

Barnardos Australia Constitution

ACN 068 557 906

A company limited by guarantee

barnardos.org.au



**Barnardos
Australia**



As amended 23 November 2021
and 21 November 2023 by:

King & Wood Mallesons

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

www.kwm.com

Barnardos Australia Constitution

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1 Interpretation

1.1 Definitions

In this Constitution unless the contrary intention appears:

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

Alternate Director means a person appointed as an alternate director under article 9.9.

Approved Institution means a fund, authority or institution which falls within the description of an item in any of the tables in Subdivision 30-B of the Tax Act, which has been established for charitable purposes, and which is endorsed as a deductible gift recipient under or for the purposes of the Tax Act.

Barnardos (United Kingdom) means the charity known as "Barnardo's" which is a registered charity incorporated in England.

Charitable Fundraising Legislation means the Charitable Fundraising Act 1991 (NSW) and corresponding legislation in other Australian States and Territories.

Chief Executive Officer means the person appointed under Part 10.

Committee means a committee of Directors constituted under article 8.6.

Community Housing Assets means community housing asset as defined by the National Law.

Company means Barnardos Australia ACN 068 557 906.

Constitution means this constitution and a reference to an article is a reference to an article of this constitution.

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

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.

Housing Agency means housing agency as defined by section 4 of the National Law.

Member means a person entered in the Register of Members as a member of the Company and who has not ceased to be a member in accordance with this Constitution.

National Law means section 4 of the Community Housing Providers (Adoption of National Law) Act 2012 (NSW), Appendix.

Objects means the objects specified in article 2.2.

Register means the register of Members of the Company and, if appropriate, includes a branch register.

Registered Charity means a charity that is registered under the ACNC Act.

Registered Office means the registered office of the Company.

Registered Community Housing Provider means registered community housing provider as defined by section 4 of the National Law.

Secretary means a person appointed under article 11 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 1936 (Cwlth) or the Income Tax Assessment Act 1997 (Cwlth), as the context requires.

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) a reference to a particular person includes the person's executors, administrators, successors, substitutes and permitted assigns;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a document (including this Constitution) includes any variation or replacement of it;
- (f) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (g) a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (h) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (i) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (j) the word "present" in the context of a person being present at a meeting includes participating using technology approved by the Directors in accordance with this Constitution;
- (k) a reference to dollars or \$ is a reference to Australian dollars;

- (l) the word “law” includes common law, principles of equity and legislation, and a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (m) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or “such as” or similar expressions;
- (n) a chair appointed under this Constitution may be referred to as a chairperson, chairwoman or as chairman, as appropriate.

1.3 Corporations Act

- (a) In this Constitution unless the contrary intention appears:
 - (i) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
 - (ii) “section” means a section of the Corporations Act.
- (b) While the Company is a Registered Charity, the ACNC Act and the applicable provisions of the Corporations Act override any provisions in this Constitution which are inconsistent with those Acts.
- (c) If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any provisions in this Constitution which is inconsistent with that Act.

1.4 Replaceable rules not to apply

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

2 Purpose and objects of the Company

2.1 Charitable purpose

The Company may only pursue charitable purposes associated with its Objects, and must do so solely in Australia.

2.2 Principal Objects

The Company is established to:

- (a) work with children and young people in need of care, support, protection and education. This work should be at a high standard having regard to current research;
- (b) provide relief and assistance to support, care, protect and educate these children and young people, irrespective of age, race, nationality or religion and to enable them to achieve full, independent and beneficial lives;

- (c) assist in the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage;
- (d) facilitate the adoption of children where appropriate; and
- (e) contribute to research into best practice models for welfare work with children and young people in need of care, support, protection and education, and, where appropriate, provide support for other organisations to implement best practice.

2.3 Barnardos (United Kingdom) approval

The prior written approval from Barnardos (United Kingdom) is required for any addition, alteration or amendment to the following matters:

- (a) the name of the Company;
- (b) the Objects;
- (c) article 2.3 ("Barnardos (United Kingdom) approval");
- (d) article 16 ("Winding up and revocation of DGR endorsement"); and
- (e) the definition of Barnardos (United Kingdom).

3 Income and property of the Company

3.1 Application of income and property

All income, property and profits of the Company must be applied towards the promotion of the Objects.

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, other than in accordance with article 3.3.

3.3 Permitted payments by the Company

Subject to articles 7.7 and 7.9, article 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 provided by, or reimbursement of expenses incurred by, that person (other than as a Director) or firm, including in accordance with articles 7.8, 7.9 and 10;
- (b) for goods supplied in the ordinary course of business;
- (c) for repayment of any money borrowed from an officer of the Company or a Member;
- (d) of interest at a rate fixed by the Directors (but not exceeding the lowest published rate paid by the Commonwealth Bank of Australia in respect

of term deposits) on money borrowed from an officer of the Company or a Member; or

- (e) of reasonable rent for premises let by an officer of the Company or a Member.

3.4 Provision of Services

Article 3.2 does not prevent an officer of the Company or a Member being the recipient of services from the Company in accordance with the Company's Objects.

4 Membership

4.1 Becoming a Member

Except for a person who agreed in writing to the terms of this Constitution before the application for the Company's registration was lodged, a person may only become a Member under this Part 4.

4.2 Application for Membership

A person seeking to become a Member must be proposed by a Member and seconded by another Member. A person may apply to become a Member by submitting to the Secretary a properly completed application in the form prescribed by the Directors. The application must be signed by the person seeking to become a Member as well as the Members who proposed and seconded the application.

By completing an application form, if accepted, the applicant 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.

4.3 Admission as a Member

At the next meeting of the Directors after the receipt of the application, the Directors must resolve whether to accept or reject each application for membership and, within a reasonable time, notify the applicant of their decision. The Directors are not required to give reasons for rejection of an application for membership of the Company.

A person is admitted as a Member when the person's application is accepted by a resolution of the Directors.

4.4 Notification of acceptance as a Member

When an application for membership is accepted by the Directors the Secretary must send to the applicant written notice of the acceptance.

4.5 Register of Members

Upon admission as a Member, that person's details will be recorded in the Register by a Director or the Secretary.

A Member must promptly notify the Company of any change in the Member's details which are recorded in the Register.

4.6 Directors may create and vary classes and class rights

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

- (a) prescribe, revoke and amend the criteria for membership and any classes of membership (but are not obliged to accept persons fulfilling those criteria as Members or Members of a class);
- (b) establish any new class of Members and define the rights, restrictions and obligations of Members in that 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 articles 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.

4.7 No transfer of Membership

A Member must not sell, transfer or dispose of their interests in the Company to another Member or a third party.

4.8 Ceasing to be a Member

A person ceases to be a Member on:

- (a) resignation;
- (b) the termination of the person's membership by the Directors or by the Company in general meeting in accordance with this Constitution;
- (c) in the case of a natural person:
 - (i) death;
 - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally; or
 - (iii) becoming physically, mentally or cognitively incapable with a result which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- (d) in the case of a body corporate:
 - (i) being dissolved or otherwise ceasing to exist;

- (ii) having a liquidator or provisional liquidator appointed to it; or
- (iii) being insolvent; or
- (e) the person not responding in writing to a written request by the Company to confirm that they want to continue being a Member within three months of the request being issued to such person.

4.9 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 6 months after the service of the notice. A Member remains liable after resignation for all money due by the Member to the Company at the date of resignation, in addition to any sum for which the Member is liable as a Member under article 16.1.

4.10 Censuring, suspension or expulsion of a Member

If a Member wilfully refuses or neglects to comply with the provisions of this Constitution, by-laws, policies or other standards prescribed by the Directors, or acts in a manner which in the opinion of the Directors is unbecoming of a Member or 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) the Directors or Secretary must give written notice to the Member setting out what is alleged against the Member and the Member must be given the opportunity to rectify the matter;
- (b) at least one week before the Directors' meeting at which the resolution is to be considered, the Member must be given notice of the meeting setting out:
 - (i) what is alleged against the Member; and
 - (ii) the intended resolution;
- (c) at the Directors' meeting, and before voting on the resolution, the Member must be given an opportunity to give a written or verbal explanation as the Member thinks fit;
- (d) if a resolution for the Member's expulsion is passed in accordance with this article, the Member's membership automatically terminates and the Member ceases to be a Member.

4.11 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 a Member; and
- (b) receive accounts of the Company when available to Members.

4.12 Limited liability

A Member has no liability as a Member except as set out in this Part 4 and article 16.1.

5 General meetings

5.1 Annual general meeting

- (a) Annual general meetings of the Company are to be held in accordance with the Corporations Act.
- (b) Without limiting the generality of article 5.1(a):
 - (i) an annual general meeting must be held at least once in every calendar year;
 - (ii) the business of an annual general meeting may include any of the following even if not referred to in the notice of meeting:
 - (A) a review of the Company's activities;
 - (B) a review of the Company's finances;
 - (C) the consideration of the annual financial report, Directors' report and any auditor's report;
 - (D) the election of Directors; and
 - (E) the appointment and remuneration of auditors, if any.

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

The chair, within 2 months of receiving a written request from at least 20 Members, in which they state their reasons for requesting a meeting to be convened, must convene a general meeting of the Company.

5.4 Use of technology at general meetings

- (a) The Company may hold a meeting of Members at one or more physical venues simultaneously, at one or more physical venues and using virtual meeting technology, or wholly virtually using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) If, before or during a general meeting, any technical difficulty occurs where all shareholders may not be able to participate, the chair of the meeting may:
 - (i) adjourn the meeting until the difficulty is remedied; or

- (ii) where a quorum remains present (in the venue at which the chair is present) and able to participate, subject to the Corporations Act, continue the meeting.

5.5 Notice of general meeting

- (a) Subject to the Corporations Act, a notice of a general meeting must be given at least 14 days' in advance of the meeting and in accordance with Part 14 and the Corporations Act to:
 - (i) every Member; and
 - (ii) the auditor(s) for the time being of the Company.
- (b) A notice of a general meeting must specify:
 - (i) a date and time for the holding of the meeting;
 - (ii) a place for the holding of the meeting;
 - (iii) 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;
- (c) in the case of any special business, the general nature of that business;
- (d) if a special resolution is to be proposed at the meeting, the intention to propose the special resolution and the special resolution itself; and
- (e) a statement setting out the following information:
- (f) that Members have a right to appoint a proxy; and
- (g) the requirements for a valid proxy appointment under article 6.19.

5.6 Calculation of period of notice

In computing the period of notice for a general meeting, 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.

5.7 Cancellation or postponement of general meeting

Where a general meeting (including an annual general meeting) is convened by the Directors under article 5.2, 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 article does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members (including under article 5.3), by the Directors on the request of Members, or to a meeting convened by a court.

5.8 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. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

5.9 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.

5.10 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.

5.11 Business at postponed general meeting

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

5.12 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 details for a general meeting to a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

5.13 Proxy or attorney at postponed general meeting

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

- (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 or power of attorney,

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

5.14 Director entitled to notice of meeting

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

5.15 Circulating resolutions

The Company may pass a resolution without a general meeting being held if all the Members 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 the document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

The resolution is passed when the last Member signs.

6 Proceedings at general meetings

6.1 Number for a quorum

Subject to article 6.3, 10 Members present in person or by proxy or attorney are a quorum at a general meeting of the Company. In determining whether a quorum is present, each individual attending as a proxy or attorney is to be counted, except that:

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

6.2 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 chair of the meeting (on the chair's own motion or at the request of a Member, proxy or attorney who is present) declares otherwise.

6.3 If quorum not present

If within 30 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened at the request of Members, is dissolved; and

- (b) in any other case, stands adjourned to the same day in the next week at the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

6.4 Adjourned meeting

At a meeting adjourned under article 6.3(b), 3 persons each being a Member, proxy or attorney present at the meeting are a quorum. If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

6.5 Appointment of chair of general meeting

If a person has been elected as chair under article 9.6, that person is entitled to preside as chair at a general meeting of the Company.

6.6 Absence of chair at general meeting

If a general meeting is held and:

- (a) a chair has not been elected in accordance with article 6.5; or
- (b) the elected chair 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 chair of the meeting (in order of precedence):

- (c) the deputy chair (if any); or
- (d) a Member chosen by a majority of the Members present in person or by proxy or attorney.

6.7 Conduct of general meetings

The chair of a general meeting:

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

and a decision by the chair under this article is final.

6.8 Adjournment of general meeting

The chair 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 any place, but:

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

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

6.9 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 30 days or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

6.10 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.

6.11 Casting vote for the chair

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

6.12 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 chair 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 chair 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.

6.13 Demanding a poll

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

- (a) at least 3 Members entitled to vote on the resolution; or
- (b) the chair of the meeting.

6.14 Poll

If a poll is effectively demanded in accordance with article 6.13:

- (a) it must be taken in the manner and at the date and time directed by the chair and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chair 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.

6.15 Entitlement to vote

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

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

6.16 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy or attorney, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the appointing Member is mentally incapacitated; or
- (c) the Member revokes the appointment or authority.

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:

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

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

6.18 Right to appoint an attorney

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

- (c) An attorney does not have the authority to speak or vote for a Member at a meeting while the Member is at the meeting.

6.19 Appointment of proxy

- (a) A Member may appoint a proxy to act on the Member's behalf at all or any meetings of the Company or of any class of Members.
- (b) A proxy appointment must be signed by the Member appointing the proxy and must contain:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy;
 - (iv) the meeting(s) at which the appointment may be used; and
 - (v) any other information required by law for the appointment of a proxy at the date of the appointment.
- (c) A proxy appointment may be standing.
- (d) A proxy appointment may specify the way the proxy must vote on a particular resolution.
- (e) To be effective, the proxy appointment must be received by the Company at least 48 hours before the meeting.
- (f) A proxy does not have the authority to speak or vote for a Member at a meeting while the Member is at the meeting.

6.20 Suspension

In addition to any other rights of the Company, if a Member is suspended, the Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy or attorney, at a general meeting of the Company.

7 Directors

7.1 Number of Directors

The number of Directors must be not less than 6 and no more than 12.

7.2 Change of number of Directors

Subject to article 7.1, the Company in general meeting may by resolution increase or reduce the number of Directors and may also determine any provisions for the rotation or retirement of Directors.

7.3 Office held until conclusion of meeting

A retiring Director holds office until the conclusion of the meeting.

7.4 Directors elected at general meeting

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

7.5 Eligibility for election as Director

Except for:

- (a) a person who is eligible for election under article 7.6; or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless that person:

- (c) is a Member; and
- (d) is nominated by 2 Members (other than the person being nominated), such nomination being in writing and signed by the person seeking to be elected a Director as well as the Members who nominated the Member for election and lodged with the Secretary at least 14 days before the general meeting at which the election is to be considered.

7.6 Casual vacancy or additional Director

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.

Apart from a Chief Executive Officer who may be appointed as a Director, a Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

7.7 No remuneration for services as a Director

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

7.8 Reimbursement of expenses

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors, a Committee or the Company or when otherwise engaged on the business of the Company.

7.9 Payments to a Director

Any payment to a Director which is not prohibited under article 7.7 (including a payment permitted under article 7.8) must be approved by the Directors.

7.10 Director's interests

Subject to the provisions of this Constitution and to complying with the Corporations Act regarding disclosure of and voting on matters involving

material personal interests and, in the case of paragraphs (a) to (f), approval by a majority of the other Directors, a Director may:

- (a) hold any office or place of profit in the Company;
- (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) despite having an interest in a matter that is being considered at a meeting of Directors, be present at, participate in, vote on and be counted in a quorum at the meeting;
- (g) despite having an interest in a document, 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 benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this article is also a reference to any related body corporate of the Company.

7.11 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) is removed from office by a resolution of the Members;
- (b) becomes insolvent under administration or makes any arrangement or composition with their creditors generally;
- (c) is an Executive Director and ceases to be employed by the Company or a related body corporate;
- (d) becomes physically, mentally or cognitively incapable of acting as, or performing their functions as, a Director to a reasonable standard, or which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;
- (e) resigns office by notice in writing to the Company;

- (f) is not present personally or by Alternate Director at meetings of the Directors for a continuous period of 6 months without leave of absence from the Directors; and
- (g) ceases to be a Member.

8 Powers and duties of Directors

8.1 Directors to manage the 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.

8.2 Specific powers of Directors

Without limiting the generality of article 8.1, 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.

8.3 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.

8.4 Provisions in power of attorney

A power of attorney granted under article 8.3 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.

8.5 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, electronic transfers or direct deposits and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed, authorised or otherwise executed.

8.6 Committees

- (a) 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.
- (b) In addition to the Committee members, selected individuals such as advisers or experts, may be invited to attend Committee meetings as

observers, participate in discussions and/or provide advice to the Committee.

8.7 Powers delegated to Committees

A Committee to which any powers have been delegated under article 8.6 must exercise those powers in accordance with any directions of the Directors.

8.8 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.

9 Proceedings of Directors

9.1 Directors' meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings so that they meet at a minimum of 4 times per year.

9.2 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.

9.3 Use of technology for Directors' meetings

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

9.4 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.

9.5 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.

9.6 Chair of Directors' meetings

The Board must, by special resolution, appoint an independent non-executive director as chair and decide the period for which that Director holds that office. The chair is to be appointed by considering a range of criteria as determined by the Board which should include governance/management experience, relevant qualifications and demonstrated leadership qualities. The chair is to hold office at the discretion of the Board or until the chair resigns as chair or ceases to be a Director.

9.7 Absence of chair at a Directors' meeting

If a Directors' meeting is held and:

- (a) a chair has not been elected under article 9.6; or
- (b) the chair 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 chair of the meeting.

9.8 Chair's casting vote at Directors' meetings

If there is an equality of votes cast for and against a question, the chair of a Directors' meeting has a casting vote.

9.9 Appointment of Alternate Director

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors, to be an Alternate Director in the Director's place for such period as the Director thinks fit.

9.10 Alternate Director and meetings

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

9.11 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

9.12 Alternate Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

9.13 Alternate Director - expenses and remuneration

Articles 3.3, 7.7, 7.8 and 7.9 apply to an Alternate Director as if they were a Director.

9.14 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

9.15 Appointment or termination

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice signed by the Director who makes or made the appointment and delivered to the Company.

9.16 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

9.17 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) the appointment is 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.

9.18 Quorum for Directors' meeting

Unless the Directors determine otherwise, the quorum for Directors' meetings is a majority of Directors who must be present for the whole meeting.

9.19 Continuing Directors may act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the requirements of article 9.18 as necessary for the quorum of Directors, 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.

9.20 Chair of Committee

The members of a Committee may elect one of their number as chair of their meetings. If a meeting of a Committee is held and:

- (a) a chair has not been elected; or

- (b) the chair 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 involved may elect one of their number to be chair of the meeting.

9.21 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

9.22 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 entitled to vote.

If there is an equality of votes the chair of the meeting has a casting vote.

9.23 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution have consented to the resolution in accordance with this article 9.23. The resolution is passed when the last participating Director consents to the resolution in accordance with this article 9.23. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.
- (b) A Director may consent to a resolution by signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution.
- (c) Alternatively, a Director may consent to a resolution by giving the Company a written notice (including by fax or other electronic means) addressed to and received by the Secretary or the chair:
 - (i) that signifies the Director's assent to the resolution;
 - (ii) that sets out the terms of the resolution or identifies those terms; and
 - (iii) if the Director has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code), that authenticates the Director's consent by those specified means.
- (d) Any document referred to in this article may be in the form of a fax or electronic notification. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.
- (e) This article 9.23 applies to resolutions of Committees as if the references to Directors were references to Committee members.

9.24 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.

10 Chief Executive Officer

- (a) The Directors may:
 - (i) appoint a Chief Executive Officer for any period;
 - (ii) delegate to the Chief Executive Officer any of the powers conferred on the Directors; and
 - (iii) withdraw or vary any of those powers,

on any terms and conditions and with any restrictions as they think fit. The Directors may fix the remuneration of the Chief Executive Officer which may be by way of salary drawn from the Company.
- (b) The Directors may appoint the Chief Executive Officer to hold office as a Director for a period not to exceed the term of employment.
- (c) Subject to the terms of any employment contract between the Company and the Chief Executive Officer:
 - (i) the Directors may at any time remove or dismiss the Chief Executive Officer from employment with the Company, in which event any appointment of the Chief Executive Officer as a Director will automatically cease; and alternatively
 - (ii) if the Chief Executive Officer ceases to be a Director, the Directors may revoke or vary the appointment as Chief Executive Officer.

11 Secretary

11.1 Appointment of Secretary

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

11.2 Suspension and removal of Secretary

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

11.3 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.

12 Seals

12.1 Safe custody of common seals

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

12.2 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 either:
 - (i) 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; or
 - (ii) two persons appointed by the Directors to countersign that document or a class of documents.

13 Inspection of records

13.1 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).

13.2 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.

14 Service of documents

14.1 Document includes notice

In this Part 14, a reference to a document includes a notice and a notification by electronic means.

14.2 Form of document

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

14.3 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or 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 notifying the Member by an electronic means nominated by the Member that:
 - (i) the document is available; and
 - (ii) how the Member may use the nominated access means to access the document.

14.4 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.

14.5 Fax or electronic transmission

A document sent or given by fax or to an electronic address:

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

14.6 Electronic notification

A document made available by electronic means is taken to have been given and received on the day after the date of transmission of the notification specifying that the document is available and how it can be accessed.

14.7 Evidence of service

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member by post, fax or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

15 Indemnity and insurance

15.1 Indemnity

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

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

15.2 Insurance

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

15.3 Contract

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

16 Winding up and revocation of DGR endorsement

16.1 Contributions on winding up

Each Member undertakes to contribute to the Company's property an amount not exceeding \$10 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.

16.2 Application of property on winding up

- (a) All government funded assets on winding up or dissolution of the Company must be transferred or otherwise dealt with as required by any applicable legislation and rules relating to that funding.
- (b) Without limiting article 16.2(a), all remaining Community Housing Assets in a participating jurisdiction on winding up must be transferred to another Registered Community Housing Provider or to a Housing Agency in the jurisdiction in which the asset is located.
- (c) If any other property or funds remain on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, the property or funds may not be paid to or distributed among the Members but must be given or transferred to one or more funds or institutions:
 - (i) having a public charitable purpose or public charitable objects similar to the purpose and objects of the Company;
 - (ii) whose constitution or rules prohibit the distribution of its property and funds among its members to an extent at least as great as is imposed on the Company under this Constitution; and
 - (iii) which is an Approved Institution.

The fund or institution is to be determined by the Directors or, if they determine, by the Members in general meeting, at or before the time of dissolution and in default by application to the court.

Barnardos (United Kingdom) must be notified of any application to wind up the Company.

16.3 Revocation of endorsement as a deductible gift recipient

If the Company is endorsed as a deductible gift recipient under Division 30 of the Tax Act and the endorsement is revoked, despite any other provision in this Constitution, all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions must be transferred to an Approved Institution.

17 Accounts

The Directors must cause the accounts and records of the Company to be maintained and, if required, audited in accordance with the requirements of the Corporations Act and applicable Charitable Fundraising Legislation.

18 Charitable Fundraising Legislation

If the Company is an authorised fundraiser within the meaning of the Charitable Fundraising Legislation, the Company must comply with relevant requirements of the legislation and conditions of its authority to the extent applicable. This includes:

- (a) establishing and complying with proper and effective controls over fundraising appeals;
- (b) issuing receipts for money received;
- (c) management and administrative requirements; and
- (d) complying with requirements relating to conflicts of interest and dispute and complaint handling mechanisms.