

**THE PETER HEWITT
CARE FOR AFRICA FOUNDATION INC.**

ABN: 44524878796

CONSTITUTION

PART 1 - PRELIMINARY

1. Name

The name of the company is the ‘The Peter Hewitt Care for Africa Foundation’ (the “**Foundation**”).

2. Nature

The Foundation is a charitable not-for-profit organisation incorporated under the Associations Incorporation Act (1964) enacted by the Government of Tasmania.

In accordance with the United Nations *Universal Declaration of Human Rights* (UDHR), the Foundation shall operate at all times without discrimination and free of political or religious affiliation¹.

3. Model Rules do not apply

This Constitution and the associated By-Laws embody the complete rules of association of the Foundation and, to the extent permitted by law, the Model Rules in the *Associations Incorporation Act (1964)* do not apply.

4. Mission & Objects

The mission of the Foundation is “*to cultivate an ethos of philanthropic endeavour in young Australians through participation in projects that advance the well-being of orphans and other groups in need in Africa.*”

4.1 The basic objects of the Foundation are to:

4.1.1 Cultivate an ethos and culture of philanthropic endeavour in young Australians by:

¹ Clause ratified by board and to be formally adopted at the Foundation’s next AGM.

- (a) increasing awareness of the plight of needy African communities through public lectures and the media, and in particular by involving youth in Australian schools;
- (b) creating opportunities for young Australians to organise or participate in fundraising activities or otherwise contribute to Foundation initiatives;
- (c) encouraging suitably-qualified students, educators and health professionals to participate in Foundation projects in the developing countries of Africa as volunteers or for work-experience;
- (d) promoting the importance of philanthropic activity at a personal, national and international level.

4.1.2 Manage development and relief projects that advance the health, education and well-being of orphans and other groups with emergency needs in the developing countries of Africa, by:

- (a) undertaking research in and gathering data about identified populations directly affected by natural or chronic disaster;
- (b) building partnerships and exchanging knowledge with local community leaders, community organisations, government agencies and other humanitarian aid providers;
- (c) planning and executing projects that are sensitive to local economic, social, cultural and political practices and realities, including **development projects** that strengthen communities and encourage sustainable local solutions and **relief projects** that support communities affected by chronic disasters including famine, conflict and disease epidemics;
- (d) maximising opportunities for Australian youth to participate in Foundation projects and stimulating a strong sense of stewardship for all involved;
- (e) funding scholarships, research grants and travel grants so that young Australian health and education professionals and others can participate in the Foundation's projects.

4.1.3 Undertake such other initiatives as the Board may see fit that benefit communities in crisis in the developing countries of Africa.

- 4.2 In addition to the basic objects of the Foundation, the objects and purposes of the Foundation include the following:
- 4.2.1 registration of and trading under any name convenient for any of the objects or purposes of the Foundation and listed in the associated By-Laws;
 - 4.2.2 the purchase, taking on lease or in exchange, and the hiring or otherwise acquiring of any real or personal property necessary or convenient for any of the objects or purposes of the Foundation;
 - 4.2.3 the buying, selling and supplying of, and dealing in, goods of all kinds;
 - 4.2.4 the construction, maintenance and alteration of buildings or works necessary or convenient for any of the objects or purposes of the Foundation;
 - 4.2.5 the accepting of any gift for any one or more of the objects or purposes of the Foundation;
 - 4.2.6 the taking of any step the Board or the members in general meeting consider expedient for the purpose of procuring contributions to the funds of the Foundation;
 - 4.2.7 the publishing of any newspapers, periodicals, books, brochures, leaflets, websites, or other documents whether on paper or electronic the Board or the members in general meeting consider desirable for the promotion of the objects and purposes of the Foundation;
 - 4.2.8 the borrowing and raising of money in any manner and on terms –
 - (a) the Board thinks fit; or
 - (b) approved or directed by resolution passed at a general meeting;
 - 4.2.9 subject to the provisions of the *Trustee Act 1898*, the investment of any moneys of the Foundation not immediately required for any of its objects or purposes in any manner the Board determines;
 - 4.2.10 the making of gifts, subscriptions or donations to any of the funds, authorities or institutions to which section 78(1)(a) of the *Income Tax Assessment Act 1936* of the Commonwealth relates;
 - 4.2.11 the establishment and support, or aiding in the establishment and support, of Foundations, institutions, funds, trusts, schemes and conveniences calculated to benefit servants or past servants of the Foundation and their dependants, and the granting of

pensions, allowances or other benefits to servants or past servants of the Foundation and their dependants, and the making of payments towards insurance in relation to any of those purposes;

4.2.12 the establishment and support, or aiding in the establishment or support, of any other Foundation formed for any of the basic objects of the Foundation;

4.2.13 the purchase or acquisition, and undertaking, of all or any part of the property, assets, liabilities and engagements of any Foundation with which the Foundation is amalgamated in accordance with the provisions of the *Associations Incorporation Act 1964* and the rules of the Foundation;

4.2.14 the doing of any lawful thing incidental or conducive to the attainment of the basic objects of the Foundation or of any of the objects and purposes specified in this Clause 4.

5. No distribution to members

5.1 The Foundation's income and assets must be used solely to promote the Foundation's objects.

5.2 The Foundation must not pay or distribute any profits, income or assets to the members.

5.3 This does not prevent the Foundation paying in good faith:

5.3.1 reasonable remuneration to a person for services rendered to the Foundation;

5.3.2 for goods supplied to the Foundation in the ordinary course of the promotion of the Foundation's objects;

5.3.3 reasonable interest on money lent by a member to the Foundation; or

5.3.4 out-of-pocket expenses incurred on behalf of the Foundation in the ordinary course of the promotion of the Foundation's objects.

6. Limited liability

6.1 The liability of the members is limited.

6.2 If the Foundation is wound up, a present or past member must contribute to the Foundation's property an amount sufficient:

6.2.1 to pay the Foundation's debts and liabilities and the costs, charges and expenses of the winding up; and

6.2.2 to adjust the rights of the contributories among themselves.

6.3 Clause 6.2 notwithstanding, a member or past member need not contribute more than Ten Dollars (\$10.00).

6.4 A past member need not contribute if not a member at any time during the year ending on the day of the commencement of the winding up.

6.5 On a winding up, any surplus must be given to a charitable public institution:

6.5.1 which has objects similar to the Foundation's objects; and

6.5.2 which cannot distribute its income and assets to its members.

The members may decide the institution. If they do not do so, the Supreme Court of Tasmania may decide the institution.

6.6 If clause 6.5 cannot be given effect, any surplus must be given to another Australian charitable public institution with Deductible Gift Recipient status that has provision of humanitarian aid in developing countries in Africa as at least one of its objects.

7. **Office**

7.1 The Registered Office of the Foundation is to be at the place specified in the associated By-Laws.

8. **Financial Year**

8.1 The financial year of the Foundation shall be from July 1st to the following June 30th.

8.2 Notwithstanding Clause 8.1, the first financial year of the Foundation shall be from the date of incorporation until June 30th 2008.

PART 2 - MEMBERSHIP

9. **Categories**

9.1 The Founding Members are:

- Any persons who join the foundation before the end of the financial year 2007/2008.

9.2 The Foundation may admit other members and the Board of Governors may decide the terms of their admission. Those terms must be consistent with this constitution.

9.3 The Foundation may, through its By-Laws, create categories of membership, and the Board shall decide the rights attached to those categories. Those rights must be consistent with this constitution.

10. Applications for membership

- 10.1 Any natural person or body corporate may apply for membership.
- 10.2 The applicant must:
 - 10.2.1 complete the application form provided by the Foundation and give it to the Foundation;
 - 10.2.2 state the category of membership for which the applicant applies;
 - 10.2.3 agree to be bound by this constitution; and
 - 10.2.4 send with the completed application form, payment of the first annual membership subscriptions for the category of membership applied for, as specified in the associated By-Laws.
- 10.3 The Board must consider the application at its first meeting after receipt of the application. The Board may accept or reject the application, or defer the application for any time.
- 10.4 The Foundation must, as soon as reasonably practicable, notify the applicant whether the application is accepted or rejected or deferred.
- 10.5 The applicant becomes a member of the Foundation if:
 - 10.5.1 the Board accepts the application; and
 - 10.5.2 the applicant pays the first annual membership subscriptions for the category of membership granted.
- 10.6 The Foundation's secretary shall record the name of each successful applicant in the register of members.

11. Resignation

- 11.1 A member, who does not owe any money to the Foundation, may resign their membership by giving written notice of resignation to the Foundation.
- 11.2 The Foundation's secretary must record the resignation in the register of members.

12. Termination

A member's membership ceases if:

- 12.1 the member's annual subscription is 12 months or more in arrears;
- 12.2 the member is a natural person and becomes an insolvent under administration or dies;

12.3 the member is a body corporate, and a resolution is passed to wind it up (otherwise than for reconstruction or amalgamation), or becomes an externally-administered body corporate; or

12.4 the Board expels the member under the following Clause 13.

13. **Expulsion**

13.1 If the Board considers that a member has not complied with this constitution, or has acted in a manner which is unbecoming to a member or prejudicial to the interests of the Foundation, it may:

13.1.1 expel the member;

13.1.2 suspend the member for a specified period.

13.2 The Board may do so only if:

13.2.1 at least 14 days before the Board meeting, the Foundation gives the member:

- (a) written particulars of the relevant act or omission;
- (b) notice of the date, place and time of the Board meeting; and
- (c) notice that the member may attend and be heard at the Board meeting or make written submissions to the Board; and

13.2.2 the Board hears the member or considers the member's written submissions at the Board meeting.

13.3 The Foundation's secretary must:

13.3.1 record the expulsion, suspension or fine in the register of members; and

13.3.2 advise the member in writing of the decision accordingly.

14. **Subscriptions**

14.1 All members must pay to the Foundation any annual subscriptions and other fees fixed by the Board. By way of the associated By-Laws, the Board may fix different annual subscriptions and other fees for different categories and sub-categories of members and may pro-rate fees for members joining after the start of a year.

14.2 The first annual subscription is due on becoming a member. In each subsequent year, annual subscriptions are due on the first day of the Foundation's financial year.

PART 3 - PROCEEDINGS OF MEMBERS

15. Annual general meetings

- 15.1 The Foundation shall hold annual general meetings:
 - 15.1.1 within 18 months after its registration; and
 - 15.1.2 at least once in each calendar year and within 5 months after the end of its financial year.
- 15.2 The business of the annual general meeting may include any of the following, even if not referred to in the notice of meeting:
 - 15.2.1 the confirmation of the minutes of the last annual general meeting;
 - 15.2.2 the consideration of the annual financial report, governors' report and auditor's report;
 - 15.2.3 the election of governors;
 - 15.2.4 the appointment of the auditor; and
 - 15.2.5 the fixing of the auditor's remuneration.

16. Who may call meetings of members

- 16.1 A governor may call a general meeting, when and where the governor decides.
- 16.2 The Board may call a general meeting, when and where the Board decides.
- 16.3 The Board must call a general meeting on the request of:
 - 16.3.1 members with at least 5% of the votes that may be cast at the general meeting; or
 - 16.3.2 at least twenty-five members who are entitled to vote at the general meeting.
- 16.4 The request must:
 - 16.4.1 be in writing;
 - 16.4.2 state any resolution to be proposed at the meeting;
 - 16.4.3 be signed by the members making the request; and
 - 16.4.4 be given to the Foundation.

- 16.5 Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- 16.6 The Board must call the meeting within twenty-one days after the request is given to the Foundation. The meeting is to be held not later than two months after the request is given to the Foundation.
- 16.7 Members may call a general meeting as the *Associations Incorporation Act (1964)* allows.

17. How to call meetings of members

- 17.1 At least 21 days notice must be given of a general meeting. However, unless prohibited by the *Associations Incorporation Act (1964)*, the Foundation may call on shorter notice:
 - 17.1.1 an annual general meeting, if all the members entitled to attend and vote at the annual general meeting agree beforehand; and
 - 17.1.2 any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 17.2 Notice of a meeting must be given to members, governors and the auditor.
- 17.3 A notice of a general meeting must:
 - 17.3.1 set out the place, date and time for the meeting;
 - 17.3.2 state the general nature of the meeting's business;
 - 17.3.3 if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution; and
 - 17.3.4 contain a statement setting out the following information:
 - (a) that the member has the right to appoint a proxy; and
 - (b) that the proxy need not be a member of the Foundation.
- 17.4 Non-receipt of notice of a meeting, or failure to give proper notice of a meeting to a person entitled to receive it, does not invalidate anything done at the meeting if:
 - 17.4.1 the failure was accidental;
 - 17.4.2 the person gives notice to the Foundation that the person waives proper notice or agrees to the thing done at the meeting; or
 - 17.4.3 the person attends the meeting and:

- (a) does not object at the start of the meeting to the holding of the meeting; or
- (b) if the notice omitted an item of business, does not object to the consideration of the business when it is presented to the meeting.

18. Membership at a specified time

For the purpose of a particular general meeting, the Board may decide that the members at a specified time before the meeting are taken to be the members at the time of the meeting.

19. Quorum

19.1 A quorum for a general meeting is 10 full members. The quorum must be present at all times during the meeting.

19.2 In determining whether a quorum is present, the chair must count full members, proxies, attorneys and any other persons entitled to vote. If an individual is attending both as a member and as a proxy or attorney or in any other capacity, the chair must count the individual only once.

19.3 If a quorum is not present within thirty minutes after the time appointed for the meeting:

19.3.1 if the meeting was called on the request of members or by members, the meeting is dissolved; and

19.3.2 any other meeting is adjourned to any day, time and place the Board decides.

19.4 If a quorum is not present within thirty minutes after the time appointed for a meeting resumed after an adjournment, the meeting is dissolved.

20. Chair

20.1 The Chair of the Board is entitled to chair all meetings of members.

20.2 If there is no Chair of the Board, or if the Chair is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the Executive Officer may chair the meeting. If there is no Executive Officer, or if the Executive Officer is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the Deputy Chair of the Board may chair the meeting. If there is no Deputy Chair, or if the Deputy Chair is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the governors present must elect one of themselves to chair the meeting. If they do not do so, the members present must elect a person to chair the meeting.

20.3 If the Chair is unable or unwilling to chair a part of the meeting, the Executive Officer may chair that part. If there is no Executive Officer, or the Executive Officer is unable or unwilling to act, the Deputy Chair may chair that part. If there is no Deputy Chair, or the Deputy Chair is unable or unwilling to act, the governors present must elect one of themselves to chair that part. If they do not do so, the members present must elect a person to chair that part.

21. **Regulation of meetings**

The chair may regulate a general meeting in any way consistent with this constitution.

22. **Adjournment**

22.1 The chair may adjourn a general meeting to any day, time and place.

22.2 The chair must adjourn a general meeting if the members present with a majority of votes at the meeting agree or direct the chair to do so. The chair may adjourn the meeting to any day, time and place.

22.3 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for more than one month.

22.4 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

23. **How members make decisions at meetings**

23.1 A general meeting makes a decision by passing a resolution. A resolution is passed if more than 50% of the votes cast by the members entitled to vote are in favour of the resolution (unless the law requires a special resolution).

23.2 A special resolution is passed if:

23.2.1 notice of the meeting set out an intention to propose the special resolution and stated the resolution; and

23.2.2 it is passed by at least 75% of the votes cast by members entitled to vote on the resolution.

24. **How voting is carried out**

24.1 Unless a poll is properly demanded, a resolution put to the vote at a general meeting must be decided on a show of hands.

24.2 If a poll is properly demanded, the result of the poll is the resolution of the meeting.

24.3 A declaration by the chair that a resolution is passed, or passed by a particular majority, or lost, and an entry to that effect in the minutes, are sufficient evidence of that fact, unless proved incorrect.

25. Polls

25.1 A poll may be demanded on any resolution.

25.2 A poll may be demanded by:

25.2.1 at least three members entitled to vote on the resolution; or

25.2.2 the chair.

25.3 The poll may be demanded:

25.3.1 before a vote is taken;

25.3.2 before the voting results on a show of hands are declared; or

25.3.3 immediately after the voting results on a show of hands are declared.

25.4 A demand for a poll may be withdrawn.

25.5 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and how the chair directs.

25.6 A poll on the election of a chair or the question of an adjournment must be taken immediately.

25.7 A demand for a poll does not prevent the meeting dealing with other business.

26. How many votes a member has

26.1 At a general meeting:

26.1.1 on a show of hands, each full member present (in person, by proxy or attorney) has one vote; and

26.1.2 on a poll, each full member present (in person, by proxy or attorney) has one vote.

26.2 Notwithstanding the previous sub-clause, a member is not entitled to vote if the member owes any money to the Foundation, except subscriptions for the current financial year.

26.3 An associate member does not have a vote.

26.4 The chair has a casting vote.

26.5 The chair or other person may disregard any vote by a member who is not entitled to vote.

27. Challenging a right to vote

27.1 A challenge to a right to vote at a general meeting may only be made:

27.1.1 before the meeting, to the Board; or

27.1.2 at the meeting, to the chair of the meeting.

27.2 The challenge must be decided by the Board or the chair (as the case may be). The Board's decision or the chair's decision is final.

28. Proxies and attorneys

28.1 A member, who is entitled to vote at a general meeting, may vote on a show of hands and on a poll:

28.1.1 personally;

28.1.2 by proxy; or

28.1.3 by attorney.

28.2 A proxy or attorney need not be a member of the Foundation.

28.3 A member may appoint a proxy or attorney for all or for particular meetings of members.

28.4 An appointment of a proxy or attorney must be in a form approved by the Board.

28.5 An appointment of a proxy is valid if it is signed by the member making the appointment and it contains the following information:

28.5.1 the member's name and address;

28.5.2 the Foundation's name;

28.5.3 the proxy's name or the name of the office held by the proxy;
and

28.5.4 the meetings at which the appointment may be used.

28.6 The Board may decide to accept a proxy even if it contains only some of that information.

28.7 Unless otherwise specified in the appointment, the proxy or attorney may:

28.7.1 agree to short notice for the meeting;

- 28.7.2 even if the appointment directs how to vote on a particular resolution:
- (a) vote on an amendment to the particular resolution, a motion not to put the particular resolution or any similar motion;
 - (b) vote on a procedural motion, including a motion to elect the chair, to vacate the chair or adjourn the meeting;
- 28.7.3 speak at the meeting;
- 28.7.4 subject to the *Associations Incorporation Act (1964)*, vote ; and
- 28.7.5 demand or join in a demand for a poll.
- 28.8 Subject to the *Associations Incorporation Act (1964)*, if a person represents two or more members, that person has only one vote on a show of hands.
- 28.9 A later appointment of a proxy or attorney revokes an earlier one if both appointments could not be validly exercised at the meeting.
- 28.10 An appointment may specify the way a proxy or attorney is to vote on a particular resolution. A proxy may vote only as directed.
- 28.11 An appointment of a proxy is effective only if the Foundation receives the appointment (and any authority under which the appointment was signed or certified copy of the authority) at least 48 hours before the meeting or resumed meeting, unless the Board decides to reduce that time. These requirements also apply to an appointment of an attorney.
- 28.12 Unless the Foundation receives written notice of the matter before the start or resumption of a meeting, a vote by a proxy or attorney is valid even if:
- 28.12.1 the appointment of the proxy or attorney is revoked; or
 - 28.12.2 the member revokes the authority under which the proxy was appointed by a third party.
- 28.13 A proxy or attorney may take part in a general meeting even if the appointor is present. However, if the appointor votes on a resolution, the proxy or attorney must not vote.

PART 4 –AFFAIRS TO BE MANAGED BY A BOARD

29. General powers

29.1 The business of the Foundation is managed by or under the direction of a Board of Governors as provided for under the *Associations Incorporation Act (1964)*.

29.2 The Board:

29.2.1 is to control and manage the business and affairs of the Foundation; and

29.2.2 may exercise all the powers and perform all the functions of the Foundation, other than those powers and functions that are required by these rules to be exercised by general meetings of members of the Foundation; and

29.2.3 may change an address, level, amount, threshold or other variable quantity or item specified in the Foundation's By-Laws; and

29.2.4 may enact further By-Laws where an address, level, amount, threshold or other variable quantity or item is deemed necessary; and

29.2.5 has power to do anything that appears to the Board to be essential for the proper management of the business and affairs of the Foundation.

30. Number of governors

30.1 There must be at least three and no more than nine governors.

30.2 Subject to Clause 30.1, the Foundation in general meeting may increase or reduce the number of governors.

31. Qualification of governors

A governor need not be a member of the Foundation.

32. Appointment of governors

32.1 The governors are elected by members at the Annual General Meeting and shall hold office until the next Annual General Meeting.

32.2 Notwithstanding Clause 32.1, the first governors of the Foundation are –

- Ms Diana Morrison (Chair)
- Dr Peter M Hewitt (Senior Vice Chair)
- Ms Allison Bassano (Vice Chair)
- Dr Lisa Searle (Treasurer)
- Sarah Melanie Godfrey-Smith (Secretary & Public Officer)
- Dr James Roberts-Thomson (member)
- Mr Michael Browne (member)
- Ms Sally Gumley (member)
- Mr Simon Wearne (member)

32.3 If the office of a governor of the Foundation is vacated, the Board may replace the governor with a person who consents to act as a governor and for the balance of the term of the governor who is replaced.

33. **Term of office**

A governor automatically retires at the end of the term of their appointment. A retiring governor may be re-appointed as a governor in accordance with Clause 32.

34. **Alternate governors**

34.1 A governor may appoint an alternate for a specified period.

34.2 The appointor may terminate the alternate's appointment at any time.

34.3 An appointment or termination is effective only if:

34.3.1 it is in writing;

34.3.2 the appointor signs it; and

34.3.3 the Foundation is given notice of it.

34.4 The alternate need not be a member or governor of the Foundation.

34.5 The alternate is entitled to notice of Board meetings.

34.6 If the appointor is not present, the alternate may:

34.6.1 attend the Board meeting, count in the quorum, speak, and vote in the place of the appointor;

34.6.2 exercise any other powers (except the power to appoint an alternate) that the appointor may exercise.

34.7 A person must not act as an alternate for more than one governor.

34.8 If the appointor ceases to be a governor, the alternate's appointment is automatically terminated and the appointee can not longer exercise any powers.

34.9 Where:

34.9.1 an appointor ceases to be a governor; and

34.9.2 that appointor's alternate purports to do an act as a governor;

that act is as valid, in relation to a person dealing with the Foundation in good faith and for value and without actually knowing that the appointor has ceased to be a governor, as if the appointor had not ceased to be a governor.

34.10 While acting as a governor, an alternate is an officer of the Foundation and not the agent of the appointor.

35. Remuneration

35.1 Unless the Foundation in general meeting otherwise decides or the governor is an employee of the Foundation, a governor is not entitled to remuneration.

35.2 The Board may enact By-Laws that pay travelling and other out-of-pocket expenses that a governor properly incurs on the Foundation's business, but shall not be liable to make such payments unless such a By-Law is enacted prior to the expense being incurred.

36. Conflict of interest

36.1 A governor who has an interest in a contract or proposed contract or holds an office or possesses property whereby, directly or indirectly, duties or interests might be created in conflict with the governor's duties or interests as governor, shall on becoming aware of the conflict declare at the next Board meeting the fact and the nature, character and extent thereof.

36.2 The Board shall determine the extent of any real or perceived conflict of interest, if any, and decide an appropriate mitigation strategy.

37. Committees and delegates

37.1 The Board may delegate any of its powers (including this power to delegate) to a committee of governors or governors and members or to one governor.

37.2 The Board may revoke or vary that delegation.

37.3 A committee or delegate must exercise the powers delegated subject to any directions of the Board. The effect of the committee or delegate exercising a power in this way is the same as if the Board exercised it.

38. Attorneys and agents

38.1 The Board may appoint any person to be the attorney or agent of the Foundation for any purpose, for any period and on any terms (including as to remuneration) the Board decides.

38.2 The Board may delegate any of its powers (including the power to delegate) to an attorney or agent.

38.3 The Board may revoke or vary:

38.3.1 the appointment; or

38.3.2 any power delegated to the attorney or agent.

39. Indemnity

39.1 To the extent permitted by the *Associations Incorporation Act (1964)*, the Foundation:

39.1.1 must indemnify each person who is or has been an Officer of the Foundation against any liability incurred by the person as an Officer of the Foundation;

39.1.2 may pay a premium for a contract insuring an Officer of the Foundation against that liability.

40. Officers of the Foundation

40.1 The Board may elect a governor, for any period it decides, to a position as an Officer of the Foundation:

40.1.1 a Chair; and

40.1.2 two Deputy Chairs, one of which shall be the Senior Deputy Chair; and

40.1.3 a Treasurer; and

40.1.4 a Secretary.

40.2 Notwithstanding Clause 40.1, the persons listed against the applicable titles in Clause 32.2 shall be the first Officers of the Foundation.

40.3 Unless the Board otherwise decides, the Foundation's secretary is the Public Officer of the Foundation.

40.4 The five officers of the Foundation constitute the Executive Committee.

41. Vacation of office

41.1 A governor ceases to be a governor, or an officer of the Foundation ceases to be an officer, if:

41.1.1 the *Associations Incorporation Act (1964)* so provides;

41.1.2 the governor or officer:

- (a) resigns by notice in writing addressed to the Board; or
- (b) the Foundation in general meeting removes the person as a governor or officer; or
- (c) automatically retires as provided for in Clause 33; or
- (d) fails, without leave granted by the Board, to attend three consecutive meetings of the Board; or
- (e) becomes bankrupt or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his or her creditors, or makes any assignment of his or her estate for their benefit; or
- (f) becomes of unsound mind; or
- (g) ceases to be resident of Australia; or
- (h) dies.

42. Executive Officer

42.1 The Board may appoint a person (who may, but need not be, a governor) to be the 'Executive Officer' of the Foundation for any period and on any terms (including as to remuneration) as the Board may determine.

42.2 Subject to any agreement between the Foundation and the Executive Officer, the Board may remove or dismiss the Executive Officer.

42.3 The Board may delegate any of their powers to the Executive Officer and may revoke or vary any such delegation. The effect of the Executive Officer exercising a power in this way is the same as if the Board exercised it.

42.4 The Executive Officer must exercise the powers delegated subject to any directions of the Board.

42.5 If not a governor, the Executive Officer shall be entitled to attend any meeting of the Board and of the Executive Committee and to chair such meetings as provided for under this Constitution. At such meetings, the Executive Officer may speak but not vote.

- 42.6 Unless specified otherwise in the terms of appointment, and subject to Clause 42.4, the Executive Officer may act in any matter connected with the management of the affairs of the Foundation during the period between meetings of the Executive Committee and meetings of the Board.
- 42.7 The Executive Officer is to report to the next meeting of the Executive Committee or of the Board, whichever occurs first, on any significant matters acted upon under Clause 42.6.
- 42.8 If not a member of the Foundation, the Executive Officer shall be entitled to attend any general meeting of the Foundation and to chair such meetings as provided for under this Constitution. At such meetings, the Executive Officer may speak, but not vote.

PART 5 - PROCEEDINGS OF THE BOARD

43. Circulating resolutions

- 43.1 The Board may pass a resolution without a Board meeting being held, if a majority of the governors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 43.2 Separate copies of a document may be used for signing by governors, if the wording of the resolution and statement is identical in each copy.
- 43.3 A document shall be taken as signed if an electronic mail message consenting to the resolution is received from the electronic mail address on file in the Foundation's records for a governor.
- 43.4 The resolution is passed when a majority of governors have signed.
- 43.5 Passage of the resolution must be recorded in the Foundation's minute book and must include a record of those in favour, those against and those abstaining or unable to be contacted.

44. Meetings

- 44.1 The Board must meet at least two times in each year.
- 44.2 The Board may meet, adjourn and otherwise regulate its meetings as it decides.
- 44.3 A Board meeting may be held using any technology consented to by all the governors. The consent may be a standing one. A governor may only withdraw consent within a reasonable period before the meeting.
- 44.4 If a Board meeting is held by telephone link-up or other contemporaneous audio, audio-visual or internet-based communication, a governor (who has stated that he or she is present) is taken to be

present unless the governor states to the chair that the governor is disconnecting his or her communication device.

45. **Calling meetings**

- 45.1 Any governor may call a Board meeting.
- 45.2 On the request of any governor, the Foundation's secretary must call a Board meeting.

46. **Notice**

- 46.1 Notice of a Board meeting must be given to each governor and each alternate.
- 46.2 The notice:
 - 46.2.1 must specify the day, time and place of the meeting;
 - 46.2.2 must state the business to be transacted; and
 - 46.2.3 must be given at least 48 hours before the meeting, unless all governors otherwise agree.
- 46.3 Non-receipt of notice of a meeting, or failure to give notice of a meeting to a governor or an alternate, does not invalidate anything done at the meeting if:
 - 46.3.1 the failure was accidental;
 - 46.3.2 the governor or alternate gives notice to the Foundation that he or she waives the notice or agrees to the thing done at the meeting; or
 - 46.3.3 the governor or alternate attends the meeting.

47. **Quorum**

- 47.1 The quorum for a Board meeting is five governors.
- 47.2 In determining whether a quorum is present, the chair must count alternates.
- 47.3 The quorum must be present at all times during the meeting.
- 47.4 If there are not enough governors in office to form a quorum, the remaining governors may act only:
 - 47.4.1 to call a general meeting of the Foundation; or
 - 47.4.2 in an emergency.

48. **Meeting Chair**

- 48.1 The Chair is entitled to chair each Board meeting.
- 48.2 If there is no Chair, or if the Chair is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the Executive Officer may chair the meeting. If there is no Executive Officer, or if the Executive Officer is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the Deputy Chair may chair the meeting. If there is no Deputy Chair, or if the Deputy Chair is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the governors present must elect one of themselves to chair the meeting.
- 48.3 If the Chair is unable or unwilling to chair a part of the meeting, the Executive Officer may chair that part. If the Executive Officer is unable or unwilling to chair a part of the meeting, the Deputy Chair may chair that part. If there is no Deputy Chair, or the Deputy Chair is unable or unwilling to act, the governors present must elect one of themselves to chair that part.

49. **Decisions of Board**

- 49.1 Each governor has one vote.
- 49.2 Unless the Executive Officer is a governor, the Executive Officer does not have a vote.
- 49.3 A resolution of the Board is passed by a majority of votes cast by the governors.
- 49.4 The chair has a casting vote, if the chair has a personal deliberative vote.

PART 6 - PROCEEDINGS OF THE EXECUTIVE COMMITTEE

50. **Meetings**

- 50.1 The Executive Committee may meet, adjourn and otherwise regulate its meetings as it decides.
- 50.2 An Executive Committee meeting² may be held using any technology consented to by all the governors. The consent may be a standing one. A governor may only withdraw consent within a reasonable period before the meeting.

² Insertion of the word "meeting" ratified by board and to be formally adopted at the Foundation's next AGM.

50.3 If an Executive Committee meeting is held by telephone link-up or other contemporaneous audio, audio-visual or internet-based communication, a member (who has stated that he or she is present) is taken to be present unless the member states to the chair that the member is disconnecting his or her communication device.

51. Calling meetings

51.1 Any member of the Executive Committee may call an Executive Committee meeting.

52. Notice and Quorum

52.1 Notice of an Executive Committee meeting must be given to each Officer.

52.2 The notice must specify the day, time and place of the meeting, which may be held on short notice.

52.3 Non-receipt of notice of a meeting, or failure to give notice of a meeting to a governor or an alternate, does not invalidate anything done at the meeting if:

52.3.1 the failure was accidental;

52.3.2 the governor or alternate gives notice to the Foundation that he or she waives the notice or agrees to the thing done at the meeting; or

52.3.3 the governor or alternate attends the meeting.

52.4 The quorum for an Executive Committee meeting is three governors.

52.5 The quorum must be present at all times during the meeting.

53. Chair of Executive Committee Meetings

53.1 The Chair is entitled to chair each Executive Committee meeting.

53.2 If there is no Chair, or if the Chair is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the Executive Officer may chair the meeting. If there is no Executive Officer, or if the Executive Officer is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the Deputy Chair may chair the meeting. If there is no Deputy Chair, or if the Deputy Chair is not present within ten minutes after the time appointed for the meeting or is unable or unwilling to act, the Officers present must elect one of themselves to chair the meeting.

53.3 If the Chair is unable or unwilling to chair a part of the meeting, the Executive Officer may chair that part. If there is no Executive Officer, or the Executive Officer is unable or unwilling to chair a part of the

meeting, the Deputy Chair may chair that part. If there is no Deputy Chair, or the Deputy Chair is unable or unwilling to act, the Officers present must elect one of themselves to chair that part.

54. Decisions of Executive Committee

- 54.1 Each Officer has one vote.
- 54.2 Unless the Executive Officer is an Officer, the Executive Officer does not have a vote.
- 54.3 A resolution of the Executive Committee is passed by a majority of votes cast by the Officers.
- 54.4 The chair has a casting vote, if the chair has a personal deliberative vote.
- 54.5 The Executive Committee may issue instructions to the Public Officer and the servants of the Foundation in matters of urgency connected with the management of the affairs of the Foundation during the period between meetings of the Board.
- 54.6 The Executive Committee is to advise the next meeting of the Board of all resolutions passed at a meeting of the Executive Meeting, and report on any instructions issued under Clause 54.5.

55. Circulating resolutions

- 55.1 The Executive Committee may pass a resolution without a meeting being held, if a majority of the governors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 55.2 Separate copies of a document may be used for signing by governors, if the wording of the resolution and statement is identical in each copy.
- 55.3 A document shall be taken as signed if an electronic mail message consenting to the resolution is received from the electronic mail address on file in the Foundation's records for a member of the Executive Committee.
- 55.4 The resolution is passed when three members of the Executive Committee have signed.
- 55.5 Passage of the resolution must be recorded in the Foundation's minute book and must include a record of those in favour, those against and those abstaining or unable to be contacted.

PART 7 – EXECUTION OF DOCUMENTS

56. Execution of documents

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

56.1.1 two governors of the Foundation; or

56.1.2 the Public Officer of the Foundation.

56.2 If the Foundation has a common seal, it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

56.2.1 two governors of the Foundation; or

56.2.2 the Public Officer of the Foundation.

56.3 The Foundation may execute a document only if authorised by the Board or by a committee of governors (or governors and members) authorised by the Board to do so.

56.4 This clause does not limit the ways in which the Foundation may execute a document (including a deed).

PART 8 - RECORDS

57. Register

The Foundation must keep a register of members in accordance with the *Associations Incorporation Act (1964)*.

58. Inspection

The Foundation must allow inspection of the register of members only as required by *the Associations Incorporation Act (1964)*.

59. Evidence of register

Unless proved incorrect, the register of members is sufficient evidence of the matters shown in the register.

60. Minute book

60.1 The Foundation must keep minute books in which it records within one month:

60.1.1 proceedings and resolutions of meetings of the members;

60.1.2 proceedings and resolutions of Board meetings (including meetings of a committee of governors);

60.1.3 resolutions passed by members without a meeting; and

60.1.4 resolutions passed by governors without a meeting.

60.2 The Foundation must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:

60.2.1 the chair of the meeting; or

60.2.2 the chair of the next meeting.

60.3 The Foundation must ensure that minutes of the passing of a resolution without a meeting are signed by a governor within a reasonable time after the resolution is passed.

60.4 The minute book and related records are to be kept at the location so specified in the associated By-Laws.

61. Evidence of minutes

A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

62. Inspection

A member is entitled to inspect the Foundation's minute book by arrangement with the Foundation's secretary subject to any reasonable restrictions as to place, time and the manner of inspecting.

PART 9 – FINANCIAL ARRANGEMENTS

63. Accounts

63.1 True accounts are to be kept of :

63.1.1 all money received and expended by the Foundation and the matter in respect of which the receipt or expenditure takes place; and

63.1.2 the property, credits and liabilities of the Foundation.

63.2 The accounts are to be open to inspection by the members of the Foundation subject to any reasonable restrictions as to place, time and manner of inspecting the Board may impose.

63.3 The Treasurer of the Foundation is to keep all general records, accounting books and records of receipts and expenditure connected with the operations and business of the Foundation in the form and manner the Board directs.

63.4 The accounts, books and financial records are to be kept at the location so specified in the associated By-Laws.

64. Banking and finance

- 64.1 The Treasurer of the Foundation, on behalf of the Foundation, is to
- 64.1.1 receive all money paid to the Foundation; and
 - 64.1.2 as soon as practicable after receipt issue official receipts.
- 64.2 The Board is to cause to be opened with any bank, building society or credit union the committee selects an account in the name of the Foundation into which all money received is to be paid as soon as possible after receipt.
- 64.3 The Board may:
- 64.3.1 receive from the Foundation's financial institution the cheques drawn by the Foundation on any of its accounts with the financial institution; and
 - 64.3.2 release and indemnify the financial institution from and against all claims, actions, suits or demands that may be brought against the financial institution arising directly or indirectly out of those cheques.
- 64.4 Except with the authority of the Board, a payment of any sum exceeding the amount specified in the associated By-Laws is not to be made from the funds of the Foundation otherwise than by cheque drawn on, or an electronic funds transfer directly from, the Foundation's account.
- 64.5 The Board may provide the treasurer with a sum to meet urgent expenditure, subject to any conditions in relation to the use and expenditure the Board may impose.
- 64.6 Cheques are not to be drawn on the Foundation's account except for the payment of expenditure that has been authorised by the Board.
- 64.7 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments are to be signed by the Treasurer or, in his or her absence, by any other governor the Board nominates for that purpose and countersigned by any other governor or servant of the Foundation the Board nominates for that purpose.
- 64.8 Where payment is made by electronic funds transfer, authorisation to effect the transfer shall be deemed as given if an electronic mail message consenting to the transfer is received from the electronic mail addresses on file in the Foundation's records for the authorising persons who would sign and countersign the payment if it were a cheque.

65. Auditor

- 65.1 At each annual general meeting of the Foundation, the members present are to appoint a person as the auditor of the Foundation.
- 65.2 The auditor is to hold office until the annual general meeting next after that at which he or she is appointed, and is eligible for re-appointment.
- 65.3 The first auditor may be appointed by the Board before the first annual general meeting, and, holds office until the first annual general meeting, unless earlier removed by a resolution of the members at a general meeting, when that meeting may appoint an auditor to act until the first annual general meeting.
- 65.4 If an appointment is not made at an annual general meeting, the Board is to appoint an auditor for the current financial year of the Foundation.
- 65.5 Except as provided in Clause 65.3 the auditor may only be removed from office by special resolution.
- 65.6 If a casual vacancy occurs in the office of auditor during the course of a financial year of the Foundation, the Board may appoint a person as the auditor to hold office until the next succeeding annual general meeting.

66. Audit of accounts

- 66.1 The auditor is to examine the accounts of the Foundation at least once in each financial year of the Foundation.
- 66.2 The auditor is to:
 - 66.2.1 certify as to the correctness of the accounts of the Foundation;
and
 - 66.2.2 report to the members present at the annual general meeting.
- 66.3 In the report and in certifying to the accounts, the auditor is to state if:
 - 66.3.1 he or she has obtained the required information; and
 - 66.3.2 in his or her opinion, the accounts are properly drawn up so as to exhibit a true and correct view of the financial position of the Foundation –
 - (a) according to the information at his or her disposal and the explanations given; and
 - (b) as shown by the books of the Foundation; and
 - (c) the rules relating to the administration of the funds of the Foundation have been observed.

- 66.4 The Public Officer of the Foundation is to cause to be delivered to the auditor a list of all the accounts, books and records of the Foundation.
- 66.5 The auditor may:
- 66.5.1 have access to the accounts, books, records, vouchers and documents of the Foundation; and
 - 66.5.2 require from the servants of the Foundation any information and explanations he or she considers necessary for the performance of the duties as auditor; and
 - 66.5.3 employ persons to assist in investigating the accounts of the Foundation; and
 - 66.5.4 in relation to the accounts of the Foundation, examine any member of the committee or any servant of the Foundation.

PART 10 – DISPUTES, NOTICES AND INTERPRETATION

67. Disputes

- 67.1 A dispute between a member of the Foundation in the capacity as a member and the Foundation is to be determined by arbitration in accordance with the provisions of the *Commercial Arbitration Act 1986*.
- 67.2 This rule does not affect the operation of Clause 13.

68. Notice in writing

Notice must be in writing and in English, and may be given by an authorised representative of the sender.

69. Notice to members

- 69.1 The Foundation may give notice to a member:
- 69.1.1 personally;
 - 69.1.2 by sending it by post to the address of the member in the register of members or the alternative address (if any) nominated by the member; or
 - 69.1.3 by sending it to the fax number or electronic mail address (if any) nominated by the member.
- 69.2 If notice is given under Clause 69.1.3 then evidence of successful transmission, including the absence of any error message, shall be sufficient to assume receipt by the member.

70. Notice to governors

70.1 The Foundation may give notice to a governor or alternate governor:

70.1.1 personally;

70.1.2 by sending it by post to the address of the governor or the alternative address (if any) nominated by the governor; or

70.1.3 by sending it to the fax number or electronic mail address (if any) nominated by the governor.

70.2 If notice is given under Clause 70.1.3, evidence of successful transmission, including the absence of any error message, shall be sufficient to assume receipt by the governor.

71. Notice to the Foundation

A person may give notice to the Foundation:

71.1 by leaving it at the Foundation's registered office;

71.2 by sending it by post to the Foundation's registered office; or

71.3 by sending it by post to the Foundation's postal address as shown in the associated By-Laws.

72. Addresses outside Australia

A notice sent by post to or from a place outside Australia must be sent by air mail.

73. Time of service

73.1 A notice sent by post within Australia is taken to be given two business days after posting.

73.2 A notice sent by post to or from a place outside Australia is taken to be given five business days after posting.

73.3 A notice sent by fax, electronic mail or other electronic means, is taken to be given on the day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic mail address without error).

74. Interpretation

In this constitution, unless the context otherwise requires:

74.1 subject to the next clause, a word has the same meaning as it has in the *Associations Incorporation Act (1964)*;

74.2 singular includes plural and plural includes singular;

- 74.3 words of one gender include both genders;
- 74.4 reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- 74.5 reference to a person includes a corporation, a firm and any other entity;
- 74.6 headings do not affect interpretation.

75. **Definitions**

In this constitution:

Board means the Board of Governors of the Foundation and may include alternate governors and has the same meaning as ‘committee’ in the *Associations Incorporation Act (1964)*;

Business Day means any day except a Saturday or Sunday or other public holiday in Tasmania;

Developing Country means a country declared by the Minister for Foreign Affairs as such for the purposes of the Overseas Aid Gift Deduction Scheme established by the *Income Tax Assessment Act 1997*.

Development and **Relief**, when used in the context of Foundation projects, have the same meanings as in the “Overseas Aid Gift Deduction Scheme (OAGDS) Guidelines” published by the Australian Agency for International Development.

Foundation means the Peter Hewitt Care for Africa Foundation or such other name as the Foundation may adopt from time to time;

Officer has the same meaning as in the *Associations Incorporation Act (1964)*.

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CONSTITUTION

**THE PETER HEWITT
CARE FOR AFRICA FOUNDATION INC.**

ABN: 44524878796