elects a person as "Secretary" as contemplated in clause 14.2.2, that person will be appointed by the Board as the secretary.

19.3 Natural person not a minor as secretary

A secretary must be a natural person who has attained the age of 18 years.

(This reflects section 204B(1) of the Law.)

19.4 Australian resident as secretary

The secretary, or 1 of the secretaries, must be a person who ordinarily resides in Australia.

(This reflects section 204A(2) of the Law.)

19.5 Acting secretary

If there is no Secretary, or no Secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the Secretary may be done by an officer authorised by the Board to act as secretary, either generally or in relation to the doing of that act or thing will act as secretary.

19.6 Terms and conditions of office of secretary

19.6.1 The Secretary holds office on the terms and conditions contained in this Constitution.

(This substitutes for section 204(F) of the Law which is a Replaceable Rule.)

20. MINUTES

20.1 Company must keep minute books

The company must keep minute books in which it records within 1 month:

20.1.1 proceedings and resolutions of meetings of the members;

20.1.2 proceedings and resolutions of meetings of the Board (including meetings of a committee of the Board);

20.1.3 resolutions passed by members without a meeting; and

20.1.4 resolutions passed by the Board without a meeting.

20.2 Minutes to be signed

The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

20.2.1 the chair of the meeting; or

20.2.2 the chair of the next meeting.

20.3 Resolution without meeting

The company must ensure that minutes of the passing of a resolution without a meeting are signed by the chair of the meeting within a reasonable time after the resolution is passed.

20.4 Location of minute books

The company must keep the minute books of the company at:

20.4.1 the Office;

20.4.2 the company's principal place of business in Australia; or

20.4.3 another place approved by the ASIC.

(This reflects section 251A of the Law.)

20.5 Inspection by members

The company must ensure that the minute books for the meetings of its members and for resolutions of members passed without meetings are open for inspection by members free of charge.

(This reflects section 251B(1) of the Law.)

20.6 Requests by members

20.6.1 A member may ask the company in writing for a copy of:

- (a) any minutes of a meeting of the company's members or an extract of the minutes; or
- (b) any minutes of a resolution passed by members without a meeting.

20.6.2 If the company does not require the member to pay for the copy, the company must send it:

- (a) within 14 days after the member asks for it; or
- (b) any longer period that the ASIC approves.

20.6.3 If the company requires payment for the copy, the company must send it:

- (a) within 14 days after the company receives the payment; or
- (b) within any longer period that the ASIC approves.

(This reflects section 251B of the Law.)

21. INSPECTION OF BOOKS

The Board may but are not required to authorise a member to inspect books of the company.

(This substitutes for section 247D of the Law which is a Replaceable Rule.)

22. INSPECTION OF ACCOUNTS

The Board may determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounting and other records of the company, or any of them, are to be opened to the inspection of members not being members of the Board, and no member (not being a member of the Board) has any right of inspecting any account or book or paper of the company, except as conferred by statute or authorised by the company in general meeting.

23. NOTICES

23.1 When notice is given

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given or the day on which the action is to be taken may be counted in calculating the period.

23.2 Notice by members of address for service

Each member must notify the company in writing of an address in Australia for service of notice. Subject to this Constitution and the Law, if the member fails to do so, the member is not entitled to any notice.

23.3 How notices are given

23.3.1 Subject to the Law and this Constitution, the company may give notice and a person may give notice to the company:

- (a) personally;
- (b) by post, to the last known address of the recipient;
- (c) by facsimile number or electronic address (if any) nominated by the recipient; or
- (d) by any other means consented to by the sender and the recipient.

23.3.2 Personal service on a member will be deemed to include the deposit by the Director or a teacher employed by the company of a notice in the school case or other bag of the child of a member who is recorded in the List.

23.4 When notices are taken to be given

A notice sent by post is taken to be given 2 days after it is posted. A notice by facsimile or other electronic means is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

24. LIABILITY OF MEMBERS

The liability of the members of the company is limited.

25. WINDING UP

25.1 If the company is wound up during the time of a member's membership or within one year afterwards, each member undertakes to contribute to the assets of the company such amount as may be required but not exceeding \$4 as set out in clause 6.

25.2 If upon the winding up or dissolution of the company, there remains after the satisfaction of all its debts and liabilities any property whatsoever, that property must not be paid or distributed among the members of the company.

25.3 All remaining property of the company under clause 25.2 must be paid and applied by the company to any entity or organisation which has objects similar to the objects of the company and rules prohibiting (except to the extent permitted under clause 4) the distribution of its assets and income to its members.

25.4 The Board must before or at the time of dissolution or winding up of the company select the institution or institutions to which property will be transferred under clause 25.3.

- 25.5 If after the dissolution or winding up of the company the members of the company have not made a selection under clause 25.4, the selection will be determined by the Council of the Municipality in which the principal school building of the Preschool is located in default of which by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.
- 25.6 If effect cannot be given to clauses 25.3 to 25.5 the property under clause 25.2 must be given to a charitable purpose.
- 25.7 Notification of dissolution or winding up of the company or the cessation by the company to operate the Preschool must be given to the Department of Community Services or its successor.

26. INDEMNITY

26.1 Indemnity against proceedings

Subject to clause 26.5, every person who is or has been a member of the Board, director, secretary or executive officer of the company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the company against any liabilities for costs and expenses incurred by that person:

26.1.1 in defending any proceedings relating to that person's position with the company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or

26.1.2 in connection with any application in relation to any proceedings relating to that person's position with the company, whether civil or criminal, in which relief is granted to that person under the Law by the court.

(See section 199A(3) of the Law.)

26.2 Indemnity against liabilities

Subject to clause 26.5, every person who is or has been a director, secretary or executive officer of the company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the company against any liability incurred by the person as such a member of the Board, director, secretary or executive officer to another person (other than the company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

(See sections 199A(1) and (2) of the Law.)

26.3 Insuring officers of the company

The company may pay a premium for a contract insuring a person who is or has been a director, secretary or executive officer of the company or its related bodies corporate against:

26.3.1 any liability incurred by that person as such a member of the Board, director, secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the company or a contravention of section 182 or 183 of the Law; and

26.3.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the company, whether civil or criminal and whatever the outcome.

(See section 199B of the Law.)

26.4 Company may make separate contracts and bring separate actions

26.4.1 The company may confirm the indemnities in clauses 26.1 and 26.2 by separate contract with, or on behalf of, one or more of the persons indemnified.

26.4.2 The indemnities given by the company in clauses 26.1 and 26.2 do not affect the right of the company to bring any demand or action against any member of the Board, director, secretary or executive officer of the company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

26.5 Directors may resolve to not indemnify

The Board may resolve that the indemnities in clauses 26.1 and 26.2 are not to apply to a specified person or class of persons and the indemnities will not apply unless the company has confirmed the indemnity under clause 26.4.1 by a contract which is in force.

26.6 Interpretation

Nothing in clauses 26.1 to 26.4 is to be taken to limit the power of the company, as permitted by the Law, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the company or its related bodies corporate.

26.7 Payments not remuneration

Any payment made by the company under clauses 26.1 to 26.3 does not constitute remuneration for the purposes of this Constitution.

27. AMENDING THIS CONSTITUTION

Subject to the Law:

27.1 By special resolution

The company may modify or repeal this Constitution or a provision of this Constitution, by special resolution.

(This reflects section 136(2) of the Law.)

27.2 Date effective

A special resolution modifying or repealing this Constitution takes effect:

27.2.1 if no later date is specified in the resolution, the date on which the resolution is passed; or

27.2.2 on a later date specified in or determined in accordance with the resolution.

(This reflects section 137 of the Law.)