

Constitution of Scaffolding Association Australia Limited

A company limited by guarantee

gadens

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Constitution

(A) GENERAL

1. Definitions and interpretation

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

Act means the *Corporations Act 2001* (Cth) as amended from time to time.

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

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane.

Chairperson means the chairperson of the Board appointed in accordance with clause 21 from time to time.

Company means the company named in clause 2.

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

Corporate Representative means a natural person appointed by a Member which is a body corporate to be that body's representative at specified general meetings.

Directors means the directors of the Company in office for the time being.

General Meeting means a meeting of Members duly called and constituted in accordance with this Constitution and any adjourned holding of it.

Managing Director means the Director appointed in accordance with clause 21.

Member means any person entered in the Register as a member for the time being of the Company.

Membership means membership of the Company.

Membership Fee means the amount determined by the Board from time to time which is payable by a Member.

Objects means the objects of the Company set out in clause 5.

Ordinary Resolution means a resolution of a general meeting where more than 50% of the total votes cast on the resolution are in favour of the resolution.

Register means the Register of Members kept in accordance with the Act and this Constitution.

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

Secretary means any person appointed to perform the duties of secretary of the Company.

Special Resolution means a resolution of a general meeting where at least 75% of the votes cast on the resolution are in favour of the resolution and which is passed in accordance with sections 249H and 249L of the Act.

Vice Chairperson means the vice chairperson appointed in accordance with clause 19 from time to time.

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (f) the meaning of general words is not limited by specific examples introduced by the words including, for example or similar expressions.

2. Name of the Company

The name of the Company is Scaffolding Association Australia Limited.

3. Public company

The Company was established as an incorporated associated under the *Associations Incorporation Act 1981* (Qld) and is now a public company limited by guarantee under the Act.

4. Act and replaceable rules

- 4.1 To the extent that a clause in this Constitution is inconsistent with the Act (if, for example, the Act is amended after this Constitution comes into effect) then this Constitution is taken to be amended so that it is consistent with the Act.
- 4.2 The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the clauses set out in this Constitution.

(B) OBJECTS AND POWERS

5. Objects

The objects of the Company are:

- (a) to promote and maintain a professional image of the scaffolding industry in Australia;
- (b) to raise the visibility and influence of the scaffolding industry in Australia;
- (c) to help develop and promote sensible and consistent legislation for scaffolding safety;
- (d) to support scaffolding companies in Australia and to facilitate information sharing between companies;
- (e) to promote the continuous improvement and education of the scaffolding industry in advanced scaffolding practices;
- (f) to increase awareness amongst Members of technological advances in the scaffolding industry with regards to its products, services and practices;
- (g) to assist Members in becoming more efficient and successful in their business practice;
- (h) to promote consistency in the training and workplace education of scaffolding workers in Australia;
- (i) to provide a forum for Members to expand their professional knowledge and capabilities;
- (j) to establish and maintain a public fund; and
- (k) solely for the above purposes, to do anything allowed by the operation of section 124 of the Act.

6. Powers

The Company has the following powers, which may only be used to carry out its Objects:

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

(C) MEMBERS

7. Limited liability

7.1 Members' liability

The liability of the Members is limited.

7.2 Members' contributions

Every Member of the Company undertakes to contribute to the assets of the Company if it is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for:

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

7.3 Amount of Members' contributions

The amount of the contribution under clause 7.2 must not exceed \$10.00 per Member in any circumstances.

8. Membership

8.1 The number of Members is unlimited.

8.2 The Members of the Company are:

- (a) the persons, corporations or organisations who were Members when the Company resolved to transfer its registration to a company limited by guarantee, or who otherwise consented to become Members in the application for registration as a company limited by guarantee, who will be recognised as Members respectively; and
- (b) any other persons, corporations or organisations whom or which the Directors admit to membership in accordance with this Constitution.

8.3 Applications for Membership must be made by completing the membership application form available on the Company's website or any other manner determined by the Directors in their absolute discretion.

8.4 The Directors will consider each application for Membership at the next meeting of Directors after the application and the applicable Membership Fee is received. In considering an application for membership, the Directors may:

- (a) accept or reject the application; or
- (b) ask the applicant to give more details as to why the Directors should approve the application for membership or respond to queries the Directors may have to assist in consideration of the application.

8.5 If the Directors ask for more information under clause 8.4, their determination of the application for Membership is deferred until the information is received.

8.6 The Directors do not have to give any reason for rejecting an application for Membership.

8.7 As soon as practicable following acceptance of an application for Membership, the Secretary will send the applicant written notice of the acceptance.

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

8.9 Subject to the Act, the Directors have the power to:

- (a) change or create new classes of Members from time to time, including setting out the rights of those Members; and
- (b) set and amend the Membership Fees for each class of Membership (or any category of Membership).

9. Ceasing to be a Member

9.1 A person ceases to be a Member of the Company:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary or such later date referred to in the notice;
- (b) if the Member has not responded within three (3) months to a written request from the Secretary that the Member confirm in writing that they want to remain a Member, on the date the three (3) month period expires;
- (c) where the Member is an individual and the Member:
 - (i) dies; or
 - (ii) is convicted of an indictable offence; or
 - (iii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
- (d) where the Member is not an individual and:
 - (i) a liquidator is appointed in connection with the winding up of the Member, on the date the liquidator is appointed; or
 - (ii) an order is made by a Court for the winding up or deregistration of the Member, on the date the Court order is made; or
- (e) where the Directors terminate their Membership under clause 11.3(b) or expel the Member under clause 12.1(f).

10. Register of Members

- 10.1 A Register of Members must be kept in accordance with section 169 of the Act.
- 10.2 Each Member and Corporate Representative must notify the Secretary in writing of any change to their name, address or email address within one month after the change.
- 10.3 The Register of Members must be kept at the Registered Office and be open for inspection by Members at all reasonable times. A Member must contact the Secretary to arrange an inspection of the Register.
- 10.4 The Board may, on the application of a Member withhold information about that Member (other than the Members' full name) from the Register available for inspection if the Board

has reasonable grounds for believing the disclosure of the information would put the Member or a Corporate Representative of the Member at risk of harm.

10.5 A Member of the Company must not:

- (a) use information obtained from the Register to contact, or send material to, another Member for the purpose of advertising for political, religious, charitable or commercial purposes; or
- (b) disclose information obtained from the Register to someone else, knowing that the information is likely to be used to contact, or send material to, another Member of for the purpose of advertising for political, religious, charitable or commercial purposes.

10.6 Clause 10.5(b) does not apply if the use or disclosure of the information is approved by the Board.

11. Membership Fees

11.1 Membership Fees

Subject to clause 11.4, each Member must pay the Membership Fees determined by the Board from time to time.

11.2 Membership Fees in arrears

If any Member fails to pay a Membership Fee by the due date for payment, that Member is not entitled, while the fee remains unpaid, to:

- (a) nominate a candidate for election to the office of Director;
- (b) vote in any ballot;
- (c) receive notices of meetings of Members; or
- (d) attend, be counted in forming a quorum for, exercise any vote at, or be a proxy or Corporate Representative for any Member for, any General Meeting.

11.3 Forfeit of Membership

- (a) If a Member (**Defaulting Member**) does not pay a Membership Fee within ninety (90) days after the due date, the Board may give the Defaulting Member notice of that fact (**Default Renewal Notice**).
- (b) If the Membership Fee remains unpaid twenty-one (21) days from the date of the Default Renewal Notice, the Board may resolve that the Defaulting Member's Membership is terminated, and in the event of such resolution, the Defaulting Member will immediately cease to be a Member.

11.4 Waiver

Without limiting the power of the Board under clause 11.3(a), the Board may at any time fix at different rates, suspend or waive payment of the Membership Fee in favour of any Member.

12. Discipline of Members

12.1 Initial resolution of Directors

Where the Directors are of the opinion that a Member:

- (a) has refused, neglected or failed to comply with a provision of the Constitution;
- (b) has engaged in building practices that are unlawful or unsafe; or
- (c) has acted in a manner that is causing, has caused, or is likely to cause, harm to the reputation or interests of the Company,

the Directors may, by Special Resolution (**Initial Resolution**):

- (d) reprimand the Member;
- (e) suspend the Member from Membership of the Company for a specified period; or
- (f) expel the Member from the Company.

12.2 Suspended operation

An Initial Resolution is of no effect unless it is confirmed at a meeting of the Directors held not earlier than fourteen (14) days and not later than twenty-one (21) days after service on the Member of a notice under the clause 12.3.

12.3 Notice to Member

The Secretary must, as soon as practicable following the passing of the Initial Resolution, cause a notice in writing to be served on the Member. The notice must:

- (a) set out the Initial Resolution and the grounds on which it is based;
- (b) state that the Initial Resolution will be considered at a meeting of the Directors;
- (c) state the date, place and time of that meeting of the Directors; and
- (d) inform the Member that they may submit a written representation to the Directors regarding the Initial Resolution before the date of the meeting and speak to the representation at that meeting.

12.4 Confirming resolution of Directors

At a meeting of the Directors referred to in clause 12.3, the Directors must:

- (a) give the Member an opportunity to speak to the written representation;
- (b) give due consideration to any written representation submitted to the Directors by the Member before the meeting; and
- (c) by Ordinary Resolution (**Confirming Resolution**) confirm, vary or revoke the Initial Resolution.

12.5 Immediate or suspended effect

The Confirming Resolution may take effect immediately, after any period of time or only on conditions, as specified in the Confirming Resolution.

12.6 Notice of decision to Member

The Secretary must, within seven (7) days of the passing of the Confirming Resolution, by notice in writing, inform the Member of the outcome of the Confirming Resolution and that there is no right of appeal against the Confirming Resolution under the Constitution.

12.7 Right of appeal

There is no right of appeal against the Confirming Resolution.

12.8 No liability

The Company and its Directors will not be liable for any loss or injuries suffered by a Member as a result of any decision made in good faith under this clause 12.

13. Members' representatives

13.1 Representatives of Members

- (a) Any corporation or organisation which is a Member may by written notice to the Secretary:
 - (i) appoint a natural person to act as its representative in all matters connected with the Company (**Corporate Representative**); and
 - (ii) remove its Corporate Representative.
- (b) A Corporate Representative is entitled to:
 - (i) exercise at a General Meeting all the powers that the Member that appointed him or her could exercise if it were a natural person; and
 - (ii) be counted towards a quorum on the basis that the Member is to be considered personally present at a General Meeting by its Corporate Representative.
- (c) A document signed by a Member which is a corporation or organisation is rebuttable evidence of the appointment or removal of its Corporate Representative (as applicable).
- (d) The Chairperson of a General Meeting may allow a Corporate Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the Chairperson to the General Meeting of his or her status as a Corporate Representative within a period prescribed by the Chairperson of the General Meeting.

13.2 Members' power of attorney

- (a) If a Member executes or proposes to execute any document or do any act by or through an attorney, that Member must deliver the instrument appointing the attorney to the Company for notation.
- (b) If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- (c) The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

(D) MEETINGS AND RESOLUTIONS OF MEMBERS

14. General Meetings

14.1 General meetings called by Directors

The Directors may call a General Meeting.

14.2 Requisition of meetings

Except as provided in the Act, no Member may call a General Meeting.

14.3 Notice of General Meeting

- (a) Subject to clause 14.4 or 14.7 at least 21 days' written notice of a General Meeting must be given individually to:
 - (i) each Member entitled to notice and to vote at the meeting;
 - (ii) each Director; and
 - (iii) the auditor of the Company.
- (b) Notice of a General Meeting must:
 - (i) set out:
 - (A) the place, date and time for the meeting;
 - (B) if virtual meeting technology is to be used in holding the meeting, sufficient information to allow the Members to participate in the meeting by means of the technology;
 - (ii) state the general nature of the meeting's business;
 - (iii) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
 - (iv) in the case of an election of Directors, give the names of the candidates for election; and
 - (v) contain a statement setting out the following in relation to proxy voting:
 - (A) that the Member has a right to appoint a proxy; and
 - (B) that a proxy does not need to be a Member.

14.4 Short notice

- (a) The Directors may call a General Meeting with less than 21 days' notice if:
 - (i) for an annual General Meeting, all the Members entitled to attend and vote at the annual General Meeting agree beforehand; or
 - (ii) for any other General Meeting, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree beforehand.

- (b) Notice of a meeting cannot be provided less than twenty-one (21) days before the meeting if a resolution will be moved at the meeting to:
 - (i) remove a Director;
 - (ii) appoint a Director in order to replace a Director who was removed; or
 - (iii) remove an auditor.

14.5 Proxy voting by Members

- (a) A Member may appoint a proxy to attend and vote at any meeting at which the Member is entitled to attend and vote.
- (b) To be valid, a proxy appointment must be:
 - (i) in writing;
 - (ii) delivered to the place nominated by the Directors in the notice of meeting (or, if no place is nominated, the Registered Office of the Company); and
 - (iii) delivered to the Company at least 48 hours before the commencement of the meeting.

14.6 Omission to give notice

The accidental omission to give notice of a General Meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

14.7 Cancellation or postponement of meeting

- (a) The Directors may cancel or postpone the holding of any General Meeting. If the meeting was called by requisitioning Members or in response to a requisition by Members, the Directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Members.
- (b) The Directors may notify the Members of a cancellation or postponement of a meeting by such means as they see fit. If any meeting is postponed for 28 days or more, then no less than five days' notice must be sent to the Members of the postponed meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

14.8 Notice of adjourned meetings

When a meeting is adjourned for one (1) month or more, new notice of the resumed meeting must be given in accordance with clause 14.3.

15. Proceedings at meetings of Members

15.1 Persons entitled to attend

- (a) The following persons may attend a General Meeting:
 - (i) each Member, apart from any Member who under this Constitution or by the terms of issue of any Membership is not entitled to attend;

- (ii) each Director, Secretary and auditor of the Company, whether or not they are a Member of the Company; and
 - (iii) each person, whether a Member or not, who is a proxy, Corporate Representative or attorney of a Member.
- (b) The right of any other person to attend a General Meeting is subject to the powers of the Chairperson of the meeting, both under the Act and under this Constitution.

15.2 Quorum

- (a) No business may be conducted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) The quorum for a General Meeting is more than 10% of the total number of Members, with each individual present only counted once toward a quorum.
- (c) If a Member has appointed more than one proxy or Corporate Representative, only one of them may be counted toward a quorum.

15.3 Quorum not present

- (a) If a quorum is not present within 30 minutes from the starting time appointed for a General Meeting:
 - (i) where the meeting was called by, or in response to, the requisition of Members, the meeting is dissolved; or
 - (ii) in any other case, the meeting is adjourned to such day, and at such time and place, as the Directors determine and notifies Members.
- (b) If no determination of an adjourned meeting is made by the Directors, the meeting stands adjourned to the same time on the same day in the next week at the same place.
- (c) If at the adjourned meeting a quorum is not present within 30 minutes from the start time appointed for the meeting, the meeting is dissolved.

15.4 Chairing meetings of Members

- (a) If the Board has appointed a Director as the Chairperson to chair Board meetings, the Chairperson may also chair meetings of Members.
- (b) If the Board has appointed a Director to be the Vice Chairperson, in the Chairperson's absence the Vice Chairperson may chair meetings of Members.
- (c) If:
 - (i) the Chairperson, or Vice Chairperson, are not present at any General Meeting within 15 minutes after the time appointed for holding the meeting; or
 - (ii) there is no Director appointed as Chairperson, or Vice Chairperson, for the time being; or
 - (iii) the Directors appointed as Chairperson and Vice Chairperson are both not present at the time for which a meeting of Members is called or are both not willing to chair the meeting,

the Members present must elect a Member or Director present to chair the meeting.

15.5 Passing the chair

If the Chairperson for a General Meeting is unwilling or unable to chair the meeting for any part of the business of the meeting:

- (a) that Chairperson may withdraw as Chairperson for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior Chairperson. The prior Chairperson is then entitled to resume as the Chairperson of the meeting.

15.6 Responsibilities of Chairperson

The Chairperson of a General Meeting is responsible for the general conduct of the meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions, and must ascertain the sense of the meeting concerning any item of business which is properly before the meeting.

15.7 Admission to meetings

The Chairperson of a General Meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the Chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under this Constitution to attend the meeting.

15.8 Report on Company's activities

The Board must at each General Meeting, submit to the Members a report on the activities of the Company in the period since the previous General Meeting.

15.9 Frequency of annual General Meeting

The Company must hold an annual General Meeting at least once every calendar year and within five months after the end of its financial year.

15.10 Special business

No special business may be transacted at any General Meeting other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Act to be transacted at the meeting.

15.11 Adjournment of meeting

The Chairperson of a General Meeting at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the Chairperson determines.

15.12 Business at adjourned meeting

- (a) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, when a meeting is adjourned for less than one (1) month.

16. Voting at meetings of Members

16.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any Membership, each natural person who is present at a General Meeting may vote if he or she is a Member, or an attorney, proxy or Corporate Representative of a Member.

16.2 Number of votes

- (a) Each Member who is entitled to vote has one vote.
- (b) A Member who is entitled to vote and is also a proxy, attorney or Corporate Representative of another Member, has one vote.
- (c) The Chairperson of a meeting of Members has a casting vote.

16.3 Voting restrictions

If permitted or contemplated by the Act or this Constitution, the Directors may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.

16.4 Method of voting

- (a) Every resolution put to a vote at a General Meeting (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the Chairperson of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.
- (b) Unless a poll is demanded, the Chairperson's declaration of a decision on a show of hands is conclusive evidence of the result.

16.5 Declaring result of vote on show of hands

In respect of any General Meeting, unless a poll is demanded:

- (a) a declaration by the Chairperson of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and

- (b) an entry made in the book containing the minutes of proceedings of the Company, is conclusive evidence of the result of a resolution.

16.6 Demand for poll

- (a) A poll may be demanded on any resolution (except a resolution concerning the election of the Chairperson of a meeting) by:
 - (i) a Member entitled to vote on the resolution;
 - (ii) Members entitled to cast at least 5% of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or
 - (iii) the Chairperson.
- (b) The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

16.7 Conduct of poll

- (a) If a poll is demanded:
 - (i) the poll must be taken:
 - (A) if the resolution is for the adjournment of the meeting, immediately and in the manner that the Chairperson of the meeting directs; or
 - (B) in all other cases, at the time and place and in the manner that the Chairperson of the meeting directs;
 - (ii) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
 - (iii) the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) The demand for a poll may be withdrawn.
- (c) The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

16.8 Objections

- (a) No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered.
- (b) Every vote allowed at any such meeting or poll is treated as valid.
- (c) In recording votes the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll.

16.9 Ruling on votes

The Chairperson of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the Chairperson is final and conclusive.

17. Circular Resolutions of Members

- 17.1 The Company may pass a resolution without a General Meeting being held if all the Members 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.
- 17.2 Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- 17.3 The Company may treat a document on which a faxed or electronic signature appears, or which is otherwise acknowledged by a Member in a manner satisfactory to the Board, as being signed by that Member.
- 17.4 The resolution is passed when the last Member signs.
- 17.5 The passage of the resolution satisfies any requirement in the Act, or the Company's constitution that the resolution be passed at a General Meeting.

(E) DIRECTORS

18. Directors

18.1 Number of Directors

The Company must have at least three (3) Directors.

18.2 Initial Directors

The initial Directors of the Company are the people who have agreed to act as Directors and who are named as proposed Directors in the application for registration of the Company as a company limited by guarantee (**Initial Directors**).

18.3 Appointment

- (a) Subject to this Constitution, the Initial Directors will continue in office until their retirement under clause 18.5(a) or 18.5(b).
- (b) Subject to clause 18.1, the Board may at any time, by Resolution, appoint any person as a Director either to fill a vacancy or as an addition to the Directors, and subject further to that person having consented to that appointment in writing.

18.4 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or by an order made under the Act) to be a Director;
- (b) becomes disqualified from managing corporations under part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206GAB or 206G of the Act;
- (c) is, or becomes, of unsound mind, or becomes physically or mentally incapable of performing the functions of that office, or that person's estate is liable to be dealt with in any way under the law relating to mental health;
- (d) fails to attend three (3) consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;

- (e) resigns by notice in writing to the Company in accordance with clause 18.5;
- (f) is removed from office under clause 18.6;
- (g) is a Managing Director and ceases to hold that office; or
- (h) was appointed to the office for a specified period and that period expires.

18.5 Resignation of Director

- (a) A Director may retire from office by giving notice in writing to the Secretary of the Director's intention to do so.
- (b) A resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time. However, the resignation must take effect within 3 (three) months from the date of the giving of the notice.
- (c) A Director must retire from office at the conclusion of the second annual General Meeting after the Director was last elected. A retiring Director will be eligible for re-election.
- (d) When a Director (other than an Initial Director) retires at a General Meeting, the Company may by Ordinary Resolution elect a person to fill the vacated office.
- (e) Clauses 18.5(d) and 18.5(e) do not apply to the Initial Directors.

18.6 Removal from office

A Director may be removed from office by the Members in accordance with section 203D of the Act.

18.7 Vacation of office

In addition to the circumstances in which the office of Director becomes vacant by virtue of the Act or other provisions of this Constitution, the office of Director is vacated automatically if the Director:

- (a) becomes mentally incapable or the Director's estate is liable to be dealt with in any way under the law relating to mental health; or
- (b) is absent from more than three (3) consecutive meetings of Directors without the prior leave of the Directors.

18.8 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in their body. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a meeting of the Members; or
- (c) in emergencies.

19. Specific officers

19.1 Election

The Directors must elect from among their number a Chairperson and Vice Chairperson of their meetings and may determine the period for which each is to hold office.

19.2 Absence of Chairperson and Vice Chairperson

- (a) Where a Directors' meeting is held and a Chairperson has not been elected or the Chairperson is unwilling to act or in his absence, the Vice Chairperson will chair the Director's meeting.
- (b) Where a Directors' meeting is held and a Chairperson has not been elected or the Chairperson is unwilling to act or in his absence, the Vice Chairperson is not present within 10 minutes after the time appointed for holding of the Directors' meeting or is unwilling to act, the Directors present must elect one of their number to be a Chairperson of the Directors' meeting.

19.3 Appointment of Secretary

- (a) The Company must have at least one Secretary, who may also be a Director.
- (b) A Secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed by the Directors.
- (c) The Directors must decide the terms and conditions under which the Secretary is appointed.
- (d) The role of the Secretary includes:
 - (i) maintaining the Register of Members, and
 - (ii) maintaining the minutes and other records of General Meetings (including notices of meetings), Directors' meetings and circular resolutions.

19.4 Election of other officers

The Directors may elect from among their number a treasurer and such other officers as determined by the Directors from time to time and may determine the period for which each is to hold office.

20. Managing Director

20.1 Appointment of Managing Director

The Board may at any time:

- (a) appoint one or more of their body to be Managing Director or to some other executive office of the Company;
- (b) define, limit and restrict that person's powers;
- (c) fix that person's remuneration and duties;

- (d) subject to the provisions of any contract between that person and the Company, vary any of the powers so conferred; and
- (e) remove that person from that office and appoint another in that person's place.

20.2 Acting Managing Director

If a Managing Director becomes at any time in any way through sickness, accident, infirmity or through extended leave incapable of acting as such, the Directors may appoint any other Director to act temporarily as Managing Director.

20.3 Termination of appointment of Managing Director

Whether or not the appointment of a Managing Director is expressed to be for a specified term, the appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, without affecting the rights of the Managing Director under any contract between the Company and the Managing Director, the Board has power to do.

(F) MEETINGS & RESOLUTIONS OF DIRECTORS

21. Meetings of Directors

21.1 Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

21.2 Number of Board meetings

At least six (6) Board meetings must be held in each financial year.

21.3 Mode of meeting

- (a) The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit.
- (b) The Directors may conduct their meetings in person, by telephone, audio visual link or by using any other technology consented to by all Directors. A consent may be a standing one.
- (c) A meeting conducted by telephone or other means of communications is considered to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

21.4 Quorum

- (a) A quorum of the Board comprises the majority of the total number of Directors or such greater number fixed by the Directors.
- (b) A quorum must be present for the whole meeting.
- (c) A Director is treated as present at a meeting held by audio or visual communication if the Director is able to hear and be heard by all others attending.

21.5 Notice of meeting

- (a) Notice of each meeting of the Directors:
 - (i) may be given by such means as is convenient, including by telephone or electronic transmission in writing; and
 - (ii) must be given to all Directors not less than 48 hours prior to the meeting.
- (b) The accidental omission to give notice of any meeting of the Directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

21.6 Votes of Directors

- (a) Questions arising at any meeting of the Directors must be decided by a majority of votes cast by Directors entitled to vote.
- (b) Each Director has one vote.
- (c) If there is an equality of votes, provided more than three (3) Directors present are competent to vote on the question at issue but not otherwise, the Chairperson has a second or casting vote.

21.7 Circular resolution of Directors

- (a) If a majority of Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Directors held on the day on which the document was signed.
- (b) If the Directors sign the documents on different days, then a resolution is treated as having been passed on the day on which the document was last signed by a Director thereby constituting a majority in number of the Directors.
- (c) A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier date.

21.8 Signing of circular resolution

For the purposes of clause 21.7:

- (a) each Director, other than one not entitled to vote on the resolution, may sign the document;
- (b) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (c) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together treated as constituting one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents; and
- (d) a fax or email containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company

21.9 Deemed minute

The document or documents referred to in clauses 21.7 and 21.8 are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

21.10 Validity of acts of Directors

All acts done in respect of any meeting of:

- (a) the Directors; or
- (b) a committee of Directors; or
- (c) other persons or by any person acting as a Director; or
- (d) any person purporting to act as an attorney under power of the Company,

are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

22. Powers and duties of Directors

22.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Act do not require to be exercised by the Company in General Meeting.

22.2 Without limiting the generality of clause 22.1, 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 become liable for the payment of money or the performance of any obligation by or of any other person.

22.3 Appointment of attorney

The Directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may:

- (a) contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit; and
- (b) authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

22.4 Delegation

- (a) The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under the Constitution by the Directors for such time as they may think fit and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient.
- (b) The Directors may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that respect.
- (c) The Directors may at any time revoke, withdraw, alter or vary all or any of such powers.
- (d) The exercise of the power by the delegate under this clause is as effective as if the Directors had exercised it.

22.5 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid.

22.6 Compliance with duties under the Act

Each Director must comply with sections 180 to 183 of the Act.

22.7 Requirement to leave the meeting

Despite anything in this Constitution, a Director's entitlement to vote, or be present, at a meeting of the Directors of any Director who has a material personal interest in a matter that is being considered at the meeting is restricted in accordance with section 195 of the Act (and every other mandatory law) as it may apply from time to time to the Company.

22.8 Actual or perceived material conflict of interest

- (a) Subject to clause 22.9, a Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):
 - (i) to the other Directors, or
 - (ii) if all of the Directors have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

22.9 Standing notice of interest

A general notice given to the Directors by any Director in accordance with section 192 of the Act and to the effect that he or she:

- (a) is an officer or a member of, or interested in, any specified firm or body corporate; and

(b) is to be regarded as interested in all transactions with such firm or body,

is sufficient disclosure as required by the Act as regards such Director and those transactions. After such general notice it is not necessary for such Director to give any special notice relating to any transaction with such firm or body.

23. Committees

23.1 Delegation to committee

The Directors may:

- (a) delegate any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of Directors) consisting of such person or persons as they think fit; and
- (c) at any time revoke any delegation of powers to a committee.

23.2 Committee powers

Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Directors.

23.3 Committee meetings

The meetings and proceedings of any committee, consisting of two or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the Directors so far as those provisions are applicable and not affected by any resolution or regulation made by the Directors under clause 23.2.

23.4 Committee Members as officers

Each person appointed to a committee under clause 23.1, if not otherwise an officer of the Company, is, when exercising the powers so delegated or functions entrusted, an officer of the Company.

(G) BOOKS AND RECORDS

24. Minutes

24.1 Required minutes

The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all General Meetings, Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of General Meetings, Directors' meetings and meetings of Directors' committees;
- (c) all appointments of officers;
- (d) all orders made by the Directors and Directors' committees; and

- (e) all disclosure of interests made pursuant to this Constitution or the Act.

24.2 Signing of minutes

- (a) Minutes must be signed by two directors of the Company who were present at the meeting and with at least one of these Directors being the Chairperson of the meeting or the Chairperson of the next meeting of the relevant body.
- (b) If any minutes of a General Meeting or of a Directors meeting are signed by any person purporting to be either the Chairperson of such meeting, or the Chairperson of the next succeeding meeting, those minutes must be received in evidence without any further proof that the matters and things recorded by or appearing in such minutes actually took place or happened at a meeting duly called and held.

24.3 Recording keeping of minutes

Minutes must be kept in accordance with sections 191, 192, 251A and 251AA of the Act.

24.4 Minutes as evidence

Any minutes recorded and signed in accordance with section 251A of the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

24.5 Inspection of minute books

The Company must allow Members to inspect, and must provide copies of, the minute books for the meetings of Members and for resolutions of Members passed without meetings in accordance with section 251B of the Act.

25. Financial matters

25.1 Company's financial year

The Company's financial year is from **1 July** to **30 June**.

25.2 Company to keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director to inspect those records at all reasonable times.

25.3 Financial reporting

If required by part 2M.3 of the Act, the Board must cause the Company to prepare a financial report and a directors' report that comply with that part and must report to Members in accordance with section 314 of the Act no later than the deadline set by section 315 of the Act.

25.4 Audit

- (a) Unless section 301(3) of the Act applies, the Board must cause the Company's financial report (if any) for each financial year to be audited and obtain an auditor's report.
- (b) The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by the Act.

25.5 Inspection of records

Except as otherwise required by the Act:

- (a) the Directors may determine whether and to what extent and at what times and places and under what conditions the accounting records and other documents of the Company or any of them will be open for inspection by Members other than Directors; and
- (b) a Member other than a Director does not have the right to inspect any accounting 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.

26. Notices

26.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

26.2 When notice is given

A notice to a person given by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5 pm (local time in the place of receipt) on a Business Day – on that day;
 - (ii) after 5 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (b) if it is sent by mail:

- (i) within Australia – on the second Business Day after posting; or
- (ii) to a place outside Australia – on the seventh Business Day after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

26.3 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in determining the period.