

# Constitution

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Group Training Australia Limited ACN 082 751 040

MinterEllison

L A W Y E R S

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# Constitution of Group Training Australia Limited

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# Preliminary

## 1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

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

**Chief Executive Officer** means the person appointed as chief executive officer of the Company from time to time, regardless of the name given to the position, under clause 49.

**Company** means Group Training Australia Limited 082 751 040.

**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 and, where appropriate..

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

**Directors' committee** means a committee established under clause 45.

**Election Year** means the calendar year in which an election is to occur under clause 31.

**Even Year Board Positions** means the three positions as Member Elected Directors for which elections are held in even calendar years.

**Group Training** means the employment of apprentices and trainees by persons who arrange contracts with other employers to host the apprentices and trainees for varying periods of time until the apprentices and trainees have completed training contracts and the provision of support and pastoral care to apprentices, trainees and host employers as required.

**Group Training Organisation** means a body corporate which has objects consistent with those of the Company set out in clause 4.1.

**Life Member** means a person who the Directors have determined under clause 11 is entitled to the status of a life member of the Company.

*Note: Life Members are not Members of the Company.*

**Member** means a member under clause 6.

**Member Elected Director** means a Director elected by Members under clause 31 or a Director appointed under clauses 33.1, 32.2 or 34.1 to fill any vacancy among such Directors.

**Member Representative** means a Statutory Representative of a Member in respect of which the requirements of clause 9.4 are satisfied.

**Nominations Close Date** means the date by which nominations must be delivered under clause 31.3 and 32.2

**Number To Be Elected** means the number of Member Elected Directors to be elected in an Election Year determined under clause 31.2.

**Odd Year Board Positions** means the two positions as Member Elected Directors for which elections are held in odd calendar years.

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

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

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

**State/Territory Association** means, in respect of each of the States of Australia and the Australian Capital Territory and Northern Territory, the organisation whose membership comprises the largest number of Group Training Organisations in that State or Territory and which has objects consistent with those of the Company set out in clause 4.1. Where a single organisation satisfies this definition in respect of more than one State or Territory, that organisation is a single State/Territory Association for the purposes of this Constitution.

**Statutory Representative** means a person appointed as such under clause 9.1.

**State Appointed Director** means a Director appointed by a State/Territory Association under clause 29.

- 1.2 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.

*Note: The terms 'corporation' and 'financial year' are defined in the Corporations Act. The definition of 'corporation' includes an incorporated association.*

## 2. Interpretation

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) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
- (g) headings and notes do not affect construction of this Constitution.

### 3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## Objects

### 4. Objects

4.1 The objects for which the Company is established are:

- (a) foster the national development and growth of Group Training;
- (b) present the view of Group Training on issues of national significance;
- (c) encourage further improvement in the quality, standard and accessibility of Group Training; and
- (d) further develop communications, information sharing and networking of Group Training.

4.2 The Company:

- (a) will operate predominantly for the promotion and encouragement of Group Training; and
- (b) is not carried on for the purpose of profit or gain to its individual Members.

## Income and property of Company

### 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 of the Company set out in clause 4.

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; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## Membership

### 6. Admission

6.1 Subject to clause 8, the Members of the Company are:

- (a) the persons whose names are entered into the Register as Members on the day the adoption of this Constitution comes into effect; and
- (b) any Group Training Organisation which satisfies the following three requirements:



- (i) the Group Training Organisation is qualified to apply to be a Member under clause 6.2; and
- (ii) either:
  - (A) the Directors determine to admit the Group Training Organisation to membership without the need for an application; or
  - (B) the Group Training Organisation has applied for membership in accordance with this Constitution provided that the application is accepted by the Directors in accordance with this Constitution; and
- (iii) the Group Training Organisation's name is entered into the Register; and
- (c) any organisation that does not qualify for membership under Clause 6(a) or 6(b), but has similar interests to those of the Company, and which the Directors agree to admit as a member or subscriber.

6.2 Any Group Training Organisation which is a member of a State/Territory Association shall be entitled to apply to be a Member. If there is no State/Territory Association where a Group Training Organisation has its operations and the Group Training Organisation is not eligible for membership in another State/Territory, the Group Training Organisation is not required to be a member of a State/Territory Association.

*Note: This clause 6.2 was formerly clause 3(1) of the Company's Articles of Association.*

6.3 Applications for membership of the Company must be made to the Secretary through the membership application form, signed by the applicant, in the form set out on the Company's website at the time of application, and, if so determined by the Directors, accompanied by any entrance fee and first annual subscription applicable under clause 7.

6.4 The Directors will consider each application for membership through an online poll or email at any time, and ratified at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:

- (a) accept or reject the application; or
- (b) ask the applicant to give more evidence of eligibility for membership.

6.5 If the Directors ask for more evidence under clause 6.4(b), their determination of the application for membership is deferred until the evidence is given.

6.6 The Directors do not have to give any reason for rejecting an application for membership.

6.7 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance and request payment of any outstanding entrance fee and first annual subscription.

6.8 Subject to clause 6.9, an applicant for membership is entitled to become a Member when the applicant's entrance fee and first annual subscription is paid or, if no entrance fee and first annual subscription is payable, on acceptance of the applicant's application. As soon as practical after an applicant is entitled to become a Member, the Secretary must enter the applicant's details into the Register and immediately on such entry the applicant becomes a Member.

6.9 If the entrance fee and first annual subscription of an applicant for membership requested under clause 6.7 is not paid within 30 days after the date the applicant is notified of acceptance of their application for membership, the Directors may cancel their acceptance of the applicant for membership of the Company.

- 6.10 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

## 7. Subscriptions

- 7.1 The Directors may determine whether an entrance fee or annual subscription is payable by each Member and, if so, the amount of the fee or subscription. Until otherwise determined by the Directors, there will be no entrance fee and the annual subscription (known as a 'network fee') will be the same as the fee applicable on the day before the adoption of this Constitution comes into effect.
- 7.2 The annual subscription period will commence at the beginning of each financial year, and the annual subscription will be due within 30 days of the beginning of that financial year.
- 7.3 The Directors may determine that any Member admitted to membership:
- (a) part way through any financial year will pay only a pro rata proportion of the annual subscription until that Member's next annual subscription falls due;
  - (b) shall be liable to a reduced entrance fee or annual subscription on the grounds of hardship or other extenuating circumstances.
- 7.4 If a Member does not pay a subscription within 30 days after it becomes due the Directors:
- (a) may give the Member notice of that fact; and
  - (b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.
- 7.5 The Company may enter into arrangements with any or all of the State/Territory Associations under which the State/Territory Associations may pay to the Company the entrance fee or annual subscription payable by specified Members. If a State/Territory Association pays the entrance fee or annual subscription payable by specified Members in accordance with those arrangements, the specified Members will be taken to have paid the entrance fee(s) or annual subscription(s), as the case may be, as provided for in the arrangements. Except to the extent prohibited by law, the Directors may determine that the amounts of the entrance fee or annual subscription payable under arrangements with State/Territory Associations is different from the entrance fee or annual subscription otherwise payable by the specified Members, but the entrance fee or annual subscription payable in respect of each Member for any financial year under all arrangements must be the same.

## 8. Ceasing to be a Member

- 8.1 A Member's membership of the Company will cease:
- (a) if the Member gives the Secretary written notice of resignation, 60 days from the date of receipt of that notice by the Secretary if the notice is not withdrawn in writing prior to the expiry of that period;
  - (b) if a majority of three-quarters of the Directors present and voting at a Directors' meeting by resolution terminate the membership of a Member:
    - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company;

- (ii) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- (c) if the Directors declare that the membership is forfeited under clause 7.4(b);
- (d) if the Member is deemed to have resigned under clause 8.2;
- (e) where the Member is an individual, if the Member:
  - (i) dies;
  - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (iii) is convicted of an indictable offence;
- (f) where the Member is not an individual, if:
  - (i) a liquidator is appointed in connection with the winding-up of the Member;
  - (ii) an order is made by a Court for the winding-up; or
  - (iii) the Member is deregistered, dissolved or otherwise ceases to exist.

8.2 A Member is deemed to have resigned from the Company where that Member has resigned or has been excluded as a Member of the relevant State/Territory Association.

*Note: This clause 8.2 was formerly clause 7(3) of the Company's Articles of Association.*

8.3 Any Member ceasing to be a Member:

- (a) will not be entitled to any refund (or part refund) of a subscription; and
- (b) will remain liable for and must pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

## 9. Statutory Representatives and Member Representatives

9.1 Any body corporate which is a Member may by written notice to the Secretary:

- (a) appoint a natural person to act as its representative in all matters connected with the Company as permitted by section 250D of the Corporations Act; and
- (b) remove a Statutory Representative.

9.2 A Statutory Representative is entitled to:

- (a) exercise at a general meeting all the powers which the body corporate which appointed him or her could exercise if it were a natural person; and
- (b) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Statutory Representative.

9.3 A notice executed in accordance with section 127 of the Corporations Act (or, if applicable, the corresponding provision (if any) of the legislation under which the Member is formed) is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Statutory Representative.

9.4 Only if, at any time, a Member has:

- (a) appointed exactly one Statutory Representative;
- (b) authorised that Statutory Representative to appoint, on behalf of the Member (and to the exclusion of the Member's own right to do so), as the Statutory Representative may determine from time to time, proxies to cast the Member's vote at any general meetings of the Company; and
- (c) appointed that Statutory Representative by notice in the form as required by the Directors , then:
- (d) the Statutory Representative is the Member Representative of the Member for the purposes of this Constitution; and
- (e) the Member will have the voting rights determined under clause 22.2.

9.5 All appointments of Member Representatives received by the Company prior to the day the adoption of this Constitution comes into effect cease to have any effect on that day.

## 10. Powers of attorney

- 10.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- 10.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member must promptly comply with that request.
- 10.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## 11. Life Members

- 11.1 The Directors may at any time determine a person is entitled to the status of a life member of the Company.
- 11.2 A Life Member, by virtue of being a Life Member, is entitled to describe him, her or itself as a life member of the Company, but, by virtue of being a Life Member, is not entitled to any other rights or privileges and, by virtue of being a Life Member, is not subject to any obligations. In particular, a Life Member is not eligible to vote at general meetings of the Company by virtue only of being a Life Member.
- 11.3 A Life Member may by notice to the Secretary resign his, her or its Life Membership and the Board may revoke the Life Membership of any Life Member at any time.
- 11.4 A Life Member is not a Member of the Company and is not liable to contribute to the property of the Company under clause 63.1.

# General meetings

## 12. Calling and bringing business before general meetings

- 12.1 The chairperson, the deputy chairperson, or a majority of the Directors may, at any time, and the Secretary must on the request of the chairperson, the deputy chairperson, or a majority of the Directors call a general meeting.
- 12.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
  - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.
- 12.3 A Member who wishes to bring any business before a general meeting may give a written request specifying that business to the Secretary who shall notify the Directors of that request at or before the next Director's meeting. Except where the request is withdrawn or the business is not within the power of a general meeting, the Directors must include that business in the notice calling the next general meeting if it is reasonably practical to do so (failing which the Directors must include that business in the notice calling the following general meeting).

## 13. Notice of general meeting

- 13.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.

*Note: Under clause 60.5, notice will normally be given to a Member by giving it to the Member care of the Member's Member Representative.*

- 13.2 A notice calling a general meeting:
- (a) must specify the place, date and time of 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) must state the general nature of the business to be transacted at the meeting;
  - (c) must, if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - (d) must contain a statement to the effect that the Member may, by its Member Representative, if the Member has appointed a Member Representative appoint a proxy who need not be a Member or Member Representative; and
  - (e) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 13.3 No business other than as set out in the notice calling a general meeting shall be transacted at the meeting.
- 13.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 12.2).

- 13.5 If it is reasonably practical to do so, the Directors must attempt to give reasonable notice of the postponement or cancellation of a general meeting to all persons referred to in clause 61.1 entitled to receive notices from the Company.
- 13.6 The failure or accidental omission to send a notice of a general meeting (or the postponement or adjournment of a general meeting) to any Member or the non-receipt of a notice of meeting by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## 14. Annual general meeting

- 14.1 The Company shall hold an annual general meeting in each calendar year.
- 14.2 Subject to the Corporations Act, the date, time and place of the annual general meeting shall be determined by the Directors. The notice of annual general meeting shall comply with clause 12.3.
- 14.3 The business of each annual general meeting will be (or include):
- (a) confirming the minutes of the last preceding annual general meeting and of any general meeting held since that meeting;
  - (b) considering the annual financial report, Directors' report and the Auditor's report;
  - (c) announcing the identities of each of the State Appointed Directors in office; and
  - (d) announcing the result of the election of Member Elected Directors for the Election Year in accordance with clause 31.8.
- 14.4 The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
- (a) ask questions about or make comments on the management of the Company; and
  - (b) ask the Auditor or their representative questions relevant to:
    - (i) the conduct of the audit;
    - (ii) the preparation and content of the Auditor's report for the Company;
    - (iii) the accounting policies adopted by the Company in relation to the preparation of the financial statements; and
    - (iv) the independence of the Auditor in relation to the conduct of the audit.

## Proceedings at general meetings

### 15. Member

In clauses 16, 17, 19 and 22, **Member** includes a Member present by proxy or Member Representative.

### 16. Quorum

- 16.1 No business may be transacted at a general meeting unless a quorum of Members entitled to vote under this Constitution is present when the meeting proceeds to business.

- 16.2 A quorum of Members is 10 Members.
- 16.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to a date, time and place to be determined by the chairperson; 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 Members present will constitute a quorum.

## 17. Chairperson

- 17.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 17.2 The Directors present may elect one of the Member's Representatives present as a chairperson of a general meeting if:
- (a) there is no chairperson or deputy chairperson; or
  - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 17.3 If no election is made under clause 17.2, then the Members may elect one of the Member's Representatives present as chairperson.
- 17.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

## 18. Adjournment

- 18.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 18.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 18.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 18.4 Notice of an adjourned general meeting must only be given in accordance with clause 12.3 if a general meeting has been adjourned for 14 days or more.

## 19. Decision on questions

- 19.1 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.
- 19.2 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.
- 19.3 Unless a poll is demanded:
- (a) a declaration by the chairperson 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.
- 19.4 The demand for a poll may be withdrawn.
- 19.5 A decision of a general meeting may not later be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## 20. Taking a poll

- 20.1 A poll will be taken when and in the manner that the chairperson directs.
- 20.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 20.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 20.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 20.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 20.6 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.

## 21. Offensive material

A person may be refused admission to, or required 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 chairperson considers to be dangerous, offensive or liable to cause disruption.



# Votes of Members

## 22. Entitlement to vote

- 22.1 A Member is not entitled to vote at a general meeting if:
- (a) the Member does not have a validly appointed Member Representative; or
  - (b) the Member's annual subscription is more than one month (or such longer period as the Directors may determine from time to time) in arrears at the date of the meeting.
- 22.2 Subject to clause 22.1, each Member is entitled to one vote at a general meeting.
- 22.3 In the case of an equality of votes at a general meeting, the chairperson of the meeting has, in addition to the chairperson's votes as proxy or Member Representative, a casting vote.

## 23. Objections

- 23.1 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 its vote.
- 23.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 23.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

## 24. Votes by proxy

- 24.1 In the event that a Member is unable to attend a general meeting of the Company by its Member Representative, that Member (by its Member Representative) may appoint a proxy to attend and vote at that meeting.

*Note: A Member may not otherwise appoint a proxy because a Member is not entitled to vote at all unless it has appointed a Member Representative and the terms of appointment of a Member Representative prevent it appointing a proxy directly.*

- 24.2 If a Member appoints a proxy, the proxy may not vote on a show of hands.
- 24.3 A proxy need not be a Member or Member Representative.
- 24.4 A proxy may demand or join in demanding a poll.
- 24.5 A proxy may vote on a poll.
- 24.6 Subject to the Corporations Act, 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. Document appointing proxy

- 25.1 An appointment of a proxy is valid if it is signed by the Member (including signed on behalf of the Member by the Member's Member Representative) making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors 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.

- 25.2 For the purposes of clause 25.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 25.3 A proxy's appointment is valid at an adjourned general meeting.
- 25.4 A proxy may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 25.5 Unless otherwise provided for in the proxy's appointment, the appointment of the proxy 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 chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy 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.
- 25.6 If a proxy appointment does not name the proxy in whose favour it is given, the chairperson may either act as proxy or complete the appointment by inserting the name of a Director or the Secretary.

## 26. Lodgement of proxy

- 26.1 The written appointment of a proxy must be received by the Company at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - (b) the taking of a poll on which the appointee proposes to vote.
- 26.2 The Company receives an appointment of a proxy when it is 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.

## 27. Validity

A vote cast in accordance with an appointment of proxy 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, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## The board of Directors

### 28. Board composition

28.1 The board of Directors shall consist of:

- (a) one State Appointed Director for each State/Territory Association that appoints a Director under clause 29; and
- (b) five Member Elected Directors.

28.2 There shall be no more than one Director on the board from a single Member organisation or its subsidiary or parent company at any given time.

### 29. State/Territory Appointed Directors

29.1 By 1 October in each calendar year, or at any time when there is no State/Territory Appointed Director holding office as a Director who has been appointed by it, and there is no Member Elected Director for the State/Territory under clause 29.2, a State/Territory Association may appoint a Member Representative of a Member of the Company from that State/Territory as its State/Territory Appointed Director by notice in writing to the Secretary.

29.2 In the event that a State/Territory Association does not appoint a Director, or there is no State/Territory Association in that location, members of the Company in that State/Territory may elect a Member Representative of a Member of the Company from that State/Territory as the State/Territory Appointed Director under Clause 32.

29.3 The appointment of a State/Territory Director under clause 29.1 and 29.2 must be for a period of at least two years, but may be for a longer period specified by the State/Territory Association in the appointment. If the period is not specified in the appointment, or if the State/Territory Director is elected by members under clause 29.2, the appointment will be for a period of two years, or until the second Annual General Meeting following the appointment if this is within two years.

29.4 Unless reappointed, a State Appointed Director will cease to hold office as a Director at the end of his or her period of appointment.

29.5 The Directors in office on the day the adoption of this Constitution comes into effect who were nominated by State/Territory Associations cease to hold office on that day but may be reappointed under clause 29.1.

## 30. Term of office of Member Elected Directors

- 30.1 The term of Office for each Member Elected Director will be the period from his or her election or appointment until he or she ceases to hold office under clauses 31.9 and 31.10.
- 30.2 The Directors in office on the day the adoption of this Constitution comes into effect who were elected by Members under articles 18(1)(b) and 19 of the Articles of Association of the Company in effect prior to that day continue in office as Member Elected Directors under, and subject to, this Constitution.

## 31. Conduct of elections for Member Elected Directors

- 31.1 An election of Member Elected Directors is to occur in each calendar year (**Election Year**) in accordance with this clause 31, starting in calendar year 2010.
- 31.2 The number of Member Elected Directors to be elected in each Election Year (**Number To Be Elected**) will be:
- (a) in calendar year 2010, five Member Elected Directors;
  - (b) in calendar year 2011 and each subsequent odd calendar year, two Member Elected Directors; and
  - (c) in calendar year 2012 and each subsequent even calendar year, three Member Elected Directors.
- 31.3 Nominations for the position of Member Elected Director must be delivered in writing to the Secretary by no later than, until otherwise determined by the Directors, 1 October in the Election Year (**Nominations Close Date**). The Directors must ensure that the Nominations Close Date permits any election to be concluded before the date of the Company's annual general meeting in the Election Year.
- 31.4 A person is not eligible to be nominated for the position of Member Elected Director unless the person:
- (a) gives the Company a consent in writing to act as a Director of the Company on or before the Nominations Close Date;
  - (b) is a Member Representative of a Member of the Company as at the Nominations Close Date; and
  - (c) is nominated by a person (other than the nominee) who is a Member Representative of a Member of the Company as at the Nominations Close Date; and
  - (d) is seconded by a person (other than the nominee or nominator) who is a Member Representative of a Member of the Company as at the Nominations Close Date.
- 31.5 A person is not eligible to be nominated for the position of Member Elected Director, or to nominate or second such a nomination, if the annual subscription of the Member who appointed him or her is more than one month (or such longer period as the Directors may determine from time to time) in arrears at the Nominations Close Date.
- 31.6 Where valid nominations have been received for a number of nominees that is less than or equal to the Number To Be Elected, all nominees for the position of Member Elected Director shall automatically be elected without the need for a postal or electronic ballot.

- 31.7 Where valid nominations have been received for a number of nominees that is more than the Number To Be Elected, the election of Member Elected Director shall be conducted by postal or electronic ballot in accordance with the following provisions:
- (a) The Directors must:
    - (i) appoint a person to act as returning officer for the election; and
    - (ii) decide whether to permit voting by electronic means and, if so, determine the procedures to govern votes cast by electronic means to the extent not provided for in this Constitution.
  - (b) the returning officer must prepare:
    - (i) a ballot form for a preference vote with the names of all nominees (**Candidates**) placed on the ballot form as selected by draw; and
    - (ii) sufficient printed copies of the ballot form for those Member Representatives who will receive the ballot forms by post.
  - (c) Ballot forms shall be forwarded to the Member Representatives by pre-paid post or electronic means not less than 10 days after the Nominations Close Date.
  - (d) To cast a valid vote, a Member Representative must complete and return the ballot forms to the returning officer not less than 20 days after the Nominations Close Date (**Vote Close Date**) and ensure that the annual subscription of the Member who appointed him or her is not more than one month (or such longer period as the Directors may determine from time to time) in arrears at the Vote Close Date.
  - (e) Promptly after the Vote Close Date, the returning officer must determine the outcome of the election in accordance with the following procedures:
    - (i) the number of votes – numbered from 1 up to the Number To Be Elected – cast for each Candidate shall be counted, with each such vote counted as a single vote regardless of its number;
    - (ii) subject to clause 31.7(e)(v), the Candidate with the least number of votes shall be excluded from the election and votes added to the remaining Candidates in accordance with the next uncounted preferences (for remaining Candidates) on all ballot forms in respect of each ballot form recording a vote for the excluded Candidate;
    - (iii) if more than one Candidate is equally lowest ranked:
      - (A) the Candidate to be excluded shall be the one who had the lowest number of votes at the previous count;
      - (B) if the Candidates ranked equally in that count, the Candidate to be excluded shall be the one who had the lowest number of votes at the second last count and this procedure shall be repeated back to the first count if necessary; and
      - (C) if the Candidates ranked equally back to the first count, the Candidate to be excluded shall be selected by draw;
    - (iv) the procedure in clauses 31.7(e)(ii) and 31.7(e)(iii) shall be repeated until the number of remaining Candidates is one more than the Number To Be Elected;

- (v) once the number of remaining Candidates is one more than the Number To Be Elected, the election is concluded and the returning officer must notify the Secretary that the Number To Be Elected of the remaining Candidates with the most votes have been elected;
- (vi) the returning officer must refer any ballot forms of doubtful validity to the chairperson of Directors' meetings, whose decision is final.

31.8 The chairperson will announce the result of the election at the annual general meeting of the Company in the Election Year.

31.9 At the conclusion of the annual general meeting of the Company in the Election Year:

- (a) in calendar year 2010:
  - (i) all Member Elected Directors in office at the commencement of the annual general meeting will cease to hold office; and
  - (ii) the nominees elected under clause 31.6 or 31.7 will become Member Elected Directors;
  - (iii) if four or five nominees were elected under clause 31.6, three of those nominees, selected by draw, will be taken to hold Even Year Board Positions and the remaining nominee(s) will be taken to hold Odd Year Board Positions;
  - (iv) if one, two or three nominees were elected under clause 31.6, they will be taken to hold Even Year Board Positions; and
  - (v) if five nominees were elected under clause 31.7, three of those nominees, being those who were elected with the most votes, will be taken to hold Even Year Board Positions and the remaining nominees will be taken to hold Odd Year Board Positions (to the extent that there is an equality of votes with the consequence that it is not possible to determine the three nominees with the most votes, preference among those with equal votes will be selected by draw);
- (b) in calendar year 2011 and each subsequent odd calendar year:
  - (i) all Member Elected Directors holding Odd Year Board Positions at the commencement of the annual general meeting will cease to hold office; and
  - (ii) the nominees elected under clause 31.6 or 31.7 will become Member Elected Directors and will be taken to hold Odd Year Board Positions; and
- (c) in calendar year 2012 and each subsequent even calendar year:
  - (i) all Member Elected Directors holding Even Year Board Positions at the commencement of the annual general meeting will cease to hold office; and
  - (ii) the nominees elected under clause 31.6 or 31.7 will become Member Elected Directors and will be taken to hold Even Year Board Positions.

31.10 Despite clause 31.9, a Member Elected Director who would otherwise both:

- (a) cease to hold office; and
- (b) become a Member Elected Director

at the conclusion of an annual general meeting will hold office continuously.

## 32. Conduct of elections for State/Territory Appointed Directors

- 32.1 An election of State/Territory Appointed Directors if required under clause 29.2 shall be conducted on a date to be determined by the Directors.
- 32.2 A person is eligible to be elected as a State/Territory Director under clause 29.2 if:
- (a) they are a Member Representative of a Member of the Company (appointed under clause 6.1) with operations in the State/Territory where there is no State/Territory Appointed Director; and
  - (b) they are nominated by two Member Representatives of Members of the Company with operations in that State/Territory (unless the person was previously elected as a Director since that meeting then no signed nomination is required); and
  - (c) the annual Company subscription of the nominee, nominator and seconder is less than one month (or such longer period as the Directors may determine from time to time) in arrears at the Nominations Close Date under Clause 32.2; and
  - (d) they give the Company their signed consent to act as a Director of the Company on or before the Nominations Close Date under clause 32.2.
- 32.3 Nominations for the position of State/Territory Director must be delivered in writing to the Secretary in the form set out in Appendix 3 by the Nominations Close Date, which will be determined by the Directors.
- 32.4 Where valid nominations have been received for a number of nominees that is less than or equal to the number to be elected, all nominees for the position of State/Territory Director shall automatically be appointed without the need for a postal or electronic ballot.
- 32.5 Where valid nominations have been received for a number of nominees that is more than the number to be elected, the election of State/Territory Directors shall be conducted by postal or electronic ballot in accordance with the provisions outlined for Member Elected Directors in clause 31.7.
- 32.6 The Secretary will announce the result of the election, which will be received and noted by the Directors at the Board meeting immediately following the election.

## 33. Casual vacancies among Directors actually elected

- 33.1 In the event that a vacancy occurs in the office of a Member Elected Director (other than by operation of clause 31.9) who was elected under clause 31.7 (**Original Director**) or appointed under this clause 33.1 to replace an Original Director (or further replacement, etc), the person with the highest vote from the election in the same calendar year as the Original Director, but not elected (or previously appointed under this clause), shall automatically become a Member Elected Director if that person:
- (a) is a Member Representative of a Member of the Company at that time; and
  - (b) confirms to the Company in writing that the person consents to act as a Director of the Company within 14 days after being notified by the Secretary of the vacancy.

If that person is not qualified under paragraphs (a) and (b) of this clause for appointment, the person with the next highest vote from that election, but not elected (or previously appointed under this clause), shall automatically become a Member Elected Director if that person is qualified under paragraphs (a) and (b) of this clause for appointment and so on until a person is qualified or the candidates at that election are exhausted. (To the extent there is an equality of votes with the consequence that it is not possible to determine a person with the next highest vote for that election, preference among those with equal votes will be selected by draw.)

*Note: This clause has the effect that a person who refuses to confirm his or her consent to act as a Director after notification of a vacancy will again be eligible for automatic appointment if a further relevant vacancy occurs.*

- 33.2 Any person appointed as a Member Elected Director under this clause will hold:
- (a) an Even Year Board Position if the Original Director held an Even Year Board Position; and
  - (b) an Odd Year Board Position if the Original Director held an Odd Year Board Position.

## 34. Other vacancies among the Member Elected Directors

- 34.1 In the event that a vacancy occurs in the office of a Member Elected Director for any reason and the vacancy is not filled under clause 32, the Directors may appoint any Member Representatives of Members of the Company as a Member Elected Director to fill the vacancy, failing which the Company may do so by resolution passed in general meeting.
- 34.2 If the only vacancies in the office of Member Elected Director are all Even Year Board Positions or all Odd Year Board Positions, the person appointed will fill one of those positions.
- 34.3 If the vacancies in the office of Member Elected Director comprise both Even Year Board Position(s) and Odd Year Board Position(s), the resolution appointing the person may specify whether the person is appointed to fill an Even Year Board Position or an Odd Year Board Position, failing which the person will be taken to fill whichever type of position will give him or her the longest period in office before the position is subject to election under clause 31.

## 35. Removal or suspension of Directors

- 35.1 The Company may by resolution passed in general meeting in accordance with section 203D of the Corporations Act remove any Director before the end of the Director's period of office.
- 35.2 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
- 35.3 Within 14 days of the suspension, the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office in accordance with clause 35.1 or annul the suspension and reinstate the Director.



## 36. Vacation of office

- 36.1 The office of a Director immediately becomes vacant if the Director:
- (a) ceases to be a Member Representative of a Member of the Company;
  - (b) resigns by notice in writing given to the Secretary;
  - (c) is absent from two consecutive Directors' meetings (including meetings held by technological means) without leave of absence from the Directors;
  - (d) dies;
  - (e) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (f) is prohibited by the Corporations Act from holding office or continuing as a Director;
  - (g) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties; or
  - (h) is removed by a resolution of the Company.
- 36.2 The office of a Director also immediately becomes vacant if the annual subscription of the Member that appointed the Director as its Member Representative is more than one month (or such longer period as the Directors may determine prior to the expiry of that one month period) in arrears.

## Powers and duties of the Directors

### 37. Powers and duties of Directors

- 37.1 The business of the Company is managed and controlled by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 37.2 Without limiting the generality of clause 37.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
  - (b) charge any property or business of the Company;
  - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person; and
  - (e) perform all such acts and things as appear to the Directors to be essential for the proper management of the business and affairs of the Company.

# Payments to Directors

## 38. Payments to Directors

Directors, other than a Director who is also the Chief Executive Officer, act in an honorary capacity and no payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to a Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

# Proceedings of the Directors

## 39. Directors' meetings

- 39.1 Any Director may at any time, and the Secretary must on the request of any Director, call a meeting of the Directors.
- 39.2 A Directors' meeting must be called on at least 48 hours (or such other period as is unanimously agreed by the Directors) oral or written notice of a meeting to each Director and the Chief Executive Officer.
- 39.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 39.4 Notice of a Directors' meeting must specify the general nature of the business to be transacted at the meeting. No business other than that business shall be transacted at the meeting, except business which the Directors at the meeting unanimously agree to treat as urgent business.
- 39.5 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 39.6 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 39.7 Subject to clause 42, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 39.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.

- 39.9 Except to the extent that the Directors determine to the contrary:
- (a) the Chief Executive Officer is entitled to attend and be heard on any matter at all Directors' meetings; and
  - (b) any Member Representative is entitled to attend all Directors' meetings, but is not entitled to be heard on any matter at those meetings.

## 40. Quorum

40.1 A quorum at a Directors' meeting is constituted by the attendance of a number of Directors equal to one-half the total of all Directors (rounded up) plus one, being Directors entitled to vote at that Directors' meeting.

*Note: Directors who cannot vote under clause 42.6(b) are not included in the calculation of the quorum.*

- 40.2 No business shall be transacted at a Directors' meeting unless a quorum is present.
- 40.3 If no quorum is present within half an hour after the time appointed for the meeting, the meeting will be automatically adjourned to a date, time and place to be determined by the chairperson.
- 40.4 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.

## 41. Decision on questions

- 41.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 42, each Director has one vote.
- 41.2 In the case of an equality of votes at a Directors' meeting, the chairperson of the meeting has, in addition to the chairperson's votes as a Director, a casting vote.

## 42. Directors' interests

- 42.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 42.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 42.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 42.4 Subject to clause 38, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than as auditor in the Company; and

- (c) act in a professional capacity other than as auditor for the Company, and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 42.5 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of that interest as required by the Corporations Act.
- 42.6 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 42.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or 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.

## 43. Remaining Directors

- 43.1 The Directors may act even if there are vacancies on the board.
- 43.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
  - (b) call a general meeting.

## 44. Chairperson and deputy chairperson

- 44.1 The Directors may elect a Director as chairperson of Directors' meetings and may elect another Director as deputy chairperson of Directors' meetings to act as chairperson in the chairperson's absence.
- 44.2 If:
- (a) no chairperson is elected and no deputy chairperson is elected; or
  - (b) neither the chairperson nor deputy chairperson is present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin,

the Directors present must elect a Director to be chairperson of the meeting.

44.3 An election of chairperson or deputy chairperson shall be conducted at the first Directors' meeting immediately following any vacancy in the office of chairperson or deputy chairperson, as the case may be.

44.4 The chairperson and the deputy chairperson will hold office, subject to removal in accordance with clause 44.6, for two years from appointment or, if earlier, until he or she ceases to be a Director.

*Note: The two year period of appointment as chairperson or deputy chairperson under this clause is unlikely to correspond to any Director's term of office as elections are unlikely to be held exactly two years after appointment under this clause.*

44.5 A person is not eligible to be elected as chairperson or deputy chairperson if he or she has previously held office as chairperson or held office as deputy chairperson for a period or periods totalling six or more years.

44.6 The Directors may remove the chairperson or deputy chairperson from office at any time and need not disclose any reason for doing so. A resolution removing the chairperson or deputy chairperson is not valid unless:

- (a) 14 days notice of the Directors' meeting is given which clearly indicates that the meeting will consider removal of the chairperson or deputy chairperson, as the case may be; and
- (b) the resolution is approved by at least two-thirds of the Directors (- present and voting (excluding from the calculation any Director subject to removal at that meeting as chairperson or deputy chairperson)).

## 45. Delegation by the Directors

45.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.

45.2 The Directors may at any time revoke any delegation of power to a committee.

45.3 At least one member of a committee must be a Director.

45.4 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

45.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

45.6 Meetings of any Directors' 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 member was a Director.

45.7 Despite any delegation under this clause, the Directors may continue to exercise any powers delegated.

## 46. Written resolutions

46.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors (other than any Director granted leave of absence for the purposes of clause 36.1(c) or who the

Secretary reasonably believes to be outside Australia) entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.

- 46.2 For the purposes of clause 46.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 46.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 46.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 46.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

## 47. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director- or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 48. Minutes and Registers

- 48.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of committees;
  - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of committees;
  - (c) all resolutions passed by Directors in accordance with clause 46 (written resolutions of Directors);
  - (d) all elections or appointments of Directors, the chairperson and deputy chairperson; and
  - (e) all disclosures of interests made under clause 42.5.
- 48.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 48.3 The Company must keep all registers required by this Constitution and the Corporations Act, including the Register. The Secretary must ensure that the Company does so.

# Chief Executive Officer

## 49. Appointment

49.1 The Directors may appoint a person (whether or not a Director or Member Representative) to the office of Chief Executive Officer on such terms as they think fit.

## 50. Powers and duties of Chief Executive Officer

50.1 The Directors may confer on the Chief Executive Officer any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors. Unless otherwise determined by the Directors, the Chief Executive Officer shall be responsible, through the chairperson to the Directors, for the day to day conduct of the Company's business and affairs and is deemed to have conferred on him or her all powers necessary to do so.

50.2 The Chief Executive Officer must also perform all such duties as may facilitate the attainment of the objects of the Company as may be determined by the Directors from time to time.

50.3 The Directors may authorise the Chief Executive Officer to sub-delegate all or any of the powers vested in him or her.

50.4 Any power conferred under this clause may be concurrent with but not to the exclusion of the Directors' powers.

50.5 The Directors may at any time withdraw or vary any of the powers conferred on an Executive Director.

50.6 Subject to this Constitution, all reasonable expenses incurred by the Chief Executive Officer in the attainment of the objects of the Company must be reimbursed by the Company.

# Negotiable instruments

## 51. Negotiable Instruments

51.1 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments may be signed by any two of the signatories approved by the Directors from time to time.

# Local management

## 52. Local management

52.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

52.2 Without limiting clause 52.1 the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and

- (b) delegate to any person appointed under clause 52.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

52.3 The Directors may at any time revoke or vary any delegation under this clause.

## 53. Appointment of attorneys and agents

53.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,

determined by the Directors.

53.2 Without limitation, an appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any member of any local board established under this Constitution;
- (b) any company;
- (c) the members, directors, nominees or managers of any company or firm; or
- (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

53.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

53.4 The Directors may appoint attorneys or agents by facsimile transmission to act for and on behalf of the Company.

53.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

## Secretary

### 54. Secretary

54.1 There must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.

54.2 Unless otherwise determined by the Directors, the Secretary must maintain, or cause to be maintained, the records of the Company including the minutes of all meetings, the Register, details of all Member Representatives and persons serving on committees of the Company and such other data as shall be required by the Directors from time to time.



- 54.3 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings. The entitlement of the Secretary to attend and be heard on any matter at particular Directors' meetings may be limited by the Directors in relation to matters in which the Secretary is personally involved.
- 54.4 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## Seals

### 55. Common Seal

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a committee authorised by the Directors to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or by some other person authorised by the Directors in writing for that purpose.

### 56. Duplicate Seal

If the Company has a 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 'Duplicate Seal' on its face;
- (b) must not be used except with the authority of the Directors.

## Audit and accounts

### 57. Audit and accounts

- 57.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company, and to prepare financial documents and reports, in accordance with the requirements of the Corporations Act.
- 57.2 The Directors must ensure that an auditor is appointed in respect of the Company and cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act at least once in respect of each financial year.

# Records

## 58. Inspection of records

58.1 The Register shall be available for inspection by a Member Representatives at the address of the Company.

58.2 All records maintained by the Secretary shall be available for inspection by the Member Representatives if permitted by law.

*Note: Privacy laws may apply restrictions to the disclosure of personal information in certain circumstances.*

58.3 Except as otherwise required by this Constitution or the Corporations Act, the Directors 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.

58.4 Except as otherwise required by this Constitution or the Corporations Act, 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 Directors.

## 59. Custody of records

59.1 Except as otherwise provided in this Constitution, the Secretary shall keep in his or her custody or under his or her control all books, documents and securities of the Company.

# Notices

## 60. Service of notices

60.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:

- (a) by serving it on the person; or
- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person (or, in the case of a Member Representative, the address supplied by the Member who appointed that Member Representative).

60.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) on the day after the day on which it was posted.

60.3 A notice sent by facsimile transmission or electronic notification is taken to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and

- (b) on the day after its despatch.
- 60.4 For the avoidance of doubt, a notice under clauses 60.1 to 60.3 satisfies any requirement that the notice be in writing.
- 60.5 At any time that a Member has a validly appointed Member Representative, all notices to be given by the Company to the Member (including notices of meeting) may be given to the Member care of the Member's Member Representative at the Member Representative's address without giving a copy of the notice to the Member at any other address.
- 60.6 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 60.7 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 60.
- 60.8 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 60.9 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed or in such electronic form as the Directors approve.
- 60.10 All notices sent by post outside Australia must be sent by prepaid airmail post.

## 61. Persons entitled to notice

- 61.1 Notice of every general meeting must be given to:
  - (a) every Member;  
*Note: By virtue of clause 60.5, notice can be given to a Member by giving it to the Member's Member Representative.*
  - (b) every Director;
  - (c) the Chief Executive Office; and
  - (d) any Auditor.
- 61.2 No other person is entitled to receive notice of a general meeting.

## Employees and contractors

### 62. Employees and contractors

- 62.1 Without limitation, but subject to this Constitution, the Directors may employ or contract with any person or corporation and pay such salaries or remuneration, for such periods and on such terms as it shall think fit and may, subject to conditions of engagement of such employees or contractors, dispense with their services and re-appoint them or appoint other employees or contractors as it thinks fit.

# Winding up

## 63. Winding up

63.1 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 63.1(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 as may be required, not exceeding \$100.

63.2 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, by its constitution, is:

- (a) required to pursue charitable purposes only or required to pursue similar objects to those of the Company set out in clause 4;
- (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;

and that corporation be selected by the Members of the Company at, or before, the time of the dissolution and, in default of that selection, by application to the Supreme Court of the Australian Capital Territory or another Territory or State for determination.

# Indemnity

## 64. Indemnity

64.1 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 subsidiary of the Company where the Company requested the officer to accept that appointment); or
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

64.2 The amount of any indemnity payable under clauses 64.1(a) or 64.1(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.

64.3 For the purposes of this clause only:

(a) **officer** means:

- (i) the Chief Executive Officer;
- (ii) a Director;
- (iii) a Secretary;
- (iv) a member of a Directors' committee; or
- (v) an employee of the Company; and

(b) Section 199A shall be interpreted as applying to all those persons as if they were officers for the purpose of that section.

## Patron

### 65. Patron

65.1 The Directors may appoint a patron or patrons of the Company from time to time who shall hold office for as long as the Directors may determine.

65.2 A patron will have only those functions and privileges as are determined by the Directors.

65.3 No patron is eligible to vote at any general meeting of the Company.