



Constitution

Mary Ward International Australia Limited
ACN 117 502 477

1 Definitions and interpretation

1.1 Replaceable Rules

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this constitution.

1.2 Definitions

The following definitions apply in this constitution:

Act means the *Corporations Act, 2001* (Cth);

Board means the board of Directors of the Company;

Charity Legislation means legislation binding the Company that regulates the registration, reporting obligations or governance of the Company as a charity as amended or replaced from time to time;

Company means Mary Ward International Australia Limited;

Director means a person appointed to that position by the Member;

Executive Officer means the executive officer of the Company and includes a person acting in that position;

Fund means each of the funds listed in 3(b) and **Funds** means all of them;

Insolvency Event means an event by which a person:

- (a) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (b) is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (c) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (d) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
- (e) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of the relevant person or his or her estate under any laws relating to insolvency;
- (f) is or applies to be protected from any of its creditors under any applicable legislation, or
- (g) has anything similar to any of the events in paragraphs (a) to (e) happen to it under the law of any applicable jurisdiction;

Institute means the Institute of the Blessed Virgin Mary;

Material Personal Interest means a material personal interest for the purposes of the Act;

Members means the members of the Company from time to time and **Member** means any member of the Company from time to time;

Province means the Australian and South East Asian Province of the Institute;

Province Leader means the person holding office for the time being as Provincial Superior of the Province under the constitutions of the Institute;

Province Leader and Council means the Province Leader acting with the members of the Province Council appointed under the constitutions of the Institute;

Secretary means any person appointed to perform the duties of a Secretary of the Company; and

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

1.3 Interpretation

The following rules apply in interpreting this document:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) words or expressions defined in the Act or the Charity Legislation, have those meanings;
- (d) except so far as the contrary intention appears in this constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
- (e) headings are for convenience only, and do not affect interpretation; and
- (f) a reference to:
 - (i) a party includes its administrators, successors, substitutes by novation and assigns;
 - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
 - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity, and
 - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

2 Name and structure

2.1 Name of the Company

The name of the Company is Mary Ward International Australia Limited.

2.2 Company limited by Guarantee

The Company is limited by guarantee and the liability of the Member is limited as provided in this document. The Company is bound to comply with its objects and character as a not-for-profit company limited by guarantee that is a registered entity under the Act and Charity Legislation.

2.3 Constitution of the Company

This is the constitution of the Company and comprises its governing document for the purposes of Charity Legislation.

3 Objects

- (a) Mary Ward (1585 – 1645) was the founder of a new form of religious life for women based on the model of the Society of Jesus. Mary Ward's vision involved engaging directly with society with a view to working for social justice, education, welfare and spirituality. The Company is a charitable institution established by the Province to support its mission to assist the most disadvantaged in Australia and in developing countries around the world, with the predominant objects of:
- (i) Advancing education; and
 - (ii) Advancing social or public welfare, particularly by relieving the poverty, distress or disadvantage of individuals or families.
- (b) Without limiting the predominant objects of the Company, the further objects of the Company is to administer and act as trustee of the following charitable trust funds:
- (i) the Mary Ward International Australian Foundation;
 - (ii) the Mary Ward International Australia Charitable Trust;
 - (iii) the Mary Ward International Australia Overseas Development Fund;
 - (iv) the Mary Ward International Australia Indigenous Education Fund; and
 - (v) any other charitable trust established by the Company from time to time, **(Funds)**.
- (c) Subject to the requirements of laws applying to the Funds and the constituent documents of the Funds, the Company will at all times operate in accordance with the canon law of the Catholic Church and in conformity with the teachings of Jesus Christ and the spirituality and charism of Mary Ward, as determined from time to time by the Province Leader and Council.

4 Income and property

- (a) The Company must apply its income and property solely towards promoting the objects of the Company as stated in rule 3. No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the Member or Directors.
- (b) Nothing in this document prevents the payment in good faith of remuneration to any officers or employees of the Company or to any Member in return for:
- (i) any services actually rendered to the Company (except for the provision of services as a Director of the Company, for which a Director must not be compensated);
 - (ii) goods supplied in the ordinary course and usual way of business;
 - (iii) interest on money lent to the Company at reasonable rates;
 - (iv) reasonable rent for premises leased to the Company; or
 - (v) reimbursement for reasonable out-of-pocket expenses incurred on the Company's behalf.

5 Deductible gift recipient status

5.1 General

If at any time the Company has the status of a company to which gifts can be deducted under the Tax Act, any provisions which from time to time are required in order to maintain the status of the Company as a company to which gifts can be deducted under the Tax Act are deemed to form part of this constitution.

5.2 Winding up or revocation of deductible gift recipient status

On the earlier of the winding up of the Company or the revocation of the Company's deductible gift recipient endorsement under Sub-division 30-BA of the Tax Act, the Company must transfer the following to a fund, authority or institution to which gifts can be deducted under Division 30 of the Tax Act, as approved by the Members:

- (a) any surplus gifts of money or property for the principal purpose of the Company; and
- (b) any surplus contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for that purposes; and
- (c) any surplus money received by the Company because of such gifts or contributions.

6 Winding up

6.1 Limited liability of Members

If the Company is wound up, each of the Members of the Company undertakes to contribute to the assets of the Company an amount not exceeding \$100 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after each of the Members ceases to be a member of the Company.

6.2 Distribution of Property

If the Company is wound up or dissolved, any property remaining after the satisfaction of the debts and liabilities of the Company will not be paid to or distributed among the Members but will be given or transferred to an organisation nominated by the Members which:

- (a) has similar objects to the Company;
- (b) meets the requirements of rule 5 if the Company has deductible gift recipient status at the time of winding up; and
- (c) is exempt from income tax under the Tax Act.

7 Membership

7.1 Members

- (a) The Members of the Company at the time of adoption of this Constitution are the Province Leader and Council.
- (b) The Members may from time to time approve the admission of a substitute or additional member or members.

7.2 Cessation of Membership

Any person will automatically cease to be a Member of the Company if they:

- (a) cease to hold the office entitling them to be a Member;

- (b) resign as a Member by notice in writing to the Company;
- (c) become the subject of an Insolvency Event or subject to any form of insolvent administration;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office; or
- (e) die.

7.3 Resolutions if the Company has one Member

- (a) If at any time there is only one Member, all resolutions and decisions required by the Act, the Charity Legislation or by this constitution to be made by the Member will be passed and made by the Member recording the resolution or decision and signing the record, without holding any annual general meeting or other general meetings.
- (b) An annual general meeting of the Company will be held in accordance with the Act provided however that where there is only one Member, the Member may elect not to hold an annual general meeting in accordance with section 250N(4) of the Act.

8 Board of Directors

8.1 Management

The management of the Company will be vested in the Board.

8.2 Number of Directors

- (a) Subject to the Act, the Members may increase the number of Directors.
- (b) Subject to rule 8.2(a), there will be:
 - (i) at least five Directors; and
 - (ii) a maximum of nine Directors.

8.3 Method of appointment and removal of Directors

- (a) The Members will make appointments and re-appointments of Directors, and nominate their terms of office, and subject to the Act and Charity Legislation may remove Directors by notice in writing addressed to the Board.
- (b) Each Director will be appointed for a term of up to three years, and an appointment may be renewed. However, a Director who has been in office for nine years may only be re-appointed for periods of up to one year.
- (c) The Members will appoint the Chair of the Board and will nominate the term of office. The Board may appoint one of its number to be Deputy Chair and nominate the term of his or her office.
- (d) Wherever a casual vacancy occurs in the office of Chair or Director, the Members will appoint a person to fill the vacancy and in the case of a casual vacancy in the office of Deputy Chair, the Board may appoint a person to fill the vacancy.

8.4 Term

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

- (a) is not reappointed upon the expiry of the term of office for which the Director was appointed;

- (b) is absent without the consent of the Board from 3 successive meetings of the Board and the Members resolve that his or her office be vacated;
- (c) resigns by notice in writing to the Members;
- (d) becomes of unsound mind or physically or mentally incapable of performing the duties of that office and the Province Leader and Council are satisfied of that fact;
- (e) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the interest as required by the Act;
- (f) is removed from office by the Members; or
- (g) ceases to meet the conditions under the Charity Legislation for being a responsible entity of the Company.

9 Operation of the Company

9.1 Powers and duties of the Board

Except as otherwise required by the Act, any other applicable law or this constitution, the Board:

- (a) has the power to manage the business of the Company;
- (b) may exercise every right, power or capacity of the Company as are not by the Act or by this constitution otherwise required to be exercised by the Company in a general meeting.

9.2 Reserved Powers

- (a) In addition to any other approvals required under this constitution, the approval of the Members is required before any decision takes effect to:
 - (i) dissolve or liquidate the Company or any Fund;
 - (ii) consolidate or merge the Company or a Fund with another organisation, fund or entity;
 - (iii) establish any new business, fund, joint venture or other corporate affiliation;
 - (iv) vary the terms of the constituent document of any Fund;
 - (v) administer any Fund in a manner which may:
 - (A) substantially alter the Fund's current operation or purpose;
 - (B) jeopardise the Fund's applicable taxation endorsements; or
 - (C) in respect of the Mary Ward International Australia Overseas Development Fund, cause that Fund to be in breach of its applicable obligations under the Overseas Aid Gift Deduction Scheme maintained by the Australian Government Department of Foreign Affairs and Trade;
 - (vi) incur any indebtedness outside the limits set from time to time by the Members;
 - (vii) act beyond the limits and conditions with respect to capital expenditure or other financial arrangements from time to time set by the Members or incur expenditure in excess of any budget approved by the Members;
 - (viii) adopt the strategic, long-range plan of the Company or any Fund;

- (ix) materially amend the strategic, long-range plan of the Company or any Fund;
 - (x) make any agreement pursuant to which a third party obtains the right or obligation to manage all or substantially all of the operations of the Company or a Fund or make any agreement pursuant to which the Company manages any entity or institution not sponsored by the Institute;
 - (xi) acquire land or buildings; and
 - (xii) grant any power of attorney.
- (b) The Members will give the Board written notice of approvals and refusals of approvals by the Members under this rule 9.2.

9.3 **Negotiable Instruments**

All negotiable instruments must be executed, accepted or endorsed by the Company by the signature of two (2) Directors or in any other manner as the Board determines.

10 **Proceedings of the Board**

10.1 **Board Meetings**

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as the Board thinks fit.
- (b) The Chair may at any time, and the Secretary must on the requisition of 2 Directors, convene a meeting of the Board.
- (c) A Board meeting may be held with one or more of the Directors taking part by telephone, audiovisual link up or other instantaneous communication medium, if the meeting is conducted so that Directors are able to hear the proceedings of the entire meeting and to be heard by all others attending the meeting.
- (d) A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if equal numbers of Directors are located in each of two or more places, at the place where the Chair of the meeting is located.
- (e) In the absence of the Chair, the Deputy Chair will chair Board meetings. In the absence of both the Chair and Deputy Chair, the Directors present must elect one of their number to chair the Board meeting.
- (f) The Executive Officer must attend all meetings of the Board, other than those meetings, or parts of any meetings, which are determined by the other members of the Board to be 'in camera' sessions from which the Executive Officer will be excluded. For the avoidance of doubt, the Executive Officer is not a member of the Board or a Director of the Company.

10.2 **Notice of Board Meeting**

The convenor of each Board meeting:

- (a) must give as much notice as is reasonably possible of the meeting (and, if it is adjourned, of its resumption) individually to each Director;
- (b) must give that notice in writing directed to such address as the Director in question furnishes to the Secretary from time to time; and
- (c) must give that notice containing as much information as is reasonably possible concerning the business to be dealt with by the meeting to which it relates,

but failure to give notice to, or non receipt of notice by, a Director does not result in a Board meeting being invalid.

10.3 **Voting**

Subject to this constitution, questions arising at a meeting of the Board will be decided by a majority of votes of Directors present and voting and any such decision will be deemed a decision of the Board. In the case of an equality of votes the Chair of the meeting will not have a second or casting vote and if a majority decision cannot be reached a resolution will not be passed.

10.4 **Quorum**

At a meeting of the Board one half of the number of Directors constitutes a quorum. No business will be transacted at any such meeting unless a quorum is present at the time the meeting proceeds to business.

10.5 **Continuing Directors**

In the event of a vacancy or vacancies in the office of a Director or offices of Directors the remaining Directors may act but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board they may act only:

- (a) for the purpose of requesting the Members to appoint additional Directors;
- (b) to convene a meeting of Members (if the Company has more than one Member); or
- (c) in emergencies.

10.6 **Written Resolution**

If all the Directors entitled to vote have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Director or if the Directors signed the document on different days on the day on which and at the time at which the document was last signed by a Director.

10.7 **Attendance of Non-Directors**

The Chair or a majority of the Directors may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration.

10.8 **Procedure at Board Meetings**

Subject to this constitution and the Act, the procedure to be followed at a meeting of the Board will be as the Board decides.

10.9 **Board Committees**

The Board may constitute committees comprised of at least one Director and including other persons suitable to assist and advise the Board in the discharge of its functions. Board committees will be constituted and act in accordance with resolutions of the Board.

11 **Director's duties and interests**

11.1 **Holding Offices or entering into Agreements**

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

- (a) holding any office or place of profit or employment with, or being a member of, any entity dealing with the Company other than that of the Company's auditor; or

- (b) entering into any agreement with the Company.

11.2 Duty to disclose Material Personal Interests

- (a) For the purposes of this rule 11, a Director has a Material Personal Interest in a matter that relates to the affairs of the Company if that Director would be considered to have a Material Personal Interest under the Act.
- (b) Unless the Act says otherwise, a Director who has a Material Personal Interest in a matter that relates to the affairs of the Company must, at a Directors' meeting as soon as practicable after the Director's appointment or after the Director becomes aware of their interest in the matter (whichever is later), give the other Directors notice of the interest which must include details-of:
 - (i) the nature and extent of the interest;
 - (ii) the relation of the interest to the affairs of the Company; and
 - (iii) any other information the Director is required to disclose under the Act.
- (c) A Director does not need to give notice of an interest under rule 11.2(b) if he or she is not required to do so under the Act.
- (d) A Director who is required to disclose a Material Personal Interest to the Company under this Constitution or the Act must ensure that the nature and extent of the interest is tabled at a Directors' meeting and recorded in the minutes of that meeting.

11.3 Effect of Director having a Material Personal Interest

Each Director must comply with the Act in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a Material Personal Interest.

11.4 Duty to disclose a conflict of interest

- (a) Unless the Charity Legislation says otherwise, a Director who has a perceived or actual material conflict of interest in accordance with Charity Legislation must, subject to 11.4(b) below, at a Directors' meeting as soon as practicable after the Director's appointment or after the Director becomes aware of their interest in the matter (whichever is later), give the other Directors notice of the interest which must include details of:
 - (i) the nature and extent of the interest;
 - (ii) the relation of the interest to the affairs of the Company; and
 - (iii) any other information the Director is required to disclose under the Charity Legislation.
- (b) A Director may disclose a material conflict of interest (within the meaning of Charity Legislation) that is not a Material Personal Interest in the form of a standing notice to the other Directors with ongoing effect.

12 By-laws

The Board has power to make vary and repeal by-laws from time to time for the proper conduct and management of the Company.

13 Secretary

At least one Secretary of the Company will be appointed by the Board and hold office on such terms and conditions as the Board determines.

14 Company seals

14.1 Common Seal

The Company will not have a common seal unless the Board resolves to adopt one.

14.2 Use of Seals

Any common seal adopted by the Board may only be used with the authority of the Board.

14.3 Fixing Seals to documents

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

- (a) by two (2) Directors;
- (b) by one (1) Director and one (1) Secretary; or
- (c) by any other way resolved by the Board.

15 Accounts and audit

15.1 Keeping accounts

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

- (a) correctly record and explain its transactions and financial position and performance;
- (b) would enable true and fair financial statements to be prepared and audited.

15.2 Board responsibilities

The Board must do all things reasonably open to it to:

- (a) ensure that all money payable to the Company is properly collected;
- (b) ensure that all money expended by the Company is properly expended and properly authorised;
- (c) ensure that adequate control is maintained over assets owned by or in the custody of the Company;
- (d) ensure that all liabilities incurred by the Company are properly authorised;
- (e) ensure efficiency and economy of operations;
- (f) develop and maintain an adequate budgeting and accounting system;
- (g) develop and maintain an adequate internal audit system.

15.3 Right of Access

A Director has a right of access to financial records of the Company at times upon 24 hours' notice being given.

15.4 Financial Report

If required by the Act, the Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to Members in accordance with the Act.

15.5 Audit

If required by the Act, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report.

15.6 Inspection of financial records and books

The books of account of the Company must be kept at the registered office of the Company or at such other place as the Board thinks fit and will be open to inspection by the Members of the Company on such reasonable conditions as the Board determines.

16 Indemnity

16.1 Indemnity

Subject to the Act, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer (as defined in the Act) of the Company against a liability:

- (a) incurred to the Company, to a related body corporate or to a person other than the Company (including a liability incurred as a result of appointment or nomination of the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith or is for a pecuniary penalty order or compensation under the Act; and
- (b) for costs and expenses incurred by the officer in defending civil or criminal proceedings in which judgment is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person under the Act.

16.2 Insurance

Subject to the Act, the Company may enter into and pay premiums on a contract of insurance in respect of any person, to the fullest extent permitted by the Act.

16.3 Former Officers

The indemnity in favour of officers under rule 16.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company, even if the person is not an officer at the time the claim is made.

17 Amendments to constitution

This constitution may be varied or amended from time to time in accordance with the Act.