



HERBERT
SMITH
FREEHILLS

Constitution

Canteen - The Australian
Organisation for Young People
Living with Cancer

ABN 77 052 040 516

Adopted by Members on August.....

Contents

Table of contents

1. Name	1
2. Purpose	1
3. Powers	1
4. Not for profit	1
4.1. Application of income and assets	1
4.2. Payments to directors	2
5. Membership	2
5.1. Members	2
5.2. When membership ends	2
5.3. Accountability to members	3
5.4. Register of members	3
5.5. Expulsion	3
6. Member liability and guarantee	3
7. Winding up	4
8. DGR status	4
8.1. Application of this rule	4
8.2. Identification of Gift Assets	4
8.3. Winding up or revocation of DGR status	4
9. Changing this constitution	4
10. General meetings	4
10.1. Convening general meetings	4
10.2. Notice 5	
10.3. Changing, postponing or adjourning general meetings	5
10.4. Quorum	5
10.5. Chair 6	
11. Decisions of the members	6
11.1. Voting by members	6
11.2. Proxies 6	
11.3. Voting is by show of hands unless a ballot is requested	7
11.4. The board may allow voting at a general meeting by notice	7
12. Board	7
12.1. Composition and eligibility	7
12.2. Directors appointed by the board	8
12.3. Directors elected by the members	8
12.4. Nominations for Board Elections	8
12.5. Term of office	8
12.6. Powers and duties	9
12.7. Conflict of interest	9
12.8. Committees	10
12.9. Validity of acts	10
13. Board meetings	10
13.1. Convening and holding board meetings	10
13.2. Quorum	10

Contents

13.3. Chair	11
13.4. Decisions at meetings.....	11
13.5. Decisions without a meeting	11
13.6. Minutes and records	11
14. Secretary	12
15. Indemnity and insurance	12
15.1. Indemnity	12
15.2. Insurance	12
15.3. Savings	12
16. Notice	12
16.1. Notice from Canteen or a director.....	12
16.2. Notice to Canteen	13
16.3. Time of service.....	13
17. Definitions and interpretation	13
17.1. Definitions	13
17.2. Interpretation	14
18. Corporations Act	14

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Constitution

Canteen - The Australian Organisation for Young People Living with Cancer

A company limited by guarantee

1. Name

The name of the company is Canteen - The Australian Organisation for Young People Living with Cancer (**Canteen**).

2. Purpose

Canteen's purpose is to support young people dealing with either their own cancer diagnosis or that of a close family member, including those who are bereaved, without limitation, by:

- (a) enabling active and effective youth leadership at every level of Canteen;
- (b) researching the unique needs of these young people in order to develop interventions that improve their health and wellbeing;
- (c) facilitating the unique support provided by these young people when connecting with others going through a similar experience, using child-safe and ethical approaches;
- (d) providing high quality, professional, child-safe and ethical treatment and support options for all these young people;
- (e) advancing the interests and improving the wellbeing of these young people; and
- (f) advocating for the needs of these young people.

3. Powers

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

4. Not for profit

4.1. Application of income and assets

- (a) Canteen's income and assets may only be used in a manner consistent with Canteen's purpose.
- (b) Canteen must not distribute any income or assets, directly or indirectly, by way of dividend or other profit distribution, to any member in their capacity as member.
- (c) This rule does not prevent payments (directly or indirectly) to or for the benefit of a member not in their capacity as a member (for example, where the

payment is made under rule 2 or is for the provision of goods or services at an amount that is no more than fair and reasonable).

4.2. Payments to directors

- (a) Canteen must not pay a director for their services as a director.
 - (b) Other payments to a director, including:
 - (1) outofpocket expenses connected with their role as a director;
 - (2) goods or services provided to Canteen (other than as a director); or
 - (3) their role as an employee of Canteen (separate to their role as a director);
- must be approved by the board and must be no more than an amount which is fair and reasonable.

5. Membership

5.1. Members

- (a) The members are:
 - (1) those who are members at the time this constitution is adopted; and
 - (2) any other persons admitted as members in accordance with this constitution.
- (b) An individual is eligible to be a member of Canteen if they receive services from Canteen as outlined in a membership policy.
- (c) Membership applications must follow the form and process decided by the board.
- (d) The board will review each membership application and decide whether to approve or reject it. No reason is required to be given for rejecting an application. The board may choose to delegate the review and decision of each membership application, but will at all times determine the form and process of membership applications.
- (e) Each member agrees to comply with this constitution, follow applicable company policies and support the purposes outlined in rule 2.

5.2. When membership ends

Membership ends when the member:

- (a) resigns as a member by giving notice to Canteen;
- (b) no longer satisfy the membership eligibility requirements as set out in the membership policy;
- (c) becomes, as determined by the board, untraceable; or
- (d) dies;
- (e) is expelled under rule 5.5.

5.3. Accountability to members

- (a) Canteen must be accountable to the members within the terms of the law, including, as applicable, the Corporations Act, the ACNC Act and this constitution.
- (b) The board will decide how Canteen will be accountable to its members and how any concerns about the governance, activities and finances of Canteen can be raised by members.

5.4. Register of members

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

5.5. Expulsion

- (a) If the board considers that there may be grounds for expelling a member, it may investigate and decide the matter itself or appoint a committee or third party to investigate and decide the matter. The decision maker must be unbiased.
- (b) The grounds for expelling a member are:
 - (1) the member has not complied with Canteen's rules, procedures or policies;
 - (2) it is in Canteen's best interests for the member to cease being a member; or
 - (3) the member is not supporting Canteen's purposes or may harm Canteen's reputation.
- (c) Before any decision to expel a member, the decision maker must arrange a meeting and give the relevant member two weeks 'notice':
 - (1) of the meeting's date, time and location, including any online links or phone number (if relevant);
 - (2) of the grounds for expulsion; and
 - (3) that the member may attend the meeting (including with a support person or representative) and give an explanation or submission.
- (d) After the meeting, the decision maker has four weeks to reach a decision and must give notice to the member of the decision. If a decision is not made within this time, no action can be taken against the member unless a new process is initiated.
- (e) A decision made under this rule is final and binding on all parties.

6. Member liability and guarantee

The liability of a member to contribute to the property of Canteen if it is wound up is limited to \$20.

7. Winding up

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

8. DGR status

8.1. Application of this rule

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

8.2. Identification of Gift Assets

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

8.3. Winding up or revocation of DGR status

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

- (a) the winding up of Canteen where the surplus assets include Gift Assets; or
- (b) the revocation of Canteen's DGR status.

9. Changing this constitution

- (a) Canteen must not pass a special resolution changing this constitution if it would result in Canteen no longer being a charity.
- (b) A resolution that attempts to change this rule 9 or this constitution in breach of rule 9(a) will have no effect.

10. General meetings

10.1. Convening general meetings

- (a) The board may convene a general meeting at a time and place it considers appropriate, including over the phone or online.
- (b) At least 40 members may request a general meeting. The request is valid if:
 - (1) the requested meeting is for a proper purpose;
 - (2) it sets out a valid resolution to be proposed;
 - (3) it is signed by those members; and
 - (4) it is given to Canteen.
- (c) On receiving a valid request under rule 10.1(a), the board must:
 - (1) give notice to all members of the meeting within two months of the request; and
 - (2) hold the meeting within three months of the request.

- (d) The board cannot postpone or cancel a general meeting convened under this rule without the prior written consent of the members who requested the meeting, except as allowed under rule 10.3.

10.2. Notice

- (a) At least 21 days 'notice of a general meeting must be given to each person who is a member, director or auditor (if one has been appointed) of Canteen at the date of the notice.
- (b) A person may waive notice of a general meeting or consent to shorter notice by giving notice to Canteen.
- (c) The notice must:
 - (1) specify the date, time and location of the meeting, including any online links or phone number (if relevant);
 - (2) state the general nature of the business of the meeting and, if a special resolution is proposed, include the wording of that resolution; and
 - (3) provide details of approved voting methods.
- (d) Failure to give or receive a meeting notice or proxy form (if any) does not invalidate resolutions passed or actions taken at the general meeting if the:
 - (1) failure was due to accident or error;
 - (2) affected person agrees to the resolution or action;
 - (3) affected person attends the general meeting.

10.3. Changing, postponing or adjourning general meetings

- (a) The board may change the venue, postpone, adjourn or cancel a general meeting:
 - (1) if the board reasonably considers the meeting is no longer necessary;
 - (2) if the venue is unreasonable or impractical;
 - (3) if a change is needed for efficient conduct of the meeting; or
 - (4) in accordance with rule 10.4(c).
- (b) An adjourned meeting may only deal with unfinished business from the original meeting.
- (c) No additional notice is needed for an adjourned meeting, unless a meeting is adjourned for 30 days or more, in which case notice of that adjourned meeting must be given in accordance with rule 10.2.

10.4. Quorum

- (a) No business may be conducted at a general meeting unless a quorum is present when the meeting proceeds to business, other than electing a chair and adjourning the meeting.
- (b) A quorum consists of at least 10 members present and entitled to vote on any resolution at the meeting.
- (c) If a quorum is not present within 30 minutes of the scheduled start time, the meeting is adjourned to a time, date and place determined by the board. If the board does not decide, it is adjourned to the same day, time and place in the following week.

- (d) If a quorum is still not present within 30 minutes of the scheduled start time at the adjourned meeting, the meeting is dissolved.

10.5. Chair

- (a) The chair of the board presides as chair at a general meeting if present within 15 minutes of the scheduled start time and willing to act as chair. If the chair of the board is not present and willing to act within that time, the deputy chair of the board must preside as chair at the meeting if present and willing to act as chair.
- (b) If the conditions in rule 10.5(a) are not met, the members present must elect a chair for the meeting who must be:
 - (1) a Member Director who is present and willing to act; or
 - (2) if no Member Director is present and willing to act, any director who is present and willing to act, or
 - (3) if no director is present and willing to act, a member who is present and willing to act.
- (c) The chair decides questions relating to the order of business, procedure or conduct of the meeting, and their decision is final.

11. Decisions of the members

11.1. Voting by members

- (a) Each member has one vote.
- (b) Unless a special resolution is required, resolutions are passed by majority of votes cast. A special resolution is passed by at least 75% of votes cast.
- (c) If the votes on a proposed resolution are tied, the chair does not have a second or casting vote and the proposed resolution is taken as lost.
- (d) The board may decide voting procedures, including:
 - (1) the form and methods of voting;
 - (2) whether voting by proxy is permitted; and
 - (3) whether voting by notice is permitted in addition to or instead of proxy voting.
- (e) An objection to a person's right to vote must be:
 - (1) raised before the vote is counted; and
 - (2) decided by the chair, whose decision is final.

11.2. Proxies

- (a) If permitted, a member may appoint a proxy to attend meetings and vote on their behalf. The proxy need not be a member of Canteen.
- (b) The appointment of a proxy is made by notice to Canteen by the deadline specified by the board, or if no deadline is given, at least 48 hours before the meeting. The board may decide to accept appointments after any deadline.
- (a) The appointment may specify voting instructions for a particular resolution. If instructions are given, the proxy must vote as directed.

- (c) The appointment of a proxy remains valid even if the appointing member attends the meeting. However, if the appointing member votes on a resolution, the proxy is not entitled to vote on that resolution.
- (d) A proxy (if any) may vote separately for each member they represent, in addition to any vote they may have as a member in their own right.

11.3. Voting is by show of hands unless a ballot is requested

- (a) A vote of the members at a general meeting is decided by a show of hands unless a ballot is requested under rule 11.3(b). Where a meeting is not held in person, the chair decides how a vote by show of hands will be conducted.
- (b) The chair, or at least four members present and entitled to vote, may request that a vote be decided by ballot instead of by show of hands. The request must be made before or immediately after the result of a vote by show of hands is declared. A request for a ballot may be withdrawn.
- (c) If no ballot is requested, the result of the vote by a show of hands as declared by the chair, and its entry in the meeting minutes, is conclusive evidence of the outcome.
- (d) If a vote is conducted by ballot, the chair may decide how to conduct the ballot, including whether to conduct it electronically.
- (e) A request for a ballot does not prevent the meeting continuing with other business. However, if the request for a ballot is made on electing a meeting chair or on adjourning the meeting, the ballot must be taken immediately.

11.4. The board may allow voting at a general meeting by notice

- (a) The board may allow members to vote on a resolution prior to a meeting by giving notice to Canteen specifying whether their vote is for or against the identified resolution (**vote by notice**). The board may decide the procedures for voting by notice including the form, method and timing of vote submission.
- (b) A member who has voted by notice may still attend the meeting but may not vote on a resolution if they have already voted by notice on that resolution.
- (c) Where the board allows voting by notice on a resolution, the secretary must provide written confirmation to the chair of the total votes by notice for and against the resolution before any vote on that resolution is held at the meeting.
- (d) When the vote is held at the meeting, the chair must:
 - (1) for a show of hands – count each vote by notice (for or against) along with the votes cast at the meeting;
 - (2) for a ballot – include each vote by notice (for or against) in the ballot count.

12. Board

12.1. Composition and eligibility

- (a) The minimum number of directors is 3.
- (b) An individual is eligible to be a director if they:
 - (1) sign a consent to act as director; and

- (2) are not disqualified from managing a corporation under the Corporations Act or from being a responsible entity under the ACNC Act.
- (c) A majority of the directors must be Member Directors.

12.2. Directors appointed by the board

Subject to rule 12.1(c), the board may appoint any eligible individual as a director.

12.3. Directors elected by the members

- (a) The board must hold elections each financial year in accordance with this rule, where members may elect or re-elect eligible individuals as directors (**Board Elections**).
- (b) At each Board Election:
 - (1) directors appointed by the board under rule 12.2 since the last Board Election must stand down and may offer themselves for election; and
 - (2) directors who have reached the maximum term of office must stand down and may offer themselves for re-election; and
 - (3) directors who were not elected or re-elected at either of the last two Board Elections must stand down and may offer themselves for re-election.
- (c) The election, re-election or ceasing to be a director under this rule takes effect at the conclusion of the Board Election.

12.4. Nominations for Board Elections

- (a) Nominations are not required for directors who stand down under rule 12.3(b) and are seeking election or re-election.
- (b) The board will determine the selection criteria prior to the nomination process.
- (c) Nominations for new candidates for election as directors must:
 - (1) be in writing and signed by one member other than the candidate;
 - (2) include a short biographical statement and the candidate's written consent;
 - (3) be delivered to Canteen at least 45 days before the Board Election unless the board agrees to accept a late nomination.
- (d) The board may review the nominees in accordance with the selection criteria and a board composition policy, and endorse candidates for election by the members.
- (e) Where there is an insufficient number of candidates nominated, or the board determines that a nominee does not meet the selection criteria, the board can call for further nominations. The board must provide feedback to any nominee deemed not to meet the selection criteria and may choose to identify these nominees who choose to continue with the nomination process.

12.5. Term of office

- (a) The maximum term of office is 9 years, or the longer term decided by the board for a particular director.
- (b) A director ceases to be a director if they:
 - (1) have served the maximum term of office;

- (2) stand down from office under rule 12.3(b) and are not elected or re-elected;
- (3) resign by giving notice to Canteen;
- (4) are removed by member resolution;
- (5) are appointed for a specific term and the term is not extended;
- (6) are disqualified from managing a corporation under the Corporations Act or from being a responsible entity under the ACNC Act;
- (7) fail to attend three consecutive board meetings or four meetings in a year, unless otherwise decided by the board;
- (8) die; or
- (9) in the circumstances outlined in the Corporations Act.

12.6. Powers and duties

- (a) The board is responsible for governing Canteen and carrying out its purpose set out in rule 2.
- (b) The board may exercise all Canteen's powers which are not required by the Corporations Act or this constitution to be exercised by the members.
- (c) Directors must understand and comply with their duties as directors, and the requirements described in the ACNC governance standards and external conduct standards.
- (d) The directors must ensure Canteen's financial affairs are managed responsibly, including by:
 - (1) maintaining accurate records that explain transactions and financial performance, and enable true and fair financial statements to be prepared annually;
 - (2) deciding how payments are approved or executed by or on behalf of Canteen; and
 - (3) ensuring Canteen does not operate while insolvent.
- (e) The board may delegate any of its powers or functions to a director, committee, employee, agent or other person as it decides. The delegate must exercise the powers or functions within the terms of the delegation.

12.7. Conflict of interest

- (a) A director must inform the other directors of any perceived or actual conflict of interest.
- (b) The directors must manage conflicts of interest in accordance with the ACNC governance standards, the Corporations Act and any conflict of interest policy adopted by the board.
- (c) Subject to conflicts of interest being managed in accordance with rule 12.7(b):
 - (1) a director is not disqualified from entering into an arrangement with Canteen as vendor, purchaser or in another capacity;
 - (2) an arrangement entered into by Canteen in which a director is interested is not invalid or voidable;
 - (3) a director who has an interest in an arrangement involving Canteen need not account to Canteen for any profit realised under the arrangement,

merely because of the director's fiduciary obligations.

12.8. Committees

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

12.9. Validity of acts

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

- (a) a defect in appointment of any person;
- (b) a person no longer being a director or committee member; or
- (c) a person being ineligible to vote;

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

13. Board meetings

13.1. Convening and holding board meetings

- (a) A director may call a board meeting by giving reasonable notice to all the other directors, or by the secretary giving reasonable notice to all directors.
- (b) A notice of board meeting:
 - (1) must specify the date, time and location of the meeting, including any online links or phone number (if relevant);
 - (2) need not state the nature of the business to be conducted; and
 - (3) may be given immediately before the meeting.
- (c) Failing to give or receive a meeting notice does not invalidate resolutions passed or actions taken at the meeting if:
 - (1) the failure was due to accident or error;
 - (2) the director waives notice of that meeting before or after the meeting;
 - (3) the director notifies Canteen of their agreement to the resolution or action before or after the meeting; or
 - (4) the director attended the meeting.
- (d) Board meetings can be held in person or by telephone or digital means or any combination.
- (e) If a technical difficulty occurs which means that one or more directors cannot participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum remains present, continue with the meeting.

13.2. Quorum

- (a) No business may be conducted at a board meeting unless a quorum is present at the time the business is dealt with.
- (b) A quorum consists of three directors, of which at least two are Member Directors.

- (c) If the number of directors falls below the minimum required by this constitution, or the requirement in rule 12.1(c) is not met, the remaining directors must appoint additional directors as soon as possible to meet the relevant requirement. Until that has happened, they may only act if and to the extent that there is an emergency requiring action.

13.3. Chair

- (a) The board must elect a Member Director as chair and a Member Director as vice-chair and decide how long they will each hold the position.
- (b) The chair must preside as chair at each board meeting if present within 10 minutes of the scheduled start time and willing to act. If the chair is not present and willing to act within that time, the deputy chair must preside as chair at the board meeting if present and willing to act.
- (c) If the conditions in rule 13.3(b) are not met, the directors present must elect one of themselves to be the chair for that meeting.

13.4. Decisions at meetings

- (a) Resolutions at a board meeting pass by majority of votes cast by the directors present.
- (b) If the votes on a proposed resolution are equal, the chair does not have a second or casting vote, and the vote is taken as lost.

13.5. Decisions without a meeting

- (a) A board resolution may be passed without a board meeting if:
 - (1) all of the directors who are entitled to receive notice of a meeting and vote on a resolution are given notice setting out that resolution;
 - (2) at least 75% of those directors consent to the resolution within the time specified, or if no time is specified, within 14 days of the document being sent; and
 - (3) the directors who consent to the resolution would have constituted a quorum at a meeting held to consider that resolution.
- (b) A director may consent to a resolution in the manner set out in the notice of the resolution.
- (c) The resolution is taken as passed when the last director required to make up at least 75% of the directors consents to the resolution within the required time period.

13.6. Minutes and records

- (a) The board must maintain as part of Canteen's records:
 - (1) minutes of general meetings, board meetings and committee meetings (including all resolutions proposed); and
 - (2) records of resolutions passed by members, the board and committees without a meeting.
- (b) The records must be made within one month after the relevant meeting is held or resolution passed.
- (c) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

14. Secretary

- (a) The board must appoint at least one secretary who ordinarily resides in Australia. The secretary may also be a director.
- (b) The secretary must consent to the appointment.
- (c) The secretary may be removed by the board.

15. Indemnity and insurance

15.1. Indemnity

- (a) Canteen must indemnify, on a full indemnity basis and to the maximum extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) they incur as an officer of Canteen.
- (b) This indemnity:
 - (1) continues and is enforceable by an Indemnified Officer even if they are no longer an officer of Canteen; and
 - (2) can be enforced without the person first having to incur any expense or make any payment.

15.2. Insurance

Canteen may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

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

15.3. Savings

Nothing in this rule:

- (a) affects any other rights or remedies an Indemnified Officer has in relation to losses or liabilities covered by this rule; or
- (b) limits Canteen's ability to indemnify or provide or pay for insurance for anyone not covered by this rule.

16. Notice

16.1. Notice from Canteen or a director

Canteen or a director may give notice:

- (a) personally;
- (b) by post to the person's nominated address; or
- (c) by email or other digital means.

16.2. Notice to Canteen

Notice to Canteen may be given:

- (a) by post or personal delivery to its registered address; or
- (b) by email to Canteen's main email address, or if none, to the secretary's or chair's email address.

16.3. Time of service

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

17. Definitions and interpretation

17.1. Definitions

Term	Meaning
ACNC Act	the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).
board	the directors of Canteen passing a resolution in accordance with this constitution.
Business Day	Monday to Friday inclusive, excluding the public holidays in the State or Territory of the registered office of Canteen.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).

17.2.

Gift	<ol style="list-style-type: none"> 1. a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage; or 2. a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
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17.3.

Indemnified Officer	each person who is or has been a director, secretary or officer of Canteen.
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17.4.

ITAA 97

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

Member Director

a director who was a member of Canteen when they were first appointed or elected as a director.

17.5. Interpretation

In this constitution:

- (a) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (b) unless the contrary intention appears, a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (c) a reference to 'notice' means 'written notice', 'in writing' includes electronic communications and 'signed' includes an electronic signature;
- (d) a reference to 'person' means a natural person;
- (e) a person is present at a meeting if they are present in person, over the phone, online or by proxy; and
- (f) the singular includes the plural and the plural includes the singular.

18. Corporations Act

- (a) The replaceable rules in the Corporations Act do not apply to Canteen.
- (b) To the extent that this constitution is inconsistent with any applicable requirements in the Corporations Act, the constitution is modified to reflect those requirements.