Constitution

Barbara May Foundation

ABN 35 141 248 900

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Constitution

Barbara May Foundation

A company limited by guarantee

1 Name

The name of the company is Barbara May Foundation.

2 Purpose

The company's purpose is to support women in need, particularly in African communities by, without limitation:

(a) providing mother and child health services;

(b) providing training and equipment to support local maternal health providers;

(c) enabling the development and improvement of medical facilities;

(d) educating and informing local communities on women's health in a way that is culturally sensitive and respectful of local traditions.

3 Powers

Solely for carrying out the company's purpose, the company may exercise all the powers of a company limited by guarantee under the Corporations Act.

4 Not for profit

4.1 Application of income and assets

(a) The company's income and assets may only be used in a manner consistent with the company's purpose.

(b) The company must not distribute any income or assets, directly or indirectly, by way of dividend or other profit distribution, to any member in their capacity as member.

(c) This rule does not prevent payments (directly or indirectly) to or for the benefit of a member not in their capacity as member (for example, where the payment is made under rule 2 or is for the provision of goods or services at an amount that is no more than fair and reasonable).

4.2 Payments to directors

(a) The company must not pay a director for their services as a director.

(b) All payments to a director must be approved by the board and must be no more than an amount which is fair and reasonable.

(c) Subject to rules 4.2(a) and 4.2(b), the company may pay directors for, without limitation:

(1) out-of-pocket expenses connected with their role as a director;

(2) goods or services provided to the company (other than as a director); or

(3) their role as an employee of the company (separate to their role as a director).

5 Membership

(a) The members are the directors.

(b) Each member agrees to comply with this constitution, follow applicable company policies and support the purpose of the company set out in rule 2.

(c) The company must maintain a register of members that sets out a member's name, address, email (or other contact details for receiving notices) and the date their membership begins and ends.

(d) A person ceases being a member when they cease being a director.

6 Liability and guarantee of members

The liability of a member to contribute to the property of the company if it is wound up is limited to $100.

7 Winding up

On winding up, if there are any surplus assets after all debts and liabilities have been met, and after applying rule 8, they must be given to one or more charities as decided by the board.

8 DGR status

8.1 Application of this rule

This rule 8 applies if the company is a deductible gift recipient under the ITAA 97 (**DGR**).

8.2 Identification of Gift Assets

The company must maintain records which identify Gifts and any money received because of those Gifts (such as interest) (**Gift Assets**) and which do not record any other assets.

8.3 Winding up or revocation of DGR status

The Gift Assets must be given to one or more charities that are DGRs, as decided by the board, on:

(a) the winding up of the company where the surplus assets include Gift Assets; or

(b) the revocation of the company's DGR status.

9 Changing this constitution

(a) The company must not pass a special resolution changing this constitution if it would result in the company no longer being a charity.

(b) A resolution that attempts to change this rule 9 or this constitution in breach of this rule 9 will have no effect.

10 General meetings

(a) The board may convene a general meeting at a time and place it considers appropriate, including over the phone or online.

(b) General meetings must be conducted in accordance with rule 12, with the following modifications:

(1) A member may appoint a proxy.

(2) A members' resolution may be passed without a meeting in accordance with rule 12.5.

(3) At least 21 days' notice of a general meeting must be given to each member unless all members consent to shorter notice or waive notice.

(4) Where a special resolution is to be proposed, the notice of meeting must state the full terms of the special resolution.

11 Board

11.1 Composition and eligibility

(a) The minimum number of directors is 3.

(b) An individual is eligible to be a director if they:

(1) have signed a consent to act as director;

(2) have not exceeded the maximum term of service, being 9 years, or the longer term decided by the board for a particular director; and

(3) are not disqualified from managing a corporation under the Corporations Act or from being a responsible entity under the ACNC Act.

11.2 Directors appointed by the board

The board may appoint any eligible individual as a director.

11.3 Term of office

A director ceases being a director if they:

(a) die;

(b) have served the maximum term of service;

(c) resign by giving notice to the company;

(d) are removed by member resolution;

(e) are appointed for a specific term and the term is not extended;

(f) are disqualified from managing a corporation under the Corporations Act or from being a responsible entity under the ACNC Act;

(g) fail to attend three consecutive board meetings or four meetings in a year, unless otherwise decided by the board; or

(h) in the circumstances outlined in the Corporations Act.

11.4 Powers and duties

(a) The board is responsible for managing the company and carrying out its purpose set out in rule 2.

(b) The board may exercise all the company's powers which are not required by the Corporations Act to be exercised by the members.

(c) Directors must understand and comply with their duties as directors, and the requirements described in the ACNC governance standards and external conduct standards.

(d) The directors must ensure the company's financial affairs are managed responsibly, including by:

(1) maintaining accurate records that explain transactions and financial performance, and enable true and fair financial statements to be prepared annually;

(2) deciding how payments are approved or executed by or on behalf of the company; and

(3) ensuring the company does not operate while insolvent.

(e) The board may delegate any of its powers or functions to a director, committee, employee, agent or other person as it decides. The delegate must exercise the powers or functions within the terms of the delegation.

11.5 Conflict of interest

(a) A director must inform the other directors of any perceived or actual conflict of interest.

(b) The directors must manage conflicts of interest in accordance with the ACNC governance standards, the Corporations Act and any conflict of interest policy adopted by the board.

(c) Subject to conflicts of interest being managed in accordance with rule 11.5(b):

(1) a director is not disqualified from entering into an arrangement with the company as vendor, purchaser or in another capacity;

(2) an arrangement entered into by the company in which a director is interested is not invalid or voidable;

(3) a director who has an interest in an arrangement involving the company need not account to the company for any profit realised under the arrangement,

merely because of the director's fiduciary obligations.

11.6 Committees

The board may establish one or more committees (including advisory committees) consisting of any number of directors or others and provide for a charter or terms of reference for the operations of the committee.

11.7 Validity of acts

An act done by a person acting as a director or done by the board, or by a person or committee exercising a power or function delegated by a director (or the board) is not invalidated merely because of:

(a) a defect in appointment of any person;

(b) a person no longer being a director or committee member; or

(c) a person being ineligible to vote;

if that circumstance was not known by the person, board or committee (as applicable) when the act was done.

12 Decision-making procedures

12.1 Convening and holding meetings

(a) A director may call a meeting by giving reasonable notice to all the other directors, or by the secretary giving reasonable notice to all directors.

(b) A notice of meeting:

(1) must specify the date, time and location of the meeting, including any online links or phone number (if relevant);

(2) need not state the nature of the business to be conducted; and

(3) may be given immediately before the meeting.

(c) Failing to give or receive a meeting notice does not invalidate resolutions passed or actions taken at the meeting if:

(1) the failure was due to accident or error;

(2) the director waives notice of that meeting before or after the meeting;

(3) the director notifies the company of their agreement to the resolution or action before or after the meeting; or

(4) the director attended the meeting.

(d) Meetings can be held in person or by telephone or digital means or any combination.

(e) If a technical difficulty occurs which means that one or more directors cannot participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum remains present, continue with the meeting.

12.2 Quorum

(a) No business may be conducted at a meeting unless a quorum is present at the time the business is dealt with.

(b) A quorum consists of a majority of directors, or at least three directors, whichever is the greater number.

(c) If the number of directors falls below the minimum required by this constitution, the remaining directors must appoint additional directors as soon as possible. Until that has happened, they may only act if and to the extent that there is an emergency requiring action.

12.3 Chair

(a) The board may elect one of the directors to be the chair and decide how long they will hold the position.

(b) The chair must preside as chair at each meeting if present within 10 minutes of the scheduled start time and willing to act.

(c) If the conditions in rule 12.3(b) are not met, the directors present must elect one of themselves to be the chair for that meeting.

12.4 Decisions at meetings

(a) Except where a special resolution is required, resolutions pass by majority of votes cast by the directors present.

(b) If the votes on a proposed resolution are equal, the chair of the meeting does not have a second or casting vote, and the vote is taken as lost.

12.5 Decisions without a meeting

(a) A resolution is taken to have passed if:

(1) all of the directors who are entitled to receive notice of a meeting and vote on a resolution are given notice setting out that resolution;

(2) at least 75% of the directors consent to the resolution within the time specified, or if no time is specified, within 14 days of the document being sent; and

(3) the directors who consent to the resolution would have constituted a quorum at a meeting held to consider that resolution.

(b) A director may consent to a resolution in the manner set out in the notice of the resolution.

(c) The resolution is taken as passed when the last director required to make up at least 75% of the directors consents to the resolution within the required time period.

12.6 Minutes and records

(a) The board must maintain as part of the company's records:

(1) minutes of general meetings, board meetings and committee meetings (including all resolutions proposed); and

(2) records of resolutions passed by members, the board and committees without a meeting,

(b) The records must be made within one month after the relevant meeting is held or resolution passed.

(c) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

13 Secretary

(a) The board must appoint at least one secretary who ordinarily resides in Australia.

(b) The secretary must consent to the appointment.

(c) The secretary can be removed by the board.

14 Indemnity and insurance

14.1 Indemnity

(a) The company must indemnify, on a full indemnity basis and to the maximum extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) they incur as an officer of the company.

(b) This indemnity:

(1) continues and is enforceable by an Indemnified Officer even if they are no longer an officer of the company; and

(2) can be enforced without the person first having to incur any expense or make any payment.

14.2 Insurance

The company may, to the extent permitted by law:

(a) purchase and maintain insurance; or

(b) pay or agree to pay a premium for insurance,

for any Indemnified Officer against any loss or liability they incur as an officer of the company if the board decides it is appropriate to do so.

14.3 Savings

Nothing in this rule:

(a) affects any other rights or remedies an Indemnified Officer has in relation to losses or liabilities covered by this rule; or

(b) limits the company's capacity to indemnify or provide or pay for insurance for anyone not covered by this rule.

15 Notice

15.1 Notice from the company or a director

The company or a director may give notice:

(a) personally;

(b) by post to the person's nominated address; or

(c) by email or other digital means.

15.2 Notice to the company

Notice to the company may be given:

(a) by post or personal delivery to its registered address; or

(b) by email to the company's main email address, or if none, to the secretary's or chair's email address.

15.3 Time of service

(a) A notice that is posted and properly addressed is considered served at 10.00am, three Business Days after it was posted.

(b) A notice sent by email or other digital means is considered served at the time it is sent. However, if it was not sent on a Business Day or was sent after 4.00pm (addressee's time), the notice is considered to be served at 10.00am on the next Business Day.

16 Definitions and interpretation

16.1 Definitions

Term	Meaning
ACNC Act	the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).
board	the directors of the company passing a resolution in accordance with this constitution.
Business Day	Monday to Friday inclusive, excluding the public holidays in the State or Territory of the registered office of the company.
Corporations Act	the *Corporations Act 2001* (Cth).
Gift	1 a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage; or 2 a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
Indemnified Officer	each person who is or has been a director, secretary or officer of the company.
ITAA 97	the *Income Tax Assessment Act 1997* (Cth).

16.2 Interpretation

In this constitution:

(a) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;

(b) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;

(c) a reference to notice means ‘written notice’ and ‘signed’ includes an electronic signature;

a reference to ‘person’ means a natural person or an incorporated entity;

(d) a person is present at a meeting if they are present in person, over the phone, online or by proxy or representative; and

(e) the singular includes the plural and the plural includes the singular.

17 Corporations Act

(a) The replaceable rules in the Corporations Act do not apply to the company.

(b) To the extent that this constitution is inconsistent with any applicable requirements in the Corporations Act, the constitution is modified to reflect those requirements.