

**CONSTITUTION OF  
AUSTRALIAN DOCTORS  
FOR AFRICA PTY LTD**

17<sup>th</sup> February 2011

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## CONSTITUTION OF AUSTRALIAN DOCTORS FOR AFRICA PTY LTD

### 1. PRELIMINARY

#### 1.1 Objects of the Company

Within its overall object of being a charitable institution, the fundamental object of the Company is to carry on work to relieve suffering caused by poverty, illness, injury and/or lack of education in countries declared by the Minister of Foreign Affairs to be developing countries.

In striving to achieve its objects, the Company may:

- 1.1.1 As a non-government organisation, in conjunction with other non-government agencies and agencies, institutions and organisations involved in developing, aiding, assisting and working with communities in developing countries worldwide, undertake development activities, including the provision of medical, nursing and allied health services, especially orthopaedic surgery, to treat patients, screen populations and train health professionals;
- 1.1.2. Seek to improve the well being of the members of the communities described in Rule 1.1.1 (“the Communities”), without favouritism or discrimination by way of race, religion, culture or political persuasion;
- 1.1.3 Fund medical visits to the Communities by personnel from Australia or elsewhere, including the cost of medical supplies and equipment, transport, accommodation, meals and other travel costs;
- 1.1.4 Implement development programs to improve social systems and networks within the Communities;
- 1.1.5 Help with the food, shelter, educational, health and medical requirements of the members of the Communities;
- 1.1.6 Establish a Relief Fund to actively seek and accept grants, donations, gifts, legacies and bequests for the above objects and activities;
- 1.1.7 Organise, promote and pay for (or underwrite) fundraising events and activities; and
- 1.1.8 Solicit financial and non-financial support for the objects and activities of the Company from members of the general public in the form of donations, fundraising, membership, sponsorship or patronage.

#### 1.2 Application of income and property

Subject to rule 10.2, the Company must apply its income and property solely towards promoting the objects of the Company as stated in rule 1.1. No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

#### 1.3 Replaceable rules

The replaceable rules referred to in section 141 do not apply to the Company and are replaced by the rules set out in this document.

## 1.4 Definitions

The following definitions apply in this document.

"**Alternate**" means an alternate Director appointed under rule 4.1.

"**Appointor**" in relation to an Alternate, means the Director who appointed the Alternate.

"**Board**" means the Directors acting collectively under this document.

"**Company**" means the company named at the beginning of this document whatever its name is for the time being.

"**Director**" means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

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

"**Managing Director**" means a managing director appointed under rule 7.1.

"**member**" means a person whose name is entered in the Register as a member of the Company.

"**ordinary resolution**" means a resolution of members other than a special resolution.

"**Register**" means the register of members kept as required by sections 168 and 169.

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

"**special resolution**" has the meaning given by section 9.

"**charity**" means any establishment, organisation, association, corporation the trustees of any trust and any other person, institution or entity established wholly for Charitable Purposes which include without limitation, any school, college, university or other place of education or any funds or authorities or institutions as described in or recognised by Division 30 of the *Income Tax Assessment Act*.

"**Charitable Purposes**" means and includes the relief of poverty, the relief of the needs of the aged, the relief of sickness or distress, the advancement of education and other purposes beneficial to the general community including the international community.

"**Income Tax Assessment Act**" means the *Income Tax Assessment Act 1997* (Commonwealth) as amended.

"**Relief Fund**" or "**Fund**" means the public fund established pursuant to the provisions of Annexure "A".

## 1.5 Charitable Purposes

This company is a special purpose company as defined by Regulation 2A (d) of the Corporation (Fees) Regulations, meaning that the company must:

1.5.1 Pursue charitable purposes only and apply its income in pursuing those purposes;

1.5.2 Not make distributions to its members and pay fees to its directors; and

1.5.3 Require its directors to approve all other payments made to them.

## 1.6 Interpretation of this document

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

A reference to:

- (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, 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.

A singular word includes the plural, and vice versa.

A word which suggests 1 gender includes the other genders.

If a word is defined, another part of speech has a corresponding meaning.

If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.

A power to do something includes a power, exercisable in the like circumstances to revoke or undo it.

A reference to a power is also a reference to authority or discretion.

A reference to something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form.

Words (other than "**remuneration**" and those defined in rule 1.4) which are defined by the Law have the same meaning in this document.

A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Law.

## 2. MEMBERSHIP

### 2.1 Categories of Membership

The Members of the Company are:

2.1.1 Those people who become Members of the Company on its registration,



- 2.1.2 The shareholders of the Company,
- 2.1.3 The Ordinary Members as recorded in the register of Members, and
- 2.1.4 The Members of any other category of membership established by the Board from time to time.

Unless otherwise resolved by the Board, a Member is an Ordinary Member.

## **2.2 Application for Membership**

A person who wants to become a Member must:

- 2.2.1 Be interested in and agree to support the Company's Objects as stated in this Constitution,
- 2.2.2 Agree to abide by this Constitution,
- 2.2.3 Meet any other membership criteria as resolved by the Board from time to time,
- 2.2.4 Complete and sign an application in such form as may be prescribed by the Board, and
- 2.2.5 Pay any joining fee and/or annual subscription as fixed by the Board from time to time, at the same time that they lodge their application.

## **2.3 Admission to Membership**

- 2.3.1 At the next meeting of the Board after the date on which an application for membership has been received by the Company, the Board shall either accept the application (including accepting the application subject to such additional conditions as it may impose) or reject the application.
- 2.3.2 The Board may reject the application for no reason or for whatever reason it decides.
- 2.3.3 A person whose application for membership is unconditionally accepted by the Board becomes a member of the Company from the date on which their application is accepted and continues to be a Member until the date on which their membership ceases in accordance with Rule 2.4.
- 2.3.4 A person whose application for membership is accepted by the Board subject to any additional conditions becomes a Member of the Company from the date on which those conditions have been fully satisfied and continues to be a Member until the date on which their Membership ceases in accordance with Rule 2.4.

## **2.4 Ceasing to be a Member**

- 2.4.1 A Member may resign from the Company by giving written notice to the Board to that effect. A Member who resigns ceases to be a Member on the date on which the Company receives their notice of resignation.
- 2.4.2 The Board may terminate a Member's membership by passing a resolution to that effect. The Board may terminate a Member's membership for no reason or for whatever reason it decides.
- 2.4.3 A Member whose membership is terminated by a resolution of the Board ceases to be a Member on the date on which that resolution is passed.

2.4.4 The Members may terminate a Member's membership by passing a resolution to that effect by a majority of two-thirds of those present at any validly constituted meeting of Members. A Member whose membership is terminated by a resolution of the Members ceases to be a Member on the date on which that resolution is passed.

## 2.5 **Register of Members**

The Secretary shall maintain a Register of Members recording:

2.5.1. The names of all Members,

2.5.2 The class of membership to which each Member belongs,

2.5.3 The date on which they became Members,

2.5.4 The amount of any fees payable by them and the date of payment of any fees paid by them,

2.5.5 The receipt number for any such payment received by the Company,

2.5.6 The amount of any donation made by the Member,

2.5.7 The date on which any Member ceased to be a Member,

2.5.8 Such other information as the Secretary may from time to time decide.

## 2.6 **Membership Fees**

The Board may resolve to:

2.6.1 Set an amount which a proposed member must pay by way of initial joining fee as a condition of new membership ("joining fee"),

2.6.2 Set an amount which a Member must pay by way of an annual subscription as a condition of new or continuing membership ("subscription")

2.6.3 Charge Members a fee for a service or services to be supplied by the Company to such Members as avail themselves of that service or services ("service fees"),

2.6.4 Set a different amount or rate of joining fee, subscription and service fees for different classes of Members

2.6.5 Waive any or all of the fees and subscriptions payable by a Member or class of Members.

## 2.7 **Membership Rights**

In addition to any other rights conferred on Members of the Company, a Member has the right to be sent notice of, attend and cast one vote per motion at the Company's Annual General Meeting and at any other duly convened Member's meeting.

## 2.8 **No Claim**

A person relinquishes any claim they may have had against or rights to any assets and funds of the Company on and from the date on which they cease to be a Member.

A person who has ceased to be a Member has no right to a refund or partial refund of any fees, subscriptions, donations or other money which the Member has paid to the Company.

### **3 DIRECTORS**

#### **3.1 Number of Directors**

The Company must have at least 2 Directors and, until otherwise decided by ordinary resolution, not more than 10 Directors.

#### **3.2 No Membership qualification**

A Director need not be a member.

#### **3.3 Appointment by the Board**

Subject to this document, section 201E and to the number of Directors for the time being fixed under rule 3.1 not being exceeded, the Board may appoint a person to be a Director at any time except during a general meeting. Any Director so appointed:

3.3.1 automatically retires at the next annual general meeting and is eligible for re-election by that general meeting; and

3.3.2 is not taken into account in deciding the rotation or retirement of Directors or the number of them to retire under rule 3.6 at that general meeting.

#### **3.4 Election by general meeting**

Subject to this document, section 201E and to the number of Directors for the time being fixed under rule 3.1 not being exceeded, the Company may elect Directors by ordinary resolution. A Director appointed to replace one removed from office under rule 3.10 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

#### **3.5 Eligible candidates**

The Company in general meeting cannot validly elect a person as a Director unless:

3.5.1 the person retires under rule 3.3, 3.4 or 3.6 and seeks re-election;

3.5.2 the Board recommends the appointment; or

3.5.3 at least 10 business days before the meeting at which the relevant resolution will be considered, the Company receives both:

i) a nomination of the person by 2 members (other than the person); and

ii) consent to act as a Director signed by the person.

The Company must notify members of every candidate for election as a Director at least 7 days before the relevant general meeting.

### **3.6 One third of Directors retire annually**

At each annual general meeting:

3.6.1 one third (or if that is not a whole number, the whole number nearest to one third) of the Directors who are not:

- i) appointed, and required to retire, under rule 3.3;
- ii) Directors who vacate office under section 201C;
- iii) a Managing Director;
- iv) Directors only because they are Alternates; and

3.6.2 subject to rule 7.2 any Director who would, if that Director remained in office until the next annual general meeting, have held that office for more than 3 years,

must retire from office and are eligible for re-election.

### **3.7 Selection of Directors to retire**

Subject to rule 3.4, the Directors who retire under rule 3.6 are those who have held office the longest since last being elected or appointed. If 2 or more Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

### **3.8 Time of retirement**

A Director's retirement under rule 3.3 or 3.6 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

### **3.9 Cessation of Director's appointment**

A person automatically ceases to be a Director if the person:

- 3.9.1 is not permitted by the Law (or an order made under the Law) to be a director;
- 3.9.2 becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- 3.9.3 becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- 3.9.4 fails to attend Board meetings (either personally or by an Alternate) for a continuous period of 3 months without leave of absence from the Board;
- 3.9.5 resigns by notice in writing to the Company; or
- 3.9.6 is removed from office under rule 3.10.

### **3.10 Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company by ordinary resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D.

### **3.11 Too few Directors**

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

3.11.1 to appoint Directors up to that minimum number;

3.11.2 to convene a meeting of members; and

3.11.3 in emergencies.

## **4 ALTERNATE DIRECTORS**

### **4.1 Appointment of Alternates**

Subject to rule 3.2, a Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

### **4.2 Notice of Board meetings**

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

### **4.3 Obligations and entitlements of Alternates**

An Alternate:

4.3.1 may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;

4.3.2 if also a Director, has a separate right to vote as Alternate;

4.3.3 if Alternate for more than 1 Appointor, has a separate right to vote in place of each Appointor;

4.3.4 when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and

4.3.5 is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

### **4.4 Termination of appointment**

The Appointor may at any time revoke the appointment of a person as an Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

4.4.1 the Appointor ceases to be a Director; or

4.4.2 an event occurs which would cause the Alternate to cease to be a Director under rule 3.9 if the Alternate were a Director.

#### **4.5 Appointments and revocations in writing**

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

### **5 POWERS OF THE BOARD**

#### **5.1 Powers generally**

Except as otherwise required by the Law, any other applicable law or this document, the Board:

5.1.1 has power to manage the business of the Company; and

5.1.2 may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

#### **5.2 Exercise of powers**

A power of the Board can be exercised only:

5.2.1 by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or

5.2.2 in accordance with a delegation of the power under rule 7 or 8.

### **6 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 Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

### **7 MANAGING DIRECTOR**

#### **7.1 Appointment and power of Managing Director**

The Board may appoint 1 or more Directors to be a Managing Director either for a specified term (but not for life) or without specifying a term.

The Board may delegate any of the powers of the Board to a Managing Director:

7.1.1 on the terms and subject to any restrictions the Board decides; and

7.1.2 so as to be concurrent with, or to the exclusion of, the powers of the Board,

and may revoke the delegation at any time.

This rule does not limit rule 8.2.

## **7.2 Retirement and removal of Managing Director**

A Managing Director is not:

7.2.1 required to retire; or

7.2.2 taken into account in determining the number of Directors to retire,

by rotation under rule 3.6 but (subject to any contract between the Company and that Managing Director) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.

## **7.3 Termination of appointment of Managing Director**

The appointment of a Managing Director terminates if:

7.3.1 the Managing Director ceases for any reason to be a Director; or

7.3.2 the Board removes the Managing Director from the office of Managing Director (which, subject to any contract between the Company and the Managing Director, the Board has power to do)

whether or not the appointment was expressed to be for a specified term.

# **8 DELEGATION OF BOARD POWERS**

## **8.1 Power to delegate**

The Board may delegate any of its powers as permitted by section 198D.

## **8.2 Power to revoke delegation**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

## **8.3 Terms of delegation**

A delegation of powers under rule 8.1 may be made:

8.3.1 for a specified period or without specifying a period; and

8.3.2 on the terms and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

## **8.4 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 document which regulate the meetings and proceedings of the Board.

## **8.5 Supporters of ADFA**

8.5.1 The Board shall establish an association called the Supporters of ADFA.

8.5.2 The constitution of the Supporters of ADFA shall be as set out in Annexure B.

8.5.3 The Board shall exercise its powers of delegation to the management committee of the Relief Fund subject to the rules set out in the constitution of the Supporters of ADFA

## 9 DIRECTOR'S DUTIES AND INTERESTS

### 9.1 Compliance with duties under the Law

Each Director must comply with sections 180 to 183.

### 9.2 Director not disqualified from holding other offices etc

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

9.2.1 holding any office or place of profit or employment other than that of the Company's auditor;

9.2.2 being a member or creditor of any corporation (including the Company) or partnership other than the auditor;

9.2.3 entering into any agreement with the Company; or

9.2.4 receiving remuneration of travel expenses, transport, accommodation and meal expenses incurred during the provision of medical services in developing countries.

### 9.3 Disclosure of interests

Each Director must comply with section 191 and any relevant general law principles in relation to disclosure of the Director's interests.

### 9.4 Director interested in a matter

Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

9.4.1 a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;

9.4.2 the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;

9.4.3 the Director may retain benefits under the transaction even though the Director has the interest; and

9.4.4 the Company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under rule 9.3, paragraph (c) applies only if it is disclosed before the transaction is entered into.

### 9.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

9.5.1 fails to make a disclosure required by rule 9.3; or



9.5.2 is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement in breach of section 195.

## **9.6 Obligation of secrecy**

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

9.6.1 in the course of duties as an officer of the Company;

9.6.2 by the Board or the Company in general meeting; or

9.6.3 by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

## **9.7 Director to give information to Company**

Each Director must comply with section 205C.

# **10 DIRECTORS' REMUNERATION**

## **10.1 Directors' not to receive remuneration**

The Company must not:

10.1.1 appoint a Director to any salaried office of the Company or any office of the Company paid by fees; or

10.1.2 pay or give a Director remuneration except of travel expenses, transport, accommodation and meal expenses incurred during the provision of medical services in developing countries.

## **10.2 Remuneration for services rendered**

Nothing in this document prevents the payment in good faith of remuneration to any officer or employee of the Company or to any member in return for:

10.2.1 any services actually rendered by them to the Company;

10.2.2 goods supplied by them in the ordinary and usual way of business;

10.2.3 the payment of reasonable interest on money borrowed from any member; or

10.2.4 reasonable rent for premises leased by any member to the Company.

# **11 OFFICERS' INDEMNITY AND INSURANCE**

## **11.1 Indemnity**

Subject to and so far as permitted by Law:

11.1.1 the Company may to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company

or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and

11.1.2 the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, "**Liability**" means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

## **11.2 Insurance**

Subject to the Law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

## **11.3 Former officers**

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

## **11.4 Deeds**

Subject to the Law, without limiting a person's rights under this rule 11, the Company may enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 11 on any terms and conditions that the Board thinks fit.

# **12 BOARD MEETINGS**

## **12.1 Convening Board meetings**

A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting. Two Board meetings must be held each calendar year.

## **12.2 Notice of Board meeting**

The convenor of each Board meeting:

12.2.1 must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to:

i) each Director who is in Australia; and

ii) each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Board meetings to be given to that Alternate or whose Appointor is not given notice due to being outside Australia; and

12.2.2 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.

### **12.3 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 way permitted by section 248D. 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 2 or more places, at the place where the chairman of the meeting is located.

### **12.4 Chairing Board meetings**

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairman of Directors or the chairman is not present within 15 minutes after 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.

### **12.5 Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is 2 Directors and a quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for more than 1 Appointor may only be counted once toward a quorum. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

### **12.6 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 matter is decided in the negative.

### **12.7 Procedural rules**

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

### **12.8 Written resolution**

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

### **12.9 Additional provisions concerning written resolutions**

For the purpose of rule 12.8:

12.9.1 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;

12.9.2 signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;

12.9.3 signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and

12.9.4 a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

### **12.10 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:

12.10.1 there was a defect in the appointment of the person; or

12.10.2 the person was disqualified from continuing in office, voting on the resolution or doing the thing.

## **13 MEETINGS OF MEMBERS**

### **13.1 Annual general meeting**

The Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year as required by section 250N.

### **13.2 Calling meetings of members**

A meeting of members:

13.2.1 may be convened at any time by the Board or a Director; and

13.2.2 must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

### **13.3 Notice of meeting**

Subject to rule 13.4, at least 21 days' written notice of a meeting of members must be given individually to:

13.3.1 each member (whether or not the member is entitled to vote at the meeting);

13.3.2 each Director; and

13.3.3 to the auditor.

The notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

### **13.4 Short notice**

Subject to sections 249H(3) and (4):

13.4.1 if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or

13.4.2 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.

### **13.5 Postponement or cancellation**

Subject to sections 249D(5) and 250N, the Board may:

13.5.1 postpone a meeting of members;

13.5.2 cancel a meeting of members; or

13.5.3 change the place for a general meeting

by written notice given individually to each person entitled to be given notice of the meeting.

### **13.6 Fresh notice**

If a meeting of members is postponed or adjourned for 1 month or more, the Company must give new notice of the resumed meeting.

### **13.7 Technology**

The Company may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

### **13.8 Accidental omission**

The accidental omission to give 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.

## **14 PROCEEDINGS AT MEETINGS OF MEMBERS**

### **14.1 Member present at meeting**

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

### **14.2 Quorum**

The quorum for a meeting of members is 2 members. Each individual present may only be counted once toward a quorum.

### **14.3 Quorum not present**

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

14.3.1 if called as a result of a request of members under section 249D, the meeting is dissolved; and

14.3.2 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 then, 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.

#### **14.4 Chairing meetings of members**

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

14.4.1 there is no Director who the Board has appointed to chair Board meetings for the time being; or

14.4.2 the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

#### **14.5 Attendance at general meetings**

14.5.1 Every member has the right to attend all meetings of members.

14.5.2 Every Director has the right to attend and speak at all meetings of members.

14.5.3 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.

#### **14.6 Adjournment**

Subject to rule 13.6, the chairman of a meeting of members at which a quorum is present:

14.6.1 may; and

14.6.2 must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

#### **14.7 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.

### **15 PROXIES, ATTORNEYS AND REPRESENTATIVES**

#### **15.1 Appointment of proxies**

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company:

15.1.1 that complies with section 250A(1); or

15.1.2 in any other form and mode that is, and is signed or acknowledged by the member in a manner, satisfactory to the Board.

#### **15.2 Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

### **15.3 Deposit of proxy forms and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

15.3.1 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

15.3.2 in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company 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 meeting is resumed.

### **15.4 Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

### **15.5 Standing appointments**

A 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.

### **15.6 Suspension of proxy or attorney's powers if member present**

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

15.6.1 in the case of an individual, in person; or

15.6.2 in the case of a body corporate, by representative.

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

### **15.7 Priority of conflicting appointments of attorney or representative**

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

15.7.1 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

15.7.2 subject to rule 0, an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

### **15.8 More than 1 current proxy appointment**

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than 1 proxy of that 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.

## **15.9 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 member:

15.9.1 dies or becomes mentally incapacitated;

15.9.2 becomes bankrupt or an insolvent under administration or is wound up; or

15.9.3 revokes the appointment or the authority under which the appointment was made by a third party,

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

## **16 ENTITLEMENT TO VOTE**

### **16.1 Number of votes**

Each member has 1 vote.

### **16.2 Casting vote of chairman**

The chairman of a meeting of members does not have a casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.

### **16.3 Decision on right to vote**

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

## **17 HOW VOTING IS CARRIED OUT**

### **17.1 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 17.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

### **17.2 Demands for a poll**

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

17.2.1 at least 5 members entitled to vote on the resolution; or

17.2.2 the chairman.

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



### **17.3 When and how polls must be taken**

If a poll is demanded:

- 17.3.1 if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 17.3.3, in the manner that the chairman of the meeting directs;
- 17.3.2 in all other cases, the poll must be taken at the time and place and, subject to rule 17.3.3 in the manner that the chairman of the meeting directs;
- 17.3.3 votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- 17.3.4 a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- 17.3.5 the result of the poll is the resolution of the meeting at which the poll was demanded.

## **18 SECRETARY**

### **18.1 Appointment of Secretary**

The Board:

- 18.1.1 Must appoint at least 1 individual; and
- 18.1.2 may appoint more than 1 individual,  
to be a Secretary either for a specified term or without specifying a term.

### **18.2 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.

### **18.3 Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

- 18.3.1 is not permitted by Law (or an order made under the Law) to be a secretary of a company;
- 18.3.2 becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- 18.3.3 becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- 18.3.4 resigns by notice in writing to the Company; or
- 18.3.5 is removed from office under rule 18.4.

### **18.4 Removal from office**

Subject to any contract between the Company 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.

## **18.5 Secretary to give information to Company**

A Secretary must comply with section 205C.

## **19 MINUTES**

### **19.1 Minutes must be kept**

The Board must cause minutes of:

19.1.1 proceedings and resolutions of meetings of the Company's members;

19.1.2 the name of Directors present at each Board meeting or committee meeting;

19.1.3 proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 8);

19.1.4 resolutions passed by Directors without a meeting; and

19.1.5 disclosures made and notices given under rule 9,

to be kept in accordance with sections 191, 192 and 251A.

### **19.2 Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

### **19.3 Inspection of minute books**

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

## **20 COMPANY SEALS**

### **20.1 Common seal**

The Board:

20.1.1 may decide whether or not the Company has a common seal; and

20.1.2 is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

### **20.2 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 section 123.

### **20.3 Fixing seals to documents**

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

20.3.1 by 2 Directors;

20.3.2 by 1 Director and 1 Secretary; or

20.3.3 by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

## 21 ESTABLISHMENT OF A RELIEF FUND

### 21.1 Company must establish a fund

The Board must establish a fund for the purpose of accepting grants, donations, gifts, legacies and bequests in accordance with the Rules set out in Annexure "A" and as provided herein.

### 21.2 Rules and Objects

The rules and objects of the Relief Fund:

21.2.1 must not conflict with the objects of the Company in rule 1.2;

21.2.2 must include an intention to invite the public to contribute to the Relief Fund; and

21.2.3 are to be set out in writing and adopted by a resolution of the Board and signed by the chairman for the purposes of identification.

### 21.3 Separate bank account

All monies and property consisting of donations, gifts, legacies and bequests to the Relief Fund must be kept separate from the other funds of the Company. The Board must open a bank account and cause financial records to be kept for this purpose.

### 21.4 Tax status

The Board must do all things reasonably necessary to ensure that the Relief Fund is, and remains, eligible for endorsement as a deductible Relief recipient under Division 30 of the Tax Act and as a charitable institution or fund under Division 50 of the Income Tax Assessment Act 1997.

## 22 FINANCIAL REPORTS AND AUDIT

### 22.1 Company must keep financial records

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

22.1.1 correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and

22.1.2 would enable true and fair financial statements to be prepared and audited,

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

### 22.2 Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 no later than the deadline set by section 315.

### **22.3 Audit**

The Board must cause the Company'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 are regulated by sections 324 to 331 inclusive and 1278, 1280 and 1289.

### **22.4 Conclusive reports**

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

### **22.5 Inspection of financial records and books**

Subject to rule 19.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

## **23 VARIATION OF CONSTITUTION**

### **23.1 Variation by special resolution**

This constitution can only be modified or repealed in accordance with section 136 of the Law.

### **23.2 Restrictions on variation**

A modification or repeal of this constitution is only valid if the modification or repeal does not alter the objects of the Company set out in clause 1.2.

## **24 WINDING UP**

If the Company is wound up, any surplus property remaining after the full settlement of all debts and liabilities incurred by the Company must be distributed to such funds authorities or institutions having purposes similar to the purposes of the Company and which, in the reasonable opinion of the Board, is a fund, authority or institution which is or will be endorsed by the Commissioner of Taxation or a Deputy Commissioner of Taxation as a fund, authority or institution referred to in section 30-15 of the Tax Act.

## 25 NOTICES

### 25.1 Notices by Company

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

25.1.1 in writing signed on behalf of the Company (by original or printed signature);

25.1.2 addressed to the person to whom it is to be given; and

25.1.3 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; or
- iv) sent by electronic message to the electronic address (if any) nominated by that person.

### 25.2 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

### 25.3 When notice is given

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

25.3.1 if it is delivered personally or sent by fax or electronic message:

- i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
- ii) after 5.00 pm (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

25.3.2 if it is sent by mail:

- i) within Australia - 3 business days after posting; or
- ii) to a place outside Australia - 7 business days after posting.

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

### 25.4 Business days

For the purposes of rule 25.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

### 25.5 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.

## 25.6 Notices to "lost" members

If:

25.6.1 on 2 or more consecutive occasions a 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

25.6.2 the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 26.2

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

This rule ceases to apply if the member gives the Company notice of a new address.

## **ANNEXURE "A": RELIEF FUND - RULES**

This Annexure "A" forms part of the Constitution of Australian Doctors for Africa Pty Ltd ("ADFA") and words defined in the Constitution have the same meaning in this Annexure.

### **1. Establishment of Fund**

By this Annexure ADFA establishes a Relief Fund, as it is the intention of ADFA that the general public will make gifts to the Fund, as recognition that the general public does make gifts to the Fund and that the Fund will be managed by persons having a degree of responsibility to the community as a whole.

### **2. Rules & Objects**

The Rules of the Fund are set out in this Annexure and the Objects in Rule 1.2 of the Constitution.

### **3. Bank Account**

ADFA will establish a separate bank account into which all gifts to the Fund together with the income derived therefrom will be deposited. The account will be named "Australian Doctors for Africa Relief Fund".

### **4. Receipts**

Receipts for gifts made to the Fund will be issued by ADFA. These receipts will provide the following information:

- a) the name of the Fund on behalf of ADFA;
- b) that the receipt is for a gift to the Fund; and
- c) the Australian Business Number of ADFA.

### **4. Public Invited to Contribute**

ADFA will invite the general public to make gifts to the Fund for the purpose of carrying out the objects of ADFA.

### **5. Committee of Management**

The Fund will be managed by a Committee of Management, the members of which having a degree of responsibility to the general community by reason of their occupation or standing in the community.

### **6. Winding Up**

In accordance with clause 25 of the Constitution, on the winding up of the Fund all remaining assets after all liabilities have been satisfied must be distributed to a fund, authority or institution gifts to which are deductible under Item 1 of the Table in Section 30-15 of the *Income Tax Assessment Act*.

### **7. ATO to be advised of changes**

The Australian Taxation Office will be advised of any changes to this Annexure or the Constitution of which it forms part.

## **ANNEXURE "B": Constitution of the Supporters of ADFA**

### **1. PRELIMINARY**

The Supporters of ADFA is a voluntary association established for the purpose of providing support for the activities of Australian Doctors for Africa Pty Ltd (the Company).

### **2. MEMBERSHIP**

#### **2.1 Categories of Membership**

The members of the Association are those people who are:

- 2.1.1 board members of the Company (the Board);
- 2.1.2 shareholders of the Company; or
- 2.1.3 recorded in the register of members of the Association.

#### **2.2 Application for Membership**

A person who wants to become a member must:

- 2.2.1 be interested in and agree to support the objects as stated in the Constitution of the Company,
- 2.2.2 meet any other membership criteria as resolved by the Board from time to time,
- 2.2.3 complete and sign an application in such form as may be prescribed by the Board, and
- 2.2.4 pay any joining fee and/or annual subscription as fixed by the Board from time to time, at the same time that they lodge their application.

#### **2.3 Admission to Membership**

- 2.3.1 At the next meeting of the Board after the date on which an application for membership has been received by the Association, the Board shall either accept the application (including accepting the application subject to such additional conditions as it may impose) or reject the application.
- 2.3.2 The Board may reject the application for no reason or for whatever reason it decides.
- 2.3.3 A person whose application for membership is unconditionally accepted by the Board becomes a member of the Association from the date on which their application is accepted and continues to be a member until the date on which their membership ceases in accordance with Rule 2.4.
- 2.3.4 A person whose application for membership is accepted by the Board subject to any additional conditions becomes a member of the Association from the date on which those conditions have been fully satisfied and continues to be a Member until the date on which their membership ceases in accordance with Rule 2.4.
- 2.3.5 The persons who are currently recorded on the register of members of the Company shall automatically be recorded on the register of members of the Association.



## 2.4 **Ceasing to be a Member**

2.4.1 A member may resign from the Association by giving written notice to the Board to that effect. A member who resigns ceases to be a member on the date on which the Board receives their notice of resignation.

2.4.2 The Board may terminate a member's membership by passing a resolution to that effect. The Board may terminate a member's membership for no reason or for whatever reason it decides.

2.4.3 A member whose membership is terminated by a resolution of the Board ceases to be a member on the date on which that resolution is passed.

2.4.4 The members may terminate a member's membership by passing a resolution to that effect by a majority of two-thirds of those present at any validly constituted meeting of members. A member whose membership is terminated by a resolution of the members ceases to be a member on the date on which that resolution is passed.

## 2.5 **Membership Fees**

The Board may resolve to:

2.6.1 set an amount which a proposed member must pay by way of initial joining fee as a condition of new membership ("joining fee"),

2.6.2 set an amount which a member must pay by way of an annual subscription as a condition of new or continuing membership ("subscription")

2.6.3 charge members a fee for a service or services to be supplied by the Association to such Members as avail themselves of that service or services ("service fees"),

2.6.4 waive any or all of the fees and subscriptions payable by a member.

## 3 **MEMBERSHIP RIGHTS**

### 3.1 **Attendance at AGMs**

A member has the right to receive 21 days' notice of and attend the Company's Annual General Meeting and to vote on appointments to the management committee of the Company (the Management Committee), being a committee established pursuant to the Board's powers of delegation under section 8 of the Company's constitution.

### 3.2 **Appointments to the Management Committee**

3.2.1 Any person appointed by the Board as member of the Management Committee after the date of the last Annual General Meeting of the Company automatically retires at the end of Company's next Annual General Meeting

3.2.2 The candidates for election as members of the Management Committee will be:

3.2.2.1 Those persons who have retired under rule 3.2.1;

3.2.2.2 Any person in relation to whom at least 14 days before the Annual General Meeting at which the relevant resolution will be considered, the Board receives both:

- i) a nomination of the person by 2 members (other than the person); and
- ii) consent to act as a member of the Management Committee signed by the person,

provided that the candidate must be a person having a degree of responsibility to the general community by reason of their occupation or standing in the community.

3.2.3 The Board must notify members of every candidate for election as a member of the Management Committee at least 7 days before the relevant Annual General Meeting.

### **3.3 Removal of members of the Management Committee**

3.3.1 Any 5 members may send a written proposal to the Board at least 14 days before the next Annual General Meeting that a member of the Management Committee be removed from office.

3.3.2 The Board must notify members of any proposal received under rule 3.3.1 at least 7 days before the relevant Annual General Meeting.

3.3.3 Members of the Management Committee in relation to whom a proposal has been notified under rule 3.3.2 may be removed from office on a resolution to that effect passed by a two thirds majority of those present or entitled to vote by proxy.

## **4 MEETINGS OF MEMBERS**

### **4.1 Convening meetings**

A meeting of members shall be convened by the Board whenever requested to do so in writing signed by at least 5 members.

### **4.2 Notice of meeting**

At least 7 days' written notice of a meeting of members must be given individually to each member.

### **4.3 Chairing meetings**

If the Board has appointed a Director to chair Board meetings, that Director shall also chair meetings of members. If:

4.3.1 there is no Director who the Board has appointed to chair Board meetings for the time being; or

4.3.2 the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member to chair the meeting.

### **4.4 Voting by proxy**

4.4.1 A member may appoint a proxy to attend and vote on behalf of a member at an Annual General Meeting of the Company or at a meeting of members.

4.4.2 An appointment of a proxy is not effective for a meeting unless written notice of appointment signed by the appointor is received by the Company at least 48 hours before the meeting commences.

4.5 **Voting at meetings**

Unless provided elsewhere in this constitution, resolutions at meetings of members and resolutions to appoint members of the Management Committee at Annual General Meetings of the Company shall be passed by a simple majority.