
Constitution of Carbon Market Institute Limited

A Company Limited by Guarantee

BAKER & MCKENZIE

Solicitors
Level 19, CBW
181 William Street
MELBOURNE VIC 3000
Tel: (03) 9617-4200
Fax: (03) 9614-2103
Email: tyson.may@bakermckenzie.com



Ref: 1143438-v4A\AUSTM6

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Schedule of Amendments

| Date | Clause | Original Clause | Amended Clause |
|---------------|---------------|--|--|
| 30 April 2014 | 8.1 | The maximum number of the Directors is seven (including the CEO who holds office as a Director under clause 14.2), until otherwise determined by the Company in general meeting. | The maximum number of the Directors is ten (including the CEO who holds office as a Director under clause 14.2), until otherwise determined by the Company in general meeting. |

Operative provisions

1 Preliminary

Definitions

1.1 In this Constitution, unless the context otherwise requires:

Act means the *Corporations Act 2001* (Cth).

Alternate Director has the meaning given in clause 8.8.

Appointing Director has the meaning given in clause 8.8.

Associate Member means a person who applies as an Associate Member under clause 2.5 which the Board admits to Membership in accordance with this Constitution.

Auditors has the meaning given in clause 22.1.

Board means the board of Directors.

CEO or *Chief Executive Officer* has the meaning given in clause 14.1.

Company means Carbon Market Institute Limited.

Constitution means the constitution of the Company for the time being in force.

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

Initial Member means Rodrigo Castellanos.

Financial Year has the same meaning as in the Act.

Full Member means a person who applies as a Full Member under clause 2 which the Board admits to Membership in accordance with this Constitution.

Member means a person who is granted Membership in the Company and is entered in the Members Register, including the Full Members and the Associate Members.

Membership means membership of the Company.

Members Register means the register of Members to be kept pursuant to the Act.

Month means calendar month.

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

Officer means an officer (as that term is defined in section 9 of the Act) of the Company from time to time.

Ordinary Resolution means a resolution that has been passed by more than 50% of the votes cast by the persons present and entitled to vote on the resolution.

Principal Objects means the principal objects of the Company as set out in clause 1.5.

Related Body Corporate has the same meaning as in the Act.

Replaceable Rules means the provisions of the Act which would but for this Constitution apply as replaceable rules under the Act.

Seal means the common seal of the Company (if the Board resolves to adopt a common seal) or, where appropriate, the duplicate seal or the official seal.

Secretary means a person appointed as secretary of the Company from time to time.

Special Resolution means a resolution that has been passed by at least 75% of the votes cast by persons present and entitled to vote on the resolution.

Interpretation

1.2 In this Constitution, unless the context otherwise requires:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes every gender;
 - (iii) the Act, any section, regulation or schedule of the Act or any other legislation is a reference to that law as amended, consolidated, supplemented or replaced;
 - (iv) \$ means Australian dollars;
 - (v) *in writing* or *written* includes printing, lithography, photography and other means of representing or reproducing words in a visible form;
 - (vi) *paid up* or *paid* includes credited as paid up or paid;
 - (vii) *dividend* includes a bonus;
 - (viii) any person includes a reference to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency;
 - (ix) the word *including* or *includes* means *including but not limited to* or *including without limitation*; and
- (b) headings are for convenience only and must be ignored in interpreting this Constitution.

Replaceable Rules not to apply

1.3 The Replaceable Rules are displaced by this Constitution and do not apply to the Company.

Constitution subject to the Act

1.4 This Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.

Principal Objects

1.5 The Principal Objects of the Company are:

- (a) to assist Australian industries with the implementation of climate-related markets and associated business opportunities;

- (b) to work in concert with Australian industry and other key stakeholders to position Australia as an emissions trading hub for the Asia-Pacific region;
- (c) to advance the education and training in response to Australian industry's needs in relation to moving to a lower carbon economy;
- (d) to conduct research and market analysis to keep Australian industries informed of characteristics of the domestic and international climate-related markets;
- (e) to be an active independent clearinghouse and standard setter for reliable and unbiased carbon market information;
- (f) to support Australian industry's engagement with international climate-related markets by facilitating and coordinating market information access and business cluster activity;
- (g) to work in concert with relevant organisations, providers and stakeholders, as appropriate, to develop and implement standards and accreditation procedures for the Australian carbon market;
- (h) to do all other things as may be incidental and ancillary to the attainment of these objects; and
- (i) to exercise any powers that the Company has by having the legal capacity of a natural person, including performing any act or function which it is authorised or required to do by any law.

1.6 The Company must pursue the Principal Objects.

1.7 Clause 1.6 does not limit the legal capacity and powers of the Company, as set out in the Act.

Income and property

1.8 Subject to clause 1.9, the income and property of the Company wherever derived shall be applied solely towards promoting the Principal Objects and no portion may be paid or transferred (whether directly or indirectly and whether by way of dividend, bonus or otherwise) to the Members or Directors.

1.9 Clause 1.8 does not prevent:

- (a) the payment in good faith of remuneration to any Member or Director of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business; or
- (b) the payment of reasonable and proper rent for premises leased by any Member or Director to the Company, or interest at reasonable and proper commercial rates on money borrowed from a Member or Director.

2 Membership

Membership

2.1 The Members of the Company are:

- (a) the Initial Member; and

- (b) any other person the Board admits to Membership in accordance with the Constitution, unless they have ceased to be Members.

Categories of Membership

2.2 The Company will consist of:

- (a) the Full Members;
- (b) the Associate Members; and
- (c) any other class of Members determined by the Board from time to time.

Voting Rights

2.3 Full Members and Associate Members have the same rights, privileges and obligations except that:

- (a) subject to law, each Full Member is entitled to cast one vote to elect directors under clause 8.5 and is otherwise entitled to vote as permitted by this constitution and by law; and
- (b) no Associate Member is entitled to cast any vote to elect Directors under clause 8.5 (and any vote purportedly cast by an Associate Member for this purpose is invalid) but, subject to law, each Associate Member is otherwise entitled to vote as permitted by this constitution and by law.

Application for Membership

2.4 Every applicant for Full Membership must be an individual, partnership, corporation or organisation that:

- (a) is interested in and agrees to support the Principal Objects;
- (b) agrees to abide by this Constitution as amended from time to time; and
- (c) meets any additional criteria established for Membership in the Company as may be adopted by the Board and approved by the Members from time to time.

2.5 Every applicant for Associate Membership must be an individual, partnership, corporation or organisation that the Board determines may apply for Associate Membership of the Company.

Form of Application

2.6 An application for Membership must be in a form approved by the Board and accompanied by the documents or evidence as to qualification for the type of Membership applied for that the Board requires.

2.7 An application form must be accompanied by:

- (a) any application fee determined under clause 2.14; and
- (b) the subscription, determined under clauses 2.15 and 2.17.

Admission to Membership

2.8 The Board, or any person or persons appointed by it for the purpose, must consider an application for Membership as soon as practicable after its receipt and may admit the applicant to Membership.

- 2.9 The decision regarding an application is final, but an applicant whose application is rejected may obtain a statement of the reasons for the rejection of the applicant's application.
- 2.10 If an application for Membership is accepted:
- (a) the Secretary must notify the applicant of his or her admission; and
 - (b) the details set out in clause 2.12 about the Member must be entered in the Register.
- 2.11 If an application for Membership is rejected, the Secretary must notify the applicant in writing and refund any application fee, and the subscription, in full.

Register of Members

- 2.12 The Secretary shall keep and maintain the Members Register in which shall be entered the full name, address and date of entry of the name of each Member and the register shall be available for inspection by Members at the Company's address.

Membership rights not transferable

- 2.13 A right, privilege, or obligation of a person by reason of his Membership:
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates upon the cessation of Membership (except as otherwise provided in this Constitution).

Application Fee

- 2.14 The application fee payable by each applicant for Membership is the sum the Board prescribes from time to time for each category of Membership.

Annual subscription

- 2.15 The Board must fix the subscription payable by Members and the period to which it relates. In fixing the subscription, the Board may provide for different subscriptions for each category of Members and different subscriptions within a particular category based on such factors appearing to the Board to justify differential subscriptions.
- 2.16 All subscriptions are due and payable on dates to be determined by the Board.
- 2.17 If a Member is admitted to Membership during a financial year, the subscription will be calculated proportionately for the part of the financial year remaining in whole Months plus the Month in which the Member was admitted to Membership.

Unpaid Subscription

- 2.18 If a Member does not pay the subscription by the date determined by the Board under clause 2.16 and:
- (a) a notice of default is given to the member; and
 - (b) the subscription of the Member remains unpaid for a further 2 Months after the date of notification under clause 2.18(a),

the Member ceases to have any of the rights or privileges of Membership, but these may be reinstated on payment of all arrears, if the Board thinks fit.

Resignation of Member

- 2.19 If all money due to the Company is paid up, a Member may resign from Membership by giving written notice to the Secretary.
- 2.20 A Member's resignation takes effect from the date the Secretary receives the notice of resignation, or any later date stated in the notice.

Failure to pay arrears of Subscriptions

- 2.21 If a Member has not paid all arrears of subscriptions and has ceased to be entitled to any rights and privileges in accordance with clause 2.18:
- (a) the Member remains liable for all amounts due to the Company; and
 - (b) unless the Board otherwise determines, the Member ceases to be a Member and the Secretary must remove the Member's name from the Members Register at the expiration of 6 Months after the end of the period allowed for payment of the subscription under clause 2.18(b).

Expulsion, suspension and fines

- 2.22 The Board may by Ordinary Resolution:
- (a) expel a Member;
 - (b) suspend a Member from Membership for a specified period; or
 - (c) fine a Member,
- who has:
- (d) refused or neglected to comply with this Constitution; or
 - (e) engaged in conduct that is prejudicial to the interests of the Company or contravenes any of the Company's policies from time to time.
- 2.23 Where the Board passes a resolution under clause 2.22, the Secretary shall, as soon as practicable, cause to be served on the Member a notice in writing setting out the resolution of the Board and the grounds on which it is based.

Other grounds for cessation of Membership

- 2.24 A Member's Membership of the Company will automatically cease:
- (a) in the case of a Member who is a natural person, on the date that the Member:
 - (i) dies; or
 - (ii) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (b) in the case of a Member that is a body corporate, on the date that:
 - (i) a liquidator is appointed in connection with the winding up of the Member; or
 - (ii) an order is made by a court for the winding-up or deregistration of the Member.

Limited liability

2.25 The liability of the Members is limited.

Members' guarantee

2.26 If the Company is wound up, anyone who is a Member when the Company is wound up or who ceases to be a Member within one year before the Company is wound up must, on winding up, contribute to the Company's property the lesser of:

- (a) the amount required for:
 - (i) payment of the Company's debts and liabilities that were contracted before the person ceased to be a Member;
 - (ii) the costs, charges and expenses of the winding up; and
 - (iii) adjustment of the rights of contributors between themselves; and
- (b) \$20.00.

3 General meetings

Annual general meetings

3.1 Subject to the Act:

- (a) the Company must hold its first annual general meeting by the end of the Financial Year following the registration of the Company; and
- (b) subsequent annual general meetings must be held at least once in every calendar year and within five Months after the end of the financial year of the Company.

The annual general meeting shall be specified as such in the notice convening it.

3.2 All other general meetings of the Company may be convened at any time.

Deemed holding of annual general meeting

3.3 An annual general meeting is deemed to have been held if the Company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but this does not affect the obligation to hold an annual general meeting as required by the Act or this Constitution.

Calling of general meetings

3.4 In relation to the convening of general meetings, either:

- (a) the Directors may by Ordinary Resolution call a general meeting to be held at any place the Directors, by Ordinary Resolution, determine; or
- (b) the Directors must call, and arrange to hold, a general meeting within 21 days after being requested to do so by Members with at least 5% of the votes that may be cast at the general meeting or at least 100 Members who are entitled to vote at the general meeting.

Notice of general meetings

- 3.5 Except as permitted by the Act, at least 21 days' notice of every general meeting or meeting of any class of Members must be given in the manner provided by this Constitution to the Members and the persons entitled under this Constitution to receive notices.

Contents of notice of general meetings

- 3.6 Every notice convening a general meeting must:
- (a) set out the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) set out the rights of and requirements for a Member to appoint a proxy;
 - (c) be accompanied by an instrument of proxy in the form which complies with the Act, and this Constitution or in any other form as the Directors may from time to time prescribe or accept; and
 - (d) otherwise comply with the requirements of section 249L of the Act.

Omission to give notice

- 3.7 The accidental omission to give notice of a meeting of Members to, or the non-receipt of any such notice by, a person or other entity entitled to receive it does not invalidate the proceedings at, or any resolution passed at, the meeting.

Class meetings

- 3.8 Subject to any additional or different requirements imposed by law, the provisions in this Constitution relating to meetings of Members (including this clause 3, and clauses 4, 5, 6 and 7) apply to meetings of a class of Members as though references to the Members are references to the Members of that class.

4 Proceedings at general meeting

Business at annual general meeting

- 4.1 The business of an annual general meeting may include the following even if not referred to in the notice of the meeting:
- (a) to consider the annual financial report, the Director's report and auditor's report;
 - (b) to appoint the Directors;
 - (c) to appoint the Auditor;
 - (d) to fix the remuneration of the auditors (if relevant); and
 - (e) to transact any other business which may be properly brought before the meeting.

Technology

- 4.2 The Company may hold a general meeting at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including telephone, VOIP and video conferencing.

Quorum for general meeting

- 4.3 No business will be transacted at any general meeting unless a quorum is present at the beginning of the business and during the whole of the meeting. A quorum is constituted by:
- (a) Where the Company has a single Member, that Member; or
 - (b) Where the Company has more than one Member, the lesser of:
 - (i) 30 per cent of the Members being present; or
 - (ii) 30 Members being present.
- 4.4 For the purpose of determining whether there is a quorum for a general meeting, a Member present at any venue using any technology as permitted under clause 4.2, and any person attending as a proxy, or as an attorney for a Member, or as a duly authorised representative of a corporation that is a Member, will be taken to be a Member present in person.

Representative of body corporate

- 4.5 Where:
- (a) a person present at a general meeting is authorised to act as the representative of a body corporate at the general meeting under an authority given by the body corporate under section 250D of the Act; and
 - (b) the person is not otherwise entitled to be present at the general meeting,
- the body corporate will, for the purposes of this Constitution, be deemed to be present in person at the general meeting.

No quorum

- 4.6 If a quorum is not present within 20 minutes after the time appointed for the meeting:
- (a) any meeting convened on a requisition of Members will be dissolved; and
 - (b) any other meeting will be adjourned to the same day in the next week at the same time and place or to such other day, time and place that the Directors may appoint by notice to the Members.

If at the adjourned meeting a quorum is not present, the meeting will be dissolved.

Chairperson of general meeting

- 4.7 The Directors may elect one of their number as chairperson of the general meeting and may decide the period for which the elected Director is to hold office.
- 4.8 The chairperson of the Directors, or, in the chairperson's absence, the deputy chairperson (if any), is entitled to take the chair at every general meeting.
- 4.9 If there is no chairperson or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or if the chairperson is unwilling to act:
- (a) the Directors present may choose a chairperson; or
 - (b) if the Directors do not choose a chairperson, the Members present must choose one of the Directors to be chairperson and if no Director is present or willing to take the chair, the Members must choose someone to be chairperson.

Powers of chairperson

- 4.10 At any general meeting, a declaration by the chairperson that a resolution has been carried or carried by a particular majority or not carried and a recording of that declaration in the minute book will be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution.

Adjournment of general meeting

- 4.11 The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place, but only business left unfinished at the original meeting may be transacted at the adjournment.

Notice of adjourned meeting

- 4.12 If any general meeting is adjourned for more than one Month, a notice of the adjournment must be given to Members of the Company in the same manner as notice was or ought to have been given of the original meeting. In the case of all other adjournments, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

5 Voting

Voting and resolutions

- 5.1 At a general meeting of Members:
- (a) all questions submitted to the meeting will be decided by an Ordinary Resolution except where the Act requires a greater majority or as otherwise required by this Constitution;
 - (b) in the first instance, voting will be on a show of hands; and
 - (c) a poll may be demanded on any question before the close of the meeting by the chairperson, any Member, or their proxy, attorney or representative. The chairperson must decide in each case the manner in which a poll will be taken. Any dispute about the admission or rejection of a vote must be determined by the chairperson and the chairperson's determination made in good faith will be final and conclusive.

Votes

- 5.2 On a show of hands and on a poll every person present as a Member or as a duly authorised representative, proxy or attorney of a Member will have one vote whether present in person or by proxy, attorney or representative.
- 5.3 A person entitled to cast more than one vote on a poll need not use all their votes or cast all the votes they use in the same way.
- 5.4 Subject to any restrictions affecting a class of Members, each Member is entitled to receive notices and to attend any general meeting and to vote and be counted in a quorum even if moneys are then due and payable to the Company by that Member.

Objections to qualification to vote

- 5.5 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

5.6 Any such objection will be resolved by the chairperson of the meeting, whose decision is final.

5.7 A vote not disallowed pursuant to an objection is valid for all purposes.

Attorney of Member

5.8 Any Member may appoint an attorney to act on the Members' behalf at all meetings of the Company or all meetings of the Company during a specified period. Before the first meeting at which the attorney acts on the Members' behalf, the relevant power of attorney must be deposited at the Office or at any place specified in the notice convening that meeting. At the first meeting and at any subsequent meeting to which the power of attorney may relate, the attorney must hand to the chairperson of the meeting a properly executed declaration of non-revocation of the power of attorney.

6 Proxies

Instrument appointing proxy

6.1 The instrument appointing a proxy must be in writing signed by the appointor or by the appointor's attorney properly authorised in writing, or, if the appointor is a body corporate, by its corporate representative or at least two of its Officers.

Validity of appointment

6.2 The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney must be received by the Company at least 48 hours before the time for holding the meeting either by delivery to the Office, by facsimile received at a fax number at the Office or otherwise by any other means permissible under section 250B(3) of the Act.

6.3 An instrument appointing a proxy will only be valid for 12 Months from the date of its execution unless it states that it is valid for all meetings until revoked, except that any instrument may be used at any adjournment of the meeting for which it was originally intended.

Validity of vote given in accordance with proxy

6.4 Unless the Company has received written notice of the matter before the start or resumption of the Members' meeting at which a proxy or an attorney votes, a vote cast by the proxy or attorney will be valid even if, before the proxy or attorney voted, the Member:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's or attorney's appointment; or
- (d) revokes the authority under which the proxy was appointed by a third party.

Form of proxy

6.5 Every instrument of proxy must specify the Members' name and address, the Company's name, the proxy's name or the name of the office held by the proxy and the meetings at which the proxy may be used, and must otherwise comply with the provisions of section 250A of the Act.

- 6.6 The instrument of proxy may be worded so that a proxy is directed to vote either for or against each of the resolutions to be proposed. Any instrument of proxy deposited in accordance with this Constitution in which the name of the appointee is not filled will be deemed to be given in favour of the chairperson of the meeting to which it relates. The instrument of proxy may specify the proportion or number of votes that the proxy may exercise.

Two proxies

- 6.7 A Member entitled to cast two or more votes at a meeting may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Members' votes, each proxy may exercise half of the votes.

7 Resolutions without meetings

- 7.1 Any resolution, other than a resolution to remove an auditor under section 329 of the Act, may be passed without a general meeting being held if all the Members entitled to vote on the resolution (or being corporations, their duly authorised representatives or attorneys) sign a statement that they are in favour of a resolution set out in the document. Identical copies of the document and accompanying information may be distributed for signing by different Members. The resolution is passed when the last Member signs the document.

8 Directors

Number of directors

- 8.1 The maximum number of the Directors is ten (including the CEO who holds office as a Director under clause 14.2), until otherwise determined by the Company in general meeting.

Eligibility

- 8.2 At least two of the Directors must be natural persons who ordinarily reside within Australia.

Consent to act as Director

- 8.3 Before being appointed as a Director a person must give the Company a signed consent to act as Director, which must be retained by the Company.

Initial Directors

- 8.4 The Directors on incorporation will be:

- (a) Anthony Clive Beck;
- (b) Leslie Victor Hosking;
- (c) Brendan Anthony Bateman;
- (d) Anna Marilla Skarbek; and
- (e) Gwennyth Jane Andrews.

Appointment or removal of Directors

8.5 The Full Members must elect Directors (other than the CEO who continues to hold office as Director under clause 14.2) at each annual general meeting of the Company. Directors may otherwise be appointed or removed either by Ordinary Resolution of Full Members or by notice in writing to the Company signed by or on behalf of Full Members holding a majority of the votes that may be cast at general meetings. Any removal or appointment by notice takes effect immediately on delivery of the notice to the Office or on presentation at a duly constituted Directors' meeting.

Directors may fill casual vacancies or appoint additional Directors

8.6 Notwithstanding clause 8.5, the Directors also have the power at any time to appoint any other person as a Director, to fill a casual vacancy, including a vacancy arising from there being an insufficient number of Directors elected under clause 8.5, provided that the total number of Directors must not at any time exceed the maximum number for the time being fixed by or under this Constitution.

Auditor cannot be Director

8.7 Subject to the Act, an auditor of the Company or partner or employee or employer of an auditor of the Company must not be appointed a Director or an Alternate Director.

Director

8.8 Subject to the Act, each Director (*Appointing Director*) may with the approval of a majority of the other Directors (and subject to any conditions determined by the other Directors) by writing under hand or by facsimile appoint any person to act as an alternate Director in the Appointing Director's place (*Alternate Director*) during any period the Appointing Director thinks fit. Any Alternate Director:

- (a) may be removed or suspended from office by written notice to the Company from the Appointing Director;
- (b) is entitled to receive notice of meetings of the Board, to attend meetings (if the Appointing Director is not present) and to be counted towards a quorum at meetings;
- (c) is entitled to vote at meetings he or she attends on all resolutions on which the Appointing Director could vote had he or she attended and, where the Alternate Director is a Director in his or her own right, will have a separate vote on behalf of the Appointing Director in addition to the Alternate Director's own vote;
- (d) need not be a Member;
- (e) may exercise any powers that the Appointing Director may exercise in the Alternate Director's own right where the Appointing Director is unavailable for any reason except the power to appoint an Alternate Director. The action of an Alternate Director will be conclusive evidence as against third parties of the unavailability of the Appointing Director;
- (f) will automatically vacate office if the Appointing Director is removed or otherwise ceases to hold office for any reason;
- (g) while acting as an Alternate Director is responsible to the Company for his or her own acts and defaults and will not be deemed to be the agent of the Appointing Director;

- (h) will not be entitled to receive any remuneration from the Company but will, if approved by the Directors, be entitled to reimbursement for reasonable travelling and other expenses incurred by the Alternate Director in attending meetings of the Board or otherwise on the Company's business;
- (i) will not be taken into account in determining the number of Directors for the purposes of this Constitution; and
- (j) may act as an Alternate Director for more than one Director.

9 Directors' terms

Directors' tenure of office

- 9.1 At the first annual general meeting of the Company, the Initial Directors must retire from office, with effect from the end of the first annual general meeting.
- 9.2 Subject to the Act, this Constitution and clause 9.3, a Director must retire from office or seek re-election by no later than the third annual general meeting following his or her appointment or election or 3 years, whichever is longer.
- 9.3 Clauses 9.1 and 9.2 do not apply to the CEO.

Retirement by rotation

- 9.4 Subject to the Act and to clause 14.2, at every annual general meeting of the Company following the first annual general meeting, one-third of the Directors (rounded up to the nearest whole number) must retire from office, with effect from the end of the annual general meeting. For the avoidance of doubt, in addition to the one-third of Directors to retire at an annual general meeting (other than the first annual general meeting), in accordance with clause 9.2 a Director must also retire at an annual general meeting if that annual general meeting is the third annual general meeting following the Director's appointment and the Director is not one of the one-third of Directors otherwise retiring.
- 9.5 The one-third (or rounded up nearest whole number) of Directors to retire at every annual general meeting (other than the first annual general meeting) will be the Director or Directors who have been longest in office. As between two or more Directors who have been in office an equal length of time, the Director or Directors to retire must be determined by lot, unless otherwise agreed among themselves.

Retiring Director eligible for re-election

- 9.6 A Director (other than the CEO) who retires or whose office is vacated under this Constitution is eligible for election or re-election to the Board except as expressly provided in this Constitution.

Vacation of office

- 9.7 The office of a Director will be automatically vacated if the Director:
 - (a) becomes insolvent under administration;
 - (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;

- (c) vacates office or is prohibited from being a Director under any of the provisions of the Act or any order made under the Act;
 - (d) fails to attend at least two of the meetings of Directors called in any 6 Month period;
or
 - (e) resigns office by notice in writing to the Company.
- 9.8 A Director whose office is vacated under clauses 9.7(a), 9.7(b) or 9.7(c) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.
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10 Proceedings of Directors

Board meetings

10.1 A meeting of Directors must be held at least four times in total in each year.

Quorum for Board meeting

10.2 No business will be transacted at any Board meeting unless a quorum is present at the beginning of the meeting. A quorum is constituted by:

- (a) Where there are three Directors, two of the Directors being present at the beginning of the meeting
- (b) Where there are more than three Directors, 75% of the Directors (rounded up to the nearest whole number) being present at the beginning of the meeting.

10.3 Unless clause 10.4 applies:

- (a) the Directors may meet for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit; and
- (b) if a quorum is present at the beginning of the meeting, it is deemed to be present throughout the meeting even if a Director absents himself or herself, or absents from voting, for any reason.

10.4 In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may only act for the purposes of:

- (a) increasing the number of Directors to a number sufficient to constitute a quorum; or
- (b) convening a general meeting of the Company.

Use of technology

10.5 A Directors' meeting may be called or held by telephone or by using any other technology consented to by all the Directors. The consent may be a standing one and may only be varied or withdrawn by a further ordinary resolution of Directors.

Calling of Board meeting and place of meeting

10.6 The Directors must meet whenever a meeting is called by at least three Directors provided that not less than three working days' written notice has been given to the other Directors.

Board meeting competent to exercise all powers

10.7 A meeting of the Directors at which a quorum is present may exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

Resolution passed deemed to be determination of Board

10.8 Any resolution properly passed under clause 10.10 at a duly convened meeting of the Directors at which a quorum is present will be deemed to be a determination by all the Directors of the Board for the purposes of this Constitution.

Chairperson of Board meetings

10.9 The Directors may elect a chairperson and deputy chairperson of their meetings and determine the period they are to hold office. If no chairperson or deputy chairperson is elected, or if elected, both the chairperson and deputy chairperson decline to act, or if at any meeting neither the chairperson nor the deputy chairperson is present at the time appointed for the meeting, the Directors present at the meeting must choose one of their number to be chairperson of the meeting. In the event of a question arising at a meeting of Directors having the same number of votes cast for and against by the Directors present and entitled to vote at that meeting, the chairperson has a second or casting vote.

Questions to be decided by Ordinary Resolution

10.10 Questions arising at any meeting of Directors will require an Ordinary Resolution cast by the Directors present and entitled to vote on the question.

Resolutions without meetings

10.11 If more than half of the Directors entitled to attend at the meeting of the Directors and vote on a resolution set out in a document sign that document, containing a statement that they are in favour of that resolution, the resolution will be taken to have been passed at a meeting of the Directors duly convened and held on the day on which and at the time at which the document was last signed by a Director, provided that all Directors have been given the document and at least 3 working day's prior notice to consider the resolution.

10.12 For the purposes of clause 10.11:

- (a) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents; and
- (b) a telex, telegram or facsimile message which is received by the Company and is expressed to have been sent by a Director or Alternate Director will be taken to be a document signed by that Director or Alternate Director at the time of receipt of the telex, telegram or facsimile message by the Company.

Validity of acts of Directors

10.13 All acts done by any meeting of the Directors or by a committee of the Directors or by any person acting as a Director are valid even if it is discovered afterwards that there was some defect in the appointment or election of any Director or person acting as a Director or that any Director was disqualified or had vacated office or was otherwise not entitled to vote or act or the Board was otherwise not validly constituted.

11 Board committees

Committee powers and meetings

- 11.1 The Directors may delegate any of their powers to a committee of Directors or to a sole Director and may revoke any delegation. Any committee or sole Director must exercise the powers delegated to it in accordance with any directions of the Board. The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any direction made by the Board under this clause 11.1.

12 Directors' contracts

Directors not disqualified from holding office or contracting with the Company

- 12.1 No Director is disqualified because of his or her office from:
- (a) holding any other office or position with the Company or with any company promoted by the Company or with any corporation in which the Company is a member or which is a Member of the Company or in which the Company is otherwise interested; or
 - (b) contracting with the Company (whether as vendor, purchaser or otherwise).
- 12.2 No contract referred to in clause 12.1(b) or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested will be avoided and no Director will be liable to account to the Company for any profit arising from such a contract or arrangement or from any office referred to in clause 12.1(a) (or other place of profit) only because that Director holds that office or because of the fiduciary relations established by it.

Director may hold office or act in professional capacity

- 12.3 Subject to the Act, a Director:
- (a) may hold any office in connection with the Company's business; and
 - (b) may act individually or through the Director's firm in a professional capacity for the Company. The Director will only be entitled to remuneration for these professional services if approved by the Directors.

Director may vote on contract in which that Director is interested

- 12.4 Subject to the Act (and in particular section 195) and to clause 14.6, a Director may vote on any matter about any contract or arrangement in which the Director is interested (whether directly or indirectly) and may be counted in a quorum, may affix the Seal to, and may otherwise act on any matter about that contract or arrangement.

Director not deemed to be interested in certain contracts or arrangements

- 12.5 A Director will not be deemed to be interested (whether directly or indirectly) or to have been at any time interested in any contract or arrangement or proposed contract or arrangement of a type referred to in section 191(2) of the Act.

Directors to declare interest

- 12.6 Any Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest, unless the interest is of a type referred to in section 191(2)(a) of the Act, or the conditions referred to in section 191(2)(b), (c) or (d) of the Act are satisfied.
- 12.7 The Director must declare the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company at the meeting of the Directors as soon as possible after the Director becomes aware of their interest in the matter.
- 12.8 A Director who has an interest in a matter may give a standing notice to the other Directors of the nature and extent of that Director's interest in the matter in accordance with section 192 of the Act.

Directors to declare potential conflicts

- 12.9 Any Director who holds any office or possesses any property which might (whether directly or indirectly) create duties or interests in conflict with that Director's duties or interests as a Director of the Company must declare the fact of the holding and the nature and extent of any conflict at the first meeting of the Directors held after the Director becomes a Director or (if already a Director) at the first meeting of the Directors held after the relevant facts came to the Director's knowledge.

Secretary to record declarations of Directors

- 12.10 The Secretary must record any declarations made or notices given by a Director under this Constitution in the minutes of the meeting.

Effect of failure to make or record disclosures

- 12.11 Failure to make or to record any disclosures will not render voidable or void any contract, transaction or arrangement to which the disclosure relates.

13 Powers of Directors

Powers of Directors

- 13.1 Subject to the Act and this Constitution, the business of the Company will be managed by the Directors, who may pay and, if approved by the Directors, be reimbursed by the Company for, all expenses incurred in promoting and forming the Company and may exercise all of the powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting.

Powers to borrow or raise money

- 13.2 Without limiting the clause 13.1, the Directors may from time to time borrow or raise any sum or sums of money or incur other financial obligations for the purposes of the Company and may give or take security over the repayment of that sum or sums or the payment, performance or fulfilment of any debts, liabilities, contracts or obligations incurred or undertaken by the Company on terms and conditions as they determine.

Directors may vote shares in other corporations

- 13.3 Subject to the Act, the Directors may exercise the voting power conferred by the shares in any corporation held by the Company as they determine, including in circumstances where a Director may be interested in the exercise, such as an exercise in favour of any resolution appointing a Director as an Officer of a corporation or voting or providing for the payment of remuneration to Officers of the other corporation.

Security over the Company's assets

- 13.4 Subject to the Act, if any Director or any other person becomes personally liable (whether as surety or otherwise) for the performance of any of the Company's obligations, the Directors may, despite their interest, execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the liability.

14 Executive Directors

Chief Executive Officer

- 14.1 The Directors may at any time and from time to time appoint any person (whether or not a Director) to the office of chief executive officer (*Chief Executive Officer* or *CEO*) or to any other executive office for any period and on any terms they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke the appointment.
- 14.2 The person appointed as CEO will remain a Director for the duration of his or her appointment as CEO or such longer period as provided for in this Constitution.
- 14.3 If a Member is appointed as CEO, then to the extent permitted by law, the rights of that Member as a Member will be automatically suspended upon such appointment until such time as the appointment ends, at which time the suspension of the person's rights as a Member will cease. A person appointed as CEO is not eligible to apply for or be admitted as a Member at any time during such appointment.

Directors may confer powers on executive officers

- 14.4 The Directors may grant a CEO or other executive officer any of the powers exercisable by the Directors on terms and conditions and with any restrictions that they think fit. Any powers which are conferred may be concurrent with or to the exclusion of their own powers. The Directors may at any time revoke, withdraw, alter or vary all or any of those powers.
- 14.5 A CEO or other executive officer must report to the Board on matters relating to the exercise of his or her powers and the performance of his or her duties, and otherwise relating to the Company, as required by the Board from time to time.

Remuneration of Directors

- 14.6 The Company must not pay the Directors any remuneration (other than any remuneration payable to any Director under any executive service contract with the Company). Any other payments to a Director by the Company must be approved by the Directors.

Expenses of Directors

- 14.7 If approved by the Directors, a Director may also be paid all travelling and other expenses incurred by them in attending and returning from meetings of the Directors, any committee of the Directors or any general meetings of the Company or otherwise in connection with the business of the Company.

15 Power of attorney

Appointment

- 15.1 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 those purposes and with those powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for that period and subject to those conditions that the Directors think fit.
- 15.2 Without limiting clause 15.1, any appointment may be made in favour of any company or the members, directors, nominees or managers of any company or firm or in favour of any fluctuating body of persons (whether nominated by the Directors or otherwise).

Indemnification of attorneys

- 15.3 Any power of attorney given on behalf of the Company may contain provisions for the indemnification, protection or convenience of the attorney or attorneys and of persons dealing with the attorney or attorneys.

Sub-delegation of powers

- 15.4 Any attorney appointed by the Directors under clause 15.1 may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions given to them.

16 Minutes and registers to be kept

Minutes

- 16.1 The Directors must ensure that minute books are kept in which are recorded, within one Month of the relevant meeting, the following:
- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
 - (b) all declarations made or notices given by any Director (either generally or specially) of his or her interest in any contract or proposed contract or of his or her holding of any office or property by which any conflict of duty or interest may arise;
 - (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors; and
 - (d) resolutions passed by Members or Directors without a meeting.
- 16.2 Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed within a reasonable time after the meeting

by the chairperson of the meeting or by the chairperson of the next succeeding meeting and once signed will be evidence of the matters stated in the minutes.

Registers

16.3 The Directors must set up and maintain in accordance with the Act:

- (a) a Members Register;
- (b) a register of charges;
- (c) if the Company issues debentures, a register of debenture holders;
- (d) a register of the holdings of Directors in debentures of the Company and in shares and debentures of any related body corporate of the Company;
- (e) a register of the Directors, principal executive officer and Secretaries of the Company which must contain for each Director, his consent in writing to his appointment as a Director; and
- (f) any other registers required to be kept under the Act.

16.4 The registers may be kept either in a bound or loose leaf book or on computer. If a register is kept on computer, its contents must be capable of being printed out in hard copy.

Overseas branch registers

16.5 Subject to the Act, the Company may keep a branch register of Members at a place outside or inside Australia.

17 The Secretary

Appointment of Secretary

17.1 A Secretary or Secretaries of the Company must be appointed by the Directors complying with the Act. The Directors may also appoint acting and assistant secretaries. At least one Secretary must be ordinarily resident in Australia. Any appointment may be for that term, at that remuneration and on those conditions the Directors think fit and any person so appointed may be removed by the Directors.

18 The Seal

Use of the Seal

18.1 If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must be used only by the authority of the Board or a committee of the Directors with authority from the Board to authorise the use of the Seal; and
- (c) every document to which the Seal is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the

Directors to countersign that document or a class of documents in which that document is included.

19 Negotiable instruments

Terms of negotiable instruments

19.1 All cheques, bills of exchange, promissory notes and other negotiable instruments must be signed, drawn, accepted, made or endorsed (as the case may be) for and on behalf of the Company by those persons and in that manner determined by the Directors.

20 Asset valuation

Revaluation of assets

20.1 Subject to the Act, the Directors may revalue any assets of the Company.

21 Financial statements

Financial records

21.1 Except as otherwise required by the Act, the Directors must cause financial and other records to be kept to record correctly and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Act or this Constitution. The records must be kept:

- (a) in a manner which will enable them to be conveniently and properly audited;
- (b) for seven years after the completion of the transactions or operations to which they relate; and
- (c) at the Office or at any other place the Directors think fit and at all times be open to inspection by the Directors.

Financial statements/reports

21.2 Except as otherwise required by the Act, at each annual general meeting the Directors must lay before the Company:

- (a) a profit and loss account for the last financial year of the Company;
- (b) a balance sheet as at the date to which the profit and loss account is made up;
- (c) an account of the contributions of each Member for the last financial year; and
- (d) attached to the documents listed in paragraphs (a) and (b), a report by the Directors regarding the state of the Company's affairs, a statement by the Director's in accordance with the Act and the auditor's report regarding the documents, unless the Company in accordance with the Act has resolved not to appoint auditors.

22 Audit

Auditors

- 22.1 Auditors of the Company (*Auditors*) must be appointed and removed and their remuneration, rights and duties must be regulated in accordance with the provisions of the Act.
- 22.2 Except as otherwise required by the Act, the financial statements of the Company must be audited for each Financial Year of the Company and the correctness of the profit and loss account and balance sheet must be ascertained by the Auditors of the Company complying with the Act.

Approval of financial statements

- 22.3 Financial statements of the Company when approved by a general meeting will be conclusive except regarding any error identified within three Months after the date of preparation. If any error is identified within this period, the financial statements must immediately be corrected and will then be conclusive.

23 Inspection of records

Right to inspect

- 23.1 Subject to the Act, the Directors will determine whether, to what extent, at what times and places and under what conditions the accounting and other records of the Company or any of them will be open to the inspection of the Members.
- 23.2 A Member who is not a Director will not have any right to inspect any account, book or document of the Company or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of the Company except as provided by the Act or as authorised by the Directors or a resolution of the Company in general meeting.

24 Deductible Gift Recipient status

Maintaining Deductible Gift Recipient status

- 24.1 If the Company is endorsed as a deductible gift recipient in its own right then to maintain this status the Company will:
- (a) ensure that all times it uses the following solely for the Principal Objects;
 - (i) gifts of money or property for the Principal Objects;
 - (ii) contributions (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 in relation to a fund-raising event held for the Principal Objects; and
 - (iii) money received by the Company because of such gifts or contributions;
 - (b) keep records in English or readily accessible and easily convertible into English which:

- (i) record and explain all transactions and other acts the Company engages in which is relevant to the Company's status as a deductible gift recipient; and
- (ii) show that each of the following is used by the Company only for the Principal Objects:
 - (A) gifts of money or property for the Principal Objects; and
 - (B) contributions (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 in relation to a fund-raising event held for the Principal Objects;
- (c) keep the records referred in paragraph (b) for at least 5 years after the completion of such transactions or acts to which they relate; and
- (d) at all times ensure it complies with the requirements of all laws and regulations in existence from time to time or any guidelines issued by the Australian Taxation Office or other such authority in relation to deductible gift recipient status.

Winding up or revocation of endorsement

24.2 If the Company is endorsed as a deductible gift recipient in its own right, then at the first occurrence of either the winding up of the Company or the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997*, the Company must transfer to a fund, authority or institution with similar objectives, any surplus:

- (a) gifts of money or property made to the Company for the Principal Objects;
- (b) contributions made to the Company (that are not gifts) but which are described in items 7 or 8 of the table in section 30-15 in relation to a fund-raising event held for the Principal Objects; and
- (c) money received by the Company because of such gifts or contributions.

24.3 The identity of the recipient under clause 24.2 must be decided by the Full Members in meeting by Ordinary Resolution.

25 Notices

Service of notices by the Company

25.1 A notice may be given by the Company to any Member either personally, by facsimile or electronically to the relevant facsimile number or electronic address of the Member as shown on the Members Register, or as advised by the Member, by sending it by post addressed to the Member at the address shown in the Members Register or otherwise by any other method, including by advertisement, as the Directors determine.

Posting notices to overseas Members

25.2 In the case of a Member whose registered address is outside Australia, a notice sent by post must be sent by pre-paid airmail in an envelope.

Notice deemed to be served

- 25.3 Any notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement.
- 25.4 Any notice sent by post will be deemed to have been served on the day following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it will be deemed to have been served on the fifth day following the day on which it is posted.
- 25.5 A notice sent by facsimile or other electronic means will be deemed to have been served on the same day that it is sent.

Service by post

- 25.6 To prove service by post, it is sufficient to prove that the notice with required postage was properly addressed and posted. A certificate in writing signed by any manager, Secretary or other Officer of the Company that the notice was properly addressed and posted will be conclusive evidence of those matters.

Notices to Members whose whereabouts unknown

- 25.7 Where:
- (a) the Company has a genuine reason to believe that a Member is not resident at the address shown for that Member in the Members Register;
 - (b) the Company has subsequently made an enquiry at that address as to the whereabouts of the Member; and
 - (c) the enquiry either elicits no response or a response indicating that the Member's present whereabouts are unknown,

all future notices will be deemed to be given to the Member if the notice is exhibited in the Office for a period (not including weekends and public holidays) of not less than 48 hours and will be deemed to be duly served at the beginning of that period.

- 25.8 Clause 25.7 will apply unless and until the Member informs the Company of a registered place of address or that the Member has resumed residence at the Members address shown in the Members Register or notifies the Company of a new address to which the Company may send the Member notices (which will be deemed to be the Member's registered address from the time the Company receives such notice).

Signing of notices

- 25.9 The signature to any notice to be given by the Company may be written or printed.

Counting of days

- 25.10 Where a given number of days' notice or notice extending over any period is required to be given, the day on which notice is deemed to be given will be included in the number of days or other period.

26 Winding up

Distribution of assets

- 26.1 Subject to clause 24.2, if upon the winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed amongst the Members of the Company but shall be given or transferred to one or more other funds, authorities or institutions which or each of which:
- (a) has purposes similar to the purposes of the Company;
 - (b) whose Constitution prohibits the distribution of its income and property among its Members to an extent at least as great as is imposed on the Company under or by virtue of clauses 1.8; and
 - (c) meets the requirements of clause 26.2.
- 26.2 Any fund, authority or institution is to be determined by the Board at or before the time of dissolution or failing which is to be determined by application to the courts.

Fee or commission paid to liquidator to be approved in general meeting

- 26.3 No fee or commission will be paid by the Company to any Director or liquidator upon any sale or realisation of the Company's undertaking or assets or any part of them except with the approval of the Company in general meeting, that meeting to be convened by notice specifying the fee or commission proposed to be paid.

27 Indemnity and insurance

Indemnity

- 27.1 To the extent permitted by law, the Company may make a payment, or agree to make a payment, whether by way of advance, loan or otherwise, for any legal costs incurred by a Director, Secretary or, where applicable, other Officer, on the condition that the Director, Secretary or, where applicable, other Officer, must repay the amount paid by the Company to the extent that the Company is ultimately found not liable to indemnify the Director, Secretary or, where applicable, other Officer, for those legal costs.

Insurance

- 27.2 To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been a Director, Secretary or other Officer, of the Company (or such persons in respect of a subsidiary of the Company), other than a liability arising out of:
- (a) conduct involving wilful breach of duty in relation to the Company; or
 - (b) a contravention of section 182 or 183 of the Act.

28 Internal disputes

- 28.1 The Directors may provide for a mechanism to be established for resolving internal disputes within its Membership, which includes, without limitation:
- (a) the appointment of an independent person to arbitrate the dispute;
 - (b) a process to bring disputing parties together to resolve the dispute at an early stage;
 - (c) a process to ensure that all parties receive a full and fair opportunity of presenting their case; and
 - (d) where the dispute cannot be resolved internally by mediation or arbitration, to refer the matter to a community justice centre, or equivalent which functions as "a centre for dispute settlement".

29 Amendment of the Constitution

- 29.1 Subject to the Act, this Constitution may be amended by a Special Resolution passed at any annual general meeting at which notice of the proposed amendment will have been given, or at a special general meeting convened for such purpose.