

CONSTITUTION

OF

MONTESSORI CHILDREN'S FOUNDATION

A COMPANY LIMITED BY GUARANTEE



Suite 4, 223 Waterworks Road
Ashgrove Q 4060
T +61 7 3188 5124

Contact: Kristel Winkler
Reference: KMW:1604

1	The COMPANY	5
2	REGISTERED OFFICE.....	5
2.1	Location	5
2.2	Display Name	5
3	OBJECTS.....	5
3.1	Objects.....	5
3.2	Application of income.....	6
3.3	Powers.....	6
4	MEMBERSHIP	6
4.1	Number of Members	6
4.2	Members.....	6
4.3	Eligibility for membership.....	6
4.4	New Members.....	7
4.5	Register of Members	7
4.6	Member must provide notice of changes.....	7
4.7	Evidence of membership	7
4.8	Membership Fees	7
4.9	Cessation of membership	7
4.10	Resignation	8
4.11	Suspension or Expulsion of Member	8
4.12	Money owing on cessation	9
4.13	Rights of members non-transferable	9
5	GENERAL MEETINGS	9
5.1	Annual General Meetings	9
5.2	Location of Meetings.....	9
5.3	Convening Meetings	9
5.4	Notice of General Meetings	10
5.5	Persons Entitled to Notice	11
5.6	Accidental omission	11
5.7	Business of Annual General Meeting	11
5.8	Quorum for General Meetings	11
5.9	Appointment of Chairperson	12
5.10	Chairperson's powers	12
5.11	Adjournment of meetings.....	12
5.12	Voting on show of hands	12
5.13	Demand for a poll	12
5.14	Proxies and representatives	13

5.15	Proxy form	13
5.16	Proxy form and power of attorney to be deposited before meeting	13
5.17	Technology	13
6	THE BOARD	14
6.1	Directors.....	14
6.2	Initial Directors	14
6.3	Becoming a Director	14
6.4	Term of appointment.....	14
6.5	Eligibility of directors	14
6.6	Ceasing to be a Director	15
6.7	Director's Remuneration	16
6.8	Alternate Directors	16
6.9	Directors cannot remove another Director.....	16
6.10	Removal by Members.....	16
7	POWERS & DUTIES OF THE BOARD	16
7.1	General Powers	17
7.2	Rules.....	17
7.3	Borrowing.....	17
7.4	Execution of cheques etc.....	17
7.5	Minutes	17
7.6	Notice required when Director has material personal interest.....	17
7.7	Standing notice of interest	18
7.8	Director may contract with Company.....	18
7.9	Director with interest may affix seal.....	18
7.10	Permitted acts during vacancy in the board	18
7.11	Defects in appointment of qualifications of Director	18
7.12	Compliance with ACNC Governance Standards.....	18
8	BOARD MEETINGS.....	18
8.1	Appointment of Chairperson	19
8.2	Minimum number of Board meetings.....	19
8.3	Convening Board meetings	19
8.4	Quorum at Board meetings	19
8.5	Voting.....	19
8.6	Mode of Meetings	19
8.7	Circular Resolutions.....	19
8.8	Sub-committees	20
9	COMPANY SECRETARY	20

9.1	Appointment.....	20
9.2	Terms of Appointment	20
10	CHIEF EXECUTIVE OFFICER (CEO)	20
10.1	Appointment.....	20
10.2	Standing Directors Continue to Hold Office.....	21
11	INDEMNITY AND INSURANCE.....	21
11.1	Indemnity	21
11.2	Insurance premiums	21
12	ACCOUNTS	21
12.1	Accounts	21
12.2	Audit.....	21
13	WINDING UP	21
13.1	No Distribution to Members on winding up.....	21
13.2	Distribution of surplus on winding up.....	21
14	PUBLIC BENEVOLENT INSTITUTION	22
14.1	Use of gifts and contributions for principal purpose	22
14.2	Distribution of assets on revocation of Public Benevolent Institution tax endorsement	22
14.3	Keeping of records.....	22
15	AMALGAMATION	22
16	NOTICES	23
16.1	Notices.....	23
16.2	Certificates.....	23
17	AMENDMENTS TO THIS CONSTITUTION	23
18	DEFINITIONS AND INTERPETATION	23
18.1	Definitions	23
18.2	Interpretation.....	24
18.3	Replaceable Rules.....	25

1 THE COMPANY

1.1 Name of Company

The name of the company is Montessori Children's Foundation.

1.2 Nature of Company

The Company is a public company limited by guarantee.

1.3 Liability of Members and Guarantee

- (a) The liability of members is limited.
- (b) Every member of the Company undertakes to contribute to the assets of the Company while they are a Member or within one year after they cease to be a Member for payment of the debts and liabilities of the Company (contracted before they ceased to be a Member) and of the cost, charges and expenses of and for the adjustment of the rights of the contributories among themselves such amounts as may be required not exceeding \$50.00.

2 REGISTERED OFFICE

2.1 Location

The registered office of the Company will be 17 Scott Street, Parramatta Park in the State of Queensland, or such other place situated in Australia as the Board may determine from time to time.

2.2 Display Name

The Company must display its name and the expression "Registered Office" at that place.

3 OBJECTS

3.1 Objects

The objects for which the Company is established are:

- A. To provide for the relief of poverty, sickness, suffering, distress, misfortune, disability or helplessness of people, and to work proactively to enhance the physical, and emotional wellbeing of people, in communities in Australia, and particularly in Indigenous communities, without discrimination due to age, sex, religion, political beliefs or marital status.
- B. To provide educational and other programs for the purpose of providing benevolent relief consistent with Object A.
- C. To give to other entities providing direct benevolent relief in accordance with Object A and B.
- D. To engage in income producing activities and fundraising to aid in the funding of such benevolent relief.
- E. To accept appointment as, and act as, trustee of charitable trusts established or to be established for charitable purposes consistent with one or more Objects of the Company.

3.2 Application of income

- (a) The assets and income of the Company must be applied solely towards the furtherance of the objects of the Company as set out in this Constitution.
- (b) No part of the assets or income shall be distributed whether directly or indirectly, by way of dividend, bonus or otherwise to any Members of the Company.
- (c) Despite paragraph (b) above, the Company may, in good faith:
 - (ii) pay a Member for goods or services actually rendered by them to the Company;
 - (iii) pay a Member rent for premises demised or let to the Company;
 - (iv) pay a Member interest on money advanced to the Company at a rate not exceeding the rate for the time being charged by the Company's Bank for overdrafts under \$100,000.00; or
 - (v) authorise the reimbursement of any expense incurred by a Member on behalf of or for the Company.

3.3 Powers

The Company:

- (a) has the legal capacity and powers of a legal person; and
- (b) may exercise the powers of a Company under the Act, but cannot issue shares;
- (c) must exercise such legal capacity and powers for the purpose of carrying out its Objects.

4 MEMBERSHIP

4.1 Number of Members

The number of Members is limited to 12.

4.2 Members

The Initial Members and such persons as the Board admits to membership in accordance with this Constitution will be Members of the Company.

4.3 Eligibility for membership

- (a) To be eligible for membership of the Company, Members or applicants for membership must:
 - (i) be a natural person who is eighteen years or over; and
 - (ii) in the view of the Board, hold a position which supports the Objects and adheres to the values of the Company.
- (b) To avoid any doubt, the Board may, from time to time, adopt and promulgate additional eligibility criteria for Membership.

4.4 **New Members**

- (a) An application for membership must be in the form approved by the Board from time to time.
- (b) The Board must consider and determine an application for membership at the next meeting of the Board after its receipt.
- (c) The Board has an unfettered discretion to determine whether an application for membership is rejected or accepted.
- (d) The Board is under no obligation to give reasons if an application for membership is rejected.
- (e) If an applicant has been accepted for membership the Secretary must provide the applicant with notice in writing of this acceptance and update the Register of Members.

4.5 **Register of Members**

- (a) The Board will keep and maintain a Register of Members in accordance with the Act.
- (b) The following information must be contained in the Register of Members in relation to each Member:
 - (i) the full name of the Member;
 - (ii) the address of the Member;
 - (iii) the date of admission to and cessation of membership; and
 - (iv) any other information which the Board requires.

4.6 **Member must provide notice of changes**

Each Member must notify the Secretary in writing of any changes to the person's name and address.

4.7 **Evidence of membership**

Inclusion of a name in the Register of Members is prima facie evidence of Membership.

4.8 **Membership Fees**

No membership fees are payable by the Members.

4.9 **Cessation of membership**

- (a) A Member ceases to a Member of the Company if the Member:
 - (i) gives notice in writing to the Company resigning as a Member;
 - (ii) fails to respond within two months to a written request from the Secretary that the Member confirm in writing that they wish to remain a Member;

- (iii) dies
 - (iv) becomes bankrupt or insolvent, or makes an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (v) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
 - (vi) is expelled by the Directors or by the Company in general meeting in accordance with this Constitution.
- (b) Upon cessation of membership the Secretary must update the Register of Members in accordance with clause 4.5.

4.10 Resignation

A Member may resign from membership by providing written notice of resignation to the Company, with immediate effect or with effect from a specified date occurring not more than 3 months after the service of the notice. A Member remains liable for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under clause 1.3 (b).

4.11 Suspension or Expulsion of Member

- (a) Subject to clause 4.11(b) below, the Board may, in its discretion, suspend or expel a Member (who is not also a Director) if that Member:
- (i) has failed, in the opinion of the Board, to comply with any provision of this Constitution or any regulations adopted by the Company;
 - (ii) is found guilty of a criminal offence;
 - (iii) engages in any conduct which is, in the opinion of the Board, prejudicial to the interests of the Company.
- (b) The Secretary must deliver a written notice to a Member at least seven (7) days prior to a meeting in which the Board intends to consider and determine a resolution to suspend or expel that Member. The notice must include:
- (i) a statement to the effect that the Board will meet to consider a resolution to suspend or expel the Member;
 - (ii) the specified time and date in which the Board intends to meet and consider the resolution;
 - (iii) particulars of the matters relevant to the potential suspension or expulsion of the Member;
 - (iv) a statement to the effect that the Member has the opportunity to provide the Board with material it considers relevant and to attend and be heard on the matter at the Board meeting.
- (c) If the Board considers that a Member who is also a Director:

- (i) has failed, in the opinion of the Board, to comply with any provision of this Constitution or any regulations adopted by the Company;
- (ii) is found guilty of a criminal offence;
- (iii) engages in any conduct which is, in the opinion of the Board, prejudicial to the interests of the Company.

then the Board may, in its discretion, refer the matter to the Company to suspend or expel that Member from the Company by resolution in general meeting, provided that the procedure set out in s 203D of the Act must be observed, as if it were a resolution to remove that Member from their office of Director under s 203D of the Act.

- (d) The Secretary must notify the Member of the outcome of any resolution of the Board or the Company in general meeting to suspend or expel the Member.
- (e) No appeal lies against a decision of the Board or the Company in general meeting to suspend or expel a Member.
- (f) When membership is suspended, a Member cannot exercise their Members' rights such as voting at a general meeting.
- (g) A person who has ceased to be a Member may be readmitted to membership in accordance with the normal requirements for membership.

4.12 Money owing on cessation

Any money owing by a Member to the Company at the time the Member ceases to be a Member remains owing upon the Member ceasing to be a Member.

4.13 Rights of members non-transferable

The rights and entitlements of a Member are not transferrable and cease upon the person ceasing to be a Member.

5 GENERAL MEETINGS

5.1 Annual General Meetings

An Annual General Meeting must be held in each financial year. All general meetings, other than Annual General Meetings, are called extraordinary general meetings.

5.2 Location of Meetings

All meetings of the Company will be held in Australia. The Company may hold a meeting of Members in 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

5.3 Convening Meetings

- (a) Any Director may convene an extraordinary general meeting whenever he or she thinks fit.

- (b) The Directors of the Company must call and arrange to hold an extraordinary general meeting on the request of Members with at least 25% of the votes that may be cast at the general meeting. In this situation:
 - (i) The request must:
 - A. Be in writing; and
 - B. State any resolution to be proposed at the meeting;
 - C. Be signed by the Members making the request; and
 - D. Be given to the Company.
 - (ii) The request may be signed in counterparts.
 - (iii) The percentage of votes that the Members have is to be worked out as at the midnight before the request is given to the Company.
 - (iv) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.
- (c) Members can only convene an extraordinary general meeting if Members with at least 25% of the votes that may be cast at a general meeting call, and arrange to hold, a general meeting. In this situation:
 - (i) The Members calling the meeting must pay the expenses of calling and holding the meeting.
 - (ii) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called.
 - (iii) The percentage of votes that Members have is to be worked out as at the midnight before the meeting is held.

5.4 Notice of General Meetings

- (a) Subject to clause 5.4(b) and (c) below, at least 21 days written notice of a General Meeting must be given to all Members who are entitled to receive a notice.
- (b) Subject to clause 5.4(c) below, the Company may call on shorter than 21 days' notice:
 - (i) An Annual General Meeting, if all the Members entitled to attend and vote at the Annual General Meeting agree in writing beforehand; and
 - (ii) An extraordinary general meeting, if Members with at least 95% of the votes that may be cast at the extraordinary general meeting agree in writing beforehand.
- (c) Notice must be given in accordance with the Act of a general meeting at which a resolution will be moved to:
 - (i) remove a Director under section 203D of the Act; or
 - (ii) appoint a Director in the place of a director removed under section 203D of the Act; or
 - (iii) remove an auditor under section 329 of the Act.

- (d) A notice of General Meeting must contain the following information:
 - (i) the place, day and hour of the meeting;
 - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
 - (iii) the general nature of the meeting's business;
 - (iv) the details of any special resolutions to be proposed at the meeting; and
 - (v) that Members are entitled to appoint a proxy.

5.5 **Persons Entitled to Notice**

Notice of every General Meeting must be given in any manner authorised by clause 16 to:

- (a) every Member and Director; and
- (b) the Auditor or Auditors, if any, for the time being of the Company.

No other person shall be entitled to receive notice of general meetings.

5.6 **Accidental omission**

A resolution passed at a General Meeting is not invalidated because the Company accidentally omitted to give notice of the meeting to a Member or because a Member did not receive a notice.

5.7 **Business of Annual General Meeting**

The business of an Annual General Meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) to receive and consider the annual financial report, the report of the Board and the Audit/Financial Review report as applicable;
- (b) the election of Directors; and
- (c) the appointment of auditors, if necessary.

5.8 **Quorum for General Meetings**

- (a) For any business to be transacted at a General Meeting a quorum must be present. The quorum for a General Meeting is 5 Members present in person or by proxy.
- (b) If a quorum is not present within 30 minutes (or such longer period allowed by the chairperson):
 - (i) If the meeting was convened on the requisition of Members, it must be dissolved;
 - (ii) Otherwise, the meeting must be adjourned to another day and at another time and place determined by the Board.

- (c) Members entitled to receive a notice of General Meeting must be given at least seven (7) days' notice of an adjourned General Meeting.
- (d) The quorum at an adjourned meeting is 5 Members present in person or by proxy.

5.9 Appointment of Chairperson

- (a) The Chairperson is to preside as chairperson at every General Meeting.
- (b) If the Chair is not present or is unwilling to act, then the Members present shall elect a Member who is present to preside as chairperson of the General Meeting.

5.10 Chairperson's powers

- (a) Subject to the terms of this Constitution, the determination of the chairperson on matters of procedure and conduct of the General Meeting is final and binding.
- (b) The Chairperson may, in his or her discretion, expel a Member from a General Meeting if he or she reasonably believes that Member's conduct is unreasonable, including, for example use of offensive or abuse language or attendance at the meeting under the influence of alcohol or drugs.
- (c) The Chairperson is entitled to a casting or second vote in General Meetings (whether on a vote on a show of hands or by poll).

5.11 Adjournment of meetings

- (a) Provided a quorum is present, with the consent of Members present in person or by proxy, the Chairperson may adjourn a General Meeting to another time and place.
- (b) The only business that may be transacted at an adjourned General Meeting is the business left unfinished at the meeting prior to the adjournment.
- (c) A notice of the adjourned General Meeting:
 - (i) is not required if the meeting is to be held within 30 days of the original General Meeting;
 - (ii) must be given in the manner required by this Constitution if the adjourned meeting is to be held 30 or more days after the original General Meeting.

5.12 Voting on show of hands

- (a) Except where a poll is demanded, at a General Meeting a resolution put to the vote must be decided on a show of hands.
- (b) If a poll is not demanded, the Chairpersons' declaration as to the outcome of the vote is conclusive evidence of the fact without further proof.

5.13 Demand for a poll

- (a) Before a resolution is put to Members by vote on show of hands, a poll may be demanded by either:
 - (i) The chairperson; or

- (ii) A Member present in person or by proxy and entitled to vote.
- (b) If a poll is demanded, it must be taken in the manner and either at once or after an interval or adjournment as determined by the Chairperson. However, a poll demanded on the election of the chairperson or on the question of an adjournment must be taken immediately.
- (c) If there is a dispute as to the admission or rejection of a vote cast by poll, the determination of the chairperson is final and binding.

5.14 Proxies and representatives

- (a) At General Meetings a Member may vote in person or by proxy.
- (b) A Member may appoint an individual as their proxy to attend and vote instead of the Member. A proxy must be another Member.
- (c) A proxy form appointing a proxy must be in writing under the hand of the appointer or of his or her attorney duly authorized in writing and be in the form determined by the Company from time to time.
- (d) In order to be relied upon, a proxy form must be received by the Company at least 48 hours before the commencement of the General Meeting at:
 - (i) its registered office; and/or
 - (ii) at the fax number or email address specified in the notice of meeting.
- (e) A proxy form may specify the manner in which the proxy is to vote. Where the proxy form specifies how the proxy must vote, the proxy must not vote on a resolution otherwise than as specified in the proxy form. Unless otherwise instructed the proxy may vote as he or she thinks fit.
- (f) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

5.15 Proxy form

The instrument appointing a proxy may be in the form set out in schedule 1 or in a common or usual form.

5.16 Proxy form and power of attorney to be deposited before meeting

The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a duly certified copy of that power or authority shall be deposited at the registered office of the Company, faxed to the registered office or deposited at, faxed or sent by electronic mail to such other place as is specified for that purpose in the notice convening the meeting, not less than forty-eight hours before the time for holding the meeting or adjourned meeting at which the person named in that instrument proposes to vote, or in the case of a poll, not less than twenty-four hours before the time appointed for the take of the poll and in default the instrument or proxy shall not be treated as valid.

5.17 Technology

The Company may hold a General Meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

6 THE BOARD

6.1 Directors

The minimum number of Directors is four, consisting of the CEO (who shall hold office ex-officio for the duration of his or her appointment to the position of CEO) and not less than three (3) elected Directors. There may not be more than eight (8) Directors holding office at any one time.

6.2 Initial Directors

At least one third of the Initial Directors (identified by lot or agreement) must retire at the next Annual General Meeting but will be eligible for re-election or re-appointment, however the CEO will not be required to retire pursuant to this clause.

6.3 Becoming a Director

- (a) A person, other than the CEO, may become a Director by:
 - (i) Election by resolution of the Members at a General Meeting; or
 - (ii) Appointment by the Board to either fill a vacancy in the number of elected Directors or as an addition to the existing Directors, but so that the total number of Directors shall not at any time exceed the maximum number fixed, if any, in accordance with this Constitution.
- (b) A person may become a Director by appointment by the Board to the position of CEO in accordance with clause 10.1(b)(ii), but so that the total number of Directors shall not at any time exceed the maximum number fixed, if any, in accordance with this Constitution.
- (c) Each candidate or appointee must lodge his or her written consent to act as Director with the Secretary prior to his or her election or appointment as a Director.

6.4 Term of appointment

- (a) Directors do not hold office for any express term, however, subject to clause 6.4(b), at each Annual General Meeting two of the Directors then holding office must retire.
- (b) With the exception of the CEO, who is a permanent member of the Board for the duration of his or her term of appointment as CEO the Directors who must retire at each Annual General Meeting pursuant to clause 6.4(a) must be the two Directors who have been longest in office since last being elected. Where Directors are elected on the same day, the Director(s) to retire will be decided by lot unless they otherwise agree.
- (c) A Director who retires at an Annual General Meeting under clause 6.4 (a) may nominate for re-election at such meeting.

6.5 Eligibility of directors

- (a) To be eligible to hold office as a Director, a person must (subject to the exceptions which may apply pursuant to subclause 10.1(b)(ii)):
 - (i) Hold a current Queensland Blue Card, or its equivalent in other States or Territories, as required;
 - (ii) Be nominated by a Member of the Company, and have their nomination approved in writing by the Board;
 - (iii) Be a Member of the Company, admitted either prior to or contemporaneously with their appointment as Director; and
 - (iv) Provide a written consent to the Company.
- (b) Provided a candidate is available (which will be determined at the discretion of the Board), at least one Director must be:
 - (i) a descendant of L.C. Masterman; or
 - (ii) endorsed by a retiring Director who is a descendant of L.C. Masterman.
- (c) At least two Directors must ordinarily reside in Australia at all times.
- (d) At least one person holding office as Director must hold an internationally recognised Montessori professional endorsement. The Board may, from time to time, publish guidance as to the nature of the professional endorsement required by this clause.

6.6 **Ceasing to be a Director**

A person in the role of Director will cease to be a Director if:

- (a) the Act or any other law, or an order made under the Act, prohibits the person from exercising the office of director;
- (b) the person becomes disqualified from being a responsible entity under the ACNC Act or any order made under the ACNC Act;
- (c) the person is found guilty of a criminal offence;
- (d) the person's term as Director expires;
- (e) the person resigns as Director and has given notice in writing to the Company Secretary;
- (f) the person has been removed as a Director prior to the expiry of his or her term at a General Meeting provided the requirements of the Act relating to the removal of a director have been fulfilled;
- (g) the person dies;
- (h) the person becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (i) the person becomes bankrupt or makes any arrangement or composition with his or her creditors unless the Board grants that person leave to remain a Director; or

- (j) the person without leave of absence approved by the Board fails to attend all Board meetings in any six month period;
- (k) the person becomes ineligible to hold a Queensland Blue Card or its equivalent in other States or Territories, as required;
- (l) the person (other than a person appointed as Director pursuant to clause 10.1(b)(ii)) ceases to be or is suspended as a Member of this Company; or
- (m) the person was appointed as Director pursuant to clause 10.1(b)(b)(ii) and his or her term of appointment to the position of CEO ends.

6.7 Director's Remuneration

- (a) The Board may authorise the repayment of any expense a Director properly incurs for the Company or in the performance of his or her ordinary duties as a Director, including travelling and accommodation expenses, provided that any such payment would be reasonable in the circumstances of the Company. Any such payment must be approved by the Directors.
- (b) No Director may be paid any fees or receive any remuneration in relation to their ordinary duties as a director of the Company.
- (c) Nothing in clause 6.7(b) prevents the payment in good faith of reasonable and proper remuneration to any Director of the Company in return for any services actually rendered by them to the Company which are not performed in their capacity as a Director of the Company.
- (d) Subject to clause 6.7 (b), no payments shall be made to any Director other than those authorised by clauses 6.7 (a) and 6.7 (c) unless:
 - (i) The payment is approved by the Directors; and
 - (ii) The payment is approved, if required, by the Members in accordance with the Act.

6.8 Alternate Directors

No Director is entitled to appoint a person to act as an alternate director for them except with the prior approval of the Board.

6.9 Directors cannot remove another Director

A Director cannot be removed from office by the other Directors.

6.10 Removal by Members

Subject to the Act, the Company may by resolution remove a Director from office.

7 POWERS & DUTIES OF THE BOARD

7.1 **General Powers**

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

7.2 **Rules**

Subject to this Constitution, the Board may, by resolution, make, rescind and alter rules for the management and conduct of any of the activities of the Company but such rules may be altered or revoked by the Company in general meeting.

7.3 **Borrowing**

The Board may exercise all the powers of the Company to borrow or raise money and to mortgage or charge any property or business of the Company, and to issue debentures and other securities whether outright or as a security for any debt, liability or obligation of the Company or of any other person.

7.4 **Execution of cheques etc**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors or in such other manner as the Board from time to time determines.

7.5 **Minutes**

The Board shall cause minutes to be made:

- (a) of proceedings and resolutions of meetings of the Company; and
- (b) of proceedings and resolutions of meetings of the Board (including meetings of a committee of Directors); and
- (c) of resolutions passed by Directors without a meeting.

Such minutes must be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting. Where the minutes referred to in this clause are signed in accordance with this clause, those minutes shall be presumed to be an accurate record of the relevant proceedings and resolutions unless the contrary is proved.

7.6 **Notice required when Director has material personal interest**

Subject to the Act, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of their interest and must not be present at the meeting while the matter is being considered or vote on the matter. The notice required to be given to the other Directors must give details of the nature and extent of the material personal interest and the relationship of the material personal interest to the affairs of the Company. Notice must be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter. Details must be recorded in the minutes of the Directors' meeting.

7.7 Standing notice of interest

A Director who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter in accordance with the Act. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.

7.8 Director may contract with Company

Subject to clause 7.6, a Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company by a Director nor any contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit realized by any contract or arrangement, by reason of holding the office of Director or of the fiduciary relationship established by the office.

7.9 Director with interest may affix seal

A Director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the Seal to any document evidencing or otherwise connected with the contract or arrangement.

7.10 Permitted acts during vacancy in the board

The continuing Directors may act notwithstanding any vacancy in the Board, but if and so long and their number is reduced below the number fixed by this Constitution as the necessary quorum of the Board, the continuing Director or Directors may act for the purpose of increasing the number of Directors to that number or of summoning a general meeting of the Company, but for no other purposes.

7.11 Defects in appointment of qualifications of Director

All acts done at a meeting of Directors of a subcommittee of Directors, or by a person acting as a Director, are taken as valid as if the relevant person 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 a person as a Director or of the person so acting; or
- (b) A person acting as a Director was disqualified or was not entitled to vote.

7.12 Compliance with ACNC Governance Standards

Without limitation to any other duties or obligations a Director may owe the Company, each Director must at all times, to the extent that it depends upon them, comply with the ACNC Governance Standards and such other regulations or codes of conduct as may be adopted by the Board from time to time.

8 BOARD MEETINGS

8.1 **Appointment of Chairperson**

- (a) The Board must elect a chairperson from among their number and may decide the period in which he or she holds the office of chairperson.
- (b) The Board may but is not obliged to elect from among their number a deputy chairperson, secretary and/or treasurer.
- (c) If at a Board meeting both the chairperson and deputy chairperson (if one has been elected) are absent, an acting chairperson must be chosen by a majority of directors present at the meeting to fulfil the duties of the chairperson.

8.2 **Minimum number of Board meetings**

The Directors must convene and conduct a minimum of three (3) Board meetings each year.

8.3 **Convening Board meetings**

- (a) A Board meeting may be convened by the chairperson, secretary or any director.
- (b) Unless all the Directors resolve otherwise, notice of each meeting must be given to each Director at least five (5) business days before the meeting.

8.4 **Quorum at Board meetings**

The quorum for Board meetings consists of a majority of the then current Directors.

8.5 **Voting**

Questions arising at any Board meeting will be decided by majority of votes with each Director entitled to one vote. In the case of deadlock, the chairperson will have a casting vote.

8.6 **Mode of Meetings**

- (a) The Directors may regulate Board meetings in the manner they see fit.
- (b) If the Board consents, Directors need not attend a Board meeting in the one place at the time and directors can instead participate in Board meetings by using technology (e.g. telephone or internet).

8.7 **Circular Resolutions**

The Directors may pass a resolution by circular resolution without a Director's meeting being held if all Directors (other than a Director who has been given a leave of absence or a Director who, at a Board meeting, would not be entitled to vote on the resolution) vote in favour of the resolution by each Director either:

- (a) signing a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document; or

- (b) replying by email in response to an original email setting out the terms of a resolution of the Board confirming that they are in favour of the resolution set out in the original email.
- (c) For the purposes of clause 8.7(a), the circular resolution can consist of several documents provided such documents are in identical terms and each document is signed by one or more Directors.

8.8 Sub-committees

- (a) Subject to any requirements of the Act, the Board may delegate any of its powers to such subcommittee or subcommittees as the Board sees fit.
- (b) The members of any subcommittee will be determined by the Board and can include such directors, Company members or other persons as the Board sees fit (provided such proposed subcommittee members consent to the appointment).
- (c) Decisions of a subcommittee are not binding unless ratified by the Board.

9 COMPANY SECRETARY

9.1 Appointment

The Board may appoint one or more persons as Company Secretary. To avoid any doubt, the Board may appoint one or more of the Directors and/or Members as Company Secretary.

9.2 Terms of Appointment

The Company Secretary holds office on such terms determined by the Board from time to time.

10 CHIEF EXECUTIVE OFFICER (CEO)

10.1 Appointment

- (a) The Board must appoint a CEO.
- (b) The Board may appoint to the position of CEO:
 - (i) any of the standing Directors; or
 - (ii) a person who is not a standing Director, subject to their satisfying the eligibility criteria set out in clause 6.5, except that a CEO appointed pursuant to this subclause need not be nominated by a Member of the Company prior to his or her appointment and need not be a Member of the Company. To be clear, a person appointed to the position of CEO pursuant to this subclause is automatically appointed as a Director for the duration of their term of appointment as CEO, subject always to the provisions of this Constitution.
- (c) The CEO will hold office as Director ex officio from the date of his or her appointment and for a term fixed by the Board, subject to clause 0. To be clear, the CEO will not need to stand for election as a Director pursuant to clause 6.3(a)(i) while he or she holds this position, regardless of whether that CEO was appointed under clause 10.1(b)(i) or 10.1(b)(ii).

(d) The CEO holds this position on such terms as determined by the Board from time to time.

10.2 Standing Directors Continue to Hold Office

Where a person was a Director of the Company prior to their appointment to the position of CEO, that person will continue to hold office as a Director subject to this Constitution at the end of any term of appointment as CEO.

11 INDEMNITY AND INSURANCE

11.1 Indemnity

To the fullest extent permitted by law, the Company indemnifies each current and former director, secretary and other officer of the Company against:

- (a) any liability incurred by that person in their capacity as director, secretary or officer of the Company; and
- (b) reasonable legal costs incurred by that person in that capacity in defending or responding to any proceeding, whether of a civil, criminal, administrative or investigatory nature.

11.2 Insurance premiums

To the fullest extent permitted by law, the Company may pay the premiums on an insurance policy insuring a current or former director, secretary or officer (including a past Officer) against any potential liability (including liability for legal costs) incurred by the person in their capacity as director, secretary or officer.

12 ACCOUNTS

12.1 Accounts

The Board must cause such proper accounting and other records to be kept as is required by law.

12.2 Audit

The Company must comply with any requirements of the Act or any other law in relation to the appointment of an auditor.

13 WINDING UP

13.1 No Distribution to Members on winding up

If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever, this surplus must not be paid to or distributed amongst the Members of the Company, unless the Member(s) is also an institution that satisfies the requirements in clause 0.

13.2 Distribution of surplus on winding up

The surplus must be given or transferred to some other institutions or institutions which is/are Public Benevolent Institutions to which income tax deductible gifts can be made, and:

- (a) that may be registered under section 149C of the *Taxation Administration Act 2001* (Qld); or
- (c) that the Commissioner of State Revenue in Queensland is satisfied has or have a principal object or pursuit of fulfilling a charitable object promoting the public good; or
- (d) for a purpose the Commissioner of State Revenue in Queensland is satisfied is charitable or for the promotion of public good,

such institution or institutions to be determined by the Members of the Company at or before the time of dissolution and in default thereof by a Judge of the Supreme Court of a State, or Territory in which the Company operates.

14 PUBLIC BENEVOLENT INSTITUTION

14.1 Use of gifts and contributions for principal purpose

If the Company is endorsed as a Public Benevolent Institution, any gift or contribution to that institution must only be used for the principal purpose for which the Company was granted Deductible Gift Recipient status.

14.2 Distribution of assets on revocation of Public Benevolent Institution tax endorsement

If the tax endorsement of the Company as a Public Benevolent Institution is revoked, the following assets remaining after the payment of the Company's liabilities shall be transferred to an institution with similar objects, which is charitable at law and registered as a Public Benevolent Institution and to which income tax deductible gifts can be made, such institution to be determined by the members of the Company at the time the endorsement is revoked and in default thereof by a Judge of the Supreme Court of a State or Territory in which the Company operates:

- (a) gifts of money or property for the principal purpose of the Company;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (c) money received by the Company because of such gifts and contributions.

14.3 Keeping of records

If the Company is endorsed as a Public Benevolent Institution the Company must:

- (a) keep records that record and explain all transactions and other acts the Company engages in that are relevant to the Company's status as a Deductible Gift Recipient; and
- (b) retain those records for at least seven (7) years after the completion of the transactions or acts to which they relate.

15 AMALGAMATION

The Company must not amalgamate with any other body that is not registered as a charity with the ACNC and endorsed by the Commissioner of Taxation with income tax exemption.

16 NOTICES

16.1 Notices

- (a) A notice or other communication required or permitted to be given by the Company to a person shall be in writing and
 - (i) delivered personally;
 - (ii) by prepaid mail; or
 - (iii) sent by email or facsimile transmission.
- (b) A notice or other communication shall be deemed to have been given when:
 - (i) personally delivered, upon delivery;
 - (ii) mailed, 48 hours after posting; or
 - (iii) sent by email or facsimile communication, when sent and in the case of a facsimile transmission, when the facsimile machine confirms transmission.

16.2 Certificates

A certificate signed by a director or secretary stating that a notice was sent is conclusive evidence of delivery.

17 AMENDMENTS TO THIS CONSTITUTION

This Constitution may only be amended or repealed by Special Resolution.

18 DEFINITIONS AND INTERPETATION

18.1 Definitions

In this Constitution unless there be something in the subject or context inconsistent therewith:

- (a) **Act** means the *Corporations Act 2001* (Cth) as amended from time to time;
- (b) **ACNC** means the Australian Charities & Not-for-profits Commission;
- (c) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) as amended from time to time;
- (d) **ACNC Governance Standards** means the standards by that name forming part of the regulations to the ACNC Act, as amended from time to time;
- (e) **Blue Card** means the Positive Notice Blue Card or Exemption Card issued by the Commission for Children and Young People and Child Guardian (by whatever name known);
- (f) **Board** means the directors of the Company acting collectively;

- (g) **Chairperson** means the chairperson of the Board;
- (h) **CEO** means the person appointed to the position of Chief Executive Officer pursuant to this Constitution.
- (i) **Company** means Montessori Children's Foundation Ltd ACN 114 666 170;
- (j) **Director** means a person elected or appointed as a director of the Company;
- (k) **General Meeting** means an Annual General Meeting or an extraordinary general meeting;
- (l) **Initial Director** means a person who is a Director of the Company at the date this Constitution is adopted as the Constitution of the Company.
- (m) **Initial Member** means a person who is a Member of the Company at the date this Constitution is adopted as the Constitution of the Company.
- (n) **Member** means a member of the Company;
- (o) **Officer** takes its meaning from the Act and to avoid doubt includes a director and secretary;
- (p) **Person** includes natural persons and corporations;
- (q) **Poll** means a secret ballot;
- (r) **Register** means the Register of Members of the Company;
- (s) **Rules** means the rules, regulations or bylaws made by the Board pursuant to this Constitution;
- (t) **Seal** means the common seal of the Company;
- (u) **Secretary** means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary;
- (v) **Special Resolution** means, subject to the Act, a resolution passed by a majority of not less than 75% of eligible voters, present in person or by proxy at a General Meeting of the Company for which sufficient notice has been given, such notice setting out the intention to propose the special resolution and stating the resolution.

18.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

- (e) A reference to a person includes any type of entity or body of persons, whether incorporated or not, and any executor or administrator of the person.
- (f) A reference to a month or to a year is to a calendar month or a calendar year.
- (g) A reference to writing includes a facsimile transmission.
- (h) A reference to includes or including should be construed without limitation.

18.3 Replaceable Rules

The replaceable rules referred to in the Act do not apply to the Company and are replaced by this Constitution.

Registered in the Office of the Australian Securities and Investments Commission on the 8th day of June 2005.

SCHEDULE 1

PROXY FORM (See clause 5.15)

MONTESSORI CHILDREN'S FOUNDATION - ACN 114 666 170

I, (name)

of (address)

being a member of the Company hereby appoint the following:

(name)

of (address)

or in their absence (name)

of (address)

as my proxy to vote for me on my behalf at the meeting of the members of the Company to be held on theday of20.... and at any adjournment of that meeting.

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 Montessori Children's Foundation Limited 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].