Constitution

Westgate Community Initiatives Group Ltd

ACN 638 435 462

A Public Company Limited by Guarantee

Contents

1 Definitions and interpretation 4
2 Object of the Company 7
3 Powers 7
4 Application of income for Object only 7
5 Winding up 8
6 Membership 9
7 Ceasing to be a Member 10
8 General Meetings 11
9 Proceedings at General Meetings 13
10 Circular resolutions of Members 17
11 Directors 17
12 Remuneration of Directors 18
13 Expenses of Directors 19
14 Vacation of office of Director 19
15 Powers and duties of Directors 19
16 Rules 20
17 Chief Executive Officer, Secretary and Public Officer 20
18 Appointment of attorney 21
19 Conflicts of interest 21
20 Proceedings of Directors 22
21 Chairperson and deputy chairperson of Directors 22
22 Alternate Director 23
23 Quorum for Directors' meeting 24
24 Circular resolutions of Directors 24
25 Validity of acts of Directors 24
26 Committees 24
27 Dispute resolution 25
28 Execution of documents 26
29 Accounts 26
30 Gift Fund 26
31 Seals 27
32 Inspection of records 27

33 Service of documents 27
34 Indemnity and insurance 28
35 Amendment to Constitution 29
Schedule 1 30

1 Definitions and interpretation

1.1 Definitions

In this Constitution, unless a contrary intention appears:

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

Alternate Director means an individual appointed as an alternate director under clause 22.1.

Annual General Meeting has the same meaning as the term 'AGM' in the Corporations Act.[1]

ASIC means the Australian Securities and Investments Commission.

Company means Westgate Community Initiatives Group Ltd being an Australian public company limited by guarantee established under the Corporations Act which bears the ACN 638 435 462.

Constitution means this constitution as amended from time to time.

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

Director means an individual holding office as director of the Company.

Director Identification Number has the same meaning it has in the Corporations Act.[2]

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

General Meeting means a meeting of the Members of the Company and includes an Annual General Meeting.

Gift Fund means a management account of the Company that is established in accordance with clause 30.

Legal Capacity means, in relation to an individual, that the individual is at least 18 years of age, and that:

(a) in the Directors' reasonable assessment, the individual is capable of understanding the nature and effect of their participation in the Company's affairs without the need of special assistance or explanation;

(b) in the Directors' reasonable assessment, the individual is able to receive and understand communications and express their will in relation to the Company's affairs; or

(c) their person or estate is not liable to be dealt with under the laws relating to mental health:

(i) on a permanent or ongoing basis;

[1] At the time of adoption of this Constitution, section 9 provides that an AGM means an annual general meeting of a company that section 250N requires to be held.

[2] At the time of adoption of this Constitution, section 9 provides that a Director Identification Number means a director identification number given under:
(a) section 1272; or
(b) section 308-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

(ii) in an involuntary manner; or

(iii) on a court ordered basis.

Member means a person entered on the Register of the Company as a member.

Object means the object of the Company as set out in clause 2.

Register means the register of members under the Corporations Act and if appropriate includes a branch register.

Registered Office means the registered office for the time being of the Company.

Related Body Corporate has the same meaning it has in the Corporations Act.[3]

Rule means a rule made by the Directors in accordance with clause 16.

Schedule means a Schedule to this Constitution.

Secretary means an individual appointed as a secretary of the Company in accordance with clause 17.2.

Special Resolution has the same meaning it has in the Corporations Act.[4]

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

Virtual Meeting Technology has the same meaning it has in the Corporations Act.[5]

1.2 Interpretation

In this Constitution, unless a contrary intention appears:

(a) words importing any gender include all other genders;

(b) the singular includes the plural and vice versa;

(c) a reference to a clause is a reference to a clause in this Constitution unless otherwise stated;

(d) a reference to a law includes regulations and instruments made under the law;

(e) 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 a state, a territory, the Commonwealth of Australia or otherwise;

(f) a reference to a meeting includes a meeting by technology provided the technology gives the persons entitled to attend the meeting, as a whole, reasonable opportunity to participate without being physically present in the same place, and includes a General Meeting:

(i) at one or more physical venues;

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[3] At the time of adoption of this Constitution, section 9 provides that a related body corporate, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

[4] At the time of adoption of this Constitution, section 9 provides that a Special Resolution is a resolution:
(a) of which notice has been given to the Members in accordance with clause 8.3; and
(b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

[5] At the time of adoption of this Constitution, section 9 provides that Virtual Meeting Technology means any technology that allows a person to participate in a meeting without being physically present at the meeting.

(ii) at one or more physical venues and using Virtual Meeting Technology; or

(iii) using Virtual Meeting Technology only;

(g) a reference to a person being present in person includes an individual participating in a meeting as described in clause 1.2(f);

(h) a reference to a person being present includes an individual participating in a meeting in person or through a proxy or attorney;

(i) a reference to a "place" includes the place or location where a General Meeting may be held, is held or is taken to be held under the Corporations Act if Virtual Meeting Technology is used in holding the meeting;

(j) a reference to a person includes a natural person, corporation or other body corporate;

(k) "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

(l) Australian dollars, dollars, A$ or $ is a reference to the lawful currency of Australia.

1.3 Signing and electronic communication

Where, by a provision of this Constitution, a document including a notice is required to be signed or communicated, that requirement may be satisfied in any manner permitted by the applicable law of a state, a territory, or the Commonwealth of Australia relating to electronic signing and transmission of documents.

1.4 Corporations Act

(a) In this Constitution unless the contrary intention appears:

(i) expressions in this Constitution that deal with a matter dealt with by a particular provision of the Corporations Act have the same meaning as they have in the Corporations Act;

(ii) "section" means a section of the Corporations Act; and

(iii) while the Company is a registered charity under the ACNC Act:

(A) subject to clause 1.4(a)(iii)(B), the provisions of the Corporations Act in Part 2G.2 (except section 249D, 249F, 249X and Division 8 of the Corporations Act) and Part 2G.3 apply as if section 111L(1) of the Corporations Act was not enacted; and

(B) if one of those provisions includes a reference to ASIC, including a reference to lodge any document with, or seek consent or approval from ASIC, that particular requirement does not apply to the Company.

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

1.5 Headings

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

2 Object of the Company

(a) The Object of the Company is to pursue the charitable purpose of providing benevolent relief to individuals experiencing poverty, sickness, destitution, helplessness, suffering, misfortune, disability or distress.

(b) The Company may pursue and promote its Object by, including but not limited to:

(i) providing support services to individuals with disabilities;

(ii) promoting and creating employment opportunities which accommodate individuals with disabilities;

(iii) promoting and creating employment opportunities to overcome the causes and factors that contribute towards an individual's unemployment;

(iv) providing advice and guidance about employment opportunities, successful job applications and diversity in the workplace, thereby assisting individuals overcome the causes and factors that contribute to their disadvantage;

(v) raising income through social enterprises and distributing the profits to support the Object pursued by the Company;

(vi) funding in whole or part the accommodation and living expenses of young persons subject to care orders;

(vii) acting as trustee and performing and discharging the duties and functions incidental thereto where this is incidental or conducive to the attainment of the Object; and

(viii) doing other things as are incidental or conducive to the attainment of the Object, including the establishment of a public fund.[6]

3 Powers

The Company has the legal capacity and powers of:

(a) an individual;

(b) a body corporate under the Corporations Act; and

(c) where the Company is a trustee, the trustee under the relevant trust instrument and laws related to trusts and trustees.

4 Application of income for Object only

4.1 Application of income and property

The income and the property of the Company, however derived:

(a) must be applied solely towards the promotion of the Object; and

(b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus, benefit or otherwise.

[6] A public fund is a fund for receiving gifts from the public that is required to be established and maintained by certain deductible gift recipient categories from time to time under the Tax Act.

4.2 Payment in good faith

Clause 4.1 does not prevent payment, directly or indirectly, in good faith to a Member:

(a) of reasonable remuneration for services to the Company in the ordinary course of business;

(b) for expenses incurred or goods supplied by the Member to the Company in the ordinary course of business;

(c) of fair and reasonable interest on money borrowed by the Company in the ordinary course of business from the Member at a rate not exceeding that fixed for the purposes of this clause 4.2(c) by the Company in a General Meeting;

(d) of reasonable rent or equivalent payment (including licence fees) for use of premises let by the Member to the Company; or

(e) in furtherance of the Object.

5 Winding up

5.1 Guarantee by Members

(a) Each Member undertakes to contribute an amount not to exceed $10 to the Company's property if the Company is wound up while they are a Member, or within 1 year after they cease to be a Member.

(b) On winding up of the Company, this contribution is for:

(i) payment of the Company's debts and liabilities;

(ii) the costs of winding up; and

(iii) adjustment of the rights of the contributories among themselves.

5.2 Application of property

(a) Subject to clause 4.2(e), if any property remains on the winding up or dissolution of the Company after satisfaction of all its debts and liabilities, then, subject always to clause 5.3, that property may not be paid to or distributed among the Members but must be transferred to one or more funds or institutions:

(i) that have charitable purposes similar to, or inclusive of, the Object; and

(ii) are not-for-profit entities whose governing documents prohibit the distribution of its income and property among its members (if it has members) to at least the same extent as imposed on the Company under this Constitution.

(b) The funds or institutions will be determined by the Members at or before the time of dissolution.

5.3 Application of property if deductible gift recipient

(a) Where the Company has been endorsed as a deductible gift recipient under Subdivision 30-BA of the Tax Act as an entity, and:

(i) the Company is wound up; or

(ii) the endorsement under Subdivision 30-BA of the Tax Act is revoked;

then, after satisfaction of all debts and liabilities, any surplus:

(iii) assets of the Gift Fund (if the Company maintains a Gift Fund); or

(iv) if the Company does not operate a Gift Fund:

(A) gifts of money or property for the principal purpose of the Company;
(B) contributions of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for the principal purpose of the Company; and
(C) money received by the Company because of such gifts or contributions

must be transferred to one or more funds or institutions that comply with clause 5.2 and are each deductible gift recipients.

6 Membership

6.1 Number of Members

The Members of the Company are:

(a) the Directors on adoption of this Constitution until they cease being a Member under clause 7.1(b);

(b) the Members at the date of adoption of this Constitution; and

(c) any person the Directors admit to membership under clause 6.2.

6.2 Admission as a Member

The Directors shall admit a person as a Member if the person is a Director.

6.3 Registration as Member

As soon as practicable after the Directors admit a person as a Member, the Directors must cause the name of the person to be entered in the Register. The person will become a Member when their name and details are entered on the Register.

6.4 Register

(a) The Company must establish and maintain a Register. The Register must be kept by the Secretary and must contain:

(i) for each current Member:

(A) name;
(B) address;
(C) any alternative address nominated by the Member for the service of notices; and
(D) date the Member was entered on to the Register.

(ii) for each person who stopped being a Member in the last 7 years:

(A) name;
(B) address;
(C) any alternative address nominated by the Member for the service of notices; and

(D) date the membership started and ended.

(b) The Company must provide access to the Register in accordance with the Corporations Act.

7 Ceasing to be a Member

7.1 Cessation of membership

(a) A Member who is not a Director of this Company ceases to be a Member on:

(i) death;

(ii) resignation by written notice to the Company having immediate effect or with effect from a specified date in the notice;

(iii) failing to respond to correspondence sent by the Company to the contact details entered on the Register for the purpose of confirming their membership and/or contact details within 3 months of the date of correspondence and the Directors determine, in their discretion, to remove the Member's name from the Register;

(iv) not having Legal Capacity;

(v) in the case of an individual becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally; or

(vi) the passing of a resolution by the Directors or Members in General Meeting in accordance with clause 7.2.

(b) A Member who is a Director of this Company ceases to be a Member when the individual ceases to be a Director.

7.2 Termination of membership

(a) Subject to this Constitution, the Directors or Members in General Meeting may at any time terminate the membership of a Member who is not a Director of this Company if the Member:

(i) refuses or neglects to comply with this Constitution or any applicable Rules made by the Directors;

(ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Company; or

(iii) fails to pay any debt due to the Company within a period of 3 months after the date for payment.

(b) For a decision of the Directors or the Members in General Meeting under clause 7.2(a) to be effective, the general nature of the allegations made against the Member must be notified to the Member in writing and the Member must be given a reasonable opportunity to respond.

(c) If a dispute arises regarding the termination of a Member's membership under this clause 7.2, the dispute resolution procedure contained in clause 27 must be followed and, for the purposes of clause 27.1, written notification under clause 7.2(b) will be the notice of the dispute (as defined in clause 27.1).

7.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1.

8 General Meetings

8.1 Annual General Meetings

The Company may hold an Annual General Meeting, and if it does so, the meeting must be held in accordance with the Corporations Act.

8.2 Convening a General Meeting

(a) The Directors may convene and arrange to hold a General Meeting when they think fit.

(b) The Directors must convene a General Meeting on the request of Members with at least 25% of the votes that may be cast at the meeting:

(i) where the request by Members:

(A) is made in writing;
(B) states any resolution to be proposed at the General Meeting;
(C) is signed by the Members making the request; and
(D) is given to the Secretary of the Company; and

(ii) within 1 month after the request is given to the Company. The meeting is to be held no later than 3 months after the request is given to the Company.

(c) The percentage of the votes that Members have in clause 8.2(b) is to be worked out as at the midnight before the request is given to the Company.

(d) Where the Directors fail to convene the General Meeting within the time required by clause 8.2(b), Members with more than 50% of the votes of all of the Members who made the request under clause 8.2(b) may:

(i) call and arrange to hold a General Meeting within 3 months after the request is given to the Company;

(ii) ask the Company for a copy of the Register; and

(iii) request the Company pay any reasonable expenses incurred by the Members for convening and arranging the meeting to be held.

8.3 Notice of a General Meeting

(a) Notice of a General Meeting must be given in accordance with the Corporations Act and served in accordance with clause 33.

(b) A Director is entitled to receive notice of and to attend all General Meetings and is entitled to speak at those meetings.

8.4 Calculation of period of notice

In computing the period of notice under clauses 8.3 and 8.6(c), 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.

8.5 Cancellation or postponement of General Meeting

(a) Where a 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.

(b) This clause 8.5 does not apply to a meeting convened in accordance with the Corporations Act by Members, by the Directors on the request of or to a meeting convened by a Court.

8.6 Notice of cancellation or postponement of a meeting

(a) Notice of cancellation, postponement or change of place of a General Meeting must state the reason for cancellation or postponement and be given:

(i) to each Member individually; and

(ii) to each other person entitled to be given notice of a General Meeting under the Corporations Act.

(b) A notice of postponement of a General Meeting must specify:

(i) the postponed date and time for the holding of the meeting;

(ii) 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

(iii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

(c) The number of 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 days' notice of the General Meeting required to be given under clause 8.3.

8.7 Business at postponed 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.

8.8 Proxy at postponed meeting

Where by the terms of an instrument appointing a proxy:

(a) the proxy is authorised to attend and vote at one or more 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;

then, by operation of this clause 8.8, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy 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.

8.9 Non-receipt of notice

The non-receipt of notice of a General Meeting or the convening, cancellation or postponement of a General Meeting by, or the accidental omission to give notice of a

General Meeting or the convening, cancellation or postponement of 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 convening, cancellation or postponement of a meeting.

9 Proceedings at General Meetings

9.1 Number of a quorum

(a) A majority of Members present are a quorum at a General Meeting.

(b) In determining whether a quorum is present, where an individual is attending both as a Member and as a proxy, that individual is to be counted only once.

9.2 Requirement for a quorum

(a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.

(b) 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 chairperson of the meeting (on the chairperson's own motion or at the request of a Member or proxy who is present) declares otherwise.

9.3 If quorum not present

If within 15 minutes after the time appointed for a 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 and 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.

9.4 Adjourned meeting

At a meeting adjourned under clause 9.3(b), 2 Members 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.

9.5 Appointment and powers of chairperson of General Meeting

If the Directors have elected one of their number as chairperson of their meetings under clause 21.1, that individual is also entitled to preside as chairperson at a General Meeting.

9.6 Absence of chairperson at General Meeting

If a General Meeting is held and:

(a) a chairperson has not been elected by the Directors; or

(b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the following individuals may preside as chairperson of the meeting (in order of precedence):

(c) the deputy chairperson if a Director has been so elected by the Directors under clause 21.1; or

(d) a Director or Member elected by the Members present in person to preside as chairperson of the meeting.

9.7 Conduct of a General Meeting

(a) The chairperson of a General Meeting:

(i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;

(ii) may require the adoption of any procedure which is, in the chairperson'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

(iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.

(b) A decision by the chairperson under this clause 9.7 is final.

9.8 Adjournment of a General Meeting

(a) The chairperson 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:

(i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present; and

(ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

(b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

9.9 Notice of an adjourned General Meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned General Meeting unless it is adjourned for 1 month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

9.10 Questions decided by majority

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

9.11 Equality of votes – no casting vote for chairperson

If there is an equality of votes, either on a show of hands or on a poll, then the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney, and consequently the resolution fails.

9.12 Voting at a General Meeting

(a) At any General Meeting a resolution put to the vote of the meeting must be decided on:

(i) a show of hands; or

(ii) where the meeting is being conducted by Virtual Meeting Technology, such other similar method as determined by the chairperson,

unless a poll is properly demanded, and the demand is not withdrawn.

(b) A declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, is conclusive evidence of the fact.

(c) Neither the chairperson 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.

9.13 Poll

If a poll is demanded at a General Meeting:

(a) it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded;

(b) on the election of a chairperson 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.

9.14 Votes of Members

(a) Every Member has one vote.

(b) Subject to this Constitution:

(i) on a show of hands at a General Meeting, each Member present in person has one vote and does not have a vote in respect of each Member whose proxy they hold; and

(ii) on a poll at a General Meeting, each Member present in person has one vote and has one vote for each proxy they hold .

9.15 Right to appoint proxy

(a) Subject to the Corporations Act, a Member entitled to attend a General Meeting is entitled to appoint another Member as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.

(b) The instrument appointing a proxy must be in writing signed by the appointor or their attorney duly authorised in writing or, if the appointor is a corporation, either under seal or signed by an officer or attorney duly authorised.

(c) The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.

(d) A Member is entitled to instruct their proxy to vote in favour of or against any proposed resolutions. The proxy may vote as they think fit unless otherwise instructed.

(e) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.

(f) The instrument appointing a proxy (along with a certified copy of the power of attorney or other authority, if any, under which it is signed) must be received at:

(i) the Registered Office;

(ii) such other place within the state or territory in which the Company has its Registered Office, or to an email address, as is specified for that purpose in the notice convening the meeting; or

(iii) if the notice convening the meeting specifies other electronic means by which a proxy document may be received by the Company, by those other electronic means,

not less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. Documents received after this time will not be treated as valid.

(g) The Company receives a document referred to in clause 9.15(f):

(i) if the document is given by other electronic means as specified for that purpose in the notice convening the meeting, when the document is received by the Company as prescribed by the Corporations Act; and

(ii) otherwise, when the document is received at:

(A) the Registered Office; or
(B) a place specified for the purpose in the notice of meeting.

9.16 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of a General 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 Member revokes the appointment or authority; or

(c) the Member is mentally incapacitated.

9.17 Objection to voting qualification

(a) An objection to the right of a person to attend or vote at a General Meeting or adjourned meeting:

(i) may not be raised except at that meeting or adjourned meeting; and

(ii) must be referred to the chairperson of that meeting, whose decision is final.

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

10 Circular resolutions of Members

(a) Subject to clause 10(b), the Members may pass any resolution that the Corporations Act or this Constitution requires or permits to be passed at a General Meeting in the manner set out in this clause without holding a General Meeting.

(b) A resolution under this clause 10 cannot be used:

(i) for a resolution to remove an auditor or remove a Director under section 203D;

(ii) for passing a special resolution; or

(iii) where the Corporations Act or this Constitution requires a meeting to be held.

(c) A resolution under this clause 10 is passed if each Member entitled to vote on the resolution signs 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.

(d) The resolution is passed when the last Member signs.

(e) The resolution is deemed to have failed if it is not passed by each Member entitled to vote on the resolution within 7 days of receiving notice of the resolution.

(f) The Company must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution. A failure to do so does not invalidate the resolution.

11 Directors

11.1 Number of Directors

The number of Directors must be such number between 5 and 9 as the Members determine at a General Meeting or by unanimous written resolution.

11.2 Appointment of Directors by Members

Upon:

(a) a Director retiring or otherwise vacating office; or

(b) a Director vacancy arising by operation of clause 11.1 or otherwise,

the Members may, at a General Meeting or by unanimous written resolution, fill the vacated office by appointing an individual to that office.

11.3 Qualification of Directors

To be eligible for the office of Director an individual must:

(a) have a Director Identification Number;

(b) not be a paid employee of the Company;

(c) have suitable qualifications, skills and experience to discharge the functions of a Director, as is determined by the Directors from time to time;

(d) consent in writing to act as Member and a Director; and

(e) agree to be bound by this Constitution.

11.4 Appointment of officers

The Directors are to appoint the other officers with such frequency as the Directors from time to time determine.

11.5 Terms of Directors

(a) Subject to clauses 11.5(b), a Director is elected for a term of 3 years.

(b) Any Director who has held office for 3 years or more since last being elected, must retire from office but, subject to clause 11.6, is eligible for reappointment.

(c) In addition to the right to remove Directors under section 203D of the Corporations Act, the Members may by ordinary resolution in General Meeting or unanimous written resolution remove any Director before the expiration of that Director's period of office, and may appoint another individual in the place of that Director in accordance with clause 11.2.

11.6 Reappointment of a Director

A Director is entitled to seek reappointment as a Director on 2 consecutive occasions provided that a Director's period of continuous service to the Company shall not exceed a period of 9 years, excluding any period of service under clause 11.8, unless the Members, by special resolution in General Meeting or unanimous written resolution, elect to waive this requirement for a particular Director and allow for one additional and final term of service.

11.7 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 reappointment.

11.8 Casual vacancy

(a) The Directors may at any time appoint any individual to be a Director to fill a casual vacancy, provided the total number of Directors does not exceed the number determined in accordance with clause 11.1.

(b) A Director appointed under clause 11.8(a) holds office:

(i) for a period of 12 months or such lesser period as specified at the time of appointment; or

(ii) until the Members appoint a new or additional Director under clause 11.2 to replace the Director whose retirement caused the casual vacancy,

whichever is sooner, but is eligible for appointment by the Members under clause 11.2.

12 Remuneration of Directors

The Directors must not be paid any remuneration for their services as Directors.

13 Expenses of Directors

(a) A Director is entitled to be reimbursed out of the funds of the Company for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company.

(b) Any payment to a Director must be approved by the Directors.

14 Vacation of office of Director

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) ceases to be eligible under clause 11.3;

(b) resigns from the office by notice in writing to the Company having immediate effect or with effect from a specified date in the notice;

(c) is not present at 3 successive meetings of the Directors, or 4 meetings within 12 months, without leave of absence from the Directors;

(d) does not have Legal Capacity;

(e) becomes insolvent or bankrupt, compounds with their creditors, or assigns their estate for the benefit of their creditors;

(f) becomes prohibited, disqualified or removed from being a Director by reason of any order of any court of competent jurisdiction or regulator; or

(g) dies.

15 Powers and duties of Directors

15.1 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.

15.2 Specific powers of Directors

Without limiting the generality of clause 15.1, and subject to any trusts relating to the assets of the Company, the Directors may exercise all the powers of the Company to:

(a) borrow or raise money;

(b) charge any property or business of the Company; and

(c) give any security for a debt, liability or obligation of the Company or of any other person.

15.3 Compliance with duties

While the Company is a registered charity under the ACNC Act, each Director must comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act and such other obligations as apply under the ACNC Act or the Corporations Act from time to time.

15.4 Delegation

(a) The Directors may resolve to delegate any of their powers to:

(i) a committee in accordance with clause 26;

(ii) a Director;

(iii) an employee of the Company on terms and subject to any restrictions to be decided by the Directors; or

(iv) any other person on terms and subject to any restrictions to be decided by the Directors.

(b) The power may be delegated for such time as determined by the Directors and the Directors may at any time revoke or vary the delegation.

(c) The delegate must exercise the powers delegated in accordance with any directions of the Directors, and the exercise of the power by the delegate is as effective as if the Directors had exercised it.

(d) The Directors may continue to exercise any power they have delegated.

16 Rules

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on the Directors and Members for the management and conduct of the business of the Company.

17 Chief Executive Officer, Secretary and Public Officer

17.1 Chief Executive Officer

(a) The Directors may appoint a Chief Executive Officer on such terms and conditions (including as to remuneration) as they think fit.

(b) The Directors may delegate any of their powers to the Chief Executive Officer and the Chief Executive Officer must exercise those powers:

(i) in accordance with the terms and subject to any restrictions or the directions of the Directors; and

(ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,

and may revoke the delegation at any time.

(c) The Chief Executive Officer may be invited to attend all meetings of the Directors, but may not hold the office of a Director and is not entitled to vote.

17.2 Secretary

(a) There must be at least one Secretary who is to be appointed by the Directors.

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

(c) 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 are subject at all times to the control of the Directors.

17.3 Public Officer

The Directors must appoint an individual as Public Officer of the Company in accordance with the *Income Tax Assessment Act 1936* (Cth).

18 Appointment of attorney

(a) By power of attorney, the Directors may appoint any individual to be an attorney of the Company, with such powers, authorities and discretions of the Directors as the Directors think fit and for such purposes, period and conditions as determined by the Directors.

(b) A power of attorney granted under clause 18(a) may contain any provisions for the protection and convenience of the attorney and 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 of the attorney.

19 Conflicts of interest

19.1 Disclosure of conflict of interest

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

(a) to the Directors; or

(b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

19.2 Disclosure recorded in minutes

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

19.3 Material personal interest

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 19.4:

(a) be present at the meeting while the matter is being discussed; or

(b) vote on the matter.

19.4 Present and voting

A Director with a material personal interest in a matter may still be present and vote if:

(a) their interest arises because they are a Member of the Company and the other Members have the same interest;

(b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 34.2);

(c) their interest relates to a payment by the Company under clause 34.1, or any contract relating to an indemnity that is allowed under the Corporations Act;

(d) ASIC makes an order allowing the Director to vote on the matter; or

(e) the Directors who do not have material personal interest in the matter pass a resolution that:

(i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Company; and

(ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

20 Proceedings of Directors

20.1 Directors' meetings

(a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

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

20.2 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.

20.3 Alternate Director and voting

(a) An individual who is present at a Directors' meeting as an Alternate Director:

(i) is entitled to participate and vote in the appointor's place if the appointor would have been entitled to vote and does not participate in that meeting; and

(ii) has one vote for each person for whom they have been appointed as Alternate Director.

(b) If that individual is also a Director, then that individual also has one vote as a Director in that capacity.

21 Chairperson and deputy chairperson of Directors

21.1 Election of chairperson and deputy chairperson

The Directors may elect from their number a chairperson and a deputy chairperson of their meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.

21.2 Absence of chairperson at Directors' meeting

If a Directors' meeting is held and:

(a) a chairperson has not been elected under clause 21.1; or

(b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the deputy chairperson, if elected under clause 21.1, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Directors present must elect one of their number to be a chairperson of the meeting.

21.3 No casting vote for chairperson at Directors' meetings

In the event of an equality of votes cast for and against a resolution, the chairperson of the Directors' meeting does not have a second or casting vote, and consequently the resolution will not be passed.

22 Alternate Director

22.1 Appointment

(a) Subject to the Corporations Act, a Director may appoint an individual, with the approval of the Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit. The approval of the Alternate Director's appointment may be withdrawn by the Directors at any time.

(b) Subject to the Corporations Act, an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment, and delivered to the Company.

22.2 Notice

An Alternate Director is entitled to notice of all meetings of the Directors.

22.3 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.

22.4 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.

22.5 Alternate Director and remuneration

An Alternate Director is entitled to receive from the Company any remuneration or benefit of the Director in whose place the Alternate Director is standing.

22.6 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, if any, of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

22.7 Termination in writing

The termination of an appointment of an Alternate Director must be effected by a notice in writing signed by the Director who made the appointment and delivered to the Company.

22.8 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.

23 Quorum for Directors' meeting

(a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is a majority of Directors holding office.

(b) The Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 11.1, the 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.

24 Circular resolutions of Directors

(a) The Directors may pass a resolution without a Directors' meeting being held in the manner set out in this clause.

(b) A circular resolution is passed if each Director entitled to vote on the resolution signs 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 Directors if the wording of the resolution and statement is identical in each copy.

(c) The resolution is passed when the last Director signs.

(d) The resolution is deemed to have failed if it is not passed by each Director entitled to vote on the resolution within 48 hours after notice of the resolution is given.

25 Validity of acts of Directors

All acts done at a meeting of the Directors or of a committee of Directors, or by an individual acting as a Director, are taken as valid as if the relevant individual had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

(a) there was a defect in the appointment or continuance in office of an individual as a Director or of the individual so acting; or

(b) an individual acting as a Director was disqualified or was not entitled to vote.

26 Committees

26.1 Delegation to committees

(a) The Directors may delegate any of their powers, to a committee consisting of one or more Directors and such other individuals as they think fit and may revoke the delegation at any time.

(b) A committee to which any powers have been delegated under clause 26.1(a) must exercise those powers:

(i) in accordance with the terms and subject to any restrictions and any directions of the Directors; and

(ii) so as to be concurrent with, or to the exclusion of, the powers of the Directors,

and a power so exercised is taken to have been exercised by the Directors.

26.2 Meetings of committees

A committee may meet and adjourn as it thinks proper.

26.3 Chairperson of a committee

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

(a) a chairperson has not been elected; or

(b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one of their number to be chairperson of the meeting.

26.4 Determination of questions

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

(b) In the event of an equality of votes, the chairperson of the meeting does not have a casting vote.

27 Dispute resolution

27.1 Handling a dispute

Where there is a dispute, grievance or other disagreement between a Member and the Company, whether arising out of the application of this Constitution, the Rules or otherwise (**Dispute**), then either party must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute, and the following must occur:

(a) the Member and the Company must in the period of 14 days from the service of the notice of the Dispute (**Initial Period**) use their best endeavours to resolve the Dispute;

(b) if the Company and the Member are unable to resolve the Dispute within the Initial Period, then the Dispute must be referred for mediation to a mediator agreed by the Member and the Company;

(c) if the disputants are unable to agree on a mediator within 7 days of the expiration of the Initial Period, the Member or the Company may request the chairperson of Resolution Institute[7] to nominate a mediator to whom the Dispute will be referred;

(d) the costs of the mediation must be shared equally between the Member and the Company; and

[7] Resolution Institute is a not-for-profit organisation facilitating dispute resolution – further information can be found at www.resolution.institute.

(e) where:

(i) the party receiving the notice of the Dispute fails to attend the mediation required by clause 27.1(b);

(ii) the mediation has not occurred within 6 weeks of the date of the notice of the Dispute; or

(iii) the mediation fails to resolve the Dispute;

then the party serving the notice of Dispute will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

27.2 Urgent interlocutory relief

The procedure in clause 27.1 will not apply in respect of proceedings for urgent interlocutory relief.

28 Execution of documents

Documents executed for and on behalf of the Company must be executed by:

(a) 2 Directors;

(b) a Director and the Secretary; or

(c) such other individuals as the Directors by resolution appoint from time to time.

29 Accounts

(a) The Directors must cause proper financial records to be kept and, if required by a law, regulation or guideline applicable to the Company or otherwise considered by the Directors to be appropriate, cause the accounts of the Company to be audited or reviewed accordingly.

(b) The Directors must distribute to the Members copies of the annual financial reports of the Company accompanied by a copy of the report of the auditor or reviewer (as required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.

30 Gift Fund

(a) Without limiting clause 29, the Company may maintain a Gift Fund:

(i) to identify and record gifts of money or property for the principal purpose of the Company or of a fund or institution it operates;

(ii) to identify and record contributions of money or property as described in item 7 or item 8 of the table in section 30-15 of the Tax Act in relation to a fundraising event held for the principal purpose of the Company or of a fund or institution it operates; and

(iii) to identify and record money received by the Company because of such gifts or contributions; and

(iv) that does not identify and record any other money or property.

(b) The Gift Fund forms part of the accounts of the Company.

31 Seals

31.1 Safe custody of common seals

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

31.2 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.

32 Inspection of records

32.1 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 inspection by the Members (other than Directors).

32.2 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.

33 Service of documents

33.1 Document includes notice

In this clause 33, a reference to a document includes a notice.

33.2 Methods of service

(a) The Company may give a document to a Member or Director:

(i) personally;

(ii) by sending it by post to the address for the Member or Director in the Register or an alternative address nominated by the Member or Director;

(iii) by sending it to an electronic address nominated by the Member or Director; or

(iv) by any other method of service provided by the Corporations Act.

(b) A Member or Director may give a document to the Company:

(i) by serving it on the Company at the Registered Office;

(ii) by sending it by post to the Registered Office; or

(iii) by sending it to the electronic address nominated by the Company.

(c) A Member may elect to be sent notices of General Meetings and other certain documents that are required or permitted to be sent to a Member by the Company under the Corporations Act either:

(i) in physical form; or

(ii) in electronic form;

by notifying the Company of the election.

(d) Except in relation to service of a document referred to in clause 9.15(f), a document is taken to be given:

(i) if it is sent by post, on the 3rd business day after the date of its posting;

(ii) if it is sent by electronic transmission:

(A) by properly addressing and transmitting the electronic transmission; and

(B) if the document is properly addressed and transmitted in accordance with clause 33.2(d)(ii)(A), on the day following its transmission; and

(iii) if it is given in any other way permitted under the Corporations Act, then when it is taken to have been given under the Corporations Act.

33.3 Evidence of service

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

34 Indemnity and insurance

34.1 Indemnity

(a) The Company must indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company out of the property of the Company against:

(i) every liability incurred by the individual in that capacity; and

(ii) all 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 individual becomes involved because of that capacity;

except to the extent that:

(iii) the Company is forbidden by law (including the Corporations Act) to indemnify the individual against the liability or legal costs;

(iv) an indemnity by the Company of the individual against the liability or legal costs would, if given, be made void by any law; or

(v) the individual is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).

(b) The indemnity is a continuing obligation and is enforceable by an individual even though they are no longer a Director, Secretary or executive officer of the Company, or of a Related Body Corporate of the Company.

34.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an individual who is or has been a Director or Secretary or executive officer of the Company or of a Related Body Corporate of the Company against liability arising out of conduct by the individual in that capacity (**Relevant Conduct**), including a liability for legal costs, unless:

(a) the Company is forbidden by law to pay or agree to pay the premium in respect of the Relevant Conduct (whether or not the law applies in the particular case); or

(b) the contract would, if the Company paid the premium, be made void by any law (including the Corporations Act).

34.3 Contract

The Company may enter into an agreement with an individual referred to in clauses 34.1 and 34.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 34 may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

35 Amendment to Constitution

(a) Subject to clause 35(c), this Constitution may only be amended by Special Resolution.

(b) While the Company is a registered charity under the ACNC Act, the Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

(c) Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for, in the resolution.

Schedule 1

Appointment of Proxy - (see clause 9.15(e))

Westgate Community Initiatives Group Ltd
ACN 638 435 462

I/We, ... (name)

of ..... (address)

being a member/members of the abovenamed Company hereby appoint

..... (name)

of ..... (address)

or in their absence ..... (name)

of ..... (address)

as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the Company to be held on the ..... day of ..... 20 ..... and at any adjournment of that meeting.

[TO BE INSERTED IF DESIRED] This form is to be used in favour of / against the resolution (Strike out whichever is not desired)

[INSERT DETAILS OF SPECIFIC RESOLUTIONS IF DESIRED]

Signed: .....

Name: .....

Dated: .....

This notice must be returned to Westgate Community Initiatives Group Ltd ACN 638 435 462 at:

[ADDRESS/EMAIL ADDRESS/FAX No]

by [TIME] on [DATE]

[INSERT SPECIFIC DETAILS ENSURING THAT THE TIME IS 48 HOURS BEFORE THE TIME FOR THE MEETING]