

## **Constitution**

**Shine Bright EYM**

**ABN 49 616 588 213**

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# 1 Preliminary

## 1.1 Defined terms

(a) In this Constitution unless the contrary intention appears:

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

**Registration Date** means the date on which the Company was registered and this Constitution adopted by the First Members.

**Auditor** means the Company's Auditor.

**Board** means all or some of the Directors acting as a board.

**Chair** means the person appointed under this Constitution to act as Chair of the Board.

**Chief Executive Officer** means any person appointed to perform the duties of a chief executive officer in accordance with clause 50.

**Circular Resolution** means a resolution of the Board passed in accordance with clause 43.

**Company** means Shine bright EYM (ABN xx xxx xxx xxx).

**Company Secretary** means any person appointed by the Board to perform the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

**Constitution** means the Constitution of the Company as amended from time to time.

**Corporations Act** means the Corporations Act 2001 (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

**Director** includes any person occupying the position of Director of the Company.

**First Member** means a person who is named in the application for registration of the company, with their consent, as a proposed member of the company.

**General Meeting** means a General Meeting of the Company (including an annual General Meeting) convened to consider the business contained in the relevant notice for that meeting.

**Member** means a Member under clause 6.3(a).

**Objects** means the objects of the Company set out in clause 4.1.

**Register** means the register of Members of the Company.

**Seal** means the Company's common seal.

**Special Resolution** means a resolution:

(i) of which notice has been given under clause 12.5(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.
- (b) In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

## **2. Interpretation**

- 2.1 In this Constitution, except where the context otherwise requires:
  - (a) the singular includes the plural and vice versa, and a gender includes other genders;
  - (b) another grammatical form of a defined word or expression has a corresponding meaning;
  - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
  - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - (e) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.
- 2.2 Headings are for the ease of reference only and do not affect interpretation.
- 2.3 The Corporations Act prevails over any inconsistency with this Constitution.

## **3. Replaceable rules & Amendment to Constitution**

- 3.1 To the extent permitted by law, the provisions of the Corporations Act that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.
- 3.2 Subject to clause 3.3, the members may amend this Constitution by passing a Special Resolution.
- 3.3 The members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

## **4. Objects and Powers**

- 4.1 The objects for which the Company is established are
  - To advance education by operating pre-schools and kindergartens as a cluster manager
  - To foster a healthy and active early childhood community throughout northern Victoria
  - To provide education and care for young children, supported by parent, family and community engagement
  - To provide pre-school age children with a safe environment for continuous learning and improvement.
- 4.2 Subject to clause 5 the Company has the following powers:

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

which may only be used to carry out its Objects and to do all things incidental or convenient in relation to the exercise of those powers.

## **5. Income and property of Company**

5.1 The income and property of the Company will only be applied towards the promotion of the Objects.

5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent;
- (c) of rent at commercial rates for premises leased or licensed by the Member to the Company;
- (d) by way of reimbursement of expenses incurred by any Member on behalf of the Company; or
- (e) otherwise in accordance with this Constitution.

## **6. Membership**

6.1 Limited liability

The liability of the Members is limited to the amount of the Guarantee in Clause 6.2.

6.2 Guarantee

Each member must contribute an amount not more than \$100 (the Guarantee) to the property of the Company if the Company 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 Company incurred before the member stopped being a member, or
- (b) costs of winding up.

6.3 Admission

- (a) The Members of the Company are:
  - (i) the First Members, and;
  - (ii) any other person that the Directors allow to be a member, in accordance with this Constitution.
- (b) Other than First Members, an applicant will become a Member when they are entered on the register of members.

- (c) The Board may, from time to time, determine:
  - (i) the various classes or categories of membership of the Company;
  - (ii) any restriction on the number of Members or the number of Members within each class or category; and
  - (iii) the rights and privileges of Members in each class or category of membership.
- (d) The Board shall from time to time determine the requirements for admission as a Member, provided the person seeking admission;
  - (i) is a natural person;
  - (ii) supports the Objects and purposes of the Company, and
  - (iii) satisfies the Board that, considering the person's character and position, the person is fit and proper to be admitted to membership of the Company.
- (e) A person may apply to become a member of the Company by writing to the Company Secretary stating that they:
  - (i) want to become a member;
  - (ii) support the purpose(s) of the Company, and
  - (iii) agree to comply with the Company's Constitution, including paying the Guarantee if required.
- (f) Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Board in its absolute discretion. Applications must be sent to the Company with the correct fees as prescribed from time to time.
- (g) The Board will consider each application for membership at the next meeting of the Board after the application is received and, having considered the application, the Board may either accept or reject the application. The Board does not have to give any reason for rejecting an application for membership.
- (h) If the Directors approve an application, the Company Secretary must as soon as possible:
  - (i) enter the new member on the register of members, and
  - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started.
- (i) If the Directors reject an application, the Company Secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- (j) For the avoidance of doubt, the Directors may approve an application even if the application does not state the matters listed in sub-clauses 6.3(e) (i), (ii) and (iii). In that case, by applying to be a member, the applicant agrees to those three matters.

#### 6.4 Register

The Company must establish and maintain a register of members. The register of members must be kept by the Company Secretary and must contain:

- (a) for each current Member:
  - (i) name;
  - (ii) address;
  - (iii) any alternative address nominated by the Member for the service of notices, and

- (iv) 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) address;
  - (iii) any alternative address nominated by the Member for the service of notices, and
  - (iv) date the membership started and ended.
- (c) The Company must give current Members access to the register of members.
- (d) Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of Members.

## 6.5 Ceasing Membership

A person immediately stops being a Member if they:

- (a) die;
- (b) resign by writing to the Company Secretary;
- (c) are expelled in accordance with the Constitution;
- (d) have not responded within three months to a written request from the Company Secretary that they confirm in writing that they want to remain a member,

and, if the Member is also a Director, when the Member ceases to hold that office.

## 6.6 Subscriptions

The Board may from time to time and in its absolute discretion determine;

- (a) the annual subscription (if any) payable by each Member or each category of Member;
- (b) the date for payment of subscriptions; and
- (c) the consequences to Members of late payment or non payment of subscriptions.

## 7 Dispute Resolution

7.1 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 Company.

7.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 8 until the disciplinary procedure is completed.

7.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

7.4 If those involved in the dispute do not resolve it under clause 7.3 they must within 10 days:

- (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.

7.5 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 of Victoria.

7.6 A mediator chosen by the Directors under clause 7.5(b)(i):

- (a) may be a member or former member of the Company
- (b) must not have a personal interest in the dispute, and
- (c) must not be biased towards or against anyone involved in the dispute.

7.7 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.

## **8 Disciplining members**

8.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:

- (a) the Member has breached this Constitution,
- (b) the Member no longer supports the Objects, or
- (b) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.

8.2 At least 14 days before the Directors' meeting at which a resolution under clause 8.1 will be considered, the Company 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.
- 8.3 Before the Directors pass any resolution under clause 8.1, 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.
- 8.4 After considering any explanation under clause 8.3, 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.
- 8.5 The Directors cannot fine a Member.
- 8.6 The Company Secretary must give written notice to the Member of the decision under clause 8.4 as soon as possible.
- 8.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 8.8 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.

## **9 General Meetings called by Directors**

- 9.1 The Directors may call a General Meeting.
- 9.2 If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company 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.
- 9.3 The percentage of votes that Members have (in clause 9.2) is to be worked out as at midnight before the members request the meeting.
- 9.4 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 Company.

9.5 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.

## **10 General Meetings called by Members**

10.1 If the Directors do not call the meeting within 21 days of being requested under clause 9.4, 50% or more of the Members who made the request may call and arrange to hold a General Meeting.

10.2 To call and hold a meeting under clause 10.1 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 Company's member register, which the Company 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 Company.

10.3 The Company must pay the members who request the General Meeting any reasonable expenses they incur because the Directors did not call and hold the meeting.

## **11 Annual General Meeting**

11.1 A General Meeting, called the annual General Meeting, must be held:

- (a) within 18 months after registration of the Company, and
- (b) after the first annual General Meeting, at least once in every calendar year.

11.2 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 Company's activities;
- (b) a review of the Company's finances;
- (c) any Auditor's report;
- (d) the election of Directors, and
- (e) the appointment and payment of Auditors, if any.

11.3 Before or at the annual General Meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual General Meeting.

11.4 The chair 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 Company.

## **12 Notice of General Meetings**

12.1 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).
- 12.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 12.3 Subject to clause 10, 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) or any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 12.4 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.
- 12.5 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 Company;
    - (ii) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - (iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 12.6 If a General Meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

### **13 Business of General Meetings**

- 13.1 In addition to the items of business in sub-clause 11.2, the business of an annual General Meeting, even if not referred to in the notice of meeting, may include:
- (a) any business which under this Constitution or the Corporations Act is required to be transacted at an annual General Meeting; and

(b) any other business which may lawfully be transacted at a General Meeting.

13.2 The Board may postpone, cancel or change the venue of any General Meeting (other than a meeting called as the result of a request under clause 10.1) at any time before the day of the meeting. The Board must give notice of the postponement, cancellation or change of venue to all persons entitled to receive notices of a General Meeting.

13.3 A person may waive notice of any General Meeting by notice in writing to the Company.

13.4 The non-receipt of notice of a General Meeting or proxy form by, or a failure to give notice of a General Meeting or a proxy form to, any person entitled to receive notice of a General Meeting under sub-clause 12.1 does not invalidate any act, matter or thing done or resolution passed at the General Meeting if:

(a) the non-receipt or failure occurred by accident or error; or

(b) before or after the meeting, the person:

(i) has waived or waives notice of that meeting under clause 13.3; or

(ii) has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by notice in writing to the Company.

## 14 Quorum

14.1 No business may be transacted at a General Meeting unless a quorum of Members is present for the whole of the meeting.

14.2 A quorum of Members is five Members.

14.3 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:

(a) the General Meeting is automatically dissolved if it was requested or called by Members under clause 10.1; or

(b) in any other case:

(i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Board; and

(ii) if at the adjourned General Meeting a quorum is not present within 30 minutes after the time appointed for the General Meeting, the General Meeting is automatically dissolved.

## 15 Chair

15.1 The Chair, or in the Chair's absence a Vice-Chair, will be the chair at every General Meeting.

15.2 If:

(a) there is no Chair or Vice-Chair; or

(b) neither the Chair nor a Vice-Chair is present within 15 minutes after the time appointed for holding the General Meeting; or

(c) the Chair and Vice-Chairs are unwilling to act as chair of the General Meeting, the Directors present may elect a chair of the General Meeting.

15.3 If no chair is elected in accordance with clause 15.2, then:

- (a) the Members may elect one of the Directors present as chair; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chair.

15.4 At any time during a meeting and in respect of any specific item or items of business, the Chair may elect to vacate the chair in favour of another person nominated by the Chair (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the Chair and will have all the powers of the Chair (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.

15.5 If there is a dispute at a General Meeting about a question of procedure, the Chair may determine the question, which determination, subject to law, is final.

15.6 The general conduct of each General Meeting of the Company and the procedures to be adopted at the meeting will be determined by the Chair, including the procedure for the conduct of the election of Directors.

15.7 The Chair 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)).

15.8 The Chair does not have a casting vote.

## **16 Using technology to hold meetings**

16.1 The Company 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.

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

## **17 Adjournment**

17.1 The Chair of a General Meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the General Meeting; and
- (b) must adjourn the General Meeting if the meeting directs him or her to do so.

17.2 An adjourned General Meeting may take place at a different venue to the initial General Meeting.

17.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial General Meeting.

17.4 Notice of an adjourned General Meeting must only be given in accordance with clause 12.6 if a General Meeting has been adjourned for 30 days or more.

## **18 Auditor's right to be heard**

18.1 The Auditor (if any) is entitled to attend and be heard at any General Meeting of the Company on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor, even if:

- (a) the Auditor retires at the General Meeting; or
- (b) Members pass a resolution to remove the Auditor from office;

- 18.2 The Auditor (if any) is entitled to authorise a person in writing to attend and speak at any General Meeting as the Auditor's representative; and
- 18.3 The Company must give the Auditor (if any) any communications relating to the General Meeting that a member of the Company is entitled to receive.

## **19 Members' resolutions and statements**

- 19.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a General Meeting (members' resolution), and/or
  - (b) a written request to the Company that the Company 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).
- 19.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 19.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 19.4 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.
- 19.5 The percentage of votes that members have (as described in clause 19.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 19.6 If the Company has been given notice of a members' resolution under clause 19.1(a), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 19.7 This clause 19 does not limit any other right that a member has to propose a resolution at a General Meeting.

## **20 Company must give notice of proposed resolution or distribute statement**

- 20.1 If the Company has been given a notice or request under clause 19.1;
- (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 Company'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 Company 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 Company will pay these expenses.
- 20.2 The Company 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 20.1(b) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of 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.

## 21 Decisions on questions

- 21.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 21.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 21.3 The Chair does not have a casting vote (in addition to the Chair's votes as a Member, proxy, attorney or Representative) on a show of hands or on a poll.
- 21.4 Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 21.5 Unless a poll is demanded:
  - (a) a declaration by the Chair that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting, are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 21.6 The demand for a poll may be withdrawn.
- 21.7 A decision of a General Meeting may not be invalidated on the ground that a person voting at the General Meeting was not entitled to do so.
- 21.8 Taking a poll
 

Subject to clause 21.8(d), a poll will be taken when and in the manner that the Chair directs. No notice need be given of any poll.

  - (b) The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.
  - (c) The Chair may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.
  - (d) A poll demanded on the election of the Chair or the adjournment of a General Meeting must be taken immediately.
  - (e) After a poll has been demanded at a General Meeting, the General Meeting may continue for the transaction of business other than the question on which the poll was demanded

## 22 Admission to General Meetings

- 22.1 The Chair of a General Meeting may refuse admission to a person, or require a person to leave and not return to, a meeting if the person:
- (a) refuses to permit examination of any article in the person's possession; or
  - (b) is in possession of any:
    - (i) electronic or recording device;
    - (ii) placard or banner; or
    - (iii) other article, which the Chair considers to be dangerous, offensive or liable to cause disruption; or
  - (c) causes any disruption to the meeting.

## **23 Circular resolutions of Members**

- 23.1 Subject to clause 23.3 the Directors may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).
- 23.2 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.
- 23.3 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.
- 23.4 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 23.5 or clause 23.6.
- 23.5 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.
- 23.6 The Company 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.

## **24 Voting at General Meetings**

- 24.1 Entitlement to vote
- (a) A Member is not entitled to vote at a General Meeting if the Member's annual subscription (if any) is more than one month in arrears at the date of the meeting.
  - (b) Subject to this Constitution and any rights or restrictions attached to a class of membership, a Member entitled to vote has one vote.
- 24.2 Objections
- (a) An objection to the qualification of a voter may only be raised at the General Meeting or adjourned General Meeting at which the voter tendered his or her vote.



- (b) An objection must be referred to the Chair of the General Meeting, whose decision is final.
- (c) A vote which the chair does not disallow because of an objection is valid for all purposes.

24.3 Subject to this Constitution, each Member may vote in person or by proxy, attorney or representative.

## **25 Votes by proxy**

25.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

25.2 A proxy need not be a Member.

25.3 A proxy may demand or join in demanding a poll.

25.4 A proxy or attorney may:

- (a) vote on a poll;
- (b) agree to a meeting being convened on shorter notice than is otherwise required by law or, subject to this clause, by this Constitution; and
- (c) speak to any proposed resolution on which the proxy or attorney may vote.

25.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

25.6 If:

- (a) a Member nominates the Chair of the meeting as the Member's proxy; or
- (b) the Chair is to act as proxy under clause 28 or otherwise under a default appointment according to the terms of the proxy form, then the person acting as Chair in respect of an item of business at the meeting must act as proxy under the appointment in respect of that item of business.

25.7 A proxy or attorney is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member in his or her own right.

25.8 The appointment of a proxy or attorney is not revoked or suspended by the appointor attending and taking part in the General Meeting but, if the appointor votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution.

## **26 Direct Votes**

The Board may determine that at any General Meeting or class meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Company by post, facsimile or other electronic means approved by the Board. The Board may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

## **27 Document appointing proxy**

- 27.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Board may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 27.2 For the purposes of clause 27.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (i) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (ii) the appointment has been verified in another manner approved by the Board.
- 27.3 A proxy's appointment is valid at an adjourned General Meeting.
- 27.4 A proxy or attorney may be appointed for all General Meetings or for any number of General Meetings or for a particular purpose.
- 27.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the General Meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (b) to vote on any motion before the General Meeting whether or not the motion is referred to in the appointment.
- 27.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the Chair may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Company Secretary.

## **28 Lodgement of proxy**

- 28.1 Subject to clause 28.3, the appointment of a proxy or attorney must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the General Meeting (or the resumption of an adjourned General Meeting) at which the appointee is to attend and vote.
- 28.2 If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the General Meeting (or the resumption of an adjourned General Meeting).
- 28.3 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
  - (b) a facsimile number at the Company's registered office; or

- (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## 29 Validity

29.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power

unless any written notification of the death, mental incapacity or revocation was received by the Company before the relevant General Meeting or adjourned General Meeting.

## 30 Directors

30.1 Number of Directors

- (a) Subject to the Corporations Act, the Company may by resolution passed at a General Meeting increase the minimum number of Directors or increase or reduce the maximum number of Directors.
- (a) Until the Company resolves otherwise in accordance with clause 30.1(a), there will be:
  - (i) a minimum of three Directors; and
  - (ii) a maximum of ten Directors.
- (c) Subject to clause 30.1(b) and any resolution of the Members determining the minimum and maximum numbers of Directors, the Board may from time to time determine the respective numbers of Directors.
- (d) A determination made under clause 30.1(c) may only result in reducing the number by Board positions that are unfilled at the time of the reduction and cannot be used to remove a Director while in office.

30.2 Qualification

In addition to the circumstances which disqualify a person from managing a corporation according to the Corporations Act, no person who has been an insolvent under administration within the previous five years is eligible to become a Director.

30.3 Initial Directors

- (a) Each First Member shall be an Initial Director and together shall comprise the first Board of the Company.
- (b) The Initial Directors must elect one of their number as Chair.

30.4 Power to remove and appoint

- (a) The Company may, subject to the Corporations Act, by resolution passed in General Meeting:

- (i) elect a Director, and/or
    - (ii) remove a Director before the end of the Director's term of office.
  - (b) Each Director must be appointed or removed under clause 30.4(a) by separate resolution unless:
    - (i) the Members present have first passed a resolution that the appointments may be voted on together, and
    - (ii) no votes were cast against that resolution.
- 30.5 A person is eligible for election as a Director of the Company if they:
- (a) are a member of the Company;
  - (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 Company their signed consent to act as a director of the Company, and
  - (d) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 30.6 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 Member of the Company;
  - (b) gives the Company their signed consent to act as a director of the Company, and
  - (c) Is not ineligible to be a director under the Corporations Act or the ACNC Act.
- 30.7 If the number of directors is reduced to fewer than three 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 three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

## **31 Election of Directors**

- 31.1 The following rules shall apply to the holding of an election of Directors:
- (a) each candidate for election must be nominated by two other Members and consent in writing to serve if elected;
  - (b) no candidate shall be eligible for election unless all subscription (if any) and any other moneys due and payable by the candidate to the Company have been paid;
  - (c) nominations for election must be received at the registered office of the Company no later than 30 days before the day appointed for the holding of the annual General Meeting at which an election is to be held;
  - (d) completed nomination forms must be lodged, on or before the date for close of nominations, with the Company Secretary at the Company's registered office;
  - (e) if the number of persons nominated for election does not exceed the vacancies to be filled at the annual General Meeting, then those nominated are to be declared elected at the annual General Meeting;

- (f) if more candidates are nominated than there are vacancies to be filled at the annual General Meeting, then an election shall be held at the annual General Meeting;
- (g) candidates shall be put forward for election in alphabetical order of their names and each candidate shall be the subject of one resolution for that person's election. The candidates receiving the highest number of votes, shall, provided they receive more votes in favour of election than against, be declared elected until all positions to be filled at the meeting have been filled. Where two or more candidates receive equal numbers of votes, those to be declared elected shall be chosen by lot conducted by the Company Secretary;
- (h) In the event that no nominations have been received prior to the commencement of the annual General Meeting, the Chair may accept nominations from the floor, supported by two Members in attendance, and proceed in accordance with clauses 31.1(e), (f) and (g), and
- (i) the Board may by resolution from time to time make rules or other decisions about the timing for nominations, candidates' statements and communications and any other matter relating to the election in respect of which a decision is required.

## **32 Term of office**

32.1 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 Directors must retire.

32.2 The Directors who must retire at each annual General Meeting under clause 32.1(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.

32.3 Other than a Director appointed under clause 30.6, 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.

32.4 Each Director must retire at least once every three years.

32.5 A Director who retires under clause 32.4 may nominate for election or re-election, subject to clause 32.6.

32.6 A 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.

32.7 A Director stops being a Director if they:

- (a) give written notice of resignation as a director to the Company;
- (b) die;
- (c) are removed as a director by a resolution of the members;
- (d) stop being a member of the Company;
- (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 Company that the representative is no longer a representative;
- (g) are absent for three consecutive Directors' meetings without approval from the Directors, or
- (h) become ineligible to be a Director of the Company under the Corporations Act or the ACNC Act.

### **33 Election of Board Chair**

- 33.1 As soon as practicable after each annual General Meeting the Directors shall elect and appoint a Director who is to be the Chair for the period commencing at the conclusion of the respective annual General Meeting and terminating at the conclusion of the next following annual General Meeting and may select and appoint from among their number a Vice-Chair for the same period.
- 33.2 The Chair shall be eligible to be appointed and serve as Chair for up to two further terms of one year each provided that the Chair may not serve for more than three consecutive terms.
- 33.3 The Chair may only be appointed to a fourth term by resolution of the Company in General Meeting or by Circular Resolution of Members.

### **34 Powers and duties of the Board**

- 34.1 The Directors may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by Members.
- 34.2 To achieve the Company's objectives and without limiting the generality of clause 34.1, the Board may exercise all the powers of the Company to:
  - (a) borrow money;
  - (b) charge any property or business of the Company;
  - (c) give any security for a debt, liability or obligation of the Company or of any other person; and
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 34.3 The Directors must decide on the responsible financial management of the company including:
  - (a) any suitable written delegations of power under clause 35.1, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 34.4 The Directors cannot remove a Director or Auditor. Directors and Auditors may only be removed by a members' resolution at a General Meeting.

### **35 Delegations and Regulations**

- 35.1 The Directors may delegate any of their powers and functions to a committee, a Director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate.

- 35.2 The delegation must be recorded in the Company's minute book or relevant by-law, regulation or policy document referred to in the minute book as approved by the Directors.
- 35.3 The Directors may make and from time to time revoke or amend by-laws, regulations and policies not inconsistent with this Constitution to govern procedures and activities of the Company and its organisation and to give effect to this Constitution. Those by-laws, regulations and policies, as they are from time to time, bind the Directors and the Members of the Company as if they were part of this Constitution.
- 35.4 The Directors may be remunerated for their services as Directors, as follows:
- a) the amount of the aggregate remuneration for Directors is a yearly amount not exceeding the amount from time to time determined by the Company in the general meeting;
  - b) all or part of the aggregate remuneration amount for Directors is to be applied annually among them in the proportion and manner the Director's agree.
- 35.5 The Company may:
- (a) pay a Director for work they do for the Company, 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 Company.
- 35.6 Any payment made under clause 35.5 must be approved by the directors.
- 35.7 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Corporations Act) and this Constitution.

## **36 Duties of directors**

- 36.1 The Directors must comply with their duties as Directors under legislation and common 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 Company
  - (b) to act in good faith in the best interests of the Company and to further the charitable Objects of the Company set out in clause 4.1;
  - (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 37;
  - (f) to ensure that the financial affairs of the Company are managed responsibly, and
  - (g) not to allow the Company to operate while it is insolvent.

## **37 Conflicts of interest**

- 37.1 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.
- 37.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 37.3 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 clause 37.4;
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 37.4 A Director may still be present and vote if:
- (a) their interest arises because they are a member of the Company, 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 Company (see clause 58 - Insurance)
  - (c) their interest relates to a payment by the Company under clause 57 (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 Company, and
    - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.
  - (f) Subject to the Corporations Act, the Board may make regulations requiring the disclosure of interests that a Director, and any person deemed by the Board to be related to or associated with the Director, may have in any matter concerning the Company and any such regulations so made under this clause will bind all Directors.

## **38 Proceedings of the Board**

- 38.1 The Directors may decide how often, where and when they meet.
- 38.2 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- 38.3 (a) 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.



- (b) The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if the non-receipt or failure occurred by accident or error.

### **39 Chair for Directors' meetings**

- 39.1 The Chair is entitled to chair Directors' meetings.
- 39.2 The Directors at a Directors' meeting may choose a Director to be the chair for that meeting if the elected Chair is:
  - (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as chair of the meeting.

### **40 Quorum at Directors' meetings**

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

### **41 Using technology to hold Directors' meetings**

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

### **42 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.

### **43 Circular Resolutions of directors**

- 43.1 The Directors may pass a Circular Resolution without a Directors' meeting being held.
- 43.2 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 43.3 or clause 43.4.
- 43.3 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.
- 43.4 The Company may send a Circular Resolution by email or facsimile to the Directors and the Directors may agree to the resolution by sending a reply email or facsimile to that effect, including the text of the resolution in their reply.
- 43.5 A Circular Resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 43.3 or clause 43.4.

43.6 This clause 43 applies to meetings of Board Committees and Advisory Committees as if all members of the Board Committee and Advisory Committee were Directors.

#### **44 Board Decisions**

44.1 Questions arising at a meeting of the Board are to be decided by a majority of votes of the Directors present and voting and, subject to the Corporations Act, each Director has one vote.

44.2 In the case of an equality of votes, the Chair does not have a second or casting vote in addition to his or her deliberative vote.

#### **45 Contracts with the Company**

45.1 The fact that a Director holds office as a Director, and has fiduciary obligations arising out of that office:

(a) will not void or render voidable a contract made by a Director with the Company;

(b) will not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest; and

(c) will not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest.

45.2 A Director may be or become a Director or other officer of, or otherwise be interested in:

(a) any related body corporate of the Company; or

(b) any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise, and is not accountable to the Company for any remuneration or other benefits received by the Director as a Director or officer of, or from having an interest in, that body corporate.

#### **46 Alternate Directors**

The appointment of alternate Directors is not permitted.

#### **47 Board Committees**

47.1 Board Committee members and Advisory Committee members will be appointed by the Directors. The Board may in its discretion appoint the chair of any Board Committee or Advisory Committee.

47.2 At least one member of each Board Committee must be a Director.

47.3 Board Committee and Advisory Committee charters will be as determined by the Directors from time to time. Members and Directors appointed to Board Committees and Advisory Committees must use all reasonable efforts to ensure that Board Committees and Advisory Committees of which they are members comply with their charters.

47.4 Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each Board Committee or Advisory Committee member was a Director.

- 47.5 (a) A Board Committee to which any powers have been delegated must exercise the powers delegated including any power of sub-delegation in accordance with any directions of the Board.
- (b) The delegation may be either general or limited in any manner provided in the terms of delegation.

#### **48 Minutes and Registers**

- 48.1 The Company 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 19.
- 48.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any board committees), and
  - (b) minutes of Circular Resolutions of Directors.
- 48.3 Notwithstanding clause 54.2(a), the Company must give a member reasonable access to the records set out in clause 48.1.
- 48.4 Minutes must be signed within a reasonable time after the meeting by the Chair of the meeting or by the Chair of the next meeting, and if so signed will be conclusive evidence of the matters stated in such minutes, unless the contrary is proved.
- 48.5 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.
- 48.6 The Company must keep all registers required by this Constitution and the Corporations Act.

#### **49 Local management**

- 49.1 The Board may provide for the transaction of the affairs of the Company in any places and in such manner as it thinks fit.
- 49.2 Without limiting clause 49.1 the Board may:
- (a) establish local committees or agency groups for managing or assisting in any of the affairs of the Company in a specified place and appoint any persons to be members of those local committees or groups; and
  - (b) delegate to any person appointed under clause 49.2(a) any of the powers, authorities and discretions which may be exercised by the Board under this Constitution, on any terms and subject to any conditions determined by the Board.
  - (c) The Board may at any time revoke or vary any delegation under this clause.
- 49.3 Appointment of attorneys and agents

- (a) The Board may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:
  - (i) for the purposes;
  - (ii) with the powers, authorities and discretions (not exceeding those exercisable by the Board under this Constitution);
  - (iii) for the period; and
  - (iv) subject to the conditions,

determined by the Board.
- (b) An appointment by the Board of an attorney or agent of the Company may be made in favour of:
  - (i) any member of any local committee established under this Constitution;
  - (ii) any company;
  - (iii) the members, Directors, nominees or managers of any company or firm; or
  - (iv) any fluctuating body of persons whether nominated directly or indirectly by the Board.
- (c) A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- (d) An attorney or agent appointed under this clause may be authorised by the Board to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

## **50 Chief Executive Officer**

The Directors may appoint and remove any person, including a Director, to the position of Chief Executive Officer for the period and on the terms (including as to remuneration) that the Directors see fit.

## **51 Company Secretary**

- 51.1 There must be at least one secretary of the Company appointed by the Board for a term and at remuneration and on conditions determined by the Board.
- 51.2 The Company Secretary is entitled to attend and be heard on any matter at all Board meetings and General Meetings.
- 51.3 The Board may, subject to the terms of the Company Secretary's employment contract, suspend, remove or dismiss the Company Secretary.
- 51.4 The role of the Company Secretary includes:
  - (a) maintaining a register of the Company's members, and
  - (b) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings, Board Committee meetings and circular resolutions.

## **52 Executive officers generally**

- 52.1 The Board may:
  - (a) confer on any executive officer of the Company such powers, discretion and duties (including any powers, discretions and duties vested in or exercisable by the Board) as they think fit;

- (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
- (c) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.

52.2 An executive officer including, but not limited to, the Chief Executive Officer and the Company Secretary is not required to be a Member of the Company to qualify for appointment.

52.3 An act done by a person acting as an executive officer is not invalidated by reason only of:

- (a) a defect in the person's appointment as an executive officer; or
- (b) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

## 53 Seals

53.1 Common Seal

- (a) The Company may have a Seal.
- (b) The Board must provide for the safe custody of the Seal, if any.
- (c) The Seal must not be used without the authority of the Board or a Board Committee authorised to permit use of the Seal.
- (d) Every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Company Secretary or another person appointed by the Board to countersign the document.

53.2 Seal register

- (a) The Company may keep a seal register. If the Company does keep a seal register the Company must enter in the register particulars of any document on which the Seal is fixed (other than a certificate for securities of the Company), giving in each case:
  - (i) the date of the document,
  - (ii) the names of the parties to the document,
  - (iii) a short description of the document; and
  - (iv) the names of the persons signing the document under clause 53.1(d).
- (b) The register must be produced at Board meetings for confirmation of the use of the Seal since confirmation was last given under this clause 53.2.
- (c) Failure to comply with clauses 53.2(a) or 53.2(b) does not invalidate any document to which the Seal is properly fixed.

53.3 Duplicate Seal

The Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal'; and
- (b) must only be used with the authority of the Board.

## **54. Company Records**

### **54.1 Financial Records**

- (a) The Board must cause the Company to keep written financial records and to prepare financial documents and reports in accordance with the Corporations Act.
- (b) The Board must cause the financial records and financial documents of the Company to be audited in accordance with the Corporations Act.
- (c) The Company must retain and keep its records safe for a period of at least 7 years.
- (d) The Company's financial year is from 1 July to 30 June, unless Directors pass a resolution to change the financial year.

### **54.2 Inspection of Records**

- (a) Except as otherwise required by the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- (b) A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Board.
- (c) Notwithstanding clauses 54.2 (a) and 54.2(b), the books of the Company containing the minutes of General Meetings will be kept at the Company's registered office and will be open to inspection of Members at all times when the office is required to be open to the public.

## **55 Notices**

### **55.1 Service of notices on the Company**

Subject to this Constitution, written notice or any communication under this Constitution may be given to the Company, the Directors or the Company Secretary by:

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

### **55.2 Service of notice by the Company**

Subject to this Constitution, written notice or any communication under this Constitution may be given by the Company to any person who is entitled to notice under this Constitution;

- (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 alternative address for service of notices (if any);
- (d) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any), or
- (e) 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).

If the Company does not have an address for the Member, the Company is not required to give notice in person.

### 55.3 When notice is taken to be given

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- (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, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 55.2(e) is taken to be given on the business day after the notification that the notice is available is sent.

## 56 Winding up

### 56.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to clause 56.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,

such amount not exceeding the guarantee in clause 6.2.

### 56.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another corporation which is endorsed or approved by the Australian Taxation Office as a tax-exempt entity and by its Constitution, is:

- (a) required to pursue charitable purposes only;

- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its Directors, with such corporation to be determined by the Members (at or before the winding up) or, in default, by application to the Supreme Court of Victoria for determination.

## 57 Indemnity

- 57.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:
- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a related body corporate of the Company); and
  - (b) reasonable legal costs incurred in defending an action for a liability incurred or allegedly incurred by that person as an officer of the Company (including such legal costs incurred by the officer as an officer of a related body corporate of the Company).
- 57.2 The Company must, if requested by a person to whom this clause 57 applies, execute a documentary indemnity in any form in favour of any officer of the Company.
- 57.3 The amount of any indemnity payable under clauses 57.1(a) or 57.1(b) will include an additional amount (GST Amount) equal to any GST payable by the officer being indemnified (Indemnified Officer) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- 57.4 The Board may agree to advance to an officer an amount which it might otherwise be liable to pay to the officer under clause 57.1 (a) on such terms as the Board thinks fit but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Company is in fact liable to indemnify the officer under clause 57.1(a). If after the Company makes the advance, the Board forms the view that the Company is not liable to indemnify the officer, the Company may recover any advance from the officer as a debt due by the officer to the Company.
- 57.5 The indemnity in this clause 57:
- (a) is a continuing obligation and is enforceable by a person to whom this clause 57 applies even though that person may have ceased to be an officer of the Company or of a related body corporate;
  - (b) operates only to the extent that the loss or liability is not covered by insurance, provided that, if the terms of insurance cover require the Company, if legally permitted to do so, to indemnify an officer in respect of a claim against him or her and then to seek reimbursement of the Company from the insurer, then the indemnity in this clause 57 applies.
- 57.6 For the purposes of this clause 57, officer means:
- (a) a Director;
  - (c) a Company Secretary;
  - (c) a Chief Executive Officer;
  - (d) a person who has formerly been a Director or Secretary or Chief Executive Officer of the Company; and



- (e) such other officers or former officers of the Company or its related bodies corporate as the Board in each case determines.

## **58. Insurance**

- 58.1 To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act the Company may pay or agree to pay a premium for a contract insuring a person who is (or has been) an officer of the Company (including a related body corporate) against any liability incurred by the person as an officer of the Company.
- 58.2 Despite anything in this Constitution, a Director is not precluded from voting on a contract (or proposed contract) of insurance, merely because the contract insures (or would insure) the Director against a liability incurred by the Director as an officer of the Company (or of a related body corporate).

## **59 No effect or limitation**

- 59.1 Nothing in clauses 57 or 58:
  - (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
  - (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

## **60 Right of access to Company books**

- 60.1 A Director has right of access to the books, including financial records, of the Company at all reasonable times.
- 60.2 A Director may inspect the books of the Company with respect to legal proceedings to which that person is a party, proposes in good faith to bring or which the person has reason to believe will be brought against them.
- 60.3 A person who has ceased to be a Director may inspect the books of the Company in accordance with the law as it is from time to time and this right continues for such period as the law provides.
- 60.4 The Company may enter into a deed of access with individual persons who may or have ceased to be a Director extending such rights, provided that the Board considers that it is an appropriate protection of a former Director to do so.
- 60.5 A person who is presently a Director or has been a Director of the Company may inspect and make copies of books or parts of books to the extent provided by law or permitted by the Company in the discretion of the Board and shall have the same right of such inspection as a current Director has pursuant to the law.

## **61 General**

- 61.1 Submission to jurisdiction

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria, the Federal Court of Australia and the courts which may hear appeals from those courts.

- 61.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.

- (b) Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place. This Constitution of the Company is effective from registration of the Company.

Adopted: 19 December 2016  
Amended: 29 May 2019