



CONSTITUTION

The Winston Churchill Memorial Trust
ABN 71 622 563 935 “Company”
A company limited by guarantee

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1 Definitions and interpretation

1.1 Definitions

In this Constitution unless the contrary intention appears:

Chief Executive Officer means a person appointed under Part 12.

Committee means a committee of Directors constituted under clause 10.6.

Company means The Winston Churchill Memorial Trust ABN 71 622 563 935.

Constitution means this constitution as amended from time to time, and a reference to a clause is a reference to a clause of this Constitution.

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

Director means a person holding office as a director, and where appropriate includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Life Member means a Member admitted under clause 4.3

Member means a person entered in the register of members as a member of the Company and includes a Life Member.

National Chairman means the Director elected to that position under Part 7.

National President means the Director elected to that position under Part 7.

Part means a Part of this Constitution.

Registered Office means the registered office of the Company.

Representative means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

Secretary means a person appointed under Part 13 as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Tax Act means the *Income Tax Assessment Act 1997* (Cth).

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(meaning not limited)** a reference to the words “include”, “including”, “for example” or “such as”, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (e) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (f) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (g) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;

- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (j) **(currency)** a reference to \$ is a reference to the lawful currency of Australia.

1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

1.4 Headings and Parts

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into Parts as indicated by its Contents.

1.5 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2 Objects of Company

The objects of the Company are:

- (a) to perpetuate and honour the memory of Sir Winston Churchill through the awarding of Churchill Fellowships (**Fellowships**). Fellowships may be awarded to Australian citizens engaged in any field for either of the following purposes:
 - (i) to enable Australian citizens to travel overseas to study, train or conduct research to further their knowledge for the benefit of the Australian community; or
 - (ii) to enable Australian citizens from any external territory under the control of the Commonwealth of Australia to study, train or conduct research within Australia or elsewhere overseas to further their knowledge for the benefit of the Australian community;
- (b) to maintain, increase and apply the financial reserves (corpus) of the Company in a balanced way so as to achieve the objectives described in clause 2(a);
- (c) to accept any gifts, endowments or bequests made to the Company with or without conditions and to act in accordance with conditions attached to any gift, endowment or bequest that the Company accepts provided that the Company shall only deal with any property which is subject to any trust in such manner as is allowed by law and having regard to such trusts;
- (d) to make known and further the objectives of the Company by the production and distribution of papers, journals, other publications and by advertising;
- (e) to employ and engage staff, contractors and consultants whose services may be deemed necessary or desirable for the purpose of the operations of the Company;

- (f) to disseminate the knowledge gained from the Fellowships to the Australian community either by publishing the Fellowship reports on the Company's website and/or any other means as may be chosen by the Company or, subject to approval by the Company, those who have been awarded Fellowships; and
- (g) to do all other things as may be incidental or ancillary to the attainment of these objects.

3 Income and property of Company

3.1 Application of income and property for objects only

The profits (if any), other income and property of the Company, however derived, must be applied solely towards the promotion of the objects of the Company as set out in Part 2 or invested with a view to future application towards the promotion of the objects of the Company set out in Part 2.

3.2 No dividend, bonus or profit paid to Members

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise.

3.3 Payments by Company in good faith

Subject to clauses 8.1, 8.2 and 8.3, clause 3.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner:

- (a) of remuneration for services to the Company;
- (b) for goods supplied in the ordinary course of business;
- (c) of interest at a rate not exceeding the rate fixed for the purposes of this clause by the Company in general meeting on money borrowed from an officer of the Company or a Member; or
- (d) of reasonable rent for premises let by an officer of the Company or a Member.

3.4 Charitable Collections Act

Funds raised by means of a collection within the meaning of the Charitable Collections Act 2003 (ACT) and corresponding legislation in other jurisdictions (as applicable) must be maintained in accordance with those Acts.

4 Membership

4.1 Classes of Members

The Members are divided into the following classes:

- (a) Directors' class; and
- (b) Life Members' class.

4.2 Directors' class

A Director remains a Member of the Directors' class, subject to:

- (a) continuing to hold office as a Director; and
- (b) this Constitution.

4.3 Life Members' class

- (a) A Director or a Life Member may nominate a natural person for admission as a Life Member by submitting to the Secretary a nomination that complies with the form, if any, prescribed by the Directors.
- (b) The person nominated for admission as a Life Member under clause 4.3(a) must sign the nomination submitted by the Director or Life Member. By signing the nomination, the person being nominated for admission as a Life Member agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.
- (c) The Directors must consider and resolve whether or not to accept each nomination under this clause 4.3 and, within a reasonable time after making a decision, give the nominee a notice which states whether the person has been accepted as a Life Member. The Directors are not required to give reasons for not accepting a nomination for admission as a Life Member.
- (d) A person is admitted as a Life Member when the person's nomination is accepted under clause 4.3(c).
- (e) Notwithstanding any other provision of this clause 4.3, a person who has been appointed by the Directors as a "life member" prior to the adoption of this Constitution shall continue as a Life Member under this Constitution.

4.4 Member to notify changes

A Member must promptly notify the Company of any change in the details with respect to that Member which are recorded in the register of Members.

4.5 Directors may create and vary classes and class rights

The Directors may, subject to this Constitution and the Corporations Act:

- (a) prescribe (and revoke or amend) the criteria for membership (including for any classes of membership) but, by doing so, do not become obliged to accept persons fulfilling those criteria as Members or Members of a class;
- (b) establish any new class of Members, provided that the existing Members have first by special resolution approved the establishment of the new class of Members and the rights, restrictions and obligations of Members in that new class; and
- (c) vary or cancel the rights, restrictions and obligations of Members in any new or existing class, if:
 - (i) at least 75% of the Members of that class give their written consent; or
 - (ii) a special resolution to that effect is passed at a separate meeting of those Members.

The clauses on general meetings apply to meetings of a class of Members so far as they are capable of application and with the necessary changes to every separate meeting.

4.6 Ceasing to be a Member

A person ceases to be a Member on:

- (a) resignation;
- (b) in the case of a Member of the Directors' class, ceasing to hold office as a Director;
- (c) death;
- (d) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (e) 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
- (f) the termination of the person's membership by the Directors or by the Company in general meeting in accordance with this Constitution.

4.7 Resignation

A Member may by written notice to the Company resign from membership with immediate effect or with effect from a specified date occurring not more than 30 days after the service of the notice. A Member remains liable after resignation for any Annual Subscription Fee due and unpaid at the date of the Member's resignation and for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under clause 18.1.

4.8 Censuring, suspension or expulsion of Member

If any Member wilfully refuses or neglects to comply with the provisions of this Constitution, or acts in a manner which in the opinion of the Directors is prejudicial to the interests of the Company, the Directors may by resolution censure, suspend or expel the Member from the Company, provided that the following procedure is observed:

- (a) at least 21 days before the Directors' meeting at which the resolution is passed, the Member must be given notice of the meeting setting out:
 - (i) what is alleged against the Member; and
 - (ii) the intended resolution; and
- (b) at the Directors' meeting, and before the passing of the resolution, the Member must be given an opportunity to address the Directors.

4.9 Patrons

The Directors may appoint and remove any persons as a patron or any other honorary title-holder of the Company on any terms the Directors think fit. A patron (or other honorary title-holder) may, in the discretion of the Directors, be given the right to:

- (a) attend and speak (but not vote) at any general meeting of the Company and be given notice of the meeting as if they are a Member; and
- (b) receive annual reports and accounts of the Company when available to Members.

4.10 Limited liability

A Member has no liability as a Member except as set out in this Part 4 and clause 18.1.

5 General meetings

5.1 Annual general meeting

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

5.2 Convening a general meeting

The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.

5.3 Members have power to convene general meeting

If there are not sufficient Directors for a quorum, a Director or any two or more Members may convene a general meeting of the Company at the cost of the Company.

5.4 Notice of general meeting

Notice of a general meeting must be given in accordance with Part 16 and the Corporations Act and, where such notice is being given to a Member, may be given as set out below.

If a Member nominates:

- (a) an electronic means by which the Member may be notified that notices of meeting are available; and
 - (b) an electronic means the Member may use to access notices of meeting,
- the Company may give the Member notice of the meeting by notifying the Member (using the notification means nominated by the Member):
- (c) that the notice of meeting is available; and
 - (d) how the Member may use the electronic means nominated by the Member to access the notice of meeting.

A notice of meeting given to a Member by this electronic means is taken to be given on the day after the day on which the Member is notified that the notice of meeting is available.

5.5 Calculation of period of notice

In computing the period of notice under clause 5.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

5.6 Directors entitled to notice of general meeting

A Director is entitled to receive notice of and to attend all general meetings of the Company and all separate meetings of any class of Members and is entitled to speak at those meetings.

5.7 Auditor entitled to notice of general meeting

To the extent required by the Corporations Act, an auditor of the Company is entitled to receive notice of, and to attend and speak at, all general meetings of the Company.

5.8 Cancellation or postponement of general meeting

Subject to clause 5.1, where a general meeting (including an annual general meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This clause does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

5.9 Notice of cancellation, postponement or change of place of general meeting

Written notice of cancellation or postponement or change of place of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. The notice must be given at least two days before the date for which the meeting is convened and must specify the reason for the cancellation, postponement or change of place. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

5.10 Contents of notice postponing general meeting

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

5.11 Number of clear days for postponement of general meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

5.12 Business at postponed general meeting

The only business that may be transacted at a general meeting, the holding of which is postponed, is the business specified in the original notice convening the meeting.

5.13 Non-receipt of notice

The non-receipt of, or accidental omission to give, a notice of a general meeting or cancellation, postponement or change of place of a general meeting by, or to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed or changed place meeting or the cancellation or postponement of a meeting.

5.14 Proxy, attorney or Representative at postponed general meeting

Where by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

6 Proceedings at general meetings

6.1 Reference to a Member

Unless the contrary intention appears, a reference to a Member in this Part 6 means a person who is a Member, or:

- (a) a proxy;
- (b) an attorney; or
- (c) a Representative,

of that Member.

6.2 Number for a quorum

Subject to clause 6.5, eight present in person or by proxy, attorney or Representative are a quorum at a general meeting of the Company. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

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

6.3 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

6.4 If quorum not present

If within one hour after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as determined by the chairman of the general meeting.

6.5 Adjourned meeting

At a meeting adjourned under clause 6.4(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

6.6 Appointment of chairman of general meeting

If a National President has been elected under clause 7, that person is entitled to preside as chairman at a general meeting of the Company.

6.7 Absence of chairman at general meeting

If a general meeting is held and:

- (a) a National President has not been elected; or
- (b) the elected National President is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the National Chairman (if one has been elected);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

6.8 Conduct of general meetings

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this clause is final.

6.9 Adjournment of general meeting

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising this discretion, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

6.10 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

6.11 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

6.12 Equality of votes - casting vote for chairman

If there is an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy, attorney or Representative of a Member.

6.13 Voting on show of hands

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

6.14 Demanding a poll

At a general meeting of the Company, a poll may be demanded by:

- (a) at least three Members entitled to vote on the resolution; or
- (b) Members with at least 10% of the votes that may be cast on the resolution on a poll; or
- (c) the chairman of the meeting.

6.15 Poll

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

6.16 Entitlement to vote

Subject to the rights and any restrictions attached to any class of Members and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as proxy, attorney or Representative of a Member has one vote for each Member that the person represents.

6.17 Objection to voting qualification

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting or to vote on a poll:

- (a) may not be raised except at that meeting or adjourned meeting or when that poll is taken; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

6.18 Chairman to determine voting dispute

If there is a dispute as to the admission or rejection of a vote, the chairman of the general meeting must decide it and the chairman's decision made in good faith is final and conclusive.

6.19 Circulating resolutions of Members

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all of the Members who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is taken to be passed (and if it is required to be a special resolution to be effective, passed as a special resolution), as if it had been passed unanimously at a duly convened general meeting, at the time the Secretary has evidence that the last Member has signed it.

6.20 Right to appoint attorney

A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

To be effective, an instrument appointing an attorney under this clause, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

6.21 Suspension or if Annual Subscription Fee not paid

In addition to any other rights of the Company, for as long as an Annual Subscription Fee is due and payable by a Member and is not paid, or if a Member is suspended, that Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy, attorney or Representative, at a general meeting of the Company.

7 Directors

7.1 Number of Directors

Subject to clause 7.10, unless otherwise determined by a special resolution of Members, there will be 14 Directors comprising:

- (a) one National Chairman;
- (b) one National President;
- (c) one Director from each of New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia, the Australian Capital Territory and the Northern Territory; and
- (d) four Directors possessing the particular skills, qualifications or commercial investment experience deemed necessary or desirable by the Directors from time to time, having regard to the objects and perpetual nature of the Company.

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

7.2 Directors to retire

At each annual general meeting of the Company, the Directors in office at the date of the annual general meeting must retire from office.

7.3 Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

7.4 Directors elected at general meeting

At each annual general meeting, the Company may elect Directors, and those Directors so elected will hold office from the conclusion of that meeting until the office they hold is vacated in accordance with this Constitution.

7.5 Eligibility for election as Director

A person is an eligible candidate for election as a Director at an annual general meeting of the Company (**Eligible Candidate**) if they are:

- (a) a person who is eligible for election or re-election under clause 7.3 or 7.9; or
- (b) a person recommended by the Directors for election as:
 - (i) the National Chairman;
 - (ii) the National President; or
 - (iii) one of the category of Directors described in clause 7.1(d); or
- (c) in the case of the category of Directors described in clause 7.1(c), a person ordinarily resident in the State or Territory for which they are nominated as a Director, who is nominated by a Member and whose nomination is seconded by another Member. The nomination must be:
 - (i) in writing, signed by the nominator, seconder and the nominee, and
 - (ii) lodged at the Registered Office at least seven days before the annual general meeting.

7.6 Verbal nominations

If an insufficient number of candidates (having regard to the maximum number of vacancies determined in accordance with clause 7.1) are eligible for election under clause 7.5, any two Members of the Company present in person at the annual general meeting may verbally nominate any other Member who is present in person at the annual general meeting. Any Member who is nominated verbally in accordance with this clause 7.6 will, if they accept the nomination, be treated as an Eligible Candidate.

7.7 Order of election

Directors must be elected by separate elections held in the following order:

- (a) election of the National Chairman;
- (b) election of the National President;
- (c) election of the Directors of the category described in clause 7.1(d); and
- (d) election of the Directors of the category described in clause 7.1(c).

If a person is an Eligible Candidate for more than one of the categories of Directors described in clause 7.1, and that person is elected as a Director of one of those categories, they are no longer an Eligible Candidate in relation to the other category or categories.

7.8 Procedure for electing Directors

If the number of Eligible Candidates for positions of Directors in the categories described in clause 7.1 is equal to or less than the maximum number of vacancies determined in accordance with that clause, the election of each Eligible Candidate as a Director will be determined by a separate resolution of the Company at the annual general meeting.

If there are more Eligible Candidates than the maximum number of vacancies determined by reference to clause 7.1 for a position:

- (a) as a Director in one of the categories described in clause 7.1(a), 7.1(b) or 7.1(d); or
- (b) as a Director from a particular State or Territory in the category described in clause 7.1(c),

the election of Directors at the annual general meeting to fill those positions is to be determined by a separate election for each such category or State or Territory using exhaustive preferential voting, such that:

- (c) Members entitled to vote must indicate their order of preference (from first preference to last preference for any number of Eligible Candidates not exceeding the maximum number of vacancies) on a ballot paper listing the names of all Eligible Candidates in alphabetical order;

- (d) the Eligible Candidate who receives the fewest first preference votes is excluded, and each ballot paper which gave a first preference vote to them is to be treated as giving a first preference vote to the Eligible Candidate next in order of the voters' preference;
- (e) the process of excluding the Eligible Candidate who has the fewest first preference votes (including votes to be treated as first preference votes according to clause 7.8(d)) and treating each ballot paper which gives (or is treated as giving) a first preference vote to the Eligible Candidate next in order of the voters' preference and who has not been excluded, is to be repeated until the number of remaining Eligible Candidates is equal to the number of vacancies; and
- (f) if two or more Eligible Candidates have an equal number of first preference votes (including votes treated as first preference votes according to clause 7.8(d)) and one or more of them must be excluded, the Eligible Candidate (or Eligible Candidates) to be excluded will be decided by drawing lots in any manner determined by the chairman of the annual general meeting.

If an insufficient number of Eligible Candidates (having regard to the maximum number of vacancies determined in accordance with clause 7.1) are elected under this clause, the unfilled positions so created are casual vacancies and may be filled by the Directors under clause 7.9.

7.9 Casual vacancy

The Directors may at any time appoint any person to be a Director to fill a casual vacancy. A Director appointed under this clause holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

7.10 Transitional provision

- (a) This clause 7.10 applies notwithstanding any other provision of this clause 7.
- (b) A Director who:
 - (i) was elected in accordance with the Memorandum and Articles of Association of the Winston Churchill Memorial Trust in force immediately before the adoption of this Constitution (**Previous Articles**); and
 - (ii) holds an office referred to in articles 34(a) and 34(b) of the Previous Articles at the commencement of the general meeting at which this Constitution is adopted,
 is eligible for re-election as a Director and subject to the remaining provisions of this clause 7.10, the maximum number of Directors who may be elected at a general meeting is not less than the number of such Directors.
- (c) A Director who is eligible for re-election in accordance with clause 7.10(b) will be treated as an Eligible Candidate, and their re-election as a Director will be determined by resolution of the Company at each annual general meeting.
- (d) If a Director referred to in clause 7.10(b) does not seek re-election at the annual general meeting at which this Constitution is adopted (or any subsequent annual general meeting), their office is abolished as at the end of the annual general meeting at which they do not seek re-election.
- (e) Where the abolition of a Director's office in accordance with clause 7.10(d) would result in any of the positions referred to in clause 7.1 being vacant (for example it will result in there being no Director for a particular State or Territory), the Company may elect a Director to fill that vacancy in accordance with clauses 7.4 to 7.8 of this Constitution.
- (f) If a Director referred to in clause 7.10(b) vacates their office at any time in any of the circumstances referred to in clause 9.2, their office is immediately abolished. Where a Director's office is abolished under this clause 7.10(f), no casual vacancy arises unless any of the positions referred to in clause 7.1 would otherwise be unfilled.

8 Remuneration and expenses

8.1 Remuneration of Directors

A Director must not be paid any remuneration for services as a Director.

8.2 Reimbursement of expenses

A Director is entitled to be reimbursed out of the funds of the Company for their out of pocket expenses incurred in respect of the business of the Company.

8.3 Payments to Director

Any payment to a Director which is not prohibited under clause 8.1 (including a payment permitted under clause 8.2) must be for categories of expenditure and within a budget for such expenditure approved by the Directors.

9 Conflict of interest and vacation of office

9.1 Director's interests

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor, unless being or becoming a Director would breach any law by reason of holding that office;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) if the other Directors determine that the Director's interest should not disqualify the Director from considering or voting on a matter, participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

9.2 Vacation of office

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes 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
- (b) resigns office by notice in writing to the Company.

10 Powers and duties of Directors

10.1 Directors to manage Company

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

10.2 Specific powers of Directors

Without limiting the generality of clause 10.1, the Directors may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

10.3 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

10.4 Provisions in power of attorney

A power of attorney granted under clause 10.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

10.5 Signing of cheques

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

10.6 Committees

The Directors may delegate (and revoke the delegation of) any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

10.7 Powers delegated to Committees

A Committee to which any powers have been delegated under clause 10.6 must exercise those powers in accordance with any directions of the Directors.

10.8 Powers of delegation

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

11 Proceedings of Directors

11.1 Directors' meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

11.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

11.3 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

11.4 Alternate Director or proxy and voting

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy. If that person is also a Director, they have one vote as a Director in that capacity.

11.5 Chairman of Directors' meetings

The National Chairman will act as the chairman of the meetings of Directors.

11.6 Absence of chairman at Directors' meeting

If a Directors' meeting is held and:

- (a) a National Chairman has not been elected under clause 7; or
- (b) the National Chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

11.7 Chairman's casting vote at Directors' meetings

The chairman of a Directors' meeting has a casting vote.

11.8 Director attending and voting by proxy

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as proxy of another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

11.9 Quorum for Directors' meeting

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is as determined by the Directors and, unless so determined, is half the number of Directors currently in office plus one Director.

11.10 Continuing Directors may act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 7.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

11.11 Chairman of Committee

The Directors may appoint a Director who is a member of a Committee as chairman of the meetings of that Committee. If a meeting of a Committee is held and:

- (a) a chairman has not been appointed; or
- (b) the appointed chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members of the Committee who are present may elect one of their number to be chairman of the meeting.

11.12 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

11.13 Determination of questions

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote at the meeting on the question.

11.14 Circulating resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

11.15 Validity of acts of Directors

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

11.16 Meeting by use of technology

A Director may not leave a telephone meeting by disconnecting the telephone without the consent of the chairman of the meeting. A Director is deemed to be present and form part of the quorum throughout the meeting unless the Director obtains the consent of the chairman of the meeting to leave the meeting.

12 Chief Executive Officer

The Directors may appoint a Chief Executive Officer. The Directors may give a Chief Executive Officer any of the powers conferred on them by this Constitution, subject, at the Directors' discretion, to:

- (a) any time period;
- (b) specific purposes; and
- (c) any other terms and restrictions.

All or any of those powers may be given collaterally with, or to the exclusion of, the powers of the Directors and may be revoked or varied by the Directors.

13 Secretary

13.1 Appointment of Secretary

The Company must have at least one Secretary who is to be appointed by the Directors.

13.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

13.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

14 Seals

14.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company.

14.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

15 Inspection of records

15.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

15.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

16 Service of documents

16.1 Document includes notice

In this Part 16, a reference to a document includes a notice.

16.2 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by sending it to the Member by other electronic means nominated by the Member.

16.3 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
 - (b) if sent to an address outside Australia, must be sent by airmail,
- and in either case is taken to have been received on the day after the date of its posting.

16.4 Fax or electronic transmission

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

16.5 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

17 Indemnity and insurance

17.1 Indemnity

To the maximum extent permitted by law, the Company may indemnify any current or former Director or Secretary or executive officer or senior manager of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity, and
- (c) 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 Company or a subsidiary, if that expenditure has been approved in accordance with the Directors' policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

17.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

17.3 Contract

The Company may enter into an agreement with a person referred to in clauses 17.1 and 17.2 with respect to the matters covered by those clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

18 Winding up

18.1 Contributions on winding up

Each Member undertakes to contribute to the Company's property if the Company is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
 - (b) the costs of winding up; and
 - (c) adjustment of the rights of the contributories among themselves,
- an amount not to exceed \$100.

18.2 Application of property on winding up

If any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:

- (a) having objects and/or purposes similar to those of the Company; and
- (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution.

The institution is to be determined by the Members at or before the time of dissolution and in default by application to the Supreme Court of the Australian Capital Territory.

19 Accounts

The Directors must cause the accounts of the Company to be maintained and audited in accordance with the requirements of the Corporations Act and the *Charitable Collections Act 2003* (ACT).