



everyone's family

CONSTITUTION OF THE SMITH FAMILY

Adopted on 29 November 2017

INTRODUCTION TO THE CONSTITUTION OF THE SMITH FAMILY

This document is intended to assist in reading the Constitution. This document itself does not form a part of the Constitution of The Smith Family.

The Constitution of The Smith Family is intended to embed a governance structure that enables The Smith Family to achieve its mission in a way that is consistent with its vision, values and strategy, creating opportunities for young Australians in need by providing long-term support for their participation in education.

The Constitution provides that the company shall have Members. Up to 35 Members of The Smith Family, including the Directors, make up the Council of Governing Members, and are intended to be the guardians of The Smith Family. Governing Members should be long-term supporters of The Smith Family with a deep understanding of and passion for its mission. The role of the Council allows it to act as a circuit-breaker in the event of unresolvable conflict among the Board or between the Board and Management.

The Chairman of the Board of Directors is the Chairman of the Council in most circumstances, but the Council has the power to appoint another person as Chairman should a majority of Council members deem that prudent in any circumstance. Members of the Board of Directors are members of the Council.

The Board of Directors is the key decision-making body of The Smith Family and is responsible for its governance and management. The Board has up to 12 non-executive members, together with the Chief Executive Officer as executive Director. The Chairman of the Board is appointed by the Directors, and may serve up to two terms of four years each in that role. Directors may serve up to three consecutive terms of four years each, and may serve additional terms with the approval of the Governing Members.

The Board has four committees, Finance, Audit & Risk (“**FAR**”), Corporate Governance, Endowment Fund and People & Culture. Each committee has a Chairman, the FAR Committee Chairman shall not be the Chairman of the Board, and the Chairmen of the other three committees shall ordinarily not be the Chairman of the Board. The Board may create additional committees as required.

The Board delegates the day-to-day management of the Company to the Chief Executive Officer and management team, retaining its oversight role and the power to engage and dismiss all Company officers. The Chief Executive Officer is responsible for the appointment of the senior executive team, which includes specialist Finance, Human Resources, and other professionals, as well as such advisory groups as the CEO may require.

The company employs the services of external professionals such as independent auditors, solicitors and consultants, as may be required by law or to assist with the fulfilment of its mission.

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**CONSTITUTION OF
THE SMITH FAMILY
ACN 000 030 179**

1 PRELIMINARY

1.1 Replaceable rules

The replaceable rules referred to in the Act do not apply to the Family and are replaced by this constitution.

1.2 Definitions

The following definitions apply in this constitution except where the context indicates otherwise:

“ACNC Act” means the Australian Charities and Not-for-profits Commission Act 2012 (Cwlth).

"Act" means the Corporations Act 2001 (Cwlth) and/or the ACNC Act (as applicable).

"Board" means the Directors acting collectively under this constitution.

"Council of Governing Members" means the body of Governing Members established in accordance with **rule 5**.

"Chairperson" means the Director appointed chairperson in accordance with **rule 9.3**.

“Charitable” means charitable within:

- (a) the Charities Act 2013 (Cwlth) and other laws of the Commonwealth;
- (b) the laws of any Australian State or Territory; and
- (c) the common law.

"Chief Executive Officer" means the chief executive officer appointed from time to time under **rule 11.1** and who is also an executive Director.

"Director" means a person who is, for the time being, a director of the Family.

"Family" means The Smith Family (ACN 000 030 179).

"Family Member" means a person who is accepted as a Family Member in accordance with **rule 4**.

"Governing Member" means a Member appointed as a Governing Member in accordance with **rule 6**.

"**Member**" means a person whose name is entered in the Register as a member of the Family whether as a Family Member or a Governing Member or a member in another category of membership.

"**Objects**" means the objects for which the Family is established as set out in **rule 3(a)**.

"**Register**" means the register of Members kept as required by the Act.

"**Secretary**" means, during the term of that appointment, a person appointed as a secretary of the Family in accordance with this constitution.

1.3 Reading this Constitution with the Act

While the Family is a registered charity, the ACNC Act and the Corporations Act override any rules in this constitution which are inconsistent with either, or both, of those Acts.

1.4 Rules for interpreting this constitution

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) A reference to something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form.
- (f) Words (other than those defined in **rule 1.2**) which are defined by the Act have the same meaning in this constitution.
- (g) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

2 COMPANY LIMITED BY GUARANTEE

2.1 Limited by guarantee

The Family is a company limited by guarantee and the liability of Members is limited as provided in this document.

2.2 Member's liability limited

The liability of Members is limited and each Member undertakes to contribute to the Family's property an amount not exceeding \$1.00, if the Family is wound up while they are a Member or within one year after they cease to be a Member, for:

- (a) payment of the Family's debts and liabilities contracted before they cease to be a Member; and
- (b) of the costs, charges and expenses of winding up; and
- (c) for adjustment of the rights of the contributories among themselves.

2.3 Restriction on application of profits

All profits (if any) and other income and property of the Family must be applied in promoting the Objects and no part of them may be paid to Members, other than in accordance with **rule 2.4**.

2.4 Certain payments allowed

Rule 2.3 does not prevent the payment in good faith to an officer, employee or servant of the Family or a Member or to a firm of which an officer, employee or servant of the Family or a Member is a partner:

- (a) of reasonable and proper remuneration for services actually rendered to the Family, or reimbursement for expenses incurred by that person (other than as a Director) or firm on behalf of the Family;
- (b) for goods supplied by that person to the Family in the ordinary and usual course of business;
- (c) of interest at a rate fixed by the Directors (but not exceeding the rate for the time being charged by Australian banks for overdrawn accounts), upon money lent by that person to the Family; or
- (d) of a reasonable and proper rent for premises let by that person to the Family.

3 OBJECTS AND POWERS

- (a) The Company is predominantly established to provide direct relief of such human poverty, sickness, suffering, distress, misfortune, disability, destitution or helplessness as arouses compassion in the community unrestrained by sectarian belief or political ideology for the betterment of the quality of life of the disadvantaged in the community.
- (b) In furtherance of **rule 3(a)**, the powers of the Company include to:

- (i) establish and operate a fund, authority or institution for the furtherance of the particular objects of the fund, authority or institution which are consistent with the Charitable, educational and benevolent objects of the Family; and
 - (ii) do all other things as may be incidental or ancillary to the attainment of these Objects, including exercising all the powers of a company under the Act.
- (c) The Company may only pursue Charitable purposes associated with its Objects (as set out in **rule 3(a)**), and must do so predominantly in Australia.

4 FAMILY MEMBERSHIP

4.1 Number of Family Members

The number of Family Members is unlimited.

4.2 Initial Family Members

The initial Family Members shall be those persons who were members or life members of the Family as at the date of the adoption of this constitution.

4.3 Application for membership

Any applicant for membership of the Family as a Family Member must submit an application to the Board, which must be in conformity with any requirement of the Board from time to time and by applying for membership the applicant agrees that, if their application is accepted by the Board under **rule 4.4(b)**, the applicant shall be bound by this constitution and by any code or rules of conduct or any other standard prescribed from time to time by the Board.

4.4 Board to review application

At the next Board meeting after receipt by the Board of an application for membership as a Family Member, the Board must consider that application and in its absolute discretion and without giving any reason may:

- (a) require the applicant to provide such further information relating to the applicant as the Board determines;
- (b) accept or reject the application.

4.5 Notification

The Family must as soon as practicable give each applicant a notice stating whether the applicant has been admitted or rejected.

4.6 Commencement of membership

An applicant becomes a Family Member only if the Board has determined to admit the applicant.

4.7 Application fee

The Board may from time to time, as it considers appropriate, impose such reasonable amount as it determines as an application fee.

4.8 Annual fee

The Board may, from time to time, if it considers appropriate require payment by some or all categories of Family Membership of such reasonable annual fee or fees as the Board may determine. The Board may determine the way in which the annual fee is to be collected.

4.9 Categories of Membership

- (a) The Family shall have life membership and standard membership as categories of Family Membership.
- (b) The Board may, from time to time, establish other categories of membership and may make appropriate provisions for the granting of such membership and the conditions of such membership.

5 COUNCIL OF GOVERNING MEMBERS

5.1 Membership of the Council of Governing Members

The Council of Governing Members shall be constituted by the Governing Members.

5.2 Role of Council of Governing Members

The role of the Council of Governing Members shall be to:

- (a) advise and consult with the Board as to the operations of the Family in accordance with the Objects of the Family; and
- (b) undertake such other tasks as the Board may from time to time reasonably request.

5.3 Obligations of the Council of Governing Members

The Council of Governing Members shall meet at least annually at such time and place as the Board may direct provided that if practicable one such annual meeting shall be held on the same date as the annual general meeting of Members.

5.4 Council of Governing Members Procedure

The Council of Governing Members must conform to any regulations that may be imposed on it by the Board but otherwise it may determine the conduct of its own proceedings.

6 GOVERNING MEMBERS

6.1 Constitution of Governing Members

- (a) The maximum number of Governing Members shall be 35;
- (b) The Governing Members shall be constituted as follows:
 - (i) the Directors from time to time;
 - (ii) those persons appointed by the Board in accordance with **rule 6.2**; and
 - (iii) up to six Family Members elected by the Family Members in accordance with the provisions of rule 6.4
- (c) Where a Governing Member resigns or is removed in accordance with **rule 6.3(a)** or **rule 6.4**, that person shall remain a Member in the category of membership determined by the Board until such time as they cease to be a Member in accordance with **rule 7.1**.

6.2 Appointment of Governing Members by Board

Subject to **rule 6.1** and **rule 6.3**, the Board shall, appoint such persons as the Board considers appropriate to be Governing Members.

6.3 Removal and reappointment of Governing Members by Board

- (a) Governing Members appointed by the Board in accordance with **rule 6.1(b)(ii)** and **rule 6.2** shall remain Governing Members until the earlier of:
 - (i) 5 years from the date of their most recent appointment as a Governing Member;
 - (ii) such time as the Governing Member provides written notice to the Family that they no longer wish to be a Governing Member; or
 - (iii) such time as the Board resolves to revoke the appointment of the individual as a Governing Member.
- (b) A Governing Member appointed by the Board in accordance with **rule 6.1(b)(ii)** and **6.2** and whose term as Governing Member has expired in accordance with **rule 6.3(a)(i)** may be re-appointed by the Board in its sole discretion.

6.4 Election of Family Members to Council of Governing Members by Family Members

The Family Members shall nominate and elect up to six Family Members to the Council of Governing Members. The procedure for election is to be in accordance with the rules established by the Board. Such rules shall provide that:

- (a) the Family Member is eligible for election;
- (b) any Family Member is entitled to nominate any other Family Member;

- (c) the Board shall prior to the annual general meeting of Members close nominations and advise the Family Members of the identity of the nominees;
- (d) should there be less nominations received than the number of vacancies, the Family Members nominated shall be declared elected without need for any ballot and that any places which are not filled shall remain vacant; and
- (e) if the Family Members nominate more than the number of vacancies, there shall be an election by the Family Members to determine the successful appointees to the Council of Governing Members.

6.5 Chairperson of the Council of Governing Members

- a) The Chairperson shall be the chairperson of the Council of Governing Members, unless the Governing Members have otherwise resolved at a meeting of the Council of Governing Members to appoint a person (other than the Chairperson) as chairperson of the Council of Governing Members.
- b) If the chairperson of the Council of Governing Members is not present at the time for which a meeting of the Council of Governing Members is called or is unwilling to act, the Governing Members present must elect a Governing Member present to chair the meeting.

7 TERMINATION OF MEMBERSHIP

7.1 Ceasing to be a Member

A person ceases to be a Member on:

- (a) resignation;
- (b) termination of the person's membership by the Directors or by the Family in general meeting in accordance with this constitution;
- (c) in the case of a natural person:
 - (i) death;
 - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
 - (iii) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
- (d) in the case of a body corporate:
 - (i) being dissolved or otherwise ceasing to exist;
 - (ii) having a liquidator or provisional liquidator appointed to it; or
 - (iii) being insolvent.

7.2 Resignation of membership

A Member may resign their membership at any time by giving the Family notice in writing to that effect and will be deemed to have given such notice where the Member fails to pay any annual fee set by the Board in accordance with **rule 4.8** within 24 months after it falls due.

7.3 Failure to comply with this document or standards

If the Family by special resolution (whether or not on the recommendation of a Member or the Board) determines that a Member has:

- (a) wilfully or recklessly breached a provision of this document; or
- (b) engaged in conduct that, in the opinion of the Family, is prejudicial to the interests of the Family,

in addition to all other remedies available to the Family, the Family may direct the Board to censure, fine, suspend or expel that Member.

7.4 Money owing on termination

Any money owed by a Member to the Family at the time the Member ceases to be a Member:

- (a) remains owing to the Family; and
- (b) becomes payable immediately upon the Member ceasing to be a Member.

8 DIRECTORS

8.1 Board

- (a) The maximum number of Directors must not exceed twelve non-executive Directors and the Chief Executive Officer as executive Director.
- (b) With the exception of the Chief Executive Officer, Directors shall be appointed for a term of four years.
- (c) The Chief Executive Officer is a Director and is not subject to **rules 8.1(b)**, or **8.7**.

8.2 Directors elected by the Governing Members

At any general meeting at which a Director retires or otherwise vacates office, the Governing Members may by resolution fill the vacated office by electing a person to that office.

8.3 Appointment of Directors - vacancies

Subject to the maximum number of Directors for the time being fixed under **rule 8.1** not being exceeded:

- (a) the Governing Members by resolution at a general meeting of the Family; or

- (b) the Board (except during a general meeting),

may appoint a person to be a Director to fill a Board vacancy. A Director appointed by the Board under **rule 8.3(b)** holds office until the conclusion of the next annual general meeting of the Family but is eligible for election at that meeting.

8.4 Director being a Member

A Director must be a Member of the Family.

8.5 Cessation of Director's appointment

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) becomes an insolvent under administration;
- (b) is disqualified from managing corporations under the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings for a continuous period of six months without leave of absence from the Board;
- (e) resigns by notice in writing to the Family;
- (f) ceases to be a Member of the Family; or
- (g) is removed from office under **rule 8.6**.

8.6 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Family by ordinary resolution may remove a Director from office.

8.7 Term of appointment

- (a) The term of appointment of a Director shall be four years starting from the Directors most recent appointment at a general meeting of the Family.
- (b) At the end of each term, a Director must, subject to **rule 8.7(c)** stand for re-election at the next annual general meeting of the Family.
- (c) A Director who has served three consecutive terms shall not be eligible for re-election unless the Governing Members elect to waive this requirement for that particular Director.

8.8 Election of Directors

No person is eligible for election as a Director unless the person is recommended for election by the Board and the person has provided the Family with a consent in accordance with the requirements of the Act.

9 POWERS OF THE BOARD

9.1 Powers generally

Except as otherwise required by the Act, any other applicable law, or this constitution, the Board:

- (a) has the power to manage the business of the Family and to carry into effect all or any of the Objects; and
- (b) may exercise every right, power or capacity of the Family to the exclusion of the Members.

9.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed, or treated by **rule 16** as passed, at a meeting of the Board; or
- (b) in accordance with a delegation of the power under **rule 11**.

9.3 Appointment of Chairperson

The Directors must from time to time, appoint one of their number to be the Chairperson.

9.4 Term of Chairperson

The Chairperson shall be appointed for a term of four years provided that no person may be appointed as Chairperson for more than two consecutive four year terms.

10 EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Family. The Family may execute, accept or endorse negotiable instruments only in the manner for the time being decided by the Board.

11 CHIEF EXECUTIVE OFFICER

11.1 Appointment of Chief Executive Officer

The Board shall appoint the Chief Executive Officer.

11.2 Powers of Chief Executive Officer

- (a) The Board may delegate any of the powers of the Board to the Chief Executive Officer:
- (i) on the terms and subject to any restrictions the Board decides; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board,
- and may revoke the delegation at any time.
- (b) Without affecting the generality of the foregoing the Chief Executive Officer shall:
- (i) be the chief executive officer of the Family;
 - (ii) insofar as the resources available permit, implement the policies of the Board;
 - (iii) prepare an annual report for the Board on the work and activities of the Family during the preceding 12 months ending on 30 June in each year; and
 - (iv) exercise such other functions duties and responsibilities as may be determined from time to time by the Board.

11.3 Termination of appointment of Chief Executive Officer

The appointment of a Chief Executive Officer terminates:

- (a) at the expiration of a fixed term if so defined in a written contract; or
- (b) if the Board removes the Chief Executive Officer from that office (which, subject to any contract between the Family and the Chief Executive Officer, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

11.4 Remuneration of Chief Executive Officer

Subject to any contract with the Family, the Board shall fix the remuneration of the Chief Executive Officer and that remuneration may consist of salary, bonuses, or any other element but must not be a commission on or a percentage of profits or operating revenue.

11.5 Chief Executive Officer is a Director

The Chief Executive Officer of the Family is a member of the Board.

12 DELEGATION OF BOARD POWERS

12.1 Delegation to committee or attorney

In addition to its powers to delegate in **rule 11.2**, the Board may delegate any of its powers:

- (a) to a committee which may also include persons who are not Members; or
- (b) to an attorney;

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to the provisions of the Act.

12.2 Terms of delegation

A delegation of powers under **rule 12.1** may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

12.3 Powers of attorney

A power of attorney under **rule 12.1** may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

12.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

13 DIRECTOR'S DUTIES AND INTERESTS

13.1 Compliance with the Act

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
- (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in rule 3
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest;
- (f) to ensure that the financial affairs of the company are managed responsibly; and

not to allow the company to operate while it is insolvent.

13.2 Scope of Director's Duties

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Family's auditor, or being a Member or creditor, of any corporation (excluding the Family) or partnership other than the auditor; or
- (b) entering into any agreement with the Family.

13.3 Voting by interested Director

Each Director must comply with the Act in relation to being present, or voting at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to the Act:

- (a) A Director of a public company who has a material personal interest in a matter that is being considered at a meeting of Directors must not be present while the matter is being considered at the meeting or vote on the matter unless the Directors who do not have a material personal interest in the matter have passed a resolution that:
 - (i) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Family; and
 - (ii) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- (b) Subject to **rule 13.3(a)** above:
 - (i) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, whether the Family enters into an agreement or proposed agreement in which that Director has an interest;
 - (ii) the Family may enter into the agreement and the Director may participate in the execution of any relevant document by or on behalf of the Family; and
 - (iii) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters involving the agreement.

14 DIRECTOR'S REMUNERATION

14.1 Remuneration of Directors

The Family must not pay any Director any amount except as expressly provided for in **rule 2.4** or **14.2**.

14.2 Expenses of Directors

The Family may pay a Director all reasonable out-of-pocket expenses incurred by the Director in carrying out that Director's duties as a Director.

15 OFFICER'S INDEMNITY AND INSURANCE

15.1 Indemnity

To the maximum extent permitted by law, the Family indemnifies any current or former Director or other officer of the Family out of the assets of the Family against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) reasonable legal costs incurred in defending or resisting or otherwise in connection with proceedings, whether civil or criminal or of an administrative or investigatory nature against the person or in which the person becomes involved because of that capacity; and
- (c) reasonable legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Family.

15.2 Insurance

To the maximum extent permitted by law, the Family may enter into, and pay a premium for, a contract insuring a person who is or has been a Director or other officer of the Family against liability incurred by the person in that capacity, including a liability for legal costs.

15.3 Contract

The Family may enter into an agreement with a Director or other officer of the with respect to the matters referred to in **rules 15.1** and **15.2** and including provisions relating to rights of access to the books of the Family.

16 BOARD MEETINGS

16.1 Convening Board meetings

Three Directors may at any time request the Secretary to convene a Board meeting.

16.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

16.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other manner permitted by the Act. A

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

16.4 Chairing Board meetings

The Chairperson shall chair meetings of the Board. If the Chairperson is not present at the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

16.5 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is three Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication of the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by the Act, the Board must resolve the basis on which Directors are treated as present.

16.6 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution, the Chairperson shall have a second or casting vote.

16.7 Procedural rules

The Board may adjourn and, subject to the constitution, otherwise regulate its meetings as it decides.

16.8 Written resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is treated as having been passed at a Board meeting at the time when the last Director signs.

16.9 Additional provisions concerning written resolutions

For the purpose of **rule 16.8**:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a fax or e-mail message containing the text of the document expressed to have been signed by a Director and sent to the Family is a document signed by that Director at the time of its receipt by the Family.

16.10 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or Member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or

- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

16.11 Excessive vacancies

The continuing members of the Board may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number necessary for a quorum of the Directors, the continuing member or members may act only for the purpose of increasing the number of members of the Board to the number so fixed.

17 MEETINGS OF MEMBERS

17.1 Annual general meeting

The Family may hold an annual general meeting.

17.2 Calling meetings of Members

The Board:

- (a) may at any time; and
- (b) must when required by the Act,

convene a meeting of Members.

17.3 Governing Members have power to convene a general meeting

Subject to the Act, any ten Governing Members have the power to convene a general meeting.

17.4 Notice of meeting

Subject to **rule 17.6**, at least 21 days' written notice of a meeting of Members must be given individually to each Member (entitled to vote at the meeting), to each Director and to the auditor (if any). However, in the case of an annual general meeting, in addition to each Director and the auditor, written notice is to be given to each Member (whether or not they are entitled to vote).

The notice of meeting must comply with the Act or otherwise be in a form that is satisfactory to the Board and may be given in any manner permitted by the Act or that is otherwise satisfactory to the Board.

17.5 Calculation of period of notice

In computing the period of notice for a general meeting, both the day on which the notice is given and the day of the meeting convened by it are to be disregarded.

17.6 Short notice

Subject to any requirements of the Act:

- (a) if the Family has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or

- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

17.7 Postponement or cancellation

Subject to the Act, the Board may postpone or cancel a meeting of Members or change the place for a meeting by written notice individually to each person entitled to be given notice of the meeting.

17.8 Fresh notice

If a meeting of Members is postponed or adjourned for more than one month, the Family must give new notice of the resumed meeting.

17.9 Technology

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

17.10 Accidental omission

The accidental omission to give the notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

17.11 Changing the constitution

A resolution to modify this constitution must be approved by 75% of the Governing Members provided that neither **rule 6.4** nor this **rule 17.11** may be modified except by resolution of 75% of the Members.

17.12 Directors and Governing Member entitled to notice

Directors and Governing Members are entitled to receive notice of and attend all general meetings and all separate meetings of any class of Members of the Family and are entitled to speak at those meetings.

18 PROCEEDINGS AT MEETINGS OF MEMBERS

18.1 Member present at meeting

If a Governing Member has appointed a proxy or attorney or (in the case of a Governing Member which is a body corporate) a representative to act at a meeting of Members, that Governing Member is taken to be present at a meeting at which the proxy, attorney or representative is present.

18.2 Quorum

The quorum for a meeting of Members is three Governing Members.

In determining whether a quorum is present, each Governing Member attending in person, by proxy, attorney or Representative is to be counted, except that:

- (a) where a Governing Member has appointed more than one proxy or attorney, only one is to be counted; and
- (b) where an individual is attending both as a Governing Member and as a proxy or attorney, that individual is to be counted only once.

18.3 Quorum not present

If a quorum is not present within 30 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members pursuant to the Act, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before them, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

18.4 Chairing meetings of Members

The Chairperson may also chair meetings of Members. If:

- (a) there is no Chairperson; or
- (b) the Chairperson is not present at the time for which a meeting of Members is called or is not willing to chair the meeting,

the Governing Members present must elect a Governing Member or Director present to chair the meeting.

18.5 Attendance by auditor

The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting, which concerns the auditor in the capacity of auditor.

18.6 Adjournment

Subject to **rule 17.7**, the Chairperson of a meeting of Members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

18.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

19 PROXIES, ATTORNEYS AND REPRESENTATIVES

19.1 Appointment of proxies

A Governing Member may appoint not more than two proxies to attend and act for the Governing Member at meetings of Members. An appointment of proxy must be made by written notice to the Family:

- (a) that complies with the Act; or
- (b) in any other form and mode that is, and is signed or acknowledged by the Governing Member in a manner, satisfactory to the Board.

If a Governing Member appoints two proxies and the appointment does not specify the proportion or number of the Governing Member's vote each proxy may exercise half of those votes.

19.2 Member's attorney

A Governing Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of the Members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

19.3 Deposit of proxy forms and powers of attorney

An appointment of a proxy or power of attorney is not effective for a particular meeting of Members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Family at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

19.4 Corporate representatives

A Governing Member that is a body corporate may appoint an individual to act as its representative at meetings of Members as provided under the Act.

19.5 Standing appointments

A Governing Member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a Member.

19.6 Suspension of proxy's or attorney's powers if Member present

A proxy or attorney has no power to act for a Governing Member at a meeting at which the Governing Member is present:

- (a) in the case of an individual, in person; or

- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a Governing Member at a meeting at which the Governing Member is present by attorney.

19.7 Priority of conflicting appointments of attorney or representative

If more than one attorney or representative appointed by a Governing Member is present at a meeting of Members and the Family has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to paragraph (a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

19.8 More than two current proxy appointments

An appointment of proxy by a Governing Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Family receives a further appointment of proxy from that Governing Member which would result in there being more than two proxies of that Governing Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

19.9 Continuing authority

An act done at a meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing Governing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up;
- (c) revokes the appointment or the authority under which the appointment was made by a third party; or
- (d) transfers the share to which the appointment relates,

unless the Family has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

20 ENTITLEMENT TO VOTE

20.1 Number of votes

Subject to the Act and **rules 19** and **20.2**, a Governing Member has one vote. The Chairperson of a meeting of Members does have a second or casting vote in the event of equality of votes.

20.2 Voting restrictions

If:

- (a) the Act requires that a Governing Member does not vote on a resolution, or that votes cast by a Governing Member be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that

that Governing Member has no right to vote on that resolution and the Family must not count any votes purported to be cast by that Governing Member. If a proxy purports to vote in a way or in circumstances that contravene the Act, the vote is invalid and the Family must not count it but, in respect of a poll, **rule 21.3(c)** applies.

20.3 Objections to right to vote

A Governing Member may challenge a person's right to vote at a meeting of Members. A challenge:

- (a) may only be made at the meeting; and
- (b) must be decided by the Chairperson, whose decision is final.

21 HOW VOTING IS CARRIED OUT

21.1 Method of voting

A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under **rule 21.2** either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the Chairperson's declaration of a decision on a show of hands is final.

21.2 Demands for a poll

A poll may be demanded on any resolution except a resolution concerning the election of the Chairperson of a meeting by:

- (a) a Governing Member entitled to vote on the resolution; or
- (b) the Chairperson.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

21.3 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to **rule 21.3(c)** in the manner that the Chairperson of the meeting directs;

- (b) in all other cases, the poll must be taken at the time and place and, subject to **rule 21.3(c)**, in the manner that the Chairperson of the meeting directs;
- (c) votes which the Act requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

22 RESOLUTIONS WITHOUT MEETINGS

22.1 Written resolutions

If the Family has only one Member, the Family may pass a resolution without a general meeting being called or held if the resolution is set out in a document signed in the manner set out in the Act or otherwise in a manner satisfactory to the Board.

22.2 Signature of resolutions

The Family may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a Member in a manner satisfactory to the Board as being signed by that Member.

23 SECRETARY

23.1 Appointment and removal of Secretary

The Board may appoint one or more individuals to be a Secretary of the Family either for a specified term or without specifying a term.

23.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

23.3 Removal from office

Subject to any contract between the Family and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

24 MINUTES

24.1 Minutes to be kept

The Board must cause minutes of the following to be kept:

- (a) proceedings and resolutions of meetings of the Members and Governing Members;

- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under **rule 12**);
- (d) resolutions passed by Members without a meeting;
- (e) resolutions passed by Directors without a meeting; and
- (f) notices given under **rule 17**.

24.2 Minutes must be signed

The Directors must ensure that minutes of meetings of Members and Governing Members or Board meetings are signed within a reasonable time after the meeting by:

- (a) the Chairperson of the meeting, or
- (b) the Chairperson of the next meeting.

24.3 Minutes of passed resolution

The Directors must ensure that minutes of the passing of a written resolution under **rule 16.8** or **22.1** are signed by a Director within a reasonable time after the resolution is passed.

24.4 Minutes as evidence

A minute recorded and signed in accordance with the Act or **rules 24.2** and **24.3** is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

24.5 Inspection of minute books

The Family must allow Members to inspect and must provide copies of the minute books for the meetings of Members and for resolutions of Members passed without meetings in accordance with the Act or otherwise in a manner, time and place determined by the Board.

25 COMPANY SEALS

25.1 Common seal

The Board:

- (a) may decide whether or not the Family has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under the Act.

25.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with the Act.

25.3 Fixing seals to documents

The fixing of a common seal or any duplicate seal to a document must be witnessed:

- (a) by two Directors;
- (b) by one Director and either the Secretary or another person authorised by the Board; or
- (c) by any other signatures or in any other way (including the use of facsimile signatures) authorised by the Board.

26 ACCOUNTS AND AUDIT

26.1 Family to keep accounts

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

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited in accordance with the Act,

and must allow a Director to inspect those records at all reasonable times.

26.2 Financial reporting

If required by the Act, the Board must cause the Family to prepare a financial report and a Directors' report that comply with that Part and must report to Members in accordance with the Act.

26.3 Audit

Unless excluded by the Act from being required to have the financial report audited, the Board must cause the Family's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by the Act.

26.4 Conclusive reports

Audited financial reports laid before the Family in general meetings are conclusive except as regards errors notified to the Family within three months after the relevant general meeting. If the Family receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

26.5 Inspection of financial records and books

Subject to **rule 24.5** and the Act, a Member who is not a Director does not have any right to inspect any document of the Family except as authorised by the Board or by a resolution of Members.

26.6 Retention of Records

- (a) The Family must keep written records that correctly record its operations.
- (b) The Family must retain its records for at least seven years.
- (c) The Directors must take reasonable steps to ensure that the Family's records are kept safe.

27 NOTICES

27.1 Notices by Family

A notice is properly given by the Family to a person if it is:

- (a) in writing signed on behalf of the Family (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person;
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

27.2 Overseas Members

A Member whose registered address is not in Australia may notify the Family in writing of an address in Australia to which notices may be sent. The Family is not obligated to forward correspondence of any kind to an overseas address.

27.3 When notice is given

A notice to a person by the Family is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5.00pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and

- (b) if it is sent by mail:
 - (i) within Australia - three (3) business days after posting; or
 - (ii) to a place outside Australia - five (5) business days after posting.

A certificate in writing signed by a Director or Secretary of the Family stating that a notice was sent, is conclusive evidence of service.

27.4 Business days

For the purposes of **rule 27.3**, a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent is a business day.

27.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

27.6 Notice to "lost" Members

If:

- (a) on two or more consecutive occasions notice served on a Member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Family under **rule 27.2**,

the Family may give effective notice to that Member by exhibiting the notice at the Family's registered office for at least 48 hours.

28 BY-LAWS, RULES AND REGULATIONS

The Board shall have power from time to time to make such by-laws, rules and regulations not inconsistent with the constitution as in the opinion of the Board are necessary and desirable for the proper control, administration and management of the Family's operations, finances, affairs, interests, effects and property as to the contributions, duties, obligations and responsibilities of the Members and to amend or rescind from time to time any such by-laws, rules or regulations.

29 ESTABLISHMENT AND OPERATION OF PUBLIC FUND

If the Family establishes a separate Public Fund in accordance with the power in **Rule 3(b)(i)**, the Family must ensure that:

- (a) the Public Fund is only to be used in furtherance of the Family's Objects;
- (b) a separate bank account be maintained for the Public Fund with clear accounting procedures and that gifts made to the Public Fund are kept separate from other funds operated by the Family;

- (c) receipts for donations to the Public Fund must be issued in the name of the Public Fund and show its Australian Business Number;
- (d) the public must be invited to contribute to the Public Fund;
- (e) the rules relating to the transfer of money or property to Members of the Family, (rules 2.3, 2.4 and 30) also apply to the money or property of the Public Fund; and
- (f) the Public Fund must be managed by the members of a Committee, a majority of whom have a degree of responsibility to the general community.

30 WINDING UP

- (a) At the first occurrence of:
 - (i) the winding up of the Family; or
 - (ii) the Family ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the Income Tax Assessment Act 1997;

any surplus assets of the Family must be transferred to a fund (including any endorsed fund operated by the entity), authority or institution gifts to which can be deducted under Division 30 of the Income Tax Assessment Act 1997.

- (b) The identity of the fund, authority or institution must be decided by the Board of the Family.
- (c) Where in respect of a fund, authority or institution section 30-15 of the Income Tax Assessment Act 1997 provides that gifts to it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a transfer under this clause to that fund, authority or institution must be made in accordance with or subject to those conditions.