

Window Shading Association of Australia

Constitution

October 2024



**Window Shading
Association of
Australia**

A Public Company Limited by Guarantee

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1 Name of the Company

The name of the Company is Window Shading Association of Australia Ltd.

2 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to \$10.00.

3 Replaceable Rules

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4 Definitions and Interpretation

4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) **ACNC** means Australian Charities and Not-for-profits Commission.
- (b) **ACNC Act** means *Australian Charities and Not-for-Profits Commission Act 2022* (Cth).
- (c) **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Regulation 2022* (Cth).
- (d) **AGM** means annual general meeting.
- (e) **Board** means the board of Directors of the Company.
- (f) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Queensland.
- (g) **By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with **clause 54**.
- (h) **Chairperson** means the person holding that office under this Constitution and includes any assistant or acting chairperson.
- (i) **Committee** means a committee established in accordance with **clause 50**.
- (j) **Company** means Window Shading Association of Australia Ltd.
- (k) **Constitution** means this constitution as amended or supplemented from time to time.

- (l) **Co-Opted Director** means a person appointed as a Director pursuant to **clause 35.7**.
- (m) **Corporations Act** means *Corporations Act 2001* (Cth).
- (n) **Director** means any person holding the position of a director of the Company (and includes Co-Opted Directors and Elected Directors) and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.
- (o) **Direct Vote** means a vote cast pursuant to **clause 24**.
- (p) **Disciplinary Committee** means a Committee formed pursuant to **clause 14.2(a)** for the purpose of conducting disciplinary proceedings against a Member.
- (q) **Elected Director** means any person elected as a Director pursuant to **clause 35.6**.
- (r) **Entrance Fee** means the entrance fee payable by Members pursuant to **clause 12**.
- (s) **Member** means a member of the Company pursuant to **clause 6** and **Membership** has the corresponding meaning.
- (t) **Member Present** means in connection with a meeting of Members, a Voting Member being present in person or by proxy or attorney or by Representative.
- (u) **Member's Guarantee Amount** means the amount referred to in **clause 2(c)**.
- (v) **Objects** means the objects of the Company as set out in **clause 5.1**.
- (w) **Office** means the registered office for the time being of the Company.
- (x) **Office Bearer** means a person holding any of the offices specified in **clause 35.9**.
- (y) **Officer** has the same meaning as given to that term in section 9 of the Corporations Act.
- (z) **President** means a Director appointed to that position pursuant to **clause 35.9(a)(i)**.
- (aa) **Register** means the register of Members to be kept pursuant to the Corporations Act.
- (bb) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act.
- (cc) **Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a body corporate, as described in **clause 11**.
- (dd) **Secretary** means the person appointed as the secretary of the Company and includes any assistant or acting secretary.
- (ee) **Special Resolution** has the meaning given to it by the Corporations Act.
- (ff) **Subscription** means the subscription fees payable by Members pursuant to **clause 12**.
- (gg) **Vice-President** means a Director appointed to that position pursuant to **clause 35.9(a)(ii)**.

- (hh) **Voting Members** are all Members entitled to vote, pursuant to **clause 7**, unless suspended from Membership pursuant to **clause 12(c)**.

4.2 Interpretation

In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other two genders;
- (c) the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (h) an expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- (i) headings do not form part of or affect the construction or interpretation of this Constitution.

5 Objects

5.1 Objects

- (a) The Company is a charitable institution established to advance education in the window shading industry of Australia. The Company will achieve these objects by:
 - (i) providing education and training to aid in the promotion and development of manufacturing resources in Australia, particularly those relating to the window shading industry;
 - (ii) developing a code of ethics for the window shading industry in Australia and providing education and training as to compliance with such code;
 - (iii) enabling manufacturers and those associated with the manufacturing, selling, installation and servicing of window shades to engage with one another to advance the knowledge base and education of the window shading industry;
 - (iv) providing consumer education regarding window shades and the window shades industry, including by dissemination of information and publications;

- (v) advocating for the manufacturing industry in Australia, in relation to regulations and training, to all levels of Government in Australia; and
 - (vi) anything ancillary to the Objects referred to in **clauses 5.1(a)(i) to 5.1(a)(iv)**.
- (b) The Company can only exercise the powers in section 124(1) of the Corporations Act to:
- (i) carry out the Objects; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company will only be applied towards the promotion of the Objects of the Company.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution will prevent payment in good faith to a Member:
- (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
 - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
 - (iii) of reasonable and proper rent for premises leased by any Member to the Company.

5.3 Remuneration of Directors

No payment shall be made to any Director other than the following payments in good faith by the Company:

- (a) out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
- (b) payment for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

MEMBERSHIP

6 Admission to Membership

6.1 Eligibility for Membership

Any natural person or body corporate is eligible to be admitted to Membership if that person or body corporate:

- (a) lodges an application form in accordance with **clause 8**;
- (b) agrees to assume the liability to pay the Member's Guarantee Amount;
- (c) supports the Objects of the Company and agrees to comply with the terms of this Constitution and any code of conduct which the Board may produce from time to time;
- (d) pays the Entrance Fee (if any); and
- (e) agrees to become a Member.

6.2 Benefits

- (a) Only Voting Members are entitled to vote.
- (b) In addition to each Voting Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

7 Classes of Membership

The Board may, from time to time:

- (a) create different classes of Membership; and
- (b) determine additional qualifications for admission to each Membership class and the rights attached to each Membership class.

8 Applications for Membership

8.1 Applications for Membership

- (a) An application for Membership of the Company must:
 - (i) be made in writing in any form acceptable to the Board;
 - (ii) include a signature, or equivalent acknowledgement by the applicant acknowledging that the applicant agrees to be bound by the Constitution;
 - (iii) be accompanied by any Entrance Fee and annual Subscription, if required, payable pursuant to **clause 12**; and
 - (iv) be lodged with the Secretary.
- (b) As soon as practicable after receiving an application for Membership, the Secretary must refer the application to the Board (or its delegate) which is to determine whether to approve or reject the application.
- (c) For the avoidance of doubt, the Board may delegate the decision-making responsibility, pursuant to **clause 8.1(b)**, to any person(s).

- (d) As soon as practicable after the Board makes that determination, the Secretary must:
 - (i) notify the applicant, in writing, that the Board (or its delegate) approved or rejected the application (whichever is applicable); and
 - (ii) if the Board approved the application, enter the applicant's name and class of Membership of any applicant approved by the Board in the Register and, subject to the Corporations Act, the person becomes a Member on the name being so entered; or
 - (iii) if the Board rejected the application, the Board will not be required to provide the applicant with any reasons for the rejection.

9 Register

- (a) The Company must establish and maintain a Register of Members.
- (b) The Register must be kept by the Secretary at the Office and must contain:
 - (i) for each current Member:
 - (A) their name;
 - (B) their address;
 - (C) any alternative address or addresses provided by the Member for the service of notices;
 - (D) their class of Membership;
 - (E) in the case of bodies corporate, their Representative;
 - (F) the date the Member was entered on to the Register; and
 - (ii) for each person who ceased to be a Member in the last seven (7) years:
 - (A) their name;
 - (B) their address last listed on the Register, or any alternative address nominated by the Member for the service of notices; and
 - (C) the dates the Membership started and ended.

10 Membership Entitlements Not Transferable

A right, privilege or obligation which a person or body corporate has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

11 Representative

- (a) This **clause 11** only applies to bodies corporate.
- (b) Any body corporate Member or body corporate applicant for Membership must appoint as its Representative a natural person.
- (c) The name and address of the Representative will be entered in the Register as the representative of the body corporate.

- (d) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the body corporate Member which is represented by that particular Representative.
- (e) If the appointment of a Representative by a body corporate Member is made by reference to a position held, the appointment must identify the position.
- (f) Despite **clause 10**, a body corporate Member may remove and replace a Representative where the body corporate Member gives written notice to the Board in a form approved by the Board.
- (g) A signature by a Representative of a body corporate Member on behalf of that body corporate Member is taken to be the signature of that body corporate Member for the purposes of this Constitution.
- (h) Any power or right of a body corporate Member as granted by this Constitution can be exercised by the Representative of that particular body corporate Member.
- (i) Body corporate Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 30(a)**.
- (j) The actions of a Representative bind the body corporate Member which is represented by that particular Representative.
- (k) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

12 Entrance Fee and Subscriptions

- (a) The amount of the Entrance Fee and annual Subscription (if any) that is payable by Members may be determined by the Board from time to time.
- (b) The Board may in its discretion:
 - (i) determine the times and manner in which the Entrance Fee and/or annual Subscription is payable;
 - (ii) charge different classes of Membership different Entrance Fees and different annual Subscriptions;
 - (iii) determine that no Entrance Fee or annual Subscription is payable by a Member or Members (in whole or in part) in a given year; and
 - (iv) extend the time for payment of the Entrance Fee or annual Subscription by any Member.
- (c) Any Member who:
 - (i) fails to pay the required annual Subscription within such reasonable period or by such reasonable date, as required by the Board from time to time, will receive a notice of default specifying that the Membership of that Member, and any rights and/or voting rights associated with such Membership, will be suspended if the outstanding Subscription is not paid by the reasonable date specified in the notice of default; and
 - (ii) then fails to pay the outstanding Subscription by the reasonable date specified in the notice of default, will have their Membership suspended, including any rights and/or voting rights associated with such

Membership, until such time as the outstanding Subscription is paid in full.

- (d) No part of any annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with **clause 13**.

13 Cessation of Membership

- (a) A Member's Membership will cease:
- (i) on the date that the Secretary receives written notice of resignation from that Member;
 - (ii) in the case of a natural person (who is not a Representative), upon that person dying;
 - (iii) upon that Member no longer satisfying the criteria for its respective class of Membership, if any (unless transferred to another class of Membership by the Board);
 - (iv) upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (v) if the Member is expelled from the Company pursuant to **clause 14**;
 - (vi) if, being a body corporate Member:
 - (A) that Member is dissolved or otherwise ceases to exist;
 - (B) that Member has:
 - (1) a receiver;
 - (2) a receiver and manager;
 - (3) a liquidator;
 - (4) an administrator;
 - (5) an administrator of a deed of company arrangement;
or
 - (6) a trustee or other person administering a compromise or arrangement between the Member and someone else,

appointed to it; or
 - (vii) if the Company in general meeting resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty-one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 13(a)(i)**, resign as a Member but shall continue to be liable for:
- (i) any monies due by the Member to the Company; and

- (ii) any sum for which the Member is liable as a Member of the Company under **clause 2(b)**.

14 Disciplining of Members

14.1 Disciplining of Members

- (a) Where the Board is of the opinion that a Member has:
 - (i) persistently refused or neglected to comply with a provision or provisions of this Constitution; or
 - (ii) persistently and wilfully acted in a manner prejudicial to the interests of the Company,the Board may:
 - (iii) expel the Member from the Company;
 - (iv) warn or reprimand the Member; or
 - (v) suspend the Member from Membership of the Company for a specified period.
- (b) A resolution of the Board pursuant to **clause 14.1(a)** is of no effect unless the Board confirms the resolution in accordance with this **clause 14.1(b)** at a Board meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service on the Member of a notice pursuant to **clause 14.1(c)**.
- (c) If the Board resolves under **clause 14.1** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
 - (i) setting out the resolution of the Board and the grounds upon which it is based;
 - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:
 - (A) attend and speak at that meeting;
 - (B) submit to the Board at or before the date of the meeting, written representations relating to the resolution.
- (d) At a meeting of the Board held as referred to in **clause 14.1(c)**, the Board must:
 - (i) give the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the Board meeting; and
 - (iii) by a resolution of at least seventy-five per cent (75%) of the Directors participating in the Board meeting, determine whether to confirm or to revoke the resolution.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 14.2**.

- (f) A resolution confirmed by the Board under **clause 14.1(d)** does not take effect:
 - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; and
 - (ii) where, within that period, the Member exercises the right of appeal, unless and until the Disciplinary Committee confirms the resolution pursuant to **clause 14.2(d)(ii)**.

14.2 Right of Appeal of Disciplined Member

- (a) The Board will establish a Disciplinary Committee. The Disciplinary Committee will comprise of an independent panel of three (3) experts, all chosen by the Board. The experts will be chosen based upon the nature of the alleged misconduct by the Member. The Disciplinary Committee may seek advice from any relevant source.
- (b) A Member may appeal to the Disciplinary Committee against a resolution of the Board, which is confirmed under **clause 14.1(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 14.1(e)**.
- (c) Within thirty-five (35) days after receipt of a notice of appeal from the Member pursuant to **clause 14.2(b)**, the Disciplinary Committee must convene a meeting.
- (d) At the Disciplinary Committee meeting convened under **clause 14.2(c)**:
 - (i) the Member must be given the opportunity to state their case orally or in writing, or both using any technology (reasonably available to the Board) that gives the Member a reasonable opportunity to do so; and
 - (ii) the Disciplinary Committee must vote by ballot on the question of whether the resolution will be confirmed.
- (e) The Disciplinary Committee's decision, pursuant to **clause 14.2(d)(ii)**, is final. The Member is not entitled to appeal the Disciplinary Committee's decision.
- (f) The Member the subject of these disciplinary procedures is entitled to:
 - (i) subject to **clause 14.2(f)(ii)**, bring a support person to any meeting with the Disciplinary Committee or the Board, which meetings are being held pursuant to this **clause 14**; and
 - (ii) if the support person is legally qualified, the Member must notify the Disciplinary Committee or the Board (as the case may be) at least five (5) Business Days before the meeting that the support person attending the meeting will be legally qualified.
- (g) Natural justice will be applied during every disciplinary process under this **clause 14**, requiring the Board and Disciplinary Committee to act fairly, in good faith and without bias or conflict of interest when making its decision.

15 Resolution of Disputes Between Members

- (a) Disputes between Members (in their capacity as Members) shall be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the

dispute to mediation before a mediator appointed by mutual agreement of the parties.

- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the president of the Law Society of Queensland.
- (d) The costs of the mediator appointed pursuant to **clause 15(b)** or **clause 15(c)** (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 15(b)** or **clause 15(c)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

GENERAL MEETINGS

16 Convening of General Meetings

16.1 AGMs

Notwithstanding section 111L of the Corporations Act:

- (a) the Board must convene an AGM at least once in each calendar year; and
- (b) any AGM which is convened must be done so in accordance with the requirements of the Corporations Act.

16.2 Convening of General Meetings

- (a) A minimum of four (4) Directors may, whenever those Directors think fit, convene a general meeting of the Company.
- (b) Notwithstanding section 111L of the Corporations Act:
 - (i) the Members may call a general meeting; and
 - (ii) the Company will do so,in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of members to call a general meeting.
- (c) Subject to approval of the Board, a general meeting of the Company may be convened virtually or at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting. Such approval may be ongoing.

17 Notice of General Meeting

- (a) Subject to consent to shorter notice being given in accordance with the Corporations Act (notwithstanding section 111L of the Corporations Act), at least twenty-one (21) days' notice of any general meeting must be given specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;

- (iv) if the meeting is to be held virtually or in two or more places, the technology that will be used to facilitate this; and
- (v) any other information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act).
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at, or any resolution passed at, the meeting.
- (c) Subject to **clause 17(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:
 - (i) every Member;
 - (ii) every Director; and
 - (iii) the auditor for the time being of the Company (if any).

18 Cancellation or Postponement of General Meeting

18.1 Cancellation or Postponement of General Meeting

- (a) Subject to the provisions of the Corporations Act (notwithstanding section 111L of the Corporations Act) and this Constitution, the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by the Members pursuant to **clause 16.2(b)** upon receipt by the Company of a written notice withdrawing the requisition signed by the Members who convened the meeting.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for a general meeting is changed, the Board must notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting.

18.2 Failure to Notify in Writing

Any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

19 Quorum

19.1 Quorum at a General Meeting

- (a) No business may be transacted at any general meeting unless there is a quorum of Members Present at all times during the meeting.
- (b) A quorum necessary for the transaction of business at any general meeting of the Company is twenty (20) Voting Members who are Members Present.
- (c) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of Members, shall be dissolved; or
 - (ii) in any other case:
 - (A) it will stand adjourned to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

20 Chairperson

- (a) The President shall preside as Chairperson at each general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no President; or
 - (ii) the President is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairperson of the meeting,then the following person will be Chairperson in lieu of the President in the order of availability set out below:
 - (iii) Vice-President;
 - (iv) another Director chosen by the Directors present at the meeting; and
 - (v) a Voting Member chosen by a majority of the Members Present.
- (c) The rulings of the Chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

21 Adjournments

- (a) The Chairperson of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs,to a time and place as determined.

- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

22 Determination of Questions

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
 - (i) the Chairperson of the meeting; or
 - (ii) at least two (2) Members Present.
- (b) Before a vote on a resolution is taken, the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chairperson of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

23 Polls

- (a) A poll may be demanded:
 - (i) before a vote on a resolution is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chairperson of the meeting directs subject to **clause 23(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chairperson or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

24 Direct Voting

- (a) The Board will determine from time to time if Voting Members are entitled to vote by a Direct Vote on a matter or a resolution. If the Board has determined that Voting Members are entitled to vote by a Direct Vote, then the Voting Members

must do so using the form prescribed by the Board from time to time, which may include electronic means.

- (b) If sent by post, the Direct Vote must be signed by the Voting Member or by a duly authorised officer or attorney.
- (c) If sent by electronic transmission, the Direct Vote is to be taken to have been signed if it has been signed or authorised by the Voting Member in the manner approved by the Board.
- (d) The Direct Vote must be received by the Company at least forty-eight (48) hours before the time of the relevant general meeting in order to be valid.
- (e) A Direct Vote is valid if it contains the following information:
 - (i) the Voting Member's name and address, or any applicable identifying document such as a driver's licence or passport number, the Voting Member's identification number or similar approved by the Board or specified in the notice of meeting; and
 - (ii) the Voting Member's voting intention on any or all of the resolutions to be put before the meeting.
- (f) A Direct Vote is valid unless the Company receives written notification changing the voting intention before the vote is cast.
- (g) The Chairperson's decision as to whether a Direct Vote is valid is conclusive.
- (h) A Voting Member who has cast a Direct Vote is entitled to attend the meeting. The Voting Member's attendance cancels the Direct Vote:
 - (i) unless the Voting Member instructs the Company otherwise; or
 - (ii) the Board has determined that Direct Votes are the only method permitted for voting on a resolution.
- (i) If a vote is taken at a meeting on a resolution on which a Direct Vote was cast, the Chairperson of the meeting must:
 - (i) on a vote by show of hands, count each Voting Member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote; and
 - (ii) on a poll, count the votes cast by each Voting Member who has submitted a Direct Vote directly for or against the resolution.

25 Voting Rights

A Voting Member has one (1) vote, both on a show of hands and a poll.

26 Disqualification

No person other than:

- (a) a Voting Member; or
 - (b) a proxy or attorney or Representative of a Voting Member,
- shall be entitled to vote at a general meeting.

27 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairperson whose decision shall be final and conclusive and a vote allowed by the Chairperson shall be valid for all purposes.

28 Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to a deliberative vote.

29 Right of Non-Members to Attend General Meeting

- (a) The Chairperson of a general meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor and any Director of the Company shall be entitled to attend and address a general meeting.

PROXIES

30 Right to Appoint Proxies

Notwithstanding section 111L of the Corporations Act:

- (a) a Voting Member or Representative may appoint a person as proxy to attend and vote for the Voting Member at the meeting; and
- (b) if a Voting Member or Representative appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

31 Appointing a Proxy

31.1 Appointing a Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

31.2 Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the following information, and any additional information required by the Corporations Act (notwithstanding the application of section 111L of the Corporations Act):
 - (i) the name and address of the Voting Member;
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.

- (c) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 31.2(a)**.
- (d) An instrument of proxy may be revoked at any time by notice in writing to the Company.

32 Lodgement of Proxies

- (a) An instrument appointing:
 - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (ii) an attorney to exercise a Voting Member's rights at a general meeting or a certified copy of that power of attorney,must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty-eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting, as the case may be, at which the person named in the instrument proposes to vote. In default, the instrument of proxy or the power of attorney will not be treated as valid.
- (b) For the purposes of this **clause 32**, it will be sufficient that any document required to be lodged by a Voting Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email or other electronic transmission by the Company.

33 Validity of Proxies

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
 - (i) the death or unsoundness of mind of the Voting Member or Representative;
 - (ii) the bankruptcy of the Voting Member or Representative;
 - (iii) the liquidation of a Voting Member which is a body corporate; or
 - (iv) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least twenty-four (24) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.
- (b) A proxy who is not entitled to vote on a resolution as a Voting Member may vote as a proxy for another Voting Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- (c) Except on a show of hands, a proxy may vote as more than one (1) Voting Member if the proxy holds appointments for those Voting Members which specify the way the proxy is to vote on the resolution and the proxy votes that way.

34 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Subject to **clause 34(c)**, unless a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise, the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor of the proxy attending and taking part in any general meeting, but if the appointor of the proxy votes on a resolution, either on a show of hands or on a poll, the person acting as proxy for the appointor of the proxy shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairperson of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairperson that he or she is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his or her identity, he or she may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

35 Number and Appointment of Directors

35.1 Number of Directors

- (a) The Board of Directors will consist of not fewer than five (5) and not more than nine (9) Directors.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in **clause 35.1(a)**, provided that the minimum number is not fewer than three (3), as required by the Corporations Act.

35.2 Constitution of Board

The Board of Directors will consist of:

- (a) Elected Directors; and
- (b) up to two (2) Co-Opted Directors,

with the number of Elected Directors and Co-Opted Directors to be determined by the Board from time to time, so long as the number of Directors is within the range referred to in **clause 35.1**.

35.3 Geographical Location of Directors

- (a) The Board of Directors shall not have, at any one time, more than three (3) Elected Directors that reside in the same state or territory of Australia; and
- (b) For the avoidance of doubt, if there are three (3) Elected Directors that reside in the same state or territory of Australia, no other person, who also resides in that state or territory, may be elected or appointed as an Elected Director until such time as the number of Elected Directors that reside in that state or territory of Australia is reduced to such number that would allow for the appointment or

election of further Elected Directors, pursuant to **paragraph 35.3(a)**, from that state or territory of Australia.

35.4 Initial Board

- (a) The initial Directors to hold office upon adoption of this Constitution will be:
 - (i) Gilbert Da Silva;
 - (ii) Stephen Eggleton;
 - (iii) Jason Lewis;
 - (iv) Chris Parkinson;
 - (v) Amelia Taylor; and
 - (vi) Robert Mayer;
- (b) The initial Directors will nominate from among their number who will hold each office (as set out in **clause 35.9(a)**).
- (c) The initial Directors shall all be deemed to be Elected Directors, except for Robert Mayer who will be deemed to be a Co-Opted Director.

35.5 Eligibility as a Director

- (a) A person is eligible to be elected or appointed as a Director if the person:
 - (i) has given the Company written consent to act as Director; and
 - (ii) is not disqualified by the ACNC Act or the Corporations Act from being a Director of the Company.
- (b) The majority of the Directors must at all times be employed by a manufacturing or retail manufacturing Member. If at any time less than a majority of the Directors are employed by a manufacturing or retail manufacturing Member, the Board must use its best endeavours to ensure that, at the earliest time possible, the number of Directors that are employed by a manufacturing or retail manufacturing Member is brought back up to a majority
- (c) It is preferable that the Board is comprised of a balance of Directors in terms of gender and geography. When considering Board composition and appointment of Co-Opted Directors, the Board shall take this preference into consideration.

35.6 Elected Directors

- (a) An Elected Director must be a Member at all times that they hold office as an Elected Director.
- (b) Prior to each AGM the Board will, if necessary, call for nominations of candidates for election as Elected Directors with a closing date for such nominations of at least thirty (30) days prior to the AGM.
- (c) Nominations of candidates for election as Elected Directors:
 - (i) shall be in writing in a form prescribed by the Board signed by the Member who is nominating the nominee and be accompanied by the written consent of the nominee (which may be endorsed on the nomination); and
 - (ii) shall be delivered to the Secretary (or other person authorised by the Board for the purpose) by the date required in the call for nominations.

- (d) The Board shall review such nominations and, prior to the AGM, provide the Members with a list of candidates, preferred by the Board, for election as Elected Directors.
- (e) Individual resolutions, in relation to each candidate on the abovementioned preferred list in **clause 35.6(d)**, shall be put to the Voting Members at the AGM to consider the election of each candidate. For the avoidance of doubt, the preferred list of candidates shall not be voted on collectively in order to ensure compliance with section 201E of the Corporations Act.
- (f) If insufficient:
 - (i) nominations are received as part of the nomination process set out in **clause 35.6(c)**; or
 - (ii) resolutions are passed as part of the voting process set out in **clause 35.6(e)**,to fill the number of vacant positions of Elected Directors on the Board, any unfilled positions remaining on the Board shall be deemed to be casual vacancies.

35.7 Co-Opted Directors

- (a) The Board may appoint Co-Opted Directors to the Board at any time to fill the positions provided for in **clause 35.2(b)**.
- (b) Co-Opted Directors are not required to be Members.
- (c) A Co-Opted Director shall be a person who will bring skills and experience to the Board to enable the Board to advance the Objects.

35.8 Term

- (a) Elected Directors shall hold office for a term of five (5) years but are eligible for re-election for one (1) further term of one (1) year.
- (b) Co-Opted Directors shall hold office for a term of five (5) years but are eligible for reappointment for one (1) further term of one (1) year.
- (c) Directors may not hold office for more than six (6) consecutive years.
- (d) Subject to clause 35.8(e) once a Director has served the maximum term pursuant to **clause 35.8(c)**, the Director is not eligible for reappointment or re-election to the Board until after a period of at least one (1) year has expired since the expiry of the Director's previous term on the Board.
- (e) Despite **clause 35.8(d)**, if more than two (2) Directors have reached the maximum term pursuant to **clause 35.8(c)**, the Board may, at its discretion, determine that such Directors, except for two Directors who must retire (to be selected by the Board), are eligible for re-election for one (1) further term of one (1) year each. For the avoidance of doubt, in such circumstances two (2) Directors must retire.
- (f) For the avoidance of doubt, any term on the Board served by a Director prior to the adoption of this Constitution shall count towards the maximum term pursuant to **clause 35.8(c)**.

35.9 Office Bearers

- (a) The Board shall, at the first meeting of the Board held after the adoption of this Constitution and thereafter at the first meeting of the Board held after an Office

Bearer has retired, appoint from among the Directors sitting on the Board at the time of the Board meeting:

- (i) a President;
- (ii) a Vice-President; and
- (iii) such additional Office Bearer positions as the Board deems necessary from time to time,

should the position be vacant.

- (b) The Office Bearers shall hold office for a term of three (3) years (or a shorter period, if the Office Bearer has less than three (3) years remaining in his or her term as a Director) but shall be eligible for reappointment for one further term of one (1) year, provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.
- (c) Office Bearers may not hold office for more than four (4) consecutive years.
- (d) Once an Office Bearer has served the maximum term pursuant to **clause 35.9(c)**, that Office Bearer is not eligible for reappointment as an Office Bearer until after a period of at least one (1) year has expired since the expiry of the Office Bearer's previous term as an Office Bearer.
- (e) For the avoidance of doubt, any term served by an Office Bearer prior to the adoption of this Constitution shall count towards the maximum term pursuant to **clause 35.9(c)**.

36 General Right to Appoint and Remove Directors

The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed in accordance with **clause 35.1** the Board may act:

- (a) for the purpose of:
 - (i) increasing the number of Directors to the minimum; or
 - (ii) convening a general meeting; or
 - (b) in emergencies,
- but for no other purpose.

37 Vacation of Office

- (a) Any Director may resign from office on giving written notice to the Company at the Office of his intention to resign and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) in the case of an Elected Director, ceases to be a Member;
 - (iii) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (iv) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;

- (v) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
- (vi) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (vii) is removed from office by the Company in general meeting;
- (viii) resigns by notice in writing to the Company; or
- (ix) is absent without the permission of the Board from two (2) consecutive meetings of the Board in a twelve (12) month period.

38 Filling of Vacancies on the Board

- (a) In the event of a casual vacancy occurring on the Board:
 - (i) in relation to an Elected Director vacancy, the Board may, at its discretion, appoint any Member to fill that vacancy; and
 - (ii) in relation to a Co-Opted Director vacancy, the Board may, at its discretion, appoint any person to fill that vacancy.
- (b) Any Director appointed pursuant to **clause 38(a)** shall hold office until the next AGM and is eligible for election or appointment following the completion of filling such casual vacancy (subject to satisfying all other conditions attached to being an Elected Director or a Co-Opted Director, as the case may be).
- (c) Any term served by a Director, pursuant to this **clause 38**, will count toward the maximum number of consecutive years of a Director pursuant to **clause 35.8(c)**.

39 Acting Office Bearers

- (a) In the event of a vacancy occurring in the position of President, the Vice-President shall assume office as President until the next meeting of the Board, at which time the Board shall appoint a new President, in accordance with **clause 35.9(a)(i)** for the balance of the term of the vacating President.
- (b) In the event of a vacancy occurring in the position of Vice-President (including in the situation described in **clause 39(a)**), the Board shall appoint a new Director to such office at the next meeting of the Board, pursuant to **clause 35.9**. If the position of Vice-President is vacant in a situation other than that described in **clause 39(a)**, the appointment of the new Director as Vice-President shall be for the balance of the term of the vacating Vice-President.
- (c) In the event of a vacancy occurring in any other Office Bearer position, the Board shall appoint a new Director to such office at the next meeting of the Board, pursuant to **clause 35.9**.
- (d) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.
- (e) Nothing in this **clause 39** permits any person to simultaneously hold more than one position of Office Bearer.

- (f) Any term served by an Office Bearer, pursuant to this **clause 39** will count toward the maximum number of consecutive years of an Office Bearer pursuant to **clause 35.9(c)**.

40 Alternate Directors

Alternate Directors shall not be permitted.

POWERS AND DUTIES OF DIRECTORS

41 Powers of Directors

The control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Corporations Act or by this Constitution required to be exercised in any other manner.

42 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be, as provided for in the By-laws from time to time.

43 Conferment of Powers

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 43** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

44 Contracts

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- (b) Any interest (whether in Australia or overseas) of a Director must be dealt with in accordance with the provisions of the relevant legislation, being either:
- (i) the Corporations Act; or
 - (ii) the ACNC Regulation,
- which shall include disclosing an interest and having the Secretary record all declarations in the minutes of the relevant meeting.

- (c) Subject to **clause 44(b)**, a Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board may:
- (i) be present while the matter is being considered at a meeting;
 - (ii) vote on the matter or in respect of any matter arising out of the contract or arrangement or proposed contract or arrangement;
 - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (iv) 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) A Director's failure to make disclosure under this **clause 44** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

45 Meetings of Directors

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that the Board must meet not fewer than four (4) times each calendar year.
- (b) A Director may at any time, and the Secretary upon the request of a Director shall, convene a meeting of the Board by giving at least seventy-two (72) hours' notice of the meeting to all Directors, provided that the Director or Secretary must have used their best endeavours to ensure that the notice was properly served and received.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) Subject to **clause 45(e)**, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) The particular technology used to convene or hold a Board meeting, pursuant to **clause 45(d)**, must be available and accessible to all Directors who wish to attend the Board meeting.
- (f) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the

same, be as valid as if notice of the meeting had been duly given to all Directors. Attendance by a Director at a meeting of Directors waives any objection which that Director may have to a failure to give notice of the meeting.

46 Quorum

- (a) The quorum necessary for the transaction of the Board's business is a majority of Directors being personally present (or in conference in accordance with **clause 45**).
- (b) A quorum must be present at all times during the meeting.
- (c) A Director who is disqualified from voting on a matter pursuant to **clause 44** shall be counted in the quorum despite that disqualification.

47 Chairperson

- (a) The President of the Board shall be the Chairperson.
- (b) The President shall, if present, preside as Chairperson of every meeting of the Board.
- (c) If a meeting of Board is held and the President is:
 - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (ii) if present, does not wish to chair the meeting,then the Vice-President shall preside as Chairperson. If the Vice-President is:
 - (iii) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (iv) if present, does not wish to chair the meeting,then the other Directors present must elect one of the Directors to be Chairperson of the meeting.

48 Voting

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one (1) vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chairperson is entitled to a casting vote in addition to a deliberative vote.

49 Resolutions by Directors

- (a) The Board may pass a resolution without a Board meeting being held if all Directors of the Company sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one document.
- (b) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this **clause 49** be taken to

be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.

- (c) A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this **clause 49** be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

50 Committee

- (a) The Board may, from time to time, form and delegate any of its powers to any Committees that it sees fit to delegate its powers to, consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- (b) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (c) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (d) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

51 Validation of Acts of Directors

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

MINUTES

52 Minutes

- (a) The Board must cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
- (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
- (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and

- (iii) such matters as are required by the Corporations Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the Chairperson of the meeting, or the Chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

SECRETARY

53 Appointment and Tenure

53.1 Appointment of Secretary

- (a) The Board must appoint one or more persons to the office of secretary to the Company, at least one of which must ordinarily reside in Australia.
- (b) A Director may also be appointed as a Secretary.

53.2 Terms and conditions of appointment

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Board determines.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Board.

53.3 Suspension or termination of appointment of Secretary

The Board may suspend, remove or terminate the appointment of a Secretary, subject to any agreement between the Company and the Secretary.

BY-LAWS

54 By-Laws

- (a) The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- (b) A By-Law must be subject to this Constitution and must not be inconsistent with any provision contained in this Constitution.
- (c) When in force, a By-Law is binding on the Members and has the same effect as this Constitution.
- (d) The Board will adopt such measures as it deems appropriate to bring to the notice of the Members all By-Laws, amendments and repeals.

EXECUTION OF DOCUMENTS

55 Execution of Documents

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

ACCOUNTS AND INSPECTION OF RECORDS

56 Accounts and Inspection

The Board shall:

- (a) cause proper financial records to be kept and must, if required by the Corporations Act or the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- (b) where required by the Corporations Act or ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the Corporations Act or the ACNC Act; and
- (c) from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Member.

NOTICES

57 Service of Notices

- (a) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices; or
 - (iii) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) A Member may elect to be sent documents in a physical form or electronic form by notifying the Company of the election, in accordance with the Corporations Act. The Company must take reasonable steps to comply.

- (c) Any Member who has not left at or sent to the Office his or her place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (d) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the third (3rd) Business Day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (e) Where a notice is sent by electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the Business Day after it is sent.
- (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.
- (g) The Company must send the Members of the Company, at least once in each financial year, a notice setting out the following or make such a notice readily available on a website:
 - (i) that they have a right to elect and to request to be sent documents in physical form under sections 110E and 110J of the Corporations Act;
 - (ii) that they have a right to elect and to request to be sent documents in electronic form under sections 110E and 110J of the Corporations Act; and
 - (iii) that they have a right to elect not to be sent annual financial reports under section 314 of the Corporations Act.
- (h) This **clause 57** does not limit the way in which notice may be given, including under Division 2 of Part 1.2AA of the Corporations Act.

WINDING UP

58 Winding Up

58.1 Surplus

- (a) Any surplus remaining following the winding up of the Company, will be paid to, transferred, or distributed to another institution(s) or corporation(s) which has:
 - (i) objects which are similar to the Objects and is charitable;
 - (ii) a constitution which requires its income and property to be applied solely in promoting its objects; and
 - (iii) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) The identity of the corporation(s) or institution(s) referred to in **clause 58.1(a)** is to be determined:
 - (i) by the Board; or

- (ii) if the Board does not decide or does not wish to decide, then by the Members,

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of Queensland for determination.

INDEMNITY

59 Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

60 Payment of Indemnity Policy Premium

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
 - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a liability arising out of conduct that contravenes the governance standards in sections 45.5 to 45.25 of the ACNC Regulation.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under **clause 59** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

61 Indemnity to Continue

The indemnity granted by the Company contained in **clauses 59** and **60** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring before the date of the deletion or modification.