

Constitution

NSW Business Chamber Limited
ACN 000 014 504

Constitution

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Preliminary

1. Defined terms

1.1 In this Constitution:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), and any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or national education body or otherwise for the not-for-profit sector, and includes:

- (a) any regulations made under that Act or any other such legislation; and
- (b) any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Company.

AGM means the annual general meeting of the Company held in accordance with clause 17.

Applicable Not-for-profit Law means any law relating to the regulation of charities or not-for-profit entities applicable to the Company, including each of the ACNC Act, the Charities Act, the Charitable Fundraising Act, the Tax Act and section 150 of the Corporations Act.

Appointed Directors has the meaning given to that term in clause 34.1(c).

Associate Member means a Member appointed or admitted to membership in accordance with clause 11.

Auditor means the Company's auditor or Reviewer (as the case may be).

Board means the board of Directors of the Company.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales.

Chairperson means the person who chairs the relevant meeting, as appointed in accordance with this Constitution.

Charitable Fundraising Act means the *Charitable Fundraising Act 1991* (NSW) and any equivalent legislation in any State or Territory as may be applicable to the activities of the Company from time to time.

Charities Act means the *Charities Act 2013* (Cth).

Chief Executive Officer means the person appointed from time to time as such whether with that title or otherwise, by the Board under this Constitution.

Company means NSW Business Chamber Limited ACN 000 014 504.

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

Corporations Act or **Corporations Law** means the *Corporations Act 2001* (Cth) as amended, modified or re-enacted from time to time.

Council means the Council as constituted by clause 48 of the Constitution and includes all Councillors of the Company for the time being or a quorum of the Councillors present at a Council meeting.

Council Election Meeting means a meeting of the Council (at which Elected Directors are elected) following an Election AGM.

Councillor means a Representative of a Voting Member appointed to the Council.

Director means a person occupying the position of director of the Company.

Effective Time means the commencement of the first Council Election Meeting after the adoption of this Constitution (scheduled for February 2020).

Elected Director has the meaning given to that term in clause 34.1(b).

Election AGM has the meaning given to that term in clause 56.1.

Government Agency includes any governmental, semi-governmental, municipal or statutory authority, instrumentality, organisation, body or delegate (including any town planning or development authority, public utility, environmental, building, health, safety or other body or authority) having jurisdiction, authority or power over or in respect of the Company or a subsidiary.

Honorary Member means a Member appointed or admitted to membership in accordance with clause 12.

Imported Provisions means the following provisions of the Corporations Act:

- (a) Section 139 (*Company must send copy of constitution to member*);
- (b) Divisions 1 to 7 of Part 2G.2 (*meetings of members of companies*); and
- (c) Part 2G.3 (*minutes and members' access to minutes*).

Member means a member of the Company and includes each Associate Member, Honorary Member and Voting Member from time to time.

Member Elected Councillor means a Representative of a Voting Member who is elected as a Councillor from and by the Members of the Company in accordance with clause 57.

Objects means the objects of the Company set out in clause 3.

Office means the registered office for the time being of the Company.

Office Bearer means a person holding the office of President or Vice President.

President means a person elected pursuant to this Constitution to the office of President.

Region means a geographic region as determined from time to time by the Board.

Regional Charter means the charter for the Regional Councils, currently being a document titled 'NSWBC Regional Councils Charter' dated 16 February 2017 as amended, varied or replaced from time to time.

Regional Council means a body of Representatives of, and elected by, Members in the designated Region from time to time (if any).

Regional Councillor means a Representative elected from and by the Members of, to sit on the Regional Council for, a Region.

Regional Nominated Councillor means a Regional Councillor appointed to the Council in accordance with this Constitution.

Regional President means the president for the time being of a Regional Council, appointed by the Regional Council.

Register means the register of Members of the Company.

Registered Entity means a body corporate registered under the ACNC Act.

Representative means, for each Member who is:

- (a) a natural person, that person; or
- (b) not a natural person, a person appointed by that Member to act as its representative in accordance with clause 16.

Returning Officer means a person appointed to oversee an election in accordance with this Constitution, who will be the Secretary unless the Secretary appoints another person in the Secretary's place for the next election.

Reviewer means a reviewer under the ACNC Act.

Seal means the Company's common seal (if any).

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.

Tax Act means the *Income Tax Assessment Act 1997* (Cth) and includes any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

Threshold Amount has the meaning given to that term in clause 25.1.

Vice President means a person elected pursuant to this Constitution to the office of Vice President.

Voting Member means a Member who, in accordance with the terms of this Constitution, is entitled to vote at a general meeting.

2. Interpretation

2.1 In this Constitution, except where the context otherwise requires:

- (a) a word or expression in a clause has the same meaning as in the Corporations Act;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) headings are for ease of reference only and do not affect interpretation;
- (e) 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;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (h) a reference to time is a reference to New South Wales, Australia time;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (j) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

General

3. Objects

The objects of the Company are:

- (a) Principally to promote the development of manufacturing, industry, trade and commerce in Australia.
- (b) Principally to promote, encourage, maintain, support and assist manufacturing and other producing industries and trade and commerce throughout Australia.
- (c) Principally, to promote, advance and protect the interests (including the industrial interests) of the Company's members so as to further the outcomes and potential of the Australian business and industry community.
- (d) To promote, support and service trade and commerce between Australia and other nations of the world.
- (e) To represent manufacturing and other producing industries and their products at State and National level.
- (f) To contribute to the development and promotion of efficient and competitive manufacturing in Australia for export enhancement.
- (g) To promote and maintain, in a lawful manner, co-operation, collaboration and close relations with Australian Business Industrial.
- (h) To improve either abroad or within Australia the relations of members of the Company with their employees or with producers, distributors and consumers of Australian products and manufactures, insofar as those interests align with the Company's goal of furthering the outcomes and potential of the Australian business and industry community.
- (i) To promote all forms of education and training in order to encourage and preserve skills and to train and instruct in manufacturing and other producing industries and trade and commerce.
- (j) To assist members of the Company and businesses in relation to matters concerning workplace health and safety, insofar as those interests align with the Company's goal of furthering the outcomes and potential of the Australian business and industry community.
- (k) To secure to members of the Company all the advantages of unity of action and to protect the interests of members in any manner whatsoever in all matters relating to the manufacturing and other producing industries and trade and commerce, insofar as those interests align with the Company's goal of furthering the outcomes and potential of the Australian business and industry community.
- (l) To secure proper representation for the furtherance of manufacturing and other producing industries and trade and commerce.
- (m) To promote or oppose legislative and other measures affecting or likely to affect manufacturing and other producing industries and trade and commerce.
- (n) To prosecute or defend any suits, applications or proceedings before any court, tribunal or like body whatsoever as may be deemed necessary or expedient in the interests of all or any of the Company or its members, insofar as those interests align with the Company's goal of furthering the outcomes and potential of the Australian business and industry community.
- (o) To bring or refer matters to and represent members, employers and interested persons before the Industrial Relations Commission of New South Wales or such other arbitral tribunals or courts, Federal or State, as may from time to time exercise like jurisdiction to that of that Commission, the High Court of Australia, any Supreme Court, any County, District or Local Court, Boards of Reference, Inquiries, Commissions, Royal Commissions

and other tribunals, courts, arbitrators, conciliation committees, mediators and bodies, and to represent members and/or interested persons at conferences, meetings and discussions with government instrumentalities unions and other bodies of employees or employers, insofar as those interests align with the Company's goal of furthering the outcomes and potential of the Australian business and industry community.

- (p) To enter into agreements and contracts with organisations, associations or companies with the object of assisting in any lawful manner members or groups or sections of members of the Company or employers or groups or sections of employers generally against the consequences of industrial disputes or industrial action, or of awards, determinations, agreements or prescriptions, on the basis that these actions align with the Company's goal of furthering the outcomes and potential of the Australian business and industry community.
- (q) To establish, subsidise, promote, co-operate with, receive into union or affiliation, subscribe and donate to, become a member of, control, manage, superintend, lend or give monetary assistance to or otherwise aid organisations incorporated or not incorporated within the Commonwealth of Australia or elsewhere which might further the objects of the Company.
- (r) To promote, encourage, maintain, support and assist research and development activities including scientific research as defined in Section 73A of the *Income Tax Assessment Act 1936* (Cth) as amended.
- (s) To act as trustee of trusts and funds established for attaining any of the objects of the Company.
- (t) To do things incidental or convenient in relation to the advancement of the objects contained in this clause 3.

4. Income and property

The income and property of the Company whencesoever derived, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution; and no portion of the income and property shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to the members of the Company. Provided that nothing herein shall prevent the payment, in good faith of reasonable remuneration to Councillors and Directors or servants of the Company or to any Member of the Company in return for any services actually rendered to the Company or repayment of out-of-pocket expenses incurred on behalf of the Company or for goods supplied in the ordinary and usual way of business nor prevent the payment of interest at a rate not exceeding the rate for the time being fixed for the purpose of this clause by the Constitution on money borrowed from any Members of the Company or reasonable and proper rent for premises demised or let by any Member to the Company and further provided that the Chief Executive Officer of the Company shall not be prohibited from acting in the capacity of Managing Director of the Company should the Chief Executive Officer be appointed the Managing Director in accordance with this Constitution.

For the purposes of this clause, the rate of interest in respect of money lent by Members to the Company (if any) must not exceed the lowest rate paid on the commensurate amounts for the time being by the Commonwealth Bank of Australia in respect of term deposits.

5. Property on winding up

If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Company and which is exempt from income tax and whose Constitution shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 4 of this Constitution, such institution or institutions to be determined by the

members of the Company at or before the time of the dissolution and in default thereof by application to the Supreme Court of New South Wales for determination.

6. Disposal of major assets

6.1 The Company must not complete any agreement to:

- (a) dispose of the whole or the majority of any Major Asset; or
- (b) merge the Company with any other organisation, association or body,

unless and until the Company, as directed by the Board, has provided the Council with at least 28 days' notice of its intention to complete such an agreement.

6.2 For the purposes of this clause 6, **Major Asset** means an asset used in the operation of the Company's business which was, in the Company's accounts as at the end of the preceding financial year, recorded as having a value exceeding 25% of the Company's total net assets. For the avoidance of doubt, assets and investments owned by the Company that are not used in the operation of the Company's business in the ordinary course (for example, financial investments managed by or on behalf of the Company) do not constitute Major Assets for the purposes of this clause 6.

7. Application of the Corporations Act

7.1 If, while the Company is a Registered Entity, the Corporations Act operates such that an Imported Provision does not apply to the Company because the Company is a Registered Entity:

- (a) a clause in the same terms as the Imported Provision, along with any relevant definitions in the Corporations Act, is deemed to be included in this Constitution and to apply to the Company to the extent the Imported Provision would have applied to the Company were the Company not a Registered Entity (**Equivalent Clause**); and
- (b) a reference in this Constitution to an Imported Provision is deemed to be a reference to the Equivalent Clause.

7.2 The provisions of the Corporations Act that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.

7.3 For the purposes of this Constitution, if the provisions of the Corporations Act or the ACNC Act conflict with the terms of this Constitution on the same matter, the provisions of the relevant Act prevail to the extent of the conflict.

8. Applicable Not-for-profit Law

For so long as the Company is a Registered Entity, the Company will comply with the Applicable Not-for-profit Laws.

9. Amendment of this Constitution

A special resolution altering or adding to or omitting clauses 3(a) or 3(b), 4, 5, or this clause of the Company's Constitution or clauses 71 and 72 of the Company's Constitution (the "**Entrenched Provisions**") does not have any effect unless and until that special resolution is passed at a general meeting of members by a majority that:

- (a) together holds at least seventy five percent (75%) of the votes in the Company;

- (b) comprises at least seventy five percent (75%) of the Members whether those holders vote personally, by proxy or attorney or (in the case of a body corporate) by representative; and where;
- (c) the notice convening the meeting at which the special resolution is to be proposed is given not less than twenty one (21) days before the date that meeting is to be held and sets out that in the opinion of all the Directors of the Company and the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other Judge of that Court as may have or acquire jurisdiction that it is in the interests of the Company as a whole for that special resolution to be passed bearing in mind the history of the Company and the fundamental importance of the Company's role in promoting the development of manufacturing, industry, trade and commerce in Australia and the prohibition against members receiving any profits of the Company; and
- (d) the meeting at which that special resolution is to be proposed transacts no business other than the consideration of the special resolution.

Membership of the Company

10. Eligibility and classes of membership

- 10.1 Any person is eligible to be admitted to membership if, in the opinion of the Board acting in its absolute discretion, that person is a bona fide employer of labour or engaged in manufacturing or the development and advancement of Australian industry, trade or commerce. This clause does not apply to persons who the Board determines are to be admitted as Honorary Members.
- 10.2 The Board may in its absolute discretion establish new classes or categories of membership and vary the terms and conditions of membership (subject to clause 10.3), including:
- (a) the eligibility criteria for membership;
 - (b) the duration of membership;
 - (c) the amount of, and payment arrangements for, any membership fees (if any) or levies (if any);
 - (d) categories or classes of membership; and
 - (e) the applicable combination of rights and privileges, including:
 - (i) to attend, be represented and vote at meetings of Members;
 - (ii) to appoint a Representative in accordance with clause 16; or
 - (iii) to hold office in the Company.
- 10.3 The Board may only vary or cancel the rights of Members in a class of Members, if it first complies with the following procedure:
- (a) the Board must resolve to vary or cancel the rights of Members in that class; and
 - (b) the Board must ensure that the Company provides Members in that class with at least 14 days' notice prior to the variation or cancellation of those Members' rights.
- 10.4 The rights and privileges of membership of the Company are personal to each Member and are not transferable by the Member's own act or, to the extent permitted by law, by operation of law.

11. Associate Members

- 11.1 Associate Members may be admitted by the Board from time to time.
- 11.2 A person who is admitted as an Associate Member is not a Voting Member, unless the Board resolves otherwise.

12. Honorary Members

- 12.1 A person may be admitted as an Honorary Member if in the opinion of the Board (acting in its absolute discretion) that person has provided distinguished services to the Company or has otherwise displayed special characteristics warranting such esteemed membership.
- 12.2 Subject to the Honorary Member's consent, Honorary Members are admitted from time to time by the Board and each President will, upon ceasing to hold such office, be admitted as an Honorary Member for life, unless the Board unanimously resolves otherwise.
- 12.3 An Honorary Member:

- (a) is not required to pay any membership fee or other levies;
- (b) who is an individual may be a Representative of another Member; and
- (c) is not a Voting Member, unless the Board resolves otherwise.

13. Applications for membership

13.1 Applications for membership of the Company must:

- (a) be in writing (whether in electronic form or another medium);
- (b) include an acknowledgment by the applicant that the applicant agrees to be bound by this Constitution; and
- (c) otherwise be in a form acceptable to the Board.

13.2 The Board may determine from time to time, in its absolute discretion, the process for determining membership applications and admitting successful applicants to membership.

13.3 If a membership application is rejected, the Company must notify the applicant of the decision within a reasonable time and refund to the applicant any monies paid to the Company in connection with the membership application.

13.4 An applicant will become a Member upon entry into the Register.

14. Membership fees and levies

14.1 The Board's determination as to the amount of membership fees (if any) payable may differ across classes or categories of membership.

14.2 The Board may from time to time resolve to impose a levy on Members on such basis as may, in their opinion, be considered just and equitable for the purpose of providing necessary funds to promote the Objects. Subject to clause 12.3, any such resolution will be binding on all Members provided that in no event will a Member's liability in respect of any such levy or levies exceed in any financial year an amount equal to that Member's membership fees (if any) for that financial year (with such levy to be paid in addition to their liability to pay membership fees).

14.3 If the Board resolves to impose a levy on Members, the Company may at any time by notice require payment of the amount of that levy by a date being not less than 30 days after the date of the notice.

14.4 The Board may provide for the pro-ration of the membership fees or levy of any Member admitted during a financial year.

14.5 The Board may from time to time suspend or waive payment of the membership fees and/or levies in favour of any Member or class of Members.

15. Cessation of membership

15.1 A Member's membership of the Company will immediately cease:

- (a) upon the Company receiving a notice of resignation from the Member, unless the notice is specified as taking effect at a future time, in which case the notice will take effect upon the earlier of:
 - (i) that future time; or
 - (ii) 90 days from when the Company receives the notice;

- (b) if the Member becomes (in the opinion of the Council) an untraceable Member because the person has ceased to reside at, attend or otherwise communicate with their registered address for a period exceeding 12 months;
- (c) if the Member no longer satisfies the membership eligibility criteria;
- (d) if the Member (being a natural person):
 - (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) files or is the subject of a petition for bankruptcy;
- (e) if the Member (not being a natural person) becomes insolvent, enters administration or makes any arrangement or composition with its creditors generally;
- (f) if the Member's membership fees (and/or levy), where payable, are in arrears for at least 90 days after having become due (unless the Council resolves otherwise); or
- (g) upon the conclusion of the Member's membership period (if any).

15.2 The Council may terminate the membership of any Honorary Member at any time acting in its absolute discretion.

15.3 Subject to clause 15.4, a Member's membership of the Company may be terminated by the Council if in the opinion of the Council, the Member:

- (a) has breached this Constitution; or
- (b) is guilty of any act, conduct or practice which is dishonourable or inconsistent with membership of the Company or is calculated to bring discredit on or to the Company or otherwise prejudicial or inimical to the interests of the Company.

15.4 Before forming an opinion under clause 15.3:

- (a) the Company must provide the Member with at least 30 days' notice of the Council meeting at which the allegation will be considered, such notice including:
 - (i) the time and place of the meeting;
 - (ii) details of the allegation against the Member;
 - (iii) details of the proposed resolution of the Council;
 - (iv) advice that the Member has the right to give any oral or written explanation or defence that they may think fit at the Council meeting; and
 - (v) advice that the Council's resolution will be final and binding; and
- (b) the Council must give the Member a reasonable opportunity to give an oral or written explanation or defence in relation to the allegation at that meeting.

15.5 The cessation or termination of a Member's membership will not affect that Member's liability for any amounts owed to the Company by that Member prior to cessation or termination.

16. Representatives

16.1 A Member (not being a natural person) may by written notice to the Company:

- (a) appoint an individual (who must be a partner, director, officer or employee of the Member) to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
- (b) remove, substitute and replace a Representative.

- 16.2 Any appointment as a Representative will cease automatically if the relevant person ceases to be a partner, director, officer or employee of the Member.
- 16.3 A Member is bound by the actions of its Representative and if the Member is a Voting Member, its Representative is entitled to:
- (a) exercise at the relevant general meeting all the powers which the Member could exercise if it were a natural person; and
 - (b) be counted towards a quorum on the basis that the Member is considered to be personally present at the general meeting.
- 16.4 A Member may only appoint one Representative at any given time.
- 16.5 The appointment of a Representative may set out restrictions on the Representative's powers.

General meetings

17. AGM

- 17.1 A general meeting, called the AGM, must be held once in every calendar year at such time and place as may be determined by the Directors.
- 17.2 While the Company is a Registered Entity, the Chairperson of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about, and make comments on, the management of the Company.
- 17.3 The business of an AGM must be to:
- (a) receive the Company's annual financial statements, including the Directors' report;
 - (b) receive the Auditor's report in respect of the Company's financial statements;
 - (c) where applicable, elect, or confirm the appointment of, relevant Member Elected Councillors;
 - (d) where applicable, confirm the election of relevant Regional Nominated Councillors;
 - (e) appoint Auditors (if necessary);
 - (f) take any action described in this Constitution as being part of the business of the Company's AGM; and
 - (g) transact any and all other business included in the notice convening the AGM.

18. Calling a general meeting

- 18.1 Any Director may, at any time, call a general meeting in accordance with the Corporations Act and must do so if requested by the Council. A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 18.2 A Member may not request or call and arrange to hold a general meeting except under sections 249D - 249F of the Corporations Act.

19. Notice of general meeting

- 19.1 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) of any general meeting must be given to each Member and any other person entitled to receive such notice from the Company.
- 19.2 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 nature of all business proposed to take place during the meeting;
 - (c) may specify a place and electronic address for the purposes of proxy appointment; and
 - (d) if a special resolution is to be proposed at the meeting, must specify an intention to propose the special resolution and state the resolution.
- 19.3 The Board may change the venue of, or postpone or cancel any general meeting (other than a meeting called as the result of a Members' requisition under clause 18.2) at any time prior to the time scheduled for the commencement of the meeting.

- 19.4 The Company must give notice of the postponement or cancellation or change of venue of a general meeting to all persons entitled to receive notice of a general meeting.
- 19.5 An accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.
- 19.6 Notice of every general meeting must also be given to every Director and the Auditor (if any).

20. Business at general meetings

- 20.1 A general meeting cannot consider matters not included in the notice convening the meeting, unless:
- (a) the Chairperson so consents; or
 - (b) notice of such matters has otherwise been provided in accordance with the Corporations Act.
- 20.2 No person may request any amendment to a resolution proposed at a general meeting the terms of which are set out in the notice convening the meeting, or to a document which relates to such a resolution (and a copy of which has been sent to Members or made available for them to inspect or obtain), without the approval of the Chairperson (in his or her discretion).
- 20.3 No resolution passed by a meeting of Members of the Company will invalidate any prior act of the Council or the Board which would have been valid if that resolution had not been passed.

21. Quorum

- 21.1 No business may be transacted at a general meeting unless a quorum is present when the meeting proceeds to business.
- 21.2 A quorum is any 10 Representatives of Voting Members.
- 21.3 If a quorum is not present within 15 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 the day, time and place determined by the Directors present or otherwise the same time and place seven days after the meeting; and
 - (ii) if at the adjourned general meeting a quorum is not present within 15 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

22. Chairperson

- 22.1 The President will be the Chairperson, and the Vice President will be the deputy Chairperson, at every general meeting. In the Chairperson's absence, the deputy Chairperson will Chair the meeting.
- 22.2 If, at a general meeting:
- (a) there is no Chairperson or deputy Chairperson;

- (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,

the Representatives of Voting Members may elect one of those Representatives present as Chairperson.

23. Conduct at general meetings

- 23.1 Subject to applicable laws and this Constitution, the general conduct and procedures of each general meeting will be determined by the Chairperson.
- 23.2 If there is a dispute at a general meeting about a question of procedure, the Chairperson may determine the question.

24. Adjournment

- 24.1 The Chairperson of a quorate general meeting:
 - (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.
- 24.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 24.3 The only business that can be transacted at any adjourned general meeting is the unfinished business of the initial general meeting.
- 24.4 Notice of an adjourned general meeting must only be given in accordance with clause 19.1 if a general meeting has been adjourned for more than 30 days.

Voting at general meetings

25. Voting Members and entitlement to vote

- 25.1 The Board may:
- (a) in respect of a financial year or rolling 12-month or other period, set a minimum amount that a Member (whether generally or in a particular class or category of membership) must have paid to the Company (by way of fees for products or services provided by or on behalf of the Company or a related body corporate) in order to be a Voting Member (**Threshold Amount**); and
 - (b) vary a Threshold Amount.
- 25.2 If the Board sets or varies a Threshold Amount, it must notify the Council and the Members of the level of the Threshold Amount along with any other relevant information (for example, the period, or types of payments, to which the Threshold Amount relates or applies).
- 25.3 Clause 25.1 does not limit the Board from giving voting rights to Members generally, or in a particular class or category of membership, on such other terms and conditions as it considers appropriate.
- 25.4 At any time, if the Board has:
- (a) set a Threshold Amount (whether generally or in respect of a particular class or category of membership), those Members to whom the Threshold Amount applies and who have paid an amount equal to the Threshold Amount will be Voting Members;
 - (b) not set a Threshold Amount, only those Members in respect of whom the Board has determined will have voting rights and whose membership fees (if any) are not in significant arrears will be Voting Members; and
 - (c) set a Threshold Amount in respect of a particular class or category of membership (**Relevant Class**), those Members who are not in the Relevant Class in respect of whom the Board has determined will have voting rights and whose membership fees (if any) are not in significant arrears will be Voting Members.
- 25.5 A Member's membership fees will be in significant arrears if they have been outstanding for more than 60 days at the relevant time.

26. Decisions

- 26.1 Each Voting Member is entitled to one vote on a resolution of Members.
- 26.2 Subject to the Corporations Act, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 26.3 A resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 26.4 Unless a poll is so demanded:
- (a) a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously or by a specified majority, or lost; and
 - (b) an entry to that effect in the book containing the minutes of the proceedings of the Company,

are conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

26.5 The demand for a poll may be withdrawn.

26.6 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

27. Taking a poll

27.1 If a poll is duly demanded under clause 26.3, a poll will be taken when and in the manner that the Chairperson directs.

27.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

27.3 The Chairperson may determine any dispute about the admission or rejection of a vote.

27.4 The Chairperson's determination, if made in good faith, will be final and conclusive.

27.5 A poll demanded on the election of a Chairperson or on the question of adjournment must be taken immediately.

27.6 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.

28. Casting vote of Chairperson

In the case of equality of votes on any given decision, the Chairperson has a casting vote in addition to his or her vote as a Member or proxy.

29. Objections

29.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the person tendered his or her vote.

29.2 An objection must be referred to the Chairperson of the general meeting, whose decision is final.

29.3 A vote which the Chairperson does not disallow because of an objection is valid for all purposes.

30. Votes by proxy

30.1 A Voting Member may vote in person or by proxy.

30.2 If a Voting Member appoints a proxy, that proxy may only vote on a poll (not on a show of hands). A proxy may demand or join in demanding a poll.

30.3 A proxy may, but need not, be a Member.

30.4 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, the proxy will be deemed to have voted all directed proxies in the manner directed.

30.5 The Chairperson may require any person acting as a proxy to establish to the satisfaction of the Chairperson (acting in his or her absolute discretion) that they are the person nominated as the

proxy in the document lodged under this Constitution. If the person is unable to establish their identity they may be excluded from voting.

- 30.6 If a Voting Member appoints a proxy in relation to a general meeting and the Voting Member attends that meeting, the proxy will not be revoked, however the proxy cannot vote if the Voting Member does.

31. Instrument appointing proxy

- 31.1 An instrument appointing a proxy is valid if it is signed by the Voting Member making the appointment and contains the information required by section 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.
- 31.2 For the purposes of clause 31.1, an appointment received at an electronic address will be taken to be signed by the Member if the appointment has been verified in a manner approved by the Directors.
- 31.3 A proxy's appointment is valid at an adjourned general meeting.
- 31.4 A proxy may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 31.5 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.
- 31.6 If a proxy appointment is signed by the Voting Member but does not name the proxy or proxies in whose favour it is given, the Chairperson may either act as proxy or nominate a Director to do so.
- 31.7 An instrument appointing a proxy may provide for the Chairperson to act as proxy if the nominated proxy fails to attend.

32. Lodgement of proxy

- 32.1 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.
- 32.2 The Company receives an appointment of a proxy when they are received at:
- (a) the Company's registered office; or
 - (b) a place or e-mail address specified for that purpose in the notice of meeting.

33. Validity

A vote cast by a validly appointed proxy remains valid even if before the vote was cast the appointor:

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

unless written notification of the death, mental incapacity or revocation was received by the Company at least 48 hours before the relevant general meeting or adjourned general meeting.

The Board

34. Composition and eligibility

- 34.1 The Board will consist of not less than eight and not more than 10 persons comprising:
- (a) the Office Bearers elected by the Council;
 - (b) up to six Member Elected Councillors elected by the Council (**Elected Directors**); and
 - (c) up to two persons appointed by the Board (**Appointed Directors**).
- 34.2 An Office Bearer must be a Member Elected Councillor or Appointed Director and have held office as an Elected Director or Appointed Director for at least two years at the time of his or her election as an Office Bearer.

35. Term of appointment

- 35.1 Subject to the remaining provisions of this Constitution:
- (a) a person elected as an Office Bearer will hold office for:
 - (i) a term of four years as a Director, regardless of whether or not that person is approved for a consecutive term in accordance with clause 35.1(a)(iii);
 - (ii) an initial term of two years as Office Bearer; and
 - (iii) a consecutive term of up to two years as Office Bearer if and as approved by the Board (and if so approved, then subject to re-election in accordance with clause 37);
 - (b) an Elected Director will hold office for a period of four years; and
 - (c) an Appointed Director will hold office for a period of up to four years as determined by the Board at the time of appointment.
- 35.2 At the end of a Director's term, he or she may be re-appointed or re-elected (as the case may be) subject to the following limits:
- (a) a person may be appointed or elected to the Board (in any capacity including as an Office Bearer) for an aggregate maximum period of 12 years; and
 - (b) following the expiry of an Office Bearer's initial term (as provided for by clause 35.1(a)(ii)) he or she may only be an Office Bearer for one consecutive term of up to two years,
- provided that any time a Director has spent filling a casual Office Bearer vacancy is not to be included in counting the time that the person has served for the purposes of clause 35.2(b).

36. Retirement of Elected Directors

- 36.1 The President must convene a Council Election Meeting within three months of an Election AGM.
- 36.2 At each Council Election Meeting:
- (a) at least one-half of the Elected Directors must retire (rounding up if there are an odd number of Elected Directors); and
 - (b) Elected Directors are to be elected (or re-elected) to fill any resultant vacancies.
- 36.3 Elected Directors must retire as follows:

- (a) the Elected Directors who have been Elected Directors for a period of four years since their last election, must retire;
 - (b) if the operation of clause 36.3(a) results in less than one-half of the Elected Directors retiring, then so many of the longest serving Elected Directors who were appointed to fill a casual vacancy must retire as are needed to satisfy the requirement in clause 36.2(a); and
 - (c) if the operation of clauses 36.3(a) and 36.3(b) results in less than one-half of the Elected Directors retiring, then so many of the longest serving Elected Directors (counting aggregate years served) must retire as are needed to satisfy the requirement in clause 36.2(a).
- 36.4 If the operation of clause 36.3(b) or 36.3(c) results in the number of relevant Elected Directors required to retire under the applicable clause exceeding the number of Directors required to retire under clause 36.2(a) (on account of two or more Elected Directors' tenure in office being the same), then the Returning Officer will determine by lot which of those Elected Directors' whose tenure is the same is required to retire.
- 36.5 Vacant Elected Director positions which, if occupied, would be captured by clause 36.3(a), will be deemed to be included in the number of Elected Directors required to retire under clause 36.2(a).

37. Election of Office Bearers and Elected Directors

- 37.1 The Council must undertake a process to fill:
- (a) at each Council Election Meeting, vacancies of Elected Directors; and
 - (b) at a Council meeting, a vacancy of an Office Bearer (including, where an Office Bearer's initial term has expired and the Board has approved a consecutive term in accordance with clause 35.1(a)(iii), and a casual vacancy) or a casual vacancy of an Elected Director as soon as reasonably practicable after the vacancy arises.
- 37.2 The election of Elected Directors and Office Bearers will be conducted at a Council meeting in the following manner unless the Council determines otherwise:
- (a) before the relevant Council meeting:
 - (i) the Returning Officer will appoint two scrutineers;
 - (ii) the Returning Officer must send a notice to all Councillors and Appointed Directors calling for nominations for the relevant positions;
 - (iii) nominations for the vacancies must be:
 - (A) submitted to the Returning Officer by a date specified by the Returning Officer which must be at least 30 days before the meeting;
 - (B) signed by the candidate and at least two Councillors in support of the nomination (excluding the candidate being nominated); and
 - (C) in accordance with any other requirements of the Council as prescribed from time to time; and
 - (iv) the Company must provide to the candidates the contact details of all existing Councillors; and
 - (b) at the meeting:
 - (i) where both Office Bearer and Elected Director positions are to be filled, the election process for the Office Bearer(s) will be held first followed by the election of Elected Directors; and
 - (ii) each candidate must receive the approval of a majority of the Council (based on the number of Councillors present at the commencement of the election process) in order to continue with the election process;

- (c) if the number of candidates approved under clause 37.2(b)(ii) is:
 - (i) fewer or equal to the number of relevant vacancies to be filled, those candidates will be deemed as elected; or
 - (ii) greater than the number of relevant vacancies to be filled, the election of the positions will take place; and
- (d) if an election is required, the Returning Officer must:
 - (i) distribute the ballot papers (or other electronic voting instructions);
 - (ii) count the votes cast (in the presence of the scrutineers);
 - (iii) for any candidates who receive an equal number of votes:
 - (A) hold a second vote; and
 - (B) for any candidates who receive an equal number of votes in the second vote, determine which candidate is to be elected by lot; and
 - (iv) declare as elected, the candidates with the most votes as are required to fill the vacancies,

and undertake other such processes determined by the Council or the Returning Officer from time to time.

37.3 All decisions taken by the Returning Officer will be final and binding in respect of any matter involving the validity or formality of any nomination, vote or other matter involving the election.

38. Appointment of Appointed Directors

The Board may at any time and after following any process of nomination and appointment it considers appropriate, appoint any, and replace any retiring, Appointed Directors.

39. Casual vacancies

39.1 The Council may elect an eligible person to fill a casual vacancy of the Board (other than a vacancy arising from the removal or retirement of an Appointed Director) in accordance with clause 37.

39.2 A person appointed to fill a casual Office Bearer vacancy will hold office as a Director and Office Bearer up until, and must retire at, the next Council Election Meeting.

40. Removal of Directors

40.1 Any Director may retire or resign from that office by giving notice in writing to the Company of the Director's intention to do so. Such retirement or resignation will take effect immediately unless the notice specifies a future time for such notice taking effect, in which case the notice will take effect upon the earlier of:

- (a) that future time; or
- (b) 90 days from the Company receiving the notice.

40.2 A person ceases to be a Director if:

- (a) he or she dies;
- (b) he or she is absent from meetings of the Board for a continuous period of three consecutive meetings of the Board or six months without leave of absence from the Board and the Council thereupon declares the Director's seat to be vacant;

- (c) he or she becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) he or she becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (e) he or she becomes ineligible to be a Director of the Company under:
 - (i) the Corporations Act; or
 - (ii) the ACNC Act while the Company is a Registered Entity;
- (f) he or she is an Elected Director, or an Office Bearer who is not also an Appointed Director, and ceases to be a Member Elected Councillor (subject to clause 40.3);
- (g) he or she is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act or the ACNC Act while the Company is a Registered Entity; or
- (h) in the opinion of the majority of the Council (such opinion not being determined until such Director has been afforded a reasonable opportunity of being heard in their defence):
 - (i) has infringed any of the provisions of this Constitution; or
 - (ii) is guilty of any prior or contemporaneous conduct, proceeding or practice which the Council considers:
 - (A) to be dishonourable;
 - (B) to be inconsistent with the Director's position as a member of the Board; or
 - (C) to be calculated to bring discredit on the Company;
 - (D) brings the Company into disrepute; or
 - (E) to be otherwise inimical to the interests of the Company or a subsidiary of the Company.

40.3 A Director (other than an Appointed Director) who is up for election as a Member Elected Councillor but is not re-elected at an Election AGM will retain his or her Board position until the next Council Election Meeting at which time he or she will retire.

Powers, duties and proceedings

41. Powers and duties

- 41.1 The business of the Company is managed 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 a general meeting.
- 41.2 Without limiting the generality of clause 41.1, 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; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 41.3 In addition to their responsibilities at law, each Director is responsible and accountable for compliance by the Company with its Objects and must:
- (a) exercise his or her powers and discharge his or her duties in compliance with the Corporations Act;
 - (b) comply with the Corporations Act in relation to the disclosure of the Director's interests; and
 - (c) at all times while the Company is a Registered Entity, comply with the duties described in governance standard 5 of the regulations made under the ACNC Act.
- 41.4 The Members do not have the power to elect or appoint or fill a vacancy of Directors.

42. Proceedings of the Board

- 42.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 42.2 Reasonable notice of every Board meeting is to be given by the Company and:
- (a) must be given to each Director (other than to a Director that the Secretary believes is ordinarily resident in Australia, but temporarily outside Australia); and
 - (b) may be given in writing or in person, or the meeting may be otherwise called by email, telephone or any other technology;
- unless the Directors unanimously agree otherwise.
- 42.3 An accidental omission to give notice of a Board meeting to any Director or the non-receipt of such notice by a Director does not invalidate the proceedings at or any resolutions passed at the meeting.
- 42.4 Board meetings 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, subject to the Corporations Act.
- 42.5 Subject to this Constitution, a Director who participates in a Board meeting is taken to be present and entitled to vote at the meeting.

- 42.6 A quorum for a Board meeting is five Directors.
- 42.7 The President, or in his or her absence, the Vice President will be the Chairperson of each Board meeting unless neither is present or willing to act as Chairperson, in which case the Board will elect one of the Directors present as the Chairperson.
- 42.8 Questions arising at any Board meeting will be decided by a majority of votes of Directors present and entitled to vote, and each Director will have one vote. In the case of an equality of votes the Chairperson will have a second or casting vote.
- 42.9 The Directors may pass a resolution without a Board meeting being held if all the Directors 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. 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. The resolution is passed when the last Director signs.
- 42.10 Directors are not entitled to appoint another person to act as an alternate Director or proxy during their absence.
- 42.11 Subject to this clause 42, the Board may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

43. Payments to Directors and Councillors

- 43.1 Any financial benefit given to a related party of the Company (including one given under this clause 43) is subject to Chapter 2E of the Corporations Act.
- 43.2 The Directors and Councillors will be entitled to payment of up to an aggregated amount as resolved by the Council from time to time, or such other fees for their service as is decided at any time in any resolution passed by the Council. As at the date of this Constitution, the aggregate amount is up to \$1,200,000, per annum.
- 43.3 Fees payable under clause 43.2 will accrue from day to day and be:
- (a) allocated among the Directors and Councillors in any proportions agreed by the Board; and
 - (b) exclusive of any benefit provided by the Company to Directors or Councillors in compliance with any legislative scheme, including any superannuation guarantee or similar scheme, or any other benefit permitted by the Corporations Law or this Constitution.
- 43.4 Any Director may be engaged by the Company in any other capacity, other than as auditor. Any such Director:
- (a) may be paid a salary, wage or other form of remuneration under an employment or other engagement agreement (as applicable) with the Company, provided that such an agreement has been approved by the Directors; and
 - (b) is not to be paid fees under clause 43.2.
- 43.5 Any Director will be entitled to reimbursement for out of pocket expenses properly incurred by the Director in connection with the operation of the Company in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Directors and is substantiated or supported by appropriate documentation.
- 43.6 The Company may pay any special and additional remuneration as decided by the Board to any Director or Councillor, who performs any extra service, travelling or going to reside overseas or

makes any special effort for the benefit of the Company. Any special or additional remuneration must not compromise any commission on or percentage of profits, operating revenue or turnover.

44. Directors' interests

- 44.1 As required by the Corporations Act, the ACNC Act while the Company is a Registered Entity or this Constitution, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company.
- 44.2 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.
- 44.3 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.
- 44.4 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 44.5 Subject to clause 44.6, 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.
- 44.6 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, the ACNC Act while the Company is a Registered Entity or this Constitution or this Constitution 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.
- 44.7 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.

45. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director (including in relation to their entitlement to be appointed); or
- (b) a person appointed to one of those positions was disqualified,

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

46. Delegation and committees

46.1 The Board and the Council may delegate any of their powers, other than those which by law must be dealt with by those respective bodies, to:

- (a) a committee or committees (each a **Committee**);
- (b) a Director; or
- (c) an employee of the Company.

46.2 For the avoidance of doubt, the Board may also delegate any of its powers (other than those which, by law, must be exercised by it) to the Council.

46.3 The Board or the Council may (as appropriate) at any time revoke any delegation of power to a Committee.

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

46.5 A Committee must exercise its powers in accordance with any directions of the body from which it received the delegation and a power exercised in that way is taken to have been exercised by that delegating body.

46.6 A Committee may be authorised by the body from which it received the delegation to sub-delegate all or any of the powers for the time being vested in it.

46.7 Meetings of any 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 or determinations of the Directors. The provisions apply as if each member was a Director.

46.8 Nothing in this clause 46 prevents the Board from establishing an advisory committee.

The Council

47. Functions

The functions of the Council are to:

- (a) elect the Office Bearers and up to six Elected Directors;
- (b) act as principal advisory body of the Company and be responsible for advising the Board on issues affecting or likely to affect Members generally in relation to all matters relevant to the Objects of the Company;
- (c) exercise any powers delegated to it by the Board from time to time;
- (d) amend, repeal or replace the Regional Charter;
- (e) determine the number of Regional Nominated Councillors from time to time; and
- (f) exempt a Region from any need to have a Regional Council.

48. Composition

- 48.1 The Council will consist of not less than 30 and not more than 40 Councillors of which:
- (a) not less than 15 and not more than 20 will be Regional Nominated Councillors; and
 - (b) the remainder will be Member Elected Councillors.

48.2 Only the Representatives of Voting Members are eligible to be a Councillor.

48.3 A person who is a Regional Nominated Councillor may not be nominated as a Member Elected Councillor, without first resigning as a Regional Nominated Councillor (and vice versa).

49. Proceedings

49.1 Unless otherwise resolved, the Council will meet at least four times each calendar year at times and places determined by the President.

49.2 The President will determine the business of Council meetings.

49.3 The President must cause a report to be tabled at each Council meeting covering material updates in the Company's affairs since the last Council meeting.

49.4 A Council meeting:

- (a) may be convened by the President at any time; or
- (b) must be convened by the Secretary upon, and held within 14 days of, a request by at least 20% of Councillors,

at a time and a place as the President or Secretary (as applicable) determines, acting in his or her absolute discretion.

49.5 A quorum for a Council meeting is 10 Councillors attending personally or represented by proxy, or such other number as may be determined from time to time by the Council.

49.6 Reasonable notice of every Council meeting is to be given by the Company and:

- (a) must be given to each Councillor (other than to a Councillor that the Secretary believes is ordinarily resident in Australia, but temporarily outside Australia); and

- (b) may be given in writing or in person, or the meeting may be otherwise called by email, telephone or any other technology,

unless the Councillors unanimously agree otherwise.

49.7 The following persons are also entitled to attend, but not vote at, all Council meetings:

- (a) each Appointed Director (unless he or she is also a Councillor); and
- (b) the Honorary Members (unless he or she is also a Councillor),

and must be sent a notice of meeting at the same time as the Councillors.

49.8 At each Council meeting, the Chairperson will be:

- (a) the President or in his or her absence, the Vice President; or
- (b) if neither of them are present within 15 minutes after the time appointed for holding such meeting, or neither of them is willing be the Chairperson, the Councillors present may choose one of their number as a Chairperson of the meeting.

49.9 Subject to the provisions of this Constitution, questions arising at any Council meeting will be decided by a majority of votes and each Councillor attending personally, or represented by proxy, will have one vote. In the case of an equality of votes, the Chairperson will have a second or casting vote.

49.10 The Councillors may pass a resolution without a Council meeting being held if all the Councillors 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. Separate copies of a document may be used for signing by Councillors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Councillor signs.

50. Votes by proxy

50.1 A Councillor may only appoint a proxy if the notice convening the relevant Council meeting indicates an intention for the Council to vote on a matter at that upcoming meeting (other than voting on mere procedural matters such as approval of the minutes of the previous Council meeting).

50.2 A Councillor may vote in person or by proxy.

50.3 If a Councillor appoints a proxy, that proxy may only vote on a poll (not on a show of hands). A proxy may demand or join in demanding a poll.

50.4 A proxy must be a Councillor.

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

50.6 The Chairperson may require any person acting as a proxy to establish to the satisfaction of the Chairperson (acting in his or her absolute discretion) that they are the person nominated as the proxy in the document lodged under this Constitution. If the person is unable to establish their identity they may be excluded from voting.

50.7 If a Councillor appoints a proxy in relation to a Council meeting and the Councillor attends that meeting, the proxy will not be revoked, however the proxy cannot vote if the Councillor does.

51. Instrument appointing proxy

- 51.1 An instrument appointing a proxy is valid if it is signed by the Councillor making the appointment and contains:
- (a) the Councillor's name and address;
 - (b) the Company's name;
 - (c) the proxy's name or the name of the office held by the proxy; and
 - (d) the meeting at which the appointment may be used.
- 51.2 The Chairperson may determine that an appointment of proxy is valid even if it only contains some of the information required by clause 51.1.
- 51.3 A proxy's appointment is valid at an adjourned Council meeting.
- 51.4 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 Council 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 Council meeting whether or not the motion is referred to in the appointment.
- 51.5 If a proxy appointment is signed by the Councillor but does not name the proxy or proxies in whose favour it is given, the Chairperson may either act as proxy or nominate a Councillor to do so.
- 51.6 An instrument appointing a proxy may provide for the Chairperson to act as proxy if the nominated proxy fails to attend.
- 51.7 A Councillor must promptly comply with any request by the Company for:
- (a) a certified copy of the instrument appointing an attorney; and
 - (b) evidence that the power of attorney is effective and continues to be in force.

52. Lodgement of proxy

- 52.1 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 Council meeting or adjourned Council meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 52.2 The Company receives an appointment of a proxy when they are received at:
- (a) the Company's registered office; or
 - (b) a place or e-mail address specified for that purpose in the notice of meeting.

53. Validity of proxy

A vote cast by a validly appointed proxy remains valid even if before the vote was cast the appointor:

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

unless written notification of the death, mental incapacity or revocation was received by the Company at least 48 hours before the relevant Council meeting or adjourned Council meeting.

54. Removal of Councillors

54.1 Any Councillor may retire from office by giving notice in writing to the Company. Such retirement or resignation will take effect immediately unless the notice is specified as taking effect at a future time, in which case the notice will take effect at the earlier of:

- (a) that future time; or
- (b) 90 days from when the Company receives the notice.

54.2 A Councillor will cease to be a Councillor if that person:

- (a) ceases to be the Representative of a Voting Member for a period of 30 days or more;
- (b) is absent from three consecutive meetings of the Council (unless by leave of absence granted by the Council or through sickness or injury), and the Council resolves that the Councillor should cease to be a Councillor;
- (c) becomes ineligible to be a Director of the Company under:
 - (i) the Corporations Act; or
 - (ii) the ACNC Act while the Company is a Registered Entity;
- (d) becomes bankrupt or insolvent or makes an assignment for the benefit of their creditors or proposes to pay a compromise to their creditors;
- (e) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (f) is the Representative of a Voting Member that is a partnership or firm, if any partner in that partnership or firm becomes bankrupt or insolvent or makes an assignment for the benefit of their creditors or proposes to pay a compromise to their creditors, unless he or she becomes the Representative of another Voting Member within 30 days;
- (g) is the Representative of a Voting Member that is a corporation, organisation, incorporated association or unincorporated association, if that entity goes into liquidation otherwise than for the purposes of a solvent reconstruction, or makes any arrangement or composition with creditors generally, unless he or she becomes the Representative of another Voting Member within 30 days;
- (h) loses the entitlement to remain as a Councillor (for example, where a Regional Nominated Councillor ceases to be a Regional Councillor);
- (i) in the opinion of the majority of the Council (such opinion not being determined until such Councillor has been afforded a reasonable opportunity of being heard in their defence):
 - (i) has infringed any of the provisions of this Constitution; or
 - (ii) is guilty of any prior or contemporaneous conduct, proceeding or practice which the Council considers:
 - (A) to be dishonourable;

- (B) to be inconsistent with the Councillor's position as a member of the Council; or
 - (C) to be calculated to bring discredit on the Company;
 - (D) brings the Company into disrepute; or
 - (E) to be otherwise inimical to the interests of the Company or a subsidiary of the Company;
- (j) that person is the Representative of a Member whose membership fees, where payable, are 60 days or more in arrears unless the Council resolves to reinstate the Councillor following payment in full of the arrears; or
 - (k) is otherwise required to cease being a Councillor by this Constitution from time to time.

54.3 In addition to clause 54.2, the Members of the Company may remove any Councillor from the Council if they pass a special resolution stating that they are of the opinion that the Councillor:

- (a) has infringed any of the provisions of this Constitution; or
- (b) is guilty of any prior or contemporaneous conduct, proceeding or practice which the Council may consider to be:
 - (i) dishonourable;
 - (ii) inconsistent with the Councillor's position as a member of the Council; or
 - (iii) calculated to bring discredit on the Company, bring the Company into disrepute or be otherwise inimical to the interests of the Company,

such a special resolution not to be passed unless the Councillor:

- (c) has been given 14 days' notice of the grounds upon which the special resolution is to be put; and
- (d) is afforded a reasonable opportunity to present submissions to the Members' meeting prior to it considering the special resolution.

Member Elected Councillors

55. Term

- 55.1 Subject to the provisions of this Constitution, a Member Elected Councillor will hold office for a period of four years.
- 55.2 At the end of a Member Elected Councillor's term, he or she may be re-elected.

56. Retirement

- 56.1 At each AGM in an odd numbered calendar year (**Election AGM**):
- (a) at least one-half of the Member Elected Councillors must retire (rounding up if there are an odd number of Member Elected Councillors); and
 - (b) new Member Elected Councillors are elected (or re-elected) to fill any resultant vacancies.
- 56.2 Member Elected Councillors must retire as follows:
- (a) the Member Elected Councillors who have been Councillors for a period of four years since their last election, must retire;
 - (b) if the operation of clause 56.2(a) results in less than one-half of the Member Elected Councillors retiring, then so many of the longest serving Member Elected Councillors who were appointed to fill a casual vacancy must retire as are needed to satisfy the requirement in clause 56.1(a); and
 - (c) if the operation of clauses 56.2(a) and 56.2(b) results in less than one-half of the Member Elected Councillors retiring, then so many of the longest serving Member Elected Councillors (counting aggregate years served) must retire as are needed to reach the required one-half.
- 56.3 If the operation of clause 56.2(b) or 56.2(c) results in the number of relevant Member Elected Councillors required to retire under the applicable clause exceeding the number of Member Elected Councillors required to retire under clause 56.1(a) (on account of two or more Member Elected Councillors' tenure being the same), then the Returning Officer will determine by lot which of those Member Elected Councillors' whose tenure is the same is required to retire.
- 56.4 Vacant Member Elected Councillor positions which, if occupied, would be captured by clause 56.2(a), will be deemed to be included in the number of Member Elected Councillors required to retire under clause 56.1(a).

57. Election

- 57.1 The Secretary must at least 60 days before an Election AGM:
- (a) notify the Member Elected Councillors that are to retire at the AGM;
 - (b) confirm the appointment of the Returning Officer for the election, who is neither a Councillor nor a candidate for election; and
 - (c) appoint two scrutineers.
- 57.2 The Returning Officer must send a notice to all Voting Members calling for nominations for the Member Elected Councillors.
- 57.3 Nominations for Member Elected Councillor vacancies must be:

- (a) submitted to the Returning Officer by a date specified by the Returning Officer, which must be at least 30 days before an Election AGM;
- (b) signed by the candidate and at least two other Voting Members in support of the nomination and
- (c) in accordance with any requirements of the Council as prescribed from time to time.

57.4 If the number of candidates nominated is:

- (a) fewer or equal to the number of vacancies to be filled, the candidates will be deemed as elected; or
- (b) greater than the number of vacancies to be filled, the election of the positions will take place by postal or electronic ballot (**Ballot**).

57.5 The Returning Officer may determine the period that the Ballot is open for, provided that the Ballot:

- (a) is open for at least 15 Business Days; and
- (b) closes at least one Business Day before the Election AGM.

57.6 The Returning Officer must:

- (a) prepare the Ballot papers and despatch them to the Voting Members by post or electronic means allowed by the Corporations Act;
- (b) subject to any procedures required to verify that a vote cast in the Ballot has been cast by a Voting Member, the Returning Officer must implement reasonable steps that are designed to preserve the secrecy of the Ballot;
- (c) determine (under supervision of the appointed scrutineers) whether a vote has been validly cast;
- (d) count the number of votes for each candidate;
- (e) for any candidates who receive an equal number of votes, determine which candidate is to be elected by lot; and
- (f) provide a report to the President before the Election AGM setting out the number of votes cast in favour of each candidate,

and undertake other such processes determined by the Council or the Returning Officer from time to time.

57.7 At the Election AGM, the President will declare as Member Elected Councillors:

- (a) where a Ballot was conducted, the candidates with the most votes as are required to fill the vacancies; or
- (b) where no Ballot was required, the candidates deemed elected.

57.8 All decisions taken by the Returning Officer will be regarded as final and binding regarding any matter involving the validity or formality of any nomination or vote or on any matter involving the election and the conduct of the election.

58. Casual vacancies

58.1 The Council may elect any Representative of a Voting Member to fill a casual vacancy of a Member Elected Councillor.

58.2 The election of persons to fill a casual Member Elected Councillor vacancy will be conducted at a Council meeting (determined by the President in his or her discretion) in the following manner:

- (a) before the relevant Council meeting:

- (i) the Returning Officer will appoint two scrutineers;
 - (ii) the Returning Officer must send a notice to all Voting Members calling for nominations for the Member Elected Councillors;
 - (iii) nominations for the vacancies must be:
 - (A) submitted to the Returning Officer by a date specified by the Returning Officer, which must be at least 30 days before the meeting;
 - (B) signed by the candidate and at least two other Voting Members in support of the nomination; and
 - (C) in accordance with any other requirements of the Council as prescribed from time to time; and
 - (iv) the Company must provide to the candidates, the contact details of all existing Councillors;
- (b) at the meeting, each candidate must receive the approval of a majority of the Council in order to continue with the election process;
- (c) if the number of candidates approved under clause 58.2(b) is:
- (i) fewer or equal to the number of vacancies to be filled, those candidates will be deemed as elected; or
 - (ii) greater than the number of vacancies to be filled, the election of the positions will take place; and
- (d) if an election is required, the Returning Officer must:
- (i) distribute the ballot papers (or other electronic voting instructions);
 - (ii) count the votes cast (in the presence of the scrutineers);
 - (iii) for any candidates who receive an equal number of votes:
 - (A) hold a second vote; and
 - (B) for any candidates who receive an equal number of votes in the second vote, determine which candidate is to be elected by lot; and
 - (iv) declare as elected, the candidates with the most votes as are required to fill the vacancies,
- and undertake other such processes determined by the Council or the Returning Officer from time to time.

58.3 All decisions taken by the Returning Officer will be final and binding in respect of any matter involving the validity or formality of any nomination, vote or other matter involving the election.

Regional Nominated Councillors

59. Appointment and regulation

- 59.1 Each Regional Council may nominate a person or persons to be Regional Nominated Councillors in accordance with the Regional Charter. If a Regional Council nominates a person who is not one of its Regional Councillors to be a Regional Nominated Councillor, then the appointment of that person must be approved by the Council.
- 59.2 If a Region does not have a Regional Council, it can (with the Council's approval (which may be given on a case-by-case or standing basis and which may be revoked by Council)) elect a Representative of a Voting Member within that Region as its Regional President. Such an election is to be held in accordance with the Regional Charter. The Regional President elected will be that Region's Regional Nominated Councillor.
- 59.3 Further details in respect of the appointment, retirement and other matters relating to Regional Nominated Councillors are set out in, or further dealt with by, the Regional Charter.
- 59.4 Any person who is a president or vice president (or other 'office bearer') of a Regional Council cannot also be a Director at the same time.
- 59.5 If a Regional Nominated Councillor stops being a Regional Councillor (or, where clause 59.2 applies, stops being the Regional President), his or her appointment as a Regional Nominated Councillor will terminate in accordance with this Constitution and the Regional Charter.
- 59.6 In the event of a casual vacancy on the Council caused by the retirement, resignation or termination of a Regional Nominated Councillor:
- (a) the relevant Regional Council will be asked to elect from their existing Regional Councillors a person to fill the vacancy on the Council; or
 - (b) where clause 59.2 applies, the Council may request the Region to elect a Regional President or form a Regional Council.

Other

60. Minutes and Registers

- 60.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors;
 - (d) all orders made by the Directors and Directors' committees; and
 - (e) all disclosures of interests made by any Director.
- 60.2 Minutes must be signed by the Chairperson of the meeting or by the Chairperson of the next meeting of the relevant body.
- 60.3 The Company must keep all registers required by this Constitution and the Corporations Act, including a Register.

61. Appointment of attorneys and agents

- 61.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a 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.
- 61.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any person or persons; or
 - (b) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 61.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 61.4 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.

62. External representation

Any person wishing to represent the Company on any external board or committee (for example the Australian Chamber of Commerce and Industry or other industry groups and associations) must:

- (a) be approved by the Board; and
- (b) comply with any directions provided by the Board made from time to time.

63. Secretary

- 63.1 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 the Directors.
- 63.2 The Secretary is entitled to attend and be heard on any matter at all Board and general meetings.
- 63.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

64. Chief Executive Officer

The Board may from time to time appoint a person to be Chief Executive Officer of the Company, define that person's powers, fix that person's remuneration and duties and from time to time (subject to the provisions of any contract between the person and the Company) vary any of the powers so conferred and revoke such appointment and appoint another in that person's place.

65. Inspection of records

- 65.1 Except as otherwise required by law, 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.
- 65.2 Except as otherwise required by law, 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.

66. Service of notices

- 66.1 Unless otherwise provided for in this Constitution or required by law, a person entitled to receive notice from the Company may be given such notice by:
 - (a) serving it on the person;
 - (b) sending it by post or electronic notification to the person at the address shown in the Register or the address supplied by the person to the Company for sending notices to the person;
 - (c) in the case of a notice to members generally, by publication in a newspaper circulating generally in, or otherwise digitally available throughout, Australia;
 - (d) the Secretary (on behalf of the Company); or
 - (e) in any other way as determined by the Board from time to time.
- 66.2 Any notice required to be given under this Constitution to the Company must be served or delivered (as appropriate) in accordance with any requirements specified by the Secretary from time to time.
- 66.3 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 second day after the date of its posting.
- 66.4 A notice sent by electronic notification is taken to be served:
- (a) by properly addressing the electronic notification and transmitting it; and
 - (b) on the day of its transmission except if transmitted after 5.00pm in which case it is taken to be served on the next day.
- 66.5 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.
- 66.6 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 this clause 66.
- 66.7 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.

67. Audit and accounts

- 67.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company as required by law.
- 67.2 The Directors must cause the financial records of the Company to be audited or reviewed as required by law.

68. Liability of Members

If the Company is wound up then each Member, and each person who ceased to be a Member in the preceding 12 months, undertakes to contribute to the property of the Company for the payment of debts and liabilities of the Company and payment of costs, charges and expenses of winding up to the amount of \$10 and the liability of the Members is limited to such amount.

69. Political Office holders

- 69.1 In this clause 69:
- (a) **Relevant Position** means Representative, Member, Director, Office Bearer, officer, Councillor or Regional Councillor;
 - (b) **Government Office** means a subsidiary organ of government created for a special purpose and includes, but is not limited to, specialised government committees; and
 - (c) **Political Office** means an office which is obtained by public election or otherwise obtained by political selection and includes, members of local, state or federal parliament and government ministries.
- 69.2 A person who stands for the election of, or holds, a Political Office, is ineligible to hold a Relevant Position.
- 69.3 If a person holding a Relevant Position becomes ineligible for that position by operation of clause 69.2, he or she will be taken to vacate that position automatically (unless the Council determines that he or she may continue to hold the position for a maximum period of 90 days).

- 69.4 Unless the Council otherwise determines, a person who stands for the election of, or holds, a Government Office, is eligible to hold a Relevant Position.
- 69.5 The Council may determine that a person caught by clause 69.4 is ineligible to hold a Relevant Position if:
- (a) a Councillor provides a notice to the Company explaining why he or she thinks that the person should be ineligible to hold the Relevant Position; and
 - (b) the Council, after considering the contents of the notice at its first meeting after receiving the notice, resolves that the relevant person is ineligible to continue holding the Relevant Position (with the person whose eligibility is being considered being excluded from voting on the resolution). The person will be deemed to have vacated the Relevant Position from the time that the Council resolution is passed.
- 69.6 For the avoidance of doubt, this clause 69 does not apply to:
- (a) a holder of a Relevant Position who is requested by the Board or Council to stand for the election of or hold Government Office or Political Office; and
 - (b) a person appointed under clause 62.

70. Indemnity and insurance

- 70.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act and any other applicable statutory restrictions, the Company indemnifies every person who is or has been an officer of the Company against:
- (a) any and all liabilities (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);
 - (b) any and all reasonable legal costs 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); and
 - (c) any and all reasonable legal costs incurred by that person 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).
- 70.2 To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company may, and may agree (by deed or otherwise) to:
- (a) enter into a contract insuring a person who is or has been an officer of the Company against liabilities incurred by the person as an officer of the Company; and
 - (b) pay the premium under any such contract.
- 70.3 Subject to the Corporations Act and without limiting a person's rights under this clause 70, the Company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the Company to give effect to the rights of the person under this clause 70, or to the exercise of a discretion under this clause 70, on any terms and conditions that the Directors think fit. Any such agreement may also give the person rights to inspect and obtain copies of the books of the Company for the purposes, and on such other terms and conditions, as the Directors decide.
- 70.4 For the avoidance of doubt, the Directors may authorise the Company to enter into any agreement (including a deed) permitted by this clause 70.
- 70.5 The amount of any indemnity payable under paragraphs (a), (b) or (c) of clause 70 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.

- 70.6 If, for any reason and by any means, any tax is or would be imposed on a person in respect of any sum paid or payable to the person under this clause 70 (**Indemnity Payment**), then the amount of any indemnity payable under this clause 70 will include any additional amount required to ensure that the total amount retained by the person (after allowing for the amount of such tax and after taking into account any tax deduction or tax benefit available to the person, at any time, that is attributable to the liability or legal costs to which the Indemnity Payment relates) is equal to the amount that would have been retained by the person if such tax was not imposed in respect of the Indemnity Payment. Payment of any such additional amount is conditional on the person providing the Company with all information and assistance reasonably required to enable the Company to calculate and verify the amount.
- 70.7 For the purposes of this clause, officer has the meaning given to that term in section 9 of the Corporations Act and includes any Auditor and any person who is not a Director but who is, or has been, a member of a committee to which the Directors delegated any of their powers pursuant to clause 46.

71. Change of status

Any resolution to be proposed pursuant to Section 162 of the Corporations Law may only be passed by the majority as described in clause 9 of the Constitution.

72. Schemes of arrangement

An application to the Court under Section 411(1) of the Corporations Law may only be made by the Company following the passing of a special resolution of the Company authorising the Directors to make such an application which has been passed by the majority as described in clause 9 of the Constitution.

73. Board related transitional provisions

- 73.1 Clauses 34.1(c) and 35.2(a) will be effective from the Effective Time.
- 73.2 For the purposes of the first Council Election Meeting after the adoption of this Constitution:
- (a) if the President is the same person as the person occupying that position at the time of adoption of this Constitution, the President's initial term as President will expire;
 - (b) if the Vice President is the same person as the person occupying that position at the time of adoption of this Constitution, the Vice President's initial term as Vice President will expire and, notwithstanding clause 35.1(a)(i), his term as Director will be deemed to have expired; and
 - (c) the Elected Directors for the purposes of clause 36.3 will be deemed to be the Directors, other than the Office Bearers (as at the Effective Time) and the Appointed Directors (if any).
- 73.3 Notwithstanding clause 34.1(b), eight Elected Directors are permitted between adoption of this Constitution and the Effective Time.
- 73.4 The Member Elected Councillor term of the person occupying the Presidency as at the time of adoption of this Constitution will expire, subject to any earlier termination required under this Constitution, at the Election AGM required to be held in 2021.

74. Member related transitional provisions

- (a) Nothing in this Constitution affects the rights of Members in a class of Members, that existed prior to the adoption of this Constitution at the Company's 2019 annual general meeting.
- (b) Clause 74(a) prevails to the extent that it is inconsistent with any other provision in this Constitution.