



CONSTITUTION

of

Certa Cito Foundation Ltd

Australian Company Number (ACN) 662 425 890
Australian Business Number (ABN) 86 662 425 890

A company limited by guarantee

11 December 2024

CONSTITUTION of Certa Cito Foundation Ltd

Table of Contents

TABLE OF CONTENTS..... 2

PRELIMINARY..... 5

1. NAME OF THE COMPANY 5

2. TYPE OF COMPANY 5

3. LIMITED LIABILITY OF MEMBERS..... 5

4. THE GUARANTEE 5

5. DEFINITIONS..... 5

CHARITABLE PURPOSES AND POWERS..... 5

6. OBJECT 5

7. POWERS..... 6

8. NOT-FOR-PROFIT 6

9. PUBLIC FUND 6

10. MERGERS AND AMALGAMATIONS 7

11. AMENDING THE CONSTITUTION 7

MEMBERS..... 7

12. MEMBERSHIP AND REGISTER OF MEMBERS 7

13. CATEGORIES OF MEMBERSHIP 8

14. MEMBERSHIP FEES 8

15. WHO CAN BE A MEMBER 8

16. HOW TO APPLY TO BECOME A MEMBER 8

17. DIRECTORS DECIDE WHETHER TO APPROVE MEMBERSHIP 8

18. WHEN A PERSON BECOMES A MEMBER..... 9

19. WHEN A PERSON STOPS BEING A MEMBER..... 9

CHAPTERS..... 9

20. ESTABLISHMENT OF CHAPTERS 9

21. DIRECTORS DECIDE WHETHER TO APPROVE ESTABLISHMENT OF A CHAPTER 9

22. MEMBERSHIP OF CHAPTERS 10

23. CHAPTER TO APPOINT A REPRESENTATIVE TO THE CHAPTERS SUBCOMMITTEE 10

24. CHAPTER MAY NOT BIND THE FOUNDATION 10

DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES 10

25. DISPUTE RESOLUTION 10

26. DISCIPLINING MEMBERS..... 11

GENERAL MEETINGS OF MEMBERS..... 13

27. GENERAL MEETINGS CALLED BY DIRECTORS 13

28. GENERAL MEETINGS CALLED BY MEMBERS..... 13

29. ANNUAL GENERAL MEETING..... 13

30. THE CHAIRPERSON OF THE ANNUAL GENERAL MEETING MUST GIVE MEMBERS AS A WHOLE A REASONABLE OPPORTUNITY AT THE MEETING TO ASK QUESTIONS OR MAKE COMMENTS ABOUT THE MANAGEMENT OF THE FOUNDATION. NOTICE OF GENERAL MEETINGS 14

31. QUORUM AT GENERAL MEETINGS 15

32. AUDITOR'S RIGHT TO ATTEND MEETINGS 15

33. REPRESENTATIVES OF MEMBERS..... 15

34. USING TECHNOLOGY TO HOLD MEETINGS..... 16

35. CHAIRPERSON FOR GENERAL MEETINGS 16

36. ROLE OF THE CHAIRPERSON 16

37. ADJOURNMENT OF MEETINGS 16

MEMBERS' RESOLUTIONS AND STATEMENTS..... 17

CONSTITUTION of Certa Cito Foundation Ltd

38. MEMBERS' RESOLUTIONS AND STATEMENTS.....	17
39. FOUNDATION MUST GIVE NOTICE OF PROPOSED RESOLUTION OR DISTRIBUTE STATEMENT	17
40. CIRCULAR RESOLUTIONS OF MEMBERS	18
VOTING AT GENERAL MEETINGS	18
41. HOW MANY VOTES A MEMBER HAS.....	18
42. CHALLENGE TO MEMBER'S RIGHT TO VOTE.....	18
43. HOW VOTING IS CARRIED OUT	18
44. WHEN AND HOW A VOTE IN WRITING MUST BE HELD	19
45. APPOINTMENT OF PROXY	19
46. VOTING BY PROXY	20
DIRECTORS.....	20
47. NUMBER OF DIRECTORS	20
48. <i>EX OFFICIO</i> , APPOINTED AND ELECTED DIRECTORS.....	20
49. ELECTION AND APPOINTMENT OF DIRECTORS AND OFFICE-HOLDERS.....	20
50. ELECTION OF PRESIDENT AND VICE PRESIDENT	22
51. TERM OF OFFICE.....	22
52. WHEN A DIRECTOR STOPS BEING A DIRECTOR	22
POWERS OF DIRECTORS	23
53. POWERS OF DIRECTORS.....	23
54. DELEGATION OF DIRECTORS' POWERS.....	23
55. APPOINTMENT OF ADVISORY SUBCOMMITTEES	23
56. PAYMENTS TO DIRECTORS	23
57. EXECUTION OF DOCUMENTS	23
DUTIES OF DIRECTORS	24
58. DUTIES OF DIRECTORS.....	24
59. CONFLICTS OF INTEREST	24
DIRECTORS' MEETINGS.....	26
60. WHEN THE DIRECTORS MEET.....	26
61. CALLING DIRECTORS' MEETINGS.....	26
62. CHAIRPERSON FOR DIRECTORS' MEETINGS.....	26
63. QUORUM AT DIRECTORS' MEETINGS	26
64. USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS.....	26
65. PASSING DIRECTORS' RESOLUTIONS.....	26
66. CIRCULAR RESOLUTIONS OF DIRECTORS.....	26
SECRETARY AND TREASURER	27
67. APPOINTMENT AND ROLE OF SECRETARY	27
68. APPOINTMENT AND ROLE OF TREASURER.....	27
MINUTES AND RECORDS.....	28
69. MINUTES AND RECORDS.....	28
70. FINANCIAL AND RELATED RECORDS.....	28
71. FINANCIAL REPORTING AND REVIEW	28
BY-LAWS	29
72. BY-LAWS	29
NOTICE.....	29
73. WHAT IS NOTICE	29
74. NOTICE TO THE FOUNDATION.....	29
75. NOTICE TO MEMBERS	29

CONSTITUTION of Certa Cito Foundation Ltd

76. WHEN NOTICE IS TAKEN TO BE GIVEN	29
FINANCIAL YEAR	30
77. FOUNDATION'S FINANCIAL YEAR	30
INDEMNITY, INSURANCE AND ACCESS	30
78. INDEMNITY.....	30
79. INSURANCE.....	30
80. DIRECTORS' ACCESS TO DOCUMENTS	30
WINDING UP.....	31
81. SURPLUS ASSETS NOT TO BE DISTRIBUTED TO MEMBERS	31
82. DISTRIBUTION OF SURPLUS ASSETS.....	31
DEFINITIONS AND INTERPRETATION.....	32
83. DEFINITIONS	32
84. READING THIS CONSTITUTION WITH THE CORPORATIONS ACT	32
85. INTERPRETATION.....	33

Preliminary

1. Name of the company

The name of the company is Certa Cito Foundation Ltd (the **Foundation**).

2. Type of company

The **Foundation** is a not-for-profit public company limited by guarantee which is established for its object as expressed in clause 6.

3. Limited liability of members

The liability of members is limited to the amount of the **guarantee** in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$10 (the **guarantee**) to the property of the **Foundation**, in addition to payment of any outstanding membership subscriptions and any other monies owing by the member to the **Foundation**, if the **Foundation** is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **Foundation** incurred before the member stopped being a member, or
- (b) costs of winding up.

5. Definitions

In this constitution, words and phrases have the meaning set out in clauses 83 and 85.

Charitable purposes and powers

6. Object

The **Foundation's** object is to pursue the following charitable purposes:

- 6.1 advancing the education, health and welfare of members and veterans of the Australian Defence Force (the **ADF**) in general and **RA Sigs** in particular, their families and their communities, including but not limited to:
 - (a) providing benefits, whether in the form of goods and services or financial support, to serving members of the **ADF** to help alleviate hardship
 - (b) providing benefits, whether in the form of goods and services or financial support, to former members of the **ADF** to help alleviate hardship
 - (c) providing benefits, whether in the form of goods and services or financial support, to the families and communities of serving and former members of the **ADF**, to help alleviate hardship
 - (d) providing grants and bursaries to assist in the education of children of serving and former members of the **ADF**, and
- 6.2 advancing the safety and security of Australia and the Australian people, including but not limited to:
 - (a) raising the profile of, and community engagement with, the **ADF** in general and **RA Sigs** in particular, including raising awareness of the heritage and history of **RA Sigs**

CONSTITUTION of Certa Cito Foundation Ltd

- (b) undertaking commemorations, promotional events and celebrations with a view to making the Australian community at large more patriotic
- (c) providing material support to the **ADF** in general and **RA Sigs** in particular, including providing specific support to deployed units, and
- (d) promoting the pursuit of excellence among serving members of the **ADF** in general and **RA Sigs** in particular, including through the establishment of competitions, awards and trophies.

7. Powers

Subject to clause 8, the **Foundation** has the following powers, which may only be used to carry out its purposes set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the **Corporations Act**.

8. Not-for-profit

- 8.1 The **Foundation** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 82.
- 8.2 Clause 8.1 does not stop the **Foundation** from doing the following things, provided they are done in good faith:
 - (a) paying a member for goods or services they have provided or expenses they have properly incurred, in accordance with **Foundation** rules and processes, at fair and reasonable rates or rates more favourable to the **Foundation**, or
 - (b) making a payment to a member in carrying out the **Foundation's** charitable purposes.

9. Public fund

- 9.1 The **Foundation** will establish and maintain a public fund.
- 9.2 The public will be invited to contribute to the fund.
- 9.3 Donations to the **Foundation** will be deposited into the public fund. These monies will be kept separate from other funds of the **Foundation** and will only be used to further the purposes of the **Foundation** under clause 6.
- 9.4 Investment of monies in this fund will be made in accordance with guidelines for public funds as specified by the ATO.
- 9.5 The fund will be administered by the treasurer and the directors, who may delegate all or part of the day-to-day management of the fund to a sub-committee.
- 9.6 Receipts for gifts to the public fund must state:
 - (a) the name of the public fund and that the receipt is for a gift made to the public fund,
 - (b) the Australian Business Number of the **Foundation**,
 - (c) the fact that the receipt is for a gift, and
 - (d) any other matter required to be included on the receipt pursuant to the requirements of the Income Tax Assessment Act 1997.

10. Mergers and amalgamations

- 10.1 The directors in considering any proposed merger, amalgamation or other similar relationship with any other body must have due regard to and comply with the requirements of the **Foundation** under this constitution and of the **ACNC Act**, including but not limited to disposition of funds and privacy considerations relating to membership registers.

11. Amending the constitution

- 11.1 Subject to clause 11.2, the members may amend this constitution by passing a special resolution.
- 11.2 The members must not pass a special resolution that amends this constitution if passing it causes the **Foundation** to no longer be a charity.

Members

12. Membership and register of members

- 12.1 The members of the **Foundation** are:
- (a) **initial members**, being those persons listed as members at the time of registration of the **Foundation** as a company, and
 - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 12.2 The **Foundation** must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each member:
 - (i) name,
 - (ii) email,
 - (iii) phone number,
 - (iv) address,
 - (v) any alternative address nominated by the member for the service of notices, and
 - (vi) date the member was entered on to the register.
 - (b) for each person who stopped being a member in the last 7 years:
 - (i) name,
 - (ii) email,
 - (iii) phone number,
 - (iv) address,
 - (v) any alternative address nominated by the member for the service of notices, and
 - (vi) dates the membership started and ended.
- 12.3 Information that is contained in the register of members must only be used in a manner relevant to the interests or rights of members, having regard to appropriate privacy protections.

13. Categories of membership

- 13.1 Categories of membership of the **Foundation** are:
- (a) **individual member**, being any natural person accepted as a member by the directors under clause 17, and
 - (b) **incorporated member**, being any incorporated body accepted as a member by the directors under clause 17, and whose own members or other constituents may be admitted as **individual members**.
- 13.2 Types of membership (**membership type**) within each of the categories of membership will be as determined from time to time by the directors.

14. Membership fees

- 14.1 The annual membership fee for each type of membership will be as determined from time to time by the directors.
- 14.2 For each member, all membership fees are due and payable each year on the first day of January.
- 14.3 Each **membership year** commences on the first day of January and ends on the last day of December in that calendar year.
- 14.4 Each member whose annual membership fee and any arrears and other monies owing to the **Foundation** is paid in full in any **membership year** is counted as a **financial member** for that **membership year**.

15. Who can be a member

- 15.1 A person who supports the purposes of the **Foundation** is eligible to apply to be a member of the **Foundation** under clause 16.
- 15.2 In this clause, 'person' means an individual or incorporated body.

16. How to apply to become a member

A person (as defined in clause 15.2) may apply to become a member of the **Foundation** in writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purposes of the **Foundation**
- (c) agree to pay the relevant membership fees, and
- (d) agree to comply with the **Foundation's** constitution, including paying the **guarantee** under clause 4 when required.

17. Directors decide whether to approve membership

- 17.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 17.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 18).

CONSTITUTION of Certa Cito Foundation Ltd

- 17.3 If the directors reject an application, the secretary must write to the applicant as soon as reasonably practicable to tell them that their application has been rejected, but does not have to give reasons.
- 17.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clause 16. In that case, by applying to be a member, the applicant agrees to those four matters.

18. When a person becomes a member

Other than **initial members**, an applicant will become a member when they are entered on the register of members and pay the relevant membership fees.

19. When a person stops being a member

A person immediately stops being a member if they:

- (a) die,
- (b) resign, by writing to the secretary
- (c) are expelled under clause 26,
- (d) are unfinancial and have not restored their **financial member** status by paying the relevant membership fee within three months of a written notification from the secretary, or
- (e) are wound up or otherwise dissolved or deregistered (for an incorporated member).

Chapters

20. Establishment of chapters

- 20.1 The **Foundation** may recognise a group of members having a commonality of association as a **chapter** within the organisational structure of the **Foundation**.
- 20.2 For the purposes of this part, a relevant commonality of association may include, but is not limited to, members from a single Australian state or territory, or members from a single unit within the **ADF**.

21. Directors decide whether to approve establishment of a chapter

- 21.1 A group of members wishing to be recognised as a **chapter** within the **Foundation** must apply in writing to the secretary.
- 21.2 An application for establishment of a **chapter** must:
- (a) include an expression of the relevant commonality of association of the members seeking its establishment,
 - (b) include a proposal for eligibility criteria for current and future members of the **Foundation** wishing to join the **chapter**, and
 - (c) be signed by at least five **financial members** of the **Foundation** meeting the proposed eligibility criteria.
- 21.3 The directors must consider an application for establishment of a **chapter** within a reasonable time after the secretary receives the application.

CONSTITUTION of Certa Cito Foundation Ltd

- 21.4 If the directors approve an application for the establishment of a **chapter**, the secretary must as soon as possible:
- (a) write to the applicants to tell them that their application was approved, and the date that the **chapter** was created,
 - (b) review the register of members, assigning each member meeting the **chapter** eligibility criteria as a member of the **chapter**, and
 - (c) advise each member so assigned.
- 21.5 If the directors reject an application, the secretary must write to the applicants as soon as reasonably practicable to tell them that their application has been rejected, but does not have to give reasons.

22. Membership of chapters

- 22.1 A member assigned to a **chapter** under clause 21.4 may request the secretary to remove them from membership of the chapter.
- 22.2 A member may be a member of more than one **chapter**, subject only to meeting the relevant eligibility criteria of each **chapter**.
- 22.3 Whether a member is a member of any or no **chapters** does not affect the member's rights and obligations as a member of the **Foundation**.

23. Chapter to appoint a representative to the chapters subcommittee

- 23.1 Each chapter must appoint one of its number as its representative on the chapters advisory subcommittee of the **Foundation**.

24. Chapter may not bind the Foundation

- 24.1 Each **chapter** serves as an organisational focus for its **chapter** members but is not a separate legal entity, and has the status of an **advisory subcommittee** of the **Foundation**.
- 24.2 No **chapter** may bind or purport to bind the **Foundation** nor purport to act as agent for the **Foundation**.
- 24.3 For clarity, no **chapter** has authority to commit the **Foundation** to expenditure of funds, which authority always rests with the directors of the **Foundation**.

Dispute resolution and disciplinary procedures

25. Dispute resolution

- 25.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
- (a) one or more members
 - (b) one or more directors, or
 - (c) the **Foundation**.
- 25.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 26 until the disciplinary procedure is completed.

CONSTITUTION of Certa Cito Foundation Ltd

- 25.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 25.4 If those involved in the dispute do not resolve it under clause 25.3, they must:
- (a) tell the directors about the dispute in writing
 - (b) agree or request that a mediator be appointed, and
 - (c) attempt in good faith to settle the dispute by mediation.
- 25.5 The mediator must:
- (a) be chosen by agreement of those involved, or
 - (b) where those involved do not agree:
 - (i) for disputes between members, a person chosen by the directors, or
 - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **Foundation** has its registered office.
- 25.6 A mediator chosen by the directors under clause 25.5(b)(i):
- (a) may be a member or former member of the **Foundation**
 - (b) must not have a personal interest in the dispute, and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 25.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
 - (b) allow those involved a reasonable chance to review any written statements
 - (c) ensure that those involved are given natural justice, and
 - (d) not make a decision on the dispute.

26. Disciplining members

- 26.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **Foundation** if the directors consider that:
- (a) the member has breached this constitution, or
 - (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **Foundation**.
- 26.2 At least 14 days before the directors' meeting at which a resolution under clause 26.1 will be considered, the secretary must notify the member in writing:
- (a) that the directors are considering a resolution to warn, suspend or expel the member
 - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
 - (c) what the member is said to have done or not done
 - (d) the nature of the resolution that has been proposed, and
 - (e) that the member may provide an explanation to the directors, and details of how to do so.

CONSTITUTION of Certa Cito Foundation Ltd

- 26.3 Before the directors pass any resolution under clause 26.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the directors a written explanation before that directors' meeting, and/or
 - (b) speaking at the meeting.
- 26.4 After considering any explanation under clause 26.3, the directors may:
- (a) take no further action
 - (b) warn the member
 - (c) suspend the member's rights as a member for a period of no more than 12 months
 - (d) expel the member
 - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
 - (f) require the matter to be determined at a **general meeting**.
- 26.5 The directors cannot fine a member.
- 26.6 The secretary must give written notice to the member of the decision under clause 26.4 as soon as possible.
- 26.7 Disciplinary procedures must be completed as soon as reasonably practicable.
- 26.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 26.9 If a member who is a **financial member** is suspended or expelled, the member is not entitled to a refund of membership fees paid in relation to the **membership year** that is then currently under way.
- 26.10 If a member who is a **financial member** is expelled, the member may request a refund of membership fees paid in relation to any **membership year** that has not yet commenced. For the purpose of this clause 26.10, a member who has paid for life membership is considered to have paid for thirty (30) years' membership.

General meetings of members

27. General meetings called by directors

- 27.1 The directors may call a **general meeting**.
- 27.2 If members with at least 5% of the votes that may be cast at a **general meeting** make a written request to the **Foundation** for a **general meeting** to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
 - (b) hold the **general meeting** within 2 months of the members' request.
- 27.3 The percentage of votes that members have (in clause 27.2) is to be worked out as at midnight before the members request the meeting.
- 27.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
 - (b) sign the request, and
 - (c) give the request to the **Foundation**.
- 27.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

28. General meetings called by members

- 28.1 If the directors do not call the meeting within 21 days of being requested under clause 27.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 28.2 To call and hold a meeting under clause 28.1 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution
 - (b) call the meeting using the list of members on the **Foundation's** member register, which the **Foundation** must provide to the members making the request at no cost, and
 - (c) hold the **general meeting** within three months after the request was given to the **Foundation**.
- 28.3 The **Foundation** must pay the members who request the **general meeting** any reasonable expenses they incur because the directors did not call and hold the meeting.
- 28.4 Expenses paid under clause 28.3 may include actual direct expenses incurred by the members, but may not include any indirect expenses such as lost profits or earnings.

29. Annual general meeting

- 29.1 A **general meeting**, called the annual general meeting, must be held:
- (a) within 18 months after registration of the **Foundation**, and
 - (b) after the first annual **general meeting**, at least once in every calendar year, not later than 6 months after the end of each financial year.

CONSTITUTION of Certa Cito Foundation Ltd

29.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:

- (a) a review of the **Foundation's** activities
- (b) a review of the **Foundation's** finances
- (c) any auditor's report
- (d) the election of directors, and
- (e) the appointment and payment of auditors, if any.

29.3 Before or at the annual **general meeting**, the directors must give information to the members on the **Foundation's** activities and finances during the period since the last annual **general meeting**.

30. The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Foundation. Notice of general meetings

30.1 Notice of a **general meeting** must be given to:

- (a) each member entitled to vote at the meeting
- (b) each director, and
- (c) the auditor (if any).

30.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.

30.3 Subject to clause 30.4, notice of a meeting may be provided less than 21 days before the meeting if:

- (a) for an annual **general meeting**, all the members entitled to attend and vote at the annual **general meeting** agree beforehand, or
- (b) for any other **general meeting**, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

30.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:

- (a) remove a director
- (b) appoint a director in order to replace a director who was removed, or
- (c) remove an auditor.

30.5 Notice of a **general meeting** must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
- (b) the general nature of the meeting's business
- (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - (i) the proxy does not need to be a member of the **Foundation**
 - (ii) the proxy form must be delivered to the **Foundation** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and

CONSTITUTION of Certa Cito Foundation Ltd

- (iii) the proxy form must be delivered to the **Foundation** at least 48 hours before the meeting.

30.6 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

31. Quorum at general meetings

31.1 For a **general meeting** to be held:

- (a) at least two of the president and vice president and secretary, plus
- (b) at least 5 other members or 10% of the membership, whichever is greater (together a quorum) must be present (in person, by proxy or by representative) for the whole meeting.

When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

31.2 No business may be conducted at a **general meeting** if a quorum is not present.

31.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week
- (b) if the time is not specified – the same time, and
- (c) if the place is not specified – the same place.

31.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

32. Auditor's right to attend meetings

32.1 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

32.2 The **Foundation** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **Foundation** is entitled to receive.

33. Representatives of members

33.1 An **incorporated member** may appoint as a representative:

- (a) one individual to represent the member at meetings and to sign circular resolutions under clause 40, and
- (b) the same individual or another individual for the purpose of being appointed or elected as a director.

33.2 The appointment of a representative by a member must:

- (a) be in writing,
- (b) include the name of the representative
- (c) be signed on behalf of the member, and
- (d) be given to the **Foundation** or, for representation at a meeting, be given to the chairperson before the meeting starts.

CONSTITUTION of Certa Cito Foundation Ltd

33.3 A representative has all the rights of a member relevant to the purposes of the appointment as a representative.

33.4 The appointment may be standing (ongoing).

34. Using technology to hold meetings

34.1 The **Foundation** may hold a **general meeting** at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.

34.2 Anyone using this technology is taken to be present in person at the meeting.

34.3 The **Foundation** may use any technology to record the proceedings of meetings, including but not limited to technology to record any voting during any meeting.

35. Chairperson for general meetings

35.1 The **President** is entitled to chair **general meetings**.

35.2 The **Vice President** is entitled to chair general meetings if the **President** is not present.

35.3 The members present and entitled to vote at a **general meeting** may choose a director or member to be the chairperson for that meeting if:

- (a) there is no **President** or **Vice President**, or
- (b) neither the **President** nor the **Vice President** is present within 30 minutes after the starting time set for the meeting, or
- (c) the **President** or **Vice President** is present but says they do not wish to act as chairperson of the meeting.

36. Role of the chairperson

36.1 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).

36.2 The chairperson does not have a casting vote.

37. Adjournment of meetings

37.1 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the chairperson to adjourn it.

37.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

38. Members' resolutions and statements

- 38.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the **Foundation** of a resolution they propose to move at a **general meeting** (members' resolution), and/or
 - (b) a written request to the **Foundation** that the **Foundation** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** (members' statement).
- 38.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 38.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 38.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 38.5 The percentage of votes that members have (as described in clause 38.1) is to be worked out as at midnight before the request or notice is given to the **Foundation**.
- 38.6 If the **Foundation** has been given notice of a members' resolution under clause 38.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 38.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

39. Foundation must give notice of proposed resolution or distribute statement

- 39.1 If the **Foundation** has been given a notice or request under clause 38:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **Foundation's** cost, or
 - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **Foundation** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **Foundation** will pay these expenses.
- 39.2 The **Foundation** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1,000 words long
 - (b) the directors consider it may be defamatory
 - (c) clause 39.1(b) applies, and the members who proposed the resolution or made the request have not paid the **Foundation** enough money to cover the cost of

CONSTITUTION of Certa Cito Foundation Ltd

- sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

40. Circular resolutions of members

- 40.1 Subject to clause 40.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held (a circular resolution).
- 40.2 The directors 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.
- 40.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
 - (b) for passing a **special resolution**, or
 - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 40.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 40.5 or clause 40.6.
- 40.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 40.6 The **Foundation** may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at general meetings

41. How many votes a member has

- 41.1 Each **individual member** who is a **financial member** at the time of the relevant meeting and whose **membership type** includes voting rights has one vote.
- 41.2 Each **incorporated member** who is a **financial member** at the time of the relevant meeting and whose **membership type** includes voting rights has one vote.

42. Challenge to member's right to vote

- 42.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 42.2 If a challenge is made under clause 42.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

43. How voting is carried out

CONSTITUTION of Certa Cito Foundation Ltd

- 43.1 Voting must be conducted and decided by:
- (a) a show of hands,
 - (b) a vote in writing,
 - (c) the use of voting technology that is equally available to all members wishing to vote, or
 - (d) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 43.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 43.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 43.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

44. When and how a vote in writing must be held

- 44.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five **members present**
 - (b) **members present** with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
 - (c) the chairperson.
- 44.2 A vote in writing must be taken when and how the chairperson directs, unless clause 44.3 applies.
- 44.3 A vote in writing must be held immediately if it is demanded under clause 44.1:
- (a) for the election of a chairperson under clause 35.3, or
 - (b) to decide whether to adjourn the meeting.
- 44.4 A demand for a vote in writing may be withdrawn.

45. Appointment of proxy

- 45.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 45.2 A proxy does not need to be a member.
- 45.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
 - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
 - (c) join in to demand a vote in writing under clause 44.1.
- 45.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **Foundation's** name

CONSTITUTION of Certa Cito Foundation Ltd

- (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 45.5 A proxy appointment may be standing (ongoing).
- 45.6 Proxy forms must be received by the **Foundation** at the address stated in the notice under clause 30.5(d) or at the **Foundation's** registered address at least 48 hours before a meeting.
- 45.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 45.8 Unless the **Foundation** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
 - (b) is mentally incapacitated
 - (c) revokes the proxy's appointment, or
 - (d) revokes the authority of a representative or agent who appointed the proxy.
- 45.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

46. Voting by proxy

- 46.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 46.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
 - (b) if the way they must vote is specified on the proxy form, must vote that way, and
 - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

47. Number of directors

The **Foundation** must have at least five and no more than nine directors.

48. *Ex officio*, appointed and elected directors

Up to five directors will be appointed and up to four directors will be elected by the membership, in accordance with clause 49.

49. Election and appointment of directors and office-holders

- 49.1 The below-listed **RA Sigs** officers are appointed *ex officio* directors of the **Foundation**:

CONSTITUTION of Certa Cito Foundation Ltd

- (a) **The RA Sigs** officer appointed by Chief of Army to the role of **RA Sigs** Representative Colonel Commandant is *ex officio* a director of the **Foundation**, and
 - (b) up to four **RA Sigs** officers, selected by the directors from those officers appointed by Chief of Army to the role of **RA Sigs** Colonel Commandant, are *ex officio* directors of the **Foundation**,
on condition that they:
 - (c) give the **Foundation** their signed consent to act as a director of the **Foundation**, and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 49.2 Each of the *ex officio* directors ceases to be a director of the **Foundation** when they cease to hold the relevant appointment with **RA Sigs**, and will be replaced on the **Foundation** in accordance with clause 49.1.
- 49.3 In the event one or more of the Colonels Commandant listed in clause 49.1 is unable, unwilling or ineligible to serve as a director of the **Foundation**, the resulting vacancy or vacancies will be casual vacancies for the purpose of clause 49.8.
- 49.4 Any officer eligible as an *ex officio* director under clause 49.1 who is replaced as a director under clause 49.8 may exercise their right to become an *ex officio* director at the next-occurring annual **general meeting**.
- 49.5 Apart from the *ex officio* directors and directors appointed under clause 49.1 the members may appoint up to four **elected directors** by a resolution passed in a **general meeting**.
- 49.6 Each of the **elected directors** must be appointed by a separate resolution, unless:
 - (a) the members present have first passed a resolution that the appointments may be voted on together, and
 - (b) no votes were cast against that resolution.
- 49.7 A person is eligible for election as a director of the **Foundation** if they:
 - (a) are a **financial member** of the **Foundation**, or a representative of a **financial member** of the **Foundation** (appointed under clause 33), and whose **membership type** includes voting rights
 - (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a **general meeting** and has been a director since that meeting)
 - (c) give the **Foundation** their signed consent to act as a director of the **Foundation**, and
 - (d) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 49.8 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
 - (a) is a **financial member** of the **Foundation**, or a representative of a **financial member** of the **Foundation** (appointed under clause 33), and whose **membership type** includes voting rights

CONSTITUTION of Certa Cito Foundation Ltd

- (b) gives the **Foundation** their signed consent to act as a director of the **Foundation**, and
- (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.

49.9 If the number of directors is reduced to fewer than five or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to five (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

50. Election of President and Vice President

- 50.1 The directors must elect a director as the **Foundation's President**.
- 50.2 The directors must elect a director as the **Foundation's Vice President**.
- 50.3 No one person may concurrently fill the roles of **President** and **Vice President**.

51. Term of office

- 51.1 At each annual **general meeting**:
 - (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and
 - (b) at least one-third of the remaining **elected directors** must retire.
- 51.2 The directors who must retire at each annual **general meeting** under clause 51.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 51.3 Other than a director appointed under clause 49.8, a director's term of office starts at the end of the annual **general meeting** at which they are elected and ends at the end of the annual **general meeting** at which they retire.
- 51.4 Each **elected director** must retire at least once every three years.
- 51.5 A director who retires under clause 51.1 may nominate for election or re-election, subject to clause 51.6.
- 51.6 An **elected director** who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a **special resolution**.

52. When a director stops being a director

- 52.1 A director stops being a director if they:
 - (a) give written notice of resignation as a director to the **Foundation**
 - (b) die
 - (c) are removed as a director by a resolution of the members
 - (d) stop being a member of the **Foundation**
 - (e) are a representative of a member, and that member stops being a member
 - (f) are a representative of a member, and the member notifies the **Foundation** that the representative is no longer a representative
 - (g) are an **ex officio director**, and their appointment to the relevant position ends
 - (h) are absent for 3 consecutive directors' meetings without approval from the directors, or
 - (i) become ineligible to be a director of the **Foundation** under the **Corporations Act** or the **ACNC Act**.

Powers of directors

53. Powers of directors

- 53.1 The directors are responsible for managing and directing the activities of the **Foundation** to achieve the purposes set out in clause 6.
- 53.2 The directors may use all the powers of the **Foundation** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 53.3 The directors must decide on the responsible financial management of the **Foundation** including:
 - (a) any suitable written delegations of power under clause 54 and
 - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 53.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

54. Delegation of directors' powers

- 54.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **Foundation** (such as a chief executive officer) or any other person, as they consider appropriate.
- 54.2 The delegation must be recorded in the **Foundation's** minute book.

55. Appointment of advisory subcommittees

- 55.1 The directors may appoint members or employees of the **Foundation** to form one or more **advisory subcommittees** as they consider appropriate.
- 55.2 The role of each **advisory subcommittee** is to provide advice and/or recommendations to the directors in relation to its purpose as determined by the directors.
- 55.3 No **advisory subcommittee** may bind or purport to bind the **Foundation** nor purport to act as agent for the **Foundation** nor commit to expenditure of **Foundation** funds, except the extent of any delegation of power under clause 54.

56. Payments to directors

- 56.1 The **Foundation** must not pay fees to a director for acting as a director.
- 56.2 The **Foundation** may:
 - (a) pay a director for work they do for the **Foundation**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
 - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **Foundation**.
- 56.3 Any payment made under clause 56.2 must first be approved by the directors.
- 56.4 The **Foundation** may pay premiums for insurance indemnifying directors, as allowed for by law (including the **Corporations Act**) and this constitution.

57. Execution of documents

CONSTITUTION of Certa Cito Foundation Ltd

The **Foundation** may execute a document without using a common seal if the document is signed by:

- (a) two directors of the **Foundation**, or
- (b) a director and the secretary.

Duties of directors

58. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Foundation**
- (b) to act in good faith in the best interests of the **Foundation** and to further the charitable purposes of the **Foundation** set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 59
- (f) to ensure that the financial affairs of the **Foundation** are managed responsibly, and
- (g) not to allow the **Foundation** to operate while it is insolvent.

59. Conflicts of interest

59.1 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 other 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.

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

59.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 59.4:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

59.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the **Foundation**, 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 **Foundation** (see clause 79)

CONSTITUTION of Certa Cito Foundation Ltd

- (c) their interest relates to a payment by the **Foundation** under clause 78 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (e) the directors who do not have a 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 relates to the affairs of the **Foundation**, and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

60. When the directors meet

The directors may decide how often, where and when they meet, subject to the requirement that they must meet, either in person or using appropriate meeting technology, not fewer than four times in each calendar year.

61. Calling directors' meetings

- 61.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 61.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

62. Chairperson for directors' meetings

- 62.1 The **President** is entitled to chair directors' meetings.
- 62.2 In the absence of the **President** at any directors' meeting, the **Vice President** is entitled to chair that meeting.
- 62.3 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the **President** and **Vice President** are both:
 - (a) not present within 30 minutes after the starting time set for the meeting, or
 - (b) present but do not want to act as chairperson of the meeting.

63. Quorum at directors' meetings

- 63.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 63.2 A quorum must be present for the whole directors' meeting.

64. Using technology to hold directors' meetings

- 64.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 64.2 The directors' agreement may be a standing (ongoing) one.
- 64.3 A director may only withdraw their consent within a reasonable period before the meeting.

65. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

66. Circular resolutions of directors

- 66.1 The directors may pass a circular resolution without a directors' meeting being held.
- 66.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 66.3 or clause 66.4.

CONSTITUTION of Certa Cito Foundation Ltd

- 66.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 66.4 The **Foundation** may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 66.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 66.3 or clause 66.4.

Secretary and Treasurer

67. Appointment and role of secretary

- 67.1 The **Foundation** must have at least one secretary, who may also be a director.
- 67.2 A secretary must be appointed by the directors (after giving the **Foundation** their signed consent to act as secretary of the **Foundation**) and may be removed by the directors.
- 67.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 67.4 The role of the secretary includes:
- (a) maintaining a register of the **Foundation's** members, and
 - (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), directors' meetings and circular resolutions.

68. Appointment and role of treasurer

- 68.1 The **Foundation** must have a treasurer, who may also be a director.
- 68.2 A treasurer must be appointed by the directors (after giving the **Foundation** their signed consent to act as treasurer of the **Foundation**) and may be removed by the directors.
- 68.3 The directors must decide the terms and conditions under which the treasurer is appointed, including any remuneration.
- 68.4 The role of the treasurer includes:
- (a) managing the **Foundation's** finances in accordance with accepted principles,
 - (b) maintaining the books of accounts in accordance with the Australian Accounting Standards, and
 - (c) managing the **Foundation's** reporting obligations and taxation affairs in accordance with the **Corporations Act**, the **ACNC Act** and other relevant legislation.

Minutes and records

69. Minutes and records

- 69.1 The **Foundation** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**
 - (b) minutes of circular resolutions of members
 - (c) a copy of a notice of each **general meeting**, and
 - (d) a copy of a members' statement distributed to members under clause 39.
- 69.2 The **Foundation** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 69.3 To allow members to inspect the **Foundation's** records:
- (a) the **Foundation** must give a member access to the records set out in clause 69.1, and
 - (b) the directors may authorise a member to inspect other records of the **Foundation**, including records referred to in clause 69.2 and clause 70.1.
- 69.4 The directors must ensure that minutes of a **general meeting** or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
 - (b) the chairperson of the next meeting.
- 69.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

70. Financial and related records

- 70.1 The **Foundation** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
 - (b) enable true and fair financial statements to be prepared and to be audited.
- 70.2 The **Foundation** must also keep written records that correctly record its operations.
- 70.3 The **Foundation** must retain its records for at least 7 years.
- 70.4 The directors must take reasonable steps to ensure that the **Foundation's** records are kept safe.

71. Financial Reporting and Review

- 71.1 In accordance with the Australian Charities and Not-for-profits Commission (ACNC) regulations, the Foundation must comply with ACNC's financial reporting requirements

By-laws

72. By-laws

- 72.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 72.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

73. What is notice

- 73.1 Anything written to or from the **Foundation** under any clause in this constitution is written notice and is subject to clauses 74 to 76, unless specified otherwise.
- 73.2 Clauses 74 to 76 do not apply to a notice of proxy under clause 45.6.

74. Notice to the Foundation

Written notice or any communication under this constitution may be given to the **Foundation**, the directors or the secretary by:

- (a) delivering it to the **Foundation's** registered office,
- (b) posting it to the **Foundation's** registered office or to another address chosen by the **Foundation** for notice to be provided, or
- (c) sending it to an email address or other electronic address notified by the **Foundation** to the members as the **Foundation's** email address or other electronic address.

75. Notice to members

- 75.1 Written notice or any communication under this constitution may be given to a member:
 - (a) in person
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
 - (c) sending it to the email or other electronic address nominated by the member as an address or alternative address for service of notices (if any), or
 - (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- 75.2 If the **Foundation** does not have an address for the member, the **Foundation** is not required to give notice in person.

76. When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered

CONSTITUTION of Certa Cito Foundation Ltd

- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 75.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

77. Foundation's financial year

The **Foundation's** financial year is from 1 July to 30 June unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

78. Indemnity

- 78.1 The **Foundation** indemnifies each officer of the **Foundation** out of the assets of the **Foundation**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **Foundation**.
- 78.2 In this clause, 'officer' means a director or secretary or treasurer who holds office on or after the date this constitution takes effect and includes a director or secretary or treasurer after they have ceased to hold that office.
- 78.3 In this clause, 'to the relevant extent' means:
 - (a) to the extent that the **Foundation** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 78.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **Foundation**.

79. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **Foundation** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Foundation** against any liability incurred by the person as an officer of the **Foundation**.

80. Directors' access to documents

- 80.1 A director has a right of access to the financial records of the **Foundation** at all reasonable times.
- 80.2 If the directors agree, the **Foundation** must give a director or former director access to:
 - (a) certain documents, including documents provided for or available to the directors, and

- (b) any other documents referred to in those documents.

Winding up

81. Surplus assets not to be distributed to members

If the **Foundation** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **Foundation**, unless that member or former member is a charity described in clause 82.1.

82. Distribution of surplus assets

- 82.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** (including **gift funds** defined in clause 82.4) that remain after the **Foundation** is wound up must be distributed to one or more charities:
 - (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6 and
 - (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the **Foundation** and
 - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).
- 82.2 The decision as to the charity or charities to be given the surplus assets must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Foundation** may apply to the Supreme Court to make this decision.
- 82.3 If the **Foundation's** deductible gift recipient endorsement is revoked (whether or not the **Foundation** is to be wound up), any surplus **gift funds** must be transferred to one or more charities that meet the requirements of clause 82.1 as decided by the directors.
- 82.4 For the purposes of this clause:
 - (a) **gift funds** means:
 - (i) gifts of money or property for the principal purpose of the **Foundation**
 - (ii) **contributions** made in relation to a **fund-raising event** held for the principal purpose of the **Foundation**, and
 - (iii) money received by the **Foundation** because of such gifts and **contributions**.
 - (b) **contributions** and **fund-raising event** have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth)

Definitions and interpretation

83. Definitions

In this constitution:

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

ADF means the Australian Defence Force. The ADF includes the precursor organisations – The Royal Australian Navy, the Australian Army, and the Royal Australian Air Force; and includes **defence civilians** who have served with or alongside RA Sigs

advisory subcommittee has the meaning set out in clause 55

chapter means a sub-set of members of the **Foundation** sharing a commonality of association, established under clause 20

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

defence civilian has the same meaning as in the *Defence Force Discipline Act 1982*

Foundation means the **Foundation** referred to in clause 1

general meeting means a meeting of members and includes the annual **general meeting**, under clause 29.1

member means, subject to clause 19, each person entered onto the register of members of the Foundation under clause 17.2

member present means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the venue or venues for the meeting

President means a person elected by the directors to be the **Foundation's** president under clause 50

RA Sigs means the Royal Australian Corps of Signals

registered charity means a charity that is registered under the **ACNC Act**

special resolution means a resolution:

- (i) of which notice has been given under clause 30.5(c), and
- (ii) that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution

surplus assets means any assets of the **Foundation** that remain after paying all debts and other liabilities of the **Foundation**, including the costs of winding up, and

Vice President means a person elected by the directors to be the **Foundation's** vice president under clause 50.

84. Reading this constitution with the Corporations Act

84.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Foundation**.

84.2 While the **Foundation** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts.

CONSTITUTION of Certa Cito Foundation Ltd

- 84.3 If the **Foundation** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 84.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning in this constitution.

85. Interpretation

- 85.1 In this constitution:
- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression,
 - (b) words expressed in the singular include the plural and vice versa, and
 - (c) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).