

Constitution of Infrastructure Sustainability Council of Australia

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Infrastructure Sustainability Council of Australia, ABN 51 131 329 774**Constitution****Preliminary**

1. Definitions

In this Constitution:

Attending Member means, in relation to a meeting of Members, the Member present at the place of the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by Corporate Representative.

Board means the Directors of the Company from time to time.

Business Day means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

Chief Executive Officer means a person appointed as, or to perform the duties of, chief executive officer of the Company for the time being.

Corporate Representative means a person authorised in accordance with the Corporations Act (or a corresponding previous law) by a Member which is a body corporate to act as its representative at a meeting of Members.

Corporations Act means the Corporations Act 2001 (Commonwealth).

DGR means a deductible gift recipient as defined in the *Income Tax Assessment Act 1997* (Cth).

Director means a person who is, for the time being, a director of the Company, including a Member Director and an Independent Director.

Fee means a fee or levy referred to in Article 14(a) or Article 16.

Independent Director means a Director who is appointed under Article 38.

Legal Costs of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

Liability of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

Member means a person whose name is entered in the Register as a member of the Company.

Member Director means a Director who is appointed under Article 37.

Notice means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

Previous Constitution means the constitution of the Company dated [*11 December 2014*].

Register means the register of Members kept pursuant to the Corporations Act and, where appropriate, includes any branch register.

Relevant Officer means a person who is, or has been, a Director or Secretary.

Secretary means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

2. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) the word "includes" in any form is not a word of limitation;
- (e) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (f) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law; and
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements.

3. Application of Corporations Act

- (a) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
 - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.

4. Enforcement

- (a) Each Member submits to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and the courts competent to determine

appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.

- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
 - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

Objects

5. Objects of the Company

The Company is established for charitable objects being:

- (a) to improve the productivity and liveability of industry and communities through sustainability in infrastructure by facilitating enhanced environmental, social and economic outcomes, correspondingly raising the standard of sustainability performance in the planning design, construction and operation of infrastructure for improved economic, environmental and societal outcomes;
- (b) to disseminate, develop and encourage the dissemination and development of knowledge regarding enhanced environmental, social and economic outcomes informing more sustainable infrastructure practices;
- (c) to establish environmental, social and economic performance benchmarks which are recognised as leading-practice for infrastructure and related industries for the better protection of the natural environment;
- (d) to publicise more sustainable infrastructure development practices within the infrastructure industry and the wider community generally;
- (e) to act as a focal point for information on more sustainable (social, economic and environmental) infrastructure including for the infrastructure industry;
- (f) to continue to update current tools and develop new tools to support the infrastructure industry with evaluating, facilitating, measuring, delivering and reporting on more sustainable (social, economic and environmental) infrastructure performance;
- (g) to develop and deliver education and research material and programs to raise the knowledge and skill base of infrastructure professionals in enhanced environmental, social and economic outcomes; and
- (h) to contribute to community dialogue and debate on key sustainable (social, economic and environmental) infrastructure issues.

Income and property

6. Application of income and property

- (a) Subject to Articles 6(b) and 6(c), the Company must apply the profits or financial surplus (if any) or other income and property of the Company solely towards the promotion of the objects of the Company set out in Article 5 and no portion of it may

be paid or transferred, directly or indirectly, to any Member whether by way of dividend, bonus or otherwise.

- (b) Nothing in Article 6(a) prevents the Company making any payment in good faith of:
- (i) reasonable and proper remuneration to any Member for any services actually rendered or goods supplied to the Company in the ordinary and usual course of business of the Company;
 - (ii) the payment or reimbursement of out-of-pocket expenses incurred by a Member on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board;
 - (iii) reasonable and proper rent or fees to a Member for premises leased or licensed by any Member to the Company;
 - (iv) money to any Member for all usual professional or other charges for work done by a Member, its employees or contractors, where the provision of the service has the prior approval of the Board, or where the work done by the Member is requested by the Chief Executive Officer within the Chief Executive Officer's scope of delegated powers, provided that the amount payable for the service is within the delegated authority limit of the Chief Executive Officer, and the amount payable is not more than an amount which commercially would be reasonable payment for the service;
 - (v) interest to a Member at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member; or
 - (vi) an amount pursuant to Article 61.
- (c) The Company must not pay fees to or on behalf of Directors or a Secretary but the Company may make payments to a Director or Secretary in good faith for:
- (i) the payment or reimbursement of out-of-pocket expenses reasonably incurred by a Director or Secretary in the performance of any duty as a director or secretary of the Company where that payment or reimbursement has been approved by the Board;
 - (ii) money to any Director or Secretary for all usual professional or other charges for work done by a Director or Secretary (as applicable), its employees or contractors, where the provision of the service has the prior approval of the Board and the amount payable is not more than an amount which commercially would be reasonable payment for the service;
 - (iii) any salary or wage due to the Director or Secretary as an employee of the Company where the terms of employment have been approved by the Board;
 - (iv) an insurance premium in respect of a contract insuring a Director or Secretary for a liability incurred as an officer of the Company where the Board has approved the payment of the premium and such payment is permitted by the Corporations Act; or
 - (v) any payment pursuant to Article 44(a), 44(c) or 44(d) or a payment pursuant to any agreement or deed referred to in Article 44(e).
- (d) For the avoidance of doubt, the Company shall not act as a conduit or collection agency for other organisations.

Liability of Members

7. Extent of liability

Each Member undertakes to contribute an amount not exceeding \$2.00 to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that person ceased to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before that person ceased to be a Member;
- (b) payment of the costs, charges and expenses of winding up the Company; and
- (c) adjustment of the rights of the contributories among themselves.

Membership

8. Applications

- (a) Any person is eligible to apply to become a Member.
- (b) Each applicant to become a Member must sign and deliver to the Company an application form, in a form determined by the Board, and pay the applicable Fee as determined by the Board.
- (c) The Board determines in its absolute discretion whether an applicant may become a Member.
- (d) If an application to become a Member is accepted by the Board, the Company must give written Notice of the acceptance to the applicant and enter the applicant's name in the Register.
- (e) If an application to become a Member is rejected by the Board, the Company must give written Notice of the rejection to the applicant and refund in full the Fee (if any) paid by the applicant.
- (f) Failure by the Company to comply with any notice requirement in this Article 8(d) or 8(e) does not invalidate the decision regarding an application.

9. No transfers

The rights of being a Member are not transferable whether by operation of law or otherwise.

10. Resignation of a Member

- (a) Subject to Article 10(b), a Member may at any time resign as a member of the Company by giving the Company Notice in writing. Unless the Notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that Notice to the Company.
- (b) If there is only one Member and the Member gives proper Notice of resignation or on the same day all of the Members give proper Notice of resignation, the Notice or Notices will be ineffective and the Member or Members cannot resign until either another person is appointed as a Member or the Company is wound up.
- (c) Subject to Article 10(b), if a Member resigns, the Company must remove the Member's name from the Register.

11. Expulsion of a Member

- (a) Subject to Article 11(b), if:
- (i) a Member is in breach of a provision of this Constitution;
 - (ii) any act or omission of a Member is, in the opinion of the Board, unbecoming of a Member, or prejudicial to the interests or reputation of the Company;
 - (iii) a Member is, or any step is taken for that Member to become, either an insolvent under administration or an externally administered body corporate; or
 - (iv) there is an event of succession by another body corporate or entity to the assets and liabilities of the Member,
- the Company may expel the Member by a resolution of the Board and remove the Member's name from the Register.
- (b) The Company must not expel a Member pursuant to Article 11(a) unless:
- (i) at least 5 Business Days' Notice has been given to the Member stating the date, time and place at which the question of expulsion of that Member is to be considered by the Board, and the nature of the alleged event giving rise to the expulsion; and
 - (ii) the affected Member is given the opportunity of explaining to the Board, orally or in writing, why the Member should not be expelled.

12. Other cessation events

If a Member is a body corporate which is deregistered pursuant to the laws of the jurisdiction in which the Member is incorporated, the Member ceases to be a member of the Company and the Company shall remove the Member's name from the Register.

13. Effect of cessation

- (a) A person who ceases to be a Member:
- (i) remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the person to the Company as a Member; and
 - (ii) must pay to the Company interest at the rate the Board resolves on those amounts from the date of cessation until and including the date of payment of those amounts.
- (b) The Company may by resolution of the Board waive any or all of its rights pursuant to this Article 13.

Fees and other payments

14. Setting of Fees

- (a) Subject to the Corporations Act, the Company may by resolution of the Board require the payment of a Fee by any Member of any amount, on any terms and at any times as the Board resolves, including payment by instalments.
- (b) The Company may when admitting any Member make a Fee payable for one or more Members for different amounts and at different times as the Board resolves.
- (c) The Company may by resolution of the Board revoke or postpone a Fee or extend the time for payment of a Fee, at any time prior to the date on which payment of that Fee is due.

15. Notice of Fees

- (a) The Company must give Notice of a Fee to each Member who is required to pay the Fees at least 30 Business Days before the due date for payment. The Notice must specify the amount of the Fee, the time or times and place of payment and any other information as the Board resolves.
- (b) The non-receipt of a Notice of a Fee by, or the accidental omission to give Notice of a Fee to, any Member does not invalidate the requirement to pay any Fee.

16. Payment of Fees

- (a) Each Member must pay to the Company the amount of each Fee payable by the Member in the manner, at the time and at the place specified in the Notice of the Fee.
- (b) If a Member fails to pay a Fee within 30 Business Days of the due date for payment as required under Article (a)16(a), then the Company may expel the Member by a resolution of the Board and remove the Member's name from the Register.
- (c) In a proceeding to recover a Fee, or an amount payable due to the failure to pay or late payment of a Fee, proof that:
 - (i) the name of the person is entered in the Register as a Member;
 - (ii) there is a record in the minute books of the Company of the resolution determining the Fee; and
 - (iii) Notice of the Fee was given or taken to be given to the person in accordance with this Constitution,

is conclusive evidence of the obligation of that person to pay the Fee.

17. Interest payable

- (a) If an amount payable to the Company as a Fee is not paid before or on the date for payment, the person who owes the amount must pay to the Company:
 - (i) interest on the unpaid part of the amount from the date payment is due to the date of payment at the rate that the Board resolves; and

- (ii) all costs and expenses that the Company incurs due to the failure to pay or the late payment.
- (b) Interest pursuant to Article 17(a) accrues daily and may be capitalised at any interval that the Board resolves.
- (c) The Company may by resolution of the Board waive payment of some or all of the interest, costs or expenses payable pursuant to Article 17(a).

Proceedings of Members

18. Written resolutions of Members

While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.

19. Calling meetings of Members

- (a) The Company may by resolution of the Board call a meeting of Members to be held at the time and place (including 2 or more venues using technology which gives Attending Members as a whole a reasonable opportunity to participate) and in the manner that the Board resolves.
- (b) No Member may call or arrange to hold a meeting of Members except where permitted by the Corporations Act.

20. Notice of meetings of Members

- (a) Where the Company has called a meeting of Members, Notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- (b) A person may waive Notice of any meeting of Members by written Notice to the Company.
- (c) A person's attendance at a meeting of Members waives any objection which that person may have had to a failure to give notice, or the giving of a defective Notice of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- (d) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid because a person does not receive Notice of the meeting or a proxy form, or the Company accidentally does not give Notice of the meeting or a proxy form to a person.

21. Business of meetings

Except with the approval of the Board, with the permission of the chairperson of the meeting or pursuant to the Corporations Act, no person may move at any meeting of Members:

- (a) any resolution (except in the form set out in the Notice of meeting given pursuant to Article 20(a)); or
- (b) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Members to inspect or obtain.

22. Quorum

- (a) No business may be transacted at a meeting of Members except, subject to Article 23, the election of the chairperson of the meeting unless a quorum for a meeting of Members is present at the time when the meeting commences.
- (b) A quorum for a meeting of Members is 10% of the Attending Members entitled to vote on a resolution at that meeting or if only one Member is entitled to vote at that meeting, then that person (or an Attending Member representing that person). Each individual present may only be counted once towards a quorum. If a Member has appointed more than one proxy or attorney or Corporate Representative, only one of them may be counted towards a quorum.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Members, the meeting is dissolved unless the chairperson of the meeting or the Board adjourns the meeting to a date, time and place determined by that chairperson or the Board.

23. Chairperson of meetings of Members

- (a) Subject to Articles 23(b) and 23(c), the chairperson of the Board must chair each meeting of Members.
- (b) If at a meeting of Members:
 - (i) there is no chairperson of the Board; or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of a meeting of Members or is not willing to chair all or part of the meeting,the deputy-chairperson of the Board (if any) must act as chairperson of the meeting. If the deputy-chairperson is not present within 15 minutes after the time appointed for the holding of a meeting of Members or is not willing to chair all or part of that meeting, the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Members may elect one of their number, to chair that meeting.
- (c) A chairperson of a meeting of Members may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chair**). Where an instrument of proxy appoints the chairperson as proxy for part of proceedings for which an Acting Chair has been nominated, the instrument of proxy is taken to be in favour of the Acting Chair for the relevant part of the proceedings.

24. Conduct of meetings of Members

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.

- (c) The chairperson of a meeting of Members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chairperson of a meeting of Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Members may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The chairperson of a meeting of Members may refuse to allow debate or discussion on any matter which is not business referred to in the Notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the Notice of meeting.
- (g) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
 - (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
 - (ii) has any audio or visual recording or broadcasting device which does not form part of the mechanism for enabling members to participate in accordance with the provisions of Article 19(a);
 - (iii) has a placard or banner;
 - (iv) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner;
 - (vi) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; or
 - (vii) is not entitled pursuant to the Corporations Act or this Constitution to attend the meeting.
- (h) If the chairperson of a meeting of Members considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the chairperson may nominate a separate meeting place using any technology that gives Attending Members as a whole a reasonable opportunity to participate.
- (i) The chairperson of a meeting of Members may delegate any power conferred by this Article 24 to any person.
- (j) Nothing contained in this Article 24 limits the powers conferred by law on the chairperson of a meeting of Members.

25. Attendance at meeting of Members

- (a) Subject to this Constitution, a Member who is entitled to attend and cast a vote at a meeting of Members, may attend and vote in person or by proxy, by attorney or, if the Member is a body corporate, by Corporate Representative.
- (b) The chairperson of a meeting of Members may require a person acting as a proxy, attorney or Corporate Representative at that meeting to establish to the

chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.

- (c) A Director is entitled to receive Notice of and to attend all meetings of Members and is entitled to speak at those meetings.
- (d) A person requested by the Board to attend a meeting of Members is, regardless of whether that person is a Member or not, entitled to attend that meeting and, at the request of the chairperson of the meeting, is entitled to speak at that meeting.

26. Authority of Attending Members

- (a) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the person so appointed has the same rights to speak, demand a poll, join in demanding a poll or act generally at a meeting of Member to which the appointment relates, as the appointing Member would have had if that Member was present at the meeting.
- (b) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the appointment is taken to confer authority to:
 - (i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion; and
 - (ii) vote on any procedural motion, including any motion to elect the chairperson of the meeting of Members to which the appointment relates, to vacate the chair or to adjourn the meeting,
 even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Corporate Representative how to vote on particular resolutions.
- (c) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

27. Multiple appointments

- (a) If more than one attorney or Corporate Representative appointed by a Member is present at a meeting of Members and the Company has not received Notice of any revocation of any of the appointments:
 - (i) an attorney or Corporate Representative appointed to act at that particular meeting may act to the exclusion of an attorney or Corporate Representative appointed pursuant to a standing appointment; and
 - (ii) subject to Article 27(a)(i), an attorney or Corporate Representative appointed pursuant to the most recent appointment may act to the exclusion of an attorney or Corporate Representative appointed earlier in time.
- (b) An appointment of a proxy of a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Members) if the Company receives a further appointment of a proxy from that Member which would result in there being more than one proxy of that Member entitled to act at the meeting. The

appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article 27(b).

- (c) The appointment of a proxy for a Member is not revoked by an attorney or Corporate Representative for that Member attending and taking part in a meeting of Members to which the appointment relates, but if that attorney or Corporate Representative votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Member's proxy on that resolution.

28. Voting at meeting of Members

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands, unless a poll is demanded in accordance with Article 31 and that demand is not withdrawn.
- (b) The Board may determine that Members entitled to attend and vote at a meeting of Members may vote at that meeting without an Attending Member in respect of that person being present at that meeting (and voting in this manner is referred to in this Article 28(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Member casting both a direct vote and a vote in any other manner. Where a Notice of meeting specifies that direct voting may occur by eligible Members, a direct vote cast by an eligible Member is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the Notice of meeting or otherwise) are complied with.
- (c) Subject to this Constitution, on a show of hands at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution, on a poll at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote for each Member that the Attending Member represents.
- (e) Subject to this Constitution, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Members on any resolution to be put at a meeting of Members, each Member having a right to vote on the resolution has one vote.
- (f) An objection to a right to vote at a meeting of Members or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Article 28(f) must be decided by the chairperson of the meeting of Members, whose decision, made in good faith, is final and conclusive.
- (g) Except where a resolution at a meeting of Members requires a special majority pursuant to the law, the resolution is passed if more votes are cast by Members entitled to vote in favour on the resolution than against it.
- (h) In the case of an equality of votes on a resolution at a meeting of Members, the chairperson of that meeting does not have a casting vote on that resolution.
- (i) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Members following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

29. Voting by representatives

- (a) The validity of any resolution passed at a meeting of Members is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Member.
- (b) If a proxy of a Member purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Member to cast in a given way must be treated as cast in that way.
- (c) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Members by a person appointed by a Member as a proxy, attorney or Corporate Representative is valid despite the revocation of the appointment (or the authority pursuant to which the appointment was executed), if no Notice in writing of that matter has been received by the Company before the time appointed for the commencement of that meeting.

30. Restrictions on voting rights

- (a) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members to which the authority relates is suspended while the Member is present in person at that meeting.
- (b) An Attending Member is not entitled to vote on any resolution for so long as any Fee or other amount due and payable to the Company in respect of that Member's membership of the Company has not been paid.
- (c) An Attending Member is not entitled to vote on a resolution at a meeting of Members where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (d) The Company must disregard any vote on a resolution at a meeting of Members purported to be cast by an Attending Member where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 30(d) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

31. Polls

- (a) A poll on a resolution at a meeting of Members may be demanded by a Member only in accordance with the Corporations Act or by the chairperson of that meeting.
- (b) No poll may be demanded at a meeting of Members on the election of a chairperson of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Members for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Members must be taken in the manner and at the time and place the chairperson of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.

- (f) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

32. Proxies

- (a) A Member who is entitled to attend and vote at a meeting of Members may appoint a person as proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act.
- (c) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.
- (d) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Member is not filled in, the proxy of that Member is:
- (i) the person specified by the Company in the form of proxy in the case that Member does not choose; or
 - (ii) if no person is so specified, the chairperson of that meeting.

33. Receipt of appointments

- (a) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.
- (b) Where a Notice of meeting specifies an electronic address or other electronic means by which a Member may give the Company a proxy appointment, a proxy appointment sent to that electronic address or by that other electronic means is taken to have been given by the Member and received by the Company if the requirements set out in the Notice of meeting are complied with.

34. Adjournments

- (a) The chairperson of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.
- (b) If the chairperson of a meeting of Members exercises the right to adjourn that meeting pursuant to Article 34(a), the chairperson may (but is not obliged to) obtain the approval of Attending Members to the adjournment.
- (c) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (d) The Company may give such Notice of a meeting of Members resumed from an adjourned meeting as the Board resolves. Failure to give Notice of an adjournment of a meeting of Members or the failure to receive any Notice of the meeting does

not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.

- (e) Only business left unfinished is to be transacted at a meeting of Members which is resumed after an adjournment.

35. Cancellations and postponements

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Members or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 35(a) does not apply to a meeting called in accordance with the Corporations Act by Members or by the Board on the request of Members, unless those Members consent to the cancellation or postponement of the meeting.
- (c) The Company may give Notice of a cancellation or postponement or change of place of a meeting of Members as the Board resolves. Failure to give Notice of a cancellation or postponement or change of place of a meeting of Members or the failure to receive any Notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the original Notice calling the meeting.

Directors

36. Directors

- (a) Subject to the Corporations Act, the number of Directors must be the number, not being less than 7, determined by the Board from time to time, but the number so determined at a particular time must not be less than the number of Directors when the determination takes effect.
- (b) Except in the event of a casual vacancy or where the Board otherwise determines, there will at all times be a minimum of 5 Member Directors.
- (c) The Board shall not at any time comprise Member Directors who are affiliated with any single Member where the number of such Member Directors exceeds one-third of the total number of Directors then in office (rounded up to the nearest whole number).
- (d) A Director need not be a Member.
- (e) A Director holding office as at the date on which this Constitution takes effect who was appointed under the Previous Constitution shall be deemed to have been appointed as a Director under this Constitution. Any part of that Director's term served under the Previous Constitution will also be deemed to be served for the purposes of this Constitution, and this Constitution will apply to that Director for the remainder of that Director's term (as may be extended under this Constitution) as if he or she had been appointed under this Constitution.

37. Member Directors

- (a) Subject to the Corporations Act and Article 36, this Article 37 and Article 40, a Member is entitled to nominate any person for election to the Board as a Member

Director by a Notice in writing signed by the relevant Member accompanied by the consent of the nominee to act as a director which is given to the Company at least 45 Business Days before a meeting of Members.

- (b) A person nominated in accordance with Article 37(a) may be elected to office as a Member Director by resolution of the Members at a meeting of Members.
- (c) No person, other than a Member Director retiring pursuant to Article 40 or a person nominated by a Member in accordance with Article 37(a), is eligible to be elected or re-elected as a Member Director at any meeting of Members.
- (d) The Board shall prepare a list of persons who have been nominated for election or re-election as Member Directors pursuant to Article 37(c) (**Director Candidate List**). The Director Candidate List shall be sent to each Member with the Notice of the meeting of Members at which it is proposed that the election or re-election of Member Directors is to occur.

38. Independent Directors

- (a) Subject to the Corporations Act and Article 36, the Board or the Members may appoint as a Director any person who has not been nominated as a Member Director under Article 37 (**Independent Director**) provided that the number of Independent Directors cannot be greater than the number of Member Directors at any time.
- (b) Unless the Board resolves otherwise, an Independent Director must retire from office no later than 3 years following the date of the Director's appointment.
- (c) For the avoidance of doubt, the appointment by the Board of an Independent Director is not an appointment to fill a casual vacancy under Article 39.

39. Casual vacancy

- (a) Subject to the Corporations Act, if a Member Director vacates office at any time other than at an annual general meeting, the Board may appoint any person as a Member Director to fill the casual vacancy.
- (b) A person elected to fill a casual vacancy pursuant to this Article 39 remains in office until the end of the first annual general meeting of the Company held after that appointment, and shall cease to hold office at that time unless re-elected in accordance with Article 37.

40. Retirement of Member Directors

- (a) Subject to the Corporations Act and Article 40(b), a Member Director must retire from office no later than the third annual general meeting of the Company following that Member Director's last election under Article 37.
- (b) A Member Director who retires pursuant to Article 40(a) holds office as a Member Director until the end of the meeting at which the Member Director retires and shall cease to hold office at that time unless re-elected in accordance with Article 37.

41. Termination of office

A person ceases to be a Director if the person:

- (a) fails to attend 3 consecutive Board meetings without the consent of the Board;

- (b) resigns by Notice in writing to the Company;
- (c) is an Independent Director who is required to retire under Article 38 ;
- (d) is a Member Director who is required to retire pursuant to Article 39 or Article 40 and is not re-elected; or
- (e) is removed from office (or not permitted to be a director or to manage a corporation) pursuant to the Corporations Act.

42. Interests of Directors

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
 - (i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
 - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
 - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
 - (iv) entering into any agreement or arrangement with the Company; or
 - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests.
- (c) A Director or Secretary who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.
- (d) If a Director or Secretary has an interest in a matter, then subject to Article 42(c), Article 42(e) and this Constitution:
 - (i) the Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
 - (ii) the Director may participate in and vote on matters that relate to the interest;
 - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and

- (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed pursuant to Article 42(b), Article 42(d)(iv) applies only if the interest is disclosed before the transaction is entered into.

Officers

43. Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including, subject to Article 6, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

44. Indemnity and insurance

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Article 44(a):
 - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
 - (iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
 - (i) enter into, or agree to enter into; or
 - (ii) pay, or agree to pay, a premium for,
 a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
 - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) indemnify that person against any Liability and Legal Costs of that person;

- (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
- (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

Powers of the Board

45. General powers

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 51, a resolution passed by signing a document in accordance with Article 50, or in accordance with a delegation of the power pursuant to Article 47, 48 or 49. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Article 47, 48 or 49.

46. Execution of documents

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

47. Committees and delegates

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company, a Member or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, Article 51 applies with the necessary changes to meetings and resolutions of a committee of the Board.

48. Chief Executive Officer

- (a) The Board may appoint a person as a Chief Executive Officer for any period and on any terms (including, subject to Article 6, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Chief Executive Officer, the Board may vary or terminate the appointment of a Chief Executive Officer at any time, with or without cause.
- (b) The Chief Executive Officer shall not be a Director unless otherwise determined by the Board.
- (c) The Board may delegate any of its powers to the Chief Executive Officer for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Chief Executive Officer.
- (d) The Chief Executive Officer must exercise the powers delegated to him or her in accordance with any directions of the Board.

49. Attorney or agent

- (a) The Board may appoint any person to be an attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

Proceedings of Directors

50. Written resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if Notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution pursuant to Article 50(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 50(a) and is taken to be signed when received by the Company in legible form.

51. Board Meetings

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.

- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by telephone, fax or other electronic means.
- (d) A Director may waive Notice of a Board meeting by giving Notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.
- (e) A person who attends a Board meeting waives any objection that person may have to a failure to give Notice of the meeting.
- (f) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive Notice of the meeting or the Company accidentally does not give Notice of the meeting to a person.
- (g) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
 - (i) telephone;
 - (ii) video;
 - (iii) any other technology which permits each Director to communicate with every other participating Director; or
 - (iv) any combination of these technologies.

A Director may withdraw the consent given pursuant to this Article 51(g) in accordance with the Corporations Act.
- (h) If a Board meeting is held in 2 or more places linked together by any technology:
 - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
 - (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (i) Until otherwise determined by the Board, a quorum for a Board meeting is [5] Directors entitled to vote on a resolution that may be proposed at that meeting. A quorum for a Board meeting must be present at all times during the meeting.

52. Chairperson and deputy-chairperson of the Board

- (a) The Board may elect a Director as chairperson of the Board for any period that it resolves, or if no period is specified, until that person ceases to be a Director. The Board may remove the chairperson of the Board by resolution at any time.
- (b) Subject to Article 52(c), the chairperson of the Board must chair each Board meeting.

- (c) The Board may elect a Director as deputy-chairperson of the Board for any period that it resolves, or if no period is specified, until that person ceases to be a Director. The Board may remove the deputy-chairperson of the Board by resolution at any time.
- (d) If at a Board meeting:
 - (i) a chairperson has not been elected pursuant to Article 52(a); or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the deputy-chairperson (if any) must act as chairperson of the meeting. If the deputy-chairperson is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting Directors present must elect one of their number to, chair that meeting or part of the meeting.
- (e) A person does not cease to be a chairperson of the Board if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting (or any adjournment of that meeting).

53. Board resolutions

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Article 42 and this Article 53, each Director present in person has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two Directors are present and entitled to vote on the resolution.

54. Valid proceedings

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
 - (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
 - (ii) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Members.

Notices

55. Notices to Members

- (a) The Company may give Notice to a Member by any of the following means in the Board's discretion:
 - (i) delivering it to that Member;
 - (ii) delivering it or sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member for that purpose;
 - (iii) sending it to the fax number or electronic address (if any) nominated by that Member or person for that purpose;
 - (iv) if permitted by the Corporations Act, notifying that Member of the notice's availability by an electronic means nominated by the Member for that purpose; or
 - (v) any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Member whose address for Notices is not within Australia by air-mail, air courier, fax or electronic transmission.
- (c) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

56. Notice to Directors

The Company may give Notice to a Director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

57. Notice to the Company

A person may give Notice to the Company by:

- (a) delivering it or sending it by post to the registered office of the Company;
- (b) delivering it or sending it by post to a place nominated by the Company for that purpose;
- (c) sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) sending it to the electronic address (if any) nominated by the Company for that purpose; or

- (e) any other means permitted by the Corporations Act.

58. Time of service

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of Notice to the Company or a Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A Notice given in accordance with Article 55(a)(iv) is taken to be given on the day after the date on which the Member is notified that the Notice is available.
- (d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

59. Notice requirements

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the Notice is taken to be given.

Constitutional Amendments

60. Amendments to the Constitution

Any material amendment to Articles 5, 6, 60 or 61 or other article of this Constitution which is likely to affect the Company's charitable, taxation or similar endorsements will be notified to the:

- (a) Australian Charities and Not-for-profits Commission;
- (b) Australian Taxation Office; or
- (c) other relevant regulatory authority or authorities,

responsible for the relevant endorsement which is likely to be affected by the amendment.

Winding up

61. Winding up

On a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must not be paid to or distributed among the Members, but must be given or transferred to:

- (a) one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Members by resolution at or before the dissolution of the Company:

- (i) having charitable objects similar to the objects of the Company;
 - (ii) whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Article 6;
 - (iii) who is charitable at law; and
 - (iv) if the Company or the Company operates a fund that is or has been endorsed as a DGR, to an entity or fund that is endorsed or entity that operates a fund endorsed as a DGR under the same DGR category as the Company.
- (b) if there are no bodies corporate, associations or institutions which meet the requirements of Article 61(a), to one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Members by resolution at or before dissolution of the Company, the objects of which are the promotion of charity and that has DGR endorsement; or
- (c) if the Members do not make a selection pursuant to Article 61(a) or 61(b) for any reason, to one or more bodies corporate, associations or institutions meeting the requirements of either Article 61(a) or 61(b) selected by the Board, subject to Board obtaining court approval pursuant to the Corporations Act to exercise this power.