

# **BUILDING SERVICE CONTRACTORS ASSOCIATION OF AUSTRALIA LIMITED**

## **CONSTITUTION**

ACN 609 343 679

ABN 62 609 343 679

A public company limited by guarantee

This constitution adopted on [insert date of adoption]

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# BUILDING SERVICE CONTRACTORS ASSOCIATION OF AUSTRALIA LIMITED

## CONSTITUTION

### PART A — GENERAL

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#### 1. Name of the Company

- 1.1. The name of the Company is Building Service Contractors Association of Australia Limited.

#### 2. Type of Company

- 2.1. The Company is a Public Company Limited by Guarantee incorporated under the *Corporations Act 2001* (Cth) (hereinafter referred to as 'the Act').
- 2.2. The assets and income of the Company must be applied solely in furtherance of the Purpose and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly, to any Member.
- 2.3. This clause does not prevent the Company from doing the following things, provided they are done in good faith:
  - a) paying a Member for goods or services they have provided to or expenses they have properly incurred on behalf of the Company at fair and reasonable rates or rates more favourable to the Company;
  - b) reimbursing a Member for expenses they have properly incurred on behalf of the Company;
  - c) making a payment to a Member in carrying out the Purpose; or
  - d) making a payment for any other bona fide reason related to the attainment of the Purpose.
- 2.4. This Constitution comprises a contract between:
  - a) the Company and each Member;
  - b) the Company and each Director;
  - c) the Company and the Secretary or Secretaries; and
  - d) a Member and each other Member.
- 2.5. The replaceable rules set out in the Act do not apply to the Company.
- 2.6. Each Member must guarantee to pay an amount not more than \$2.00 to the Company if the Company is wound up while the Member is a Member, or within 12 months after they cease being a Member (Guarantee), and this Guarantee is required to pay for the:
  - a) debts and liabilities of the Company that exceed the Company's assets incurred before the Member stopped being a Member; and
  - b) costs of winding up the Company.

### 3. Purpose

- 3.1. The Purpose of the Company is to safeguard, support and promote the business interests of its Members in the building service contracting industries.
- 3.2. The Company pursues its Purpose through a range of activities and services that may include:
  - a) considering, initiating and supporting improvements in the laws affecting the interests of Members and promoting or opposing legislative and other measures affecting or likely to affect the interests of Members;
  - b) promoting and fostering the consideration and free discussion of all matters and questions affecting directly or indirectly the interests of Members;
  - c) establishing a Code of Practice for Members
  - d) printing and publishing any newspapers, periodicals, books, leaflets or electronic communications or websites that are desirable for the promotion of its purposes;
  - e) assisting in negotiations relating to the settlement of disputes between Members and their employees and contractors and to encourage and preserve industrial skills; and
  - f) seeking to secure, maintaining and improving favourable trade relations with public authorities property owners, managing agents, manufacturers and suppliers of goods, materials and/or services.

### 4. Powers of the Company

- 4.1. The Company has the following powers which may be used only to carry out its Purpose:
  - a) all the powers of a Company under the Act; and
  - b) the power to do all things necessary or convenient to be done for, or in connection with, the attainment of its Purpose.

### 5. Definitions

- 5.1. In this Constitution, except as so far as the context or subject matter otherwise indicates or requires:
  - a) **Associate Member** means a Member of the Company admitted to that class of membership;
  - b) **Board** means some or all of the Directors acting as the Board of Directors;
  - c) **By-laws** means the rules and regulations of the Company made by the Board in accordance with clause 34;
  - d) **Code of Practice** means any code of practice applicable to Members made by the Board;
  - e) **Constitution** means this document which describes the rules of the Company subject to the Act;

- f) **Director** means an individual elected or appointed as a Director of the Board;
- g) **Division Member** means an association with similar objectives to the Company's Purpose and admitted to membership of the Company. The Division Members include:
  - i. Building Service Contractors Association of Australia NSW Division (ABN 13 033 709 955);
  - ii. Building Service Contractors Association of Australia - Queensland Division Limited (ACN 612 738 753);
  - iii. Building Service Contractors Association of Tasmania Limited (ACN 639 713 303);
  - iv. Building Service Contractors Association of Australia Victoria Limited (ACN 608 597 217);
  - v. Cleaning Council WA Ltd ACN 147 434 571.
- h) **Full Member** means a Member of the Company admitted to that class of membership;
- i) **General Meeting** means a formal meeting of the Members and includes an Annual General Meeting;
- j) **President** means the Director holding the office of President;
- k) **Representative** means an individual appointed as a representative by a Member that is not an individual;
- l) **Secretary** means an individual or individuals appointed to undertake the role of Secretary as defined in the Act and this Constitution;
- m) **State Committee** means the committee established for each State Branch in accordance with clause 42.3;
- n) **Special Resolution** means a resolution at a General Meeting that is passed by at least 75% of the votes cast by Members entitled to vote on the resolution being in favour of the resolution;
- o) **Vice President** means the Director holding the office of Vice President.

## 6. Interpretation

- 6.1. Headings are for convenience only and do not affect the interpretation of this Constitution.
- 6.2. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise:
  - a) mandatory provisions of the Act override any clause in this Constitution which is inconsistent with that Act;
  - b) reference to an act includes every amendment, re-enactment, or replacement of that act and any subordinate legislation made under that act such as regulations;
  - c) a reference to a clause or sub-clause is to a clause or sub-clause of this Constitution;
  - d) where a word or phrase is defined, its other grammatical forms or parts of speech have corresponding meaning;

- e) reference to a person is a reference to an individual, company, any other body corporate, partnership, joint venture, association or other body whether or not incorporated;
- f) the words 'writing' and 'written' include any mode of representing or reproducing, including electronically, words, figures, drawings or symbols in a visible or communicable form;
- g) the words 'including', 'for example', or similar expressions do not limit the inclusions or examples;
- h) a gender includes all genders;
- i) singular includes plural and vice versa.

## **PART B — MEMBERSHIP**

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### **7. Classes of Membership**

- 7.1. There are three classes of membership:
  - a) Full Member;
  - b) Associate Member; and
  - c) Division Member.
- 7.2. A Full Member is an individual who is a sole trader or a body corporate:
  - a) providing building services contracting, including but not limited to cleaning, security, ground maintenance, pest management and waste management;
  - b) that agrees to support the Purposes;
  - c) that satisfies any additional requirements for Full Membership as prescribed by the Board and set out in the By-laws; and
  - d) that has been admitted as a Member in accordance with this Constitution.
- 7.3. An Associate Member is a body corporate or individual who:
  - a) is a supplier or consultant to the building services industry or has a business regarded by the Board as being complementary to the building services industry;
  - b) is not eligible to be a Full Member;
  - c) agrees to support the Purposes;
  - d) satisfies any additional requirements for being Associate Members as prescribed by the Board and set out in the By-laws; and
  - e) has been admitted as a Member in accordance with this Constitution.
- 7.4. A Division Member is an association listed in clause 5.1.g).
- 7.5. The Board may provide for categories of Members within each class on such terms and conditions as the Board determines.
- 7.6. The Board may determine additional requirements for admission as a Member or as a Member in a particular class or category of membership.

## **8. Rights and Obligations of Members**

- 8.1. A Full Member and a Division Member has the right to:
  - a) receive notices of and to attend General Meetings; and
  - b) vote at General Meetings on resolutions put to the Members.
- 8.2. An Associate Member:
  - a) is entitled to receive notices of and to attend General Meetings; but
  - b) does not have voting rights.
- 8.3. The Board may extend benefits and services to Members that may differ between classes and categories of membership and within classes and categories of membership.
- 8.4. A Member who has not paid any fees payable by the due date is not entitled to exercise their rights while the fee remains unpaid.
- 8.5. A Member is entitled to exercise their rights if their membership rights are not suspended for any other reason.
- 8.6. Members must comply with:
  - a) this Constitution;
  - b) the By-Laws, if any; and
  - c) the Code of Practice, if any.
- 8.7. A Member must, within a reasonable time, notify the Secretary of any change to their details as recorded in the register of Members.
- 8.8. A right, privilege or obligation held by reason of being a Member:
  - a) is not capable of being transferred or transmitted to another person; and
  - b) terminates upon cessation of the Member's membership.
- 8.9. Clause 8.8 does not preclude a Member from replacing its nominated Representative.
- 8.10. The rights of Members are not to be taken as being varied by the admission of more Members or the addition or deletion of classes or categories of membership.
- 8.11. The rights of Members in any class may be varied or cancelled by the Full Members approving amendments to the Constitution by Special Resolution. For clarity, this shall be taken to be the procedure for varying and cancelling rights of Members in any class.

## **9. Members Representatives**

- 9.1. If a Member is not an individual, the Member will nominate to the Secretary by written notice at the time of application for membership the name of one individual, called the Representative, who will represent that Member to exercise any of the powers the Member may exercise under this Constitution including representing at General Meetings and in the case of a Full Member or Division Member, voting on behalf of that Member at General Meetings.

- 9.2. A Member may by written notice to the Secretary change its Representative in the time and manner as prescribed by the Board.
- 9.3. The Secretary will keep a register of Representatives.

## **10. Application for Membership**

- 10.1. An application for membership must be in a form prescribed by the Board.
- 10.2. The Board may approve or reject an application for membership.
- 10.3. The Board may refuse any application for membership without being compelled to give the reasons for such refusal.
- 10.4. The Board may delegate the consideration and determination of any membership application.
- 10.5. Once the outcome of a membership application is determined, written notice of the decision of the Board or their delegate is to be sent to the applicant within a reasonable time.
- 10.6. The acceptance of an applicant as a Member is subject to the payment of any fees and if such payment is not made, the Board may cancel its acceptance of the applicant for membership of the Company.
- 10.7. If the applicant is not admitted to membership, then any monies paid by the applicant for membership must be returned to the applicant in full within a reasonable time.
- 10.8. An applicant who is admitted to membership is entitled to exercise the rights and privileges of that membership when their name is entered in the register of Members.

## **11. Membership Fees**

- 11.1. The Board may set any joining fee, membership fees and may determine different fees:
  - a) for different classes or categories of membership;
  - b) within classes or categories of membership; or
  - c) for different Members.
- 11.2. The Board may in its discretion waive or vary the amount of any fee set.
- 11.3. Any fee charged to Members is payable in such manner and at such times as are determined by the Board.
- 11.4. If any fee remains unpaid for a period of one month after it becomes due, written notice will be given to the Member of that fact. Unless the Board resolves otherwise, if the fee remains unpaid more than three months after the date of the notice, the Member's membership will be terminated.
- 11.5. Membership that has been terminated under this Constitution may be reinstated at the discretion of the Board upon payment of the outstanding fee.
- 11.6. Should circumstances arise which affect the common interests of the Members or a particular part of the membership that special funds are



necessary to protect such interests, the Board may charge a special levy provided that the amount of any levy in any one financial year does not exceed the amount of a Member's annual membership subscription unless approved by the Members in a General Meeting.

## **12. Register of Members**

- 12.1. The Secretary or another person delegated by the Board must establish and maintain a register of Members (which may be in electronic form) containing:
- a) the name of each Member and the date on which they became a Member;
  - b) the Member's address (which may be an email address), to which notices from the Company may be sent;
  - c) the name of each person who has ceased to be a Member and the date on which the person ceased to be a Member; and
  - d) any other information as determined by the Board or required by the Act.

## **13. Ceasing to be a Member**

- 13.1. A Member ceases to be a Member if they:
- a) resign in writing;
  - b) for an individual, die;
  - c) if not an individual, are wound up or are dissolved;
  - d) have their membership terminated or are expelled under this Constitution;
  - e) cease to satisfy the criteria to be a Member: on the date that the Board resolves to terminate the membership;
  - f) are convicted of an indictable offence: on the date that the Board resolves to cease the membership;
  - g) fail to provide any information required by the Board as part of the renewal process, unless the Board resolves otherwise; or
  - h) fail to satisfy any undertaking given by the Member upon them being admitted as a Member or in any other circumstances prescribed in the terms of membership that are applicable to the Member: on the date that the Board resolves to cease the membership.
- 13.2. The Board may waive any grounds for cessation of membership or any breach of this Constitution by a Member and readmit any person as a Member as it thinks fit.
- 13.3. Any Member ceasing to be a Member:
- a) is not be entitled to any refund, in full or part, of any membership fees paid; and
  - b) will not be readmitted as a Member until all unpaid fees outstanding at the time they ceased to be a Member are paid, including any interest or other charges levied on any outstanding fees.

- 13.4. Upon ceasing to be a Member, the date on which the Member ceased to be a Member will be recorded in the register of Members.
- 13.5. Any Member ceasing to be a Member remains liable for any fees owing by that Member to the Company and, if the Company is wound up within one year of the date the Member ceases to be a Member, the Guarantee under this Constitution.

#### **14. Disciplining a Member**

- 14.1. The Board may take disciplinary action against a Member if the Board is of the opinion that any of the following circumstances does or may apply to a Member:
  - a) infringement of any provisions of this Constitution, breach of any Code of Practice or by-law; or
  - b) engaged in conduct which the Board considers to be dishonourable or which brings discredit on the Company or is otherwise contrary to the Company's interest.
- 14.2. The Board shall determine the procedures and rules relating to the disciplining of Members and any appeals process. This may include appointing a disciplinary committee to hear the matter and to recommend to the Board what penalties to impose, if any, against the Member.
- 14.3. The Board must ensure that procedural fairness is applied to any procedures and rules relating to the disciplining of Members and any appeals process including ensuring that:
  - a) the Member is informed of the grounds upon which the disciplinary action is proposed to be taken; and
  - b) the Member has been given an opportunity to be heard in relation to the matter; and
  - c) the outcome of the disciplinary procedure is determined by an unbiased decision-maker which may be the Board.
- 14.4. The penalties that may be imposed by the Board include, but are not limited to:
  - a) suspension of the membership rights of the Member for a specified period; or
  - b) expulsion of the Member from the Company.

### **PART C — GENERAL MEETINGS**

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#### **15. Calling a General Meeting**

- 15.1. The Board may call a General Meeting.
- 15.2. The time, place of, and the technology to be used, if any, at, the General Meeting to be determined by the Board.
- 15.3. An Annual General Meeting will be held within five months after the end of each financial year.

- 15.4. A General Meeting may be held at one or more venues, or wholly or partly online or virtually, using any technology that provides the Members with a reasonable opportunity to participate, including the ability to hear and be heard.
- 15.5. A Member who participates in a General Meeting using the technology prescribed by the Board is taken to be present at the General Meeting and, if the Member votes at the meeting using the technology prescribed, is taken to have voted in person.
- 15.6. A virtual General Meeting and a General Meeting that is partly held using technology, and partly held at a physical location or locations, is deemed to have been held at the Company's registered office.
- 15.7. A General Meeting must be held:
  - a) at a reasonable time;
  - b) at a reasonable location or locations if the General Meeting is being held at a physical location or locations and any of the Members are entitled to physically attend the General Meeting; and
  - c) if virtual meeting technology is used in holding the General Meeting, in such a way as to give the persons entitled to attend the General Meeting, as a whole, a reasonable opportunity to participate in the meeting without being physically present in the same place.
- 15.8. A General Meeting is taken to be held at a reasonable time if any of the following applies:
  - a) if there is only one location at which the Members entitled to physically attend the General Meeting may do so, the meeting is held at a time that is reasonable at the location;
  - b) if there are two or more locations at which the Members who are entitled to physically attend the General Meeting may do so, the meeting is held at a time that is reasonable at the main location for the General Meeting as set out in the notice of the meeting;
  - c) if the General Meeting is held using virtual meeting technology, the General Meeting is held at a time that is reasonable at the Company's registered office.
- 15.9. A General Meeting must also be convened by the Board upon the requisition of not less than 5% of Members who are entitled to vote at a General Meeting.
- 15.10. A requisition for a General Meeting called by Members:
  - a) must state the purpose or purposes of the General Meeting;
  - b) must be signed by the Members making the request;
  - c) must be lodged with the Secretary; and
  - d) may consist of several documents in a similar form, each signed by one or more of the Members making the request.
- 15.11. A requisition for a General Meeting called by Members:
  - a) may be in electronic form; and

- b) may include one or more signatures transmitted by electronic means.
- 15.12. If the Board fails to give notice of a General Meeting called by Members within one month after the date on which the request for the General Meeting is lodged, any one or more of the Members making the request may convene a General Meeting which must be held not later than three months after that date.
- 15.13. A General Meeting called by Members must be convened as nearly as is practicable in the same manner as a General Meeting convened by the Board.
- 15.14. At a General Meeting called by Members, the Members may pass a resolution that the Company will pay the expenses for calling the General Meeting.

## **16. Notice of a General Meeting**

- 16.1. Notice of a General Meeting must be given to:
  - a) each Member;
  - b) each Director; and
  - c) the Auditor, if any.
- 16.2. Notice of a General Meeting must include:
  - a) the time, date, place of, and, if any, the technology to be used to facilitate the General Meeting;
  - b) if virtual meeting technology is to be used to hold the General Meeting, sufficient information to allow the Members to participate in the General Meeting by means of the technology;
  - c) a statement that Members may appoint a proxy; and
  - d) if applicable, that a Special Resolution is to be proposed at the General Meeting, the words of the proposed Special Resolution.
- 16.3. Notice of a General Meeting must be given at least 21 days before the date fixed for the holding of the General Meeting.
- 16.4. Notice of a General Meeting may be given less than 21 days before the meeting if:
  - a) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand; or
  - b) for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 16.5. Notice of a General Meeting must not be provided less than 21 days before the General Meeting if it is proposed that a resolution is to be moved to:
  - a) remove a Director;
  - b) appoint a Director in order to replace a Director who has been removed; or
  - c) remove an Auditor.

- 16.6. An Annual General Meeting must be specified as such in the notice convening it.
- 16.7. The accidental failure to give notice of any General Meeting to, or the non-receipt of notice of a General Meeting by, any Member entitled to receive notice will not invalidate the proceedings at or any resolution passed at the General Meeting.
- 16.8. A Member's attendance at a General Meeting waives any objection that the Member may have regarding a failure to be given notice, or the receiving of defective notice, of the General Meeting.

## **17. Business at a General Meeting**

- 17.1. No business other than that specified in the Notice convening a General Meeting is to be transacted at the General Meeting.
- 17.2. The business of an Annual General Meeting may include any of the following, even if not referred to in the notice convening the Meeting:
  - a) the consideration of the annual financial report, the Board report and the Auditor's report, if any;
  - b) the election or announcement of Directors, if any; and
  - c) the appointment of the Auditor, if any.

## **18. Proxies at a General Meeting**

- 18.1. A Member is entitled to appoint a proxy by notice given to the Company at the address stated in the notice which may be an electronic address at least 48 hours before the time of the General Meeting in respect of which the proxy is appointed.
- 18.2. The Board may prescribe a form of proxy, however a proxy will be valid provided the instrument purporting to appoint a proxy:
  - a) is in writing;
  - b) contains the Member's name and address, the Company's name and the proxy holder's name or the office held by the proxy holder;
  - c) contains the details of the meeting at which the appointment may be used; and
  - d) contains the details as to how the proxy holder is to vote on the matters before the General Meeting.
- 18.3. In the event of a Member not nominating a particular person as proxy holder on the proxy form, the proxy is to be exercised by the chairperson of the General Meeting.
- 18.4. Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy holder votes, a vote cast by the proxy holder is valid even if, before the proxy holder votes, the appointing Member:
  - a) revokes the proxy holder's appointment; or
  - b) revokes the authority of a representative or agent who appointed the proxy holder.

- 18.5. A proxy holder need not be a Member or a Representative.
- 18.6. A proxy holder does not have the authority to speak and vote for a Member at a General Meeting while the Member is at the General Meeting.

## **19. Quorum at a General Meeting**

- 19.1. No business shall be transacted at a General Meeting unless a quorum is present. A Member is taken to be present at a General Meeting if the Member is present:
  - a) in person;
  - b) by Representative; or
  - c) by proxy.
- 19.2. The quorum for a General Meeting is the lesser of:
  - a) 5% of the total number of Members entitled to vote; or
  - b) the number of Members entitled to vote that is equal to twice the number of Directors in office at the time.
- 19.3. If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
  - a) if convened by or on the requisition of Members: the General Meeting is dissolved; and
  - b) in any other case, the General Meeting stands adjourned to such other day, time and place as the Board appoints by notice to the Members and others entitled to notice of the General Meeting.
- 19.4. If at the adjourned General Meeting a quorum is not present within 30 minutes from the time appointed for the General Meeting, the General Meeting will lapse.

## **20. Chairperson of a General Meeting**

- 20.1. The President will preside as chairperson of each General Meeting.
- 20.2. If there is no President, or the President is not present within 15 minutes after the time appointed for the commencement of the General Meeting, or the President is unable or unwilling to act as chairperson of the General Meeting or of part of the General Meeting, then the following persons will preside as chairperson of the General Meeting in the order of precedence:
  - a) the Vice President;
  - b) any other Director present who has been appointed as chairperson by the other Directors present; or
  - c) a Member present chosen by a majority of the Full Members present.
- 20.3. The chairperson of a General Meeting is responsible for the conduct of the General Meeting and any question arising at a General Meeting relating to the order of business, procedure or conduct of the General Meeting must be referred to the chairperson whose decision is final.

- 20.4. The chairperson of a General Meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the General Meeting:
- a) impose a limit on the time that a person may speak on a motion or other item of business, question, motion or resolution being considered by the General Meeting;
  - b) terminate debate or discussion at the General Meeting; and
  - c) adopt any procedures for casting or recording votes at the General Meeting whether on a show of hands or a poll.
- 20.5. The chairperson of a General Meeting may at any time during the course of a General Meeting, adjourn the General Meeting from time to time and from place to place, but no business may be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 20.6. When a General Meeting is adjourned for 30 days or more, notice of the adjourned General Meeting must be given as in the case of an original General Meeting.

## **21. Methods of Voting at a General Meeting**

- 21.1. Upon any question arising at a General Meeting, a Member entitled to vote has one vote.
- 21.2. A Member may not vote at a General Meeting unless all fees due and payable by the Member to the Company have been paid.
- 21.3. All persons participating virtually in a General Meeting who are entitled to vote at the General Meeting:
- a) must be given the opportunity to participate in the vote in real time; and
  - b) may be given the opportunity to record a vote in advance of the meeting at the election of the voter.
- 21.4. Votes must be given in person or by proxy, by the Member's Representative or when applicable by direct vote.
- 21.5. Proxies must not be counted on a vote by a show of hands.
- 21.6. A Member entitled to vote at a General Meeting may vote by direct vote using electronic means where such an option is offered by the Board. A direct vote includes a vote delivered to the Company by any means approved by the Board, which may include postal or electronic means.
- 21.7. The Board may prescribe By-Laws in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a General Meeting in order for the vote to be valid.
- 21.8. An objection to the qualification of a Member to vote at a General Meeting:
- a) must be raised before or at the General Meeting at which the vote objected to is given or tendered; and

- b) must be referred to the chairperson of the General Meeting whose decision on the qualification to vote is final.
- 21.9. If virtual meeting technology is used to hold a General Meeting and a document is required or permitted to be tabled at the General Meeting, the document is taken to have been tabled at the General Meeting if the document is:
- a) given to the persons entitled to attend the General Meeting, whether physically or by the use of virtual meeting technology, before the General Meeting; or
  - b) made accessible to the persons attending the General Meeting, whether physically or by the use of virtual meeting technology, during the General Meeting.

## **22. Decisions at a General Meeting**

- 22.1. Questions arising at a General Meeting are to be decided by ordinary resolution unless otherwise required by this Constitution or the Act. An ordinary resolution is a resolution passed by a simple majority of the votes cast.
- 22.2. In the case of an equality of votes upon any proposed resolution, the chairperson of the General Meeting, in addition to any deliberative vote, does not have a casting vote and the proposed resolution is not passed.
- 22.3. A resolution put to the vote of a General Meeting must be decided on a show of hands and the declaration by the chairperson of the General Meeting is conclusive evidence of the result.
- 22.4. Unless required under this Constitution or the Act, a poll may be demanded before the vote is taken or before or immediately after the declaration of the result of the show of hands by:
- a) the chairperson of the General Meeting;
  - b) at least five Members entitled to vote on the resolution present in person or by their Representative or by proxy at the General Meeting; or
  - c) Members with at least 5% of the votes that may be cast on the resolution on a poll present in person or by their Representative or by proxy at the General Meeting.
- 22.5. Neither the chairperson of the General Meeting nor the minutes of the General Meeting need to state the number or proportion of the votes recorded in favour or against.
- 22.6. The demand for a poll at a General Meeting may be withdrawn.
- 22.7. A demand for a poll at a General Meeting does not prevent the continuation of a General Meeting for the transaction of any business other than the question on which the poll has been demanded.
- 22.8. A poll demanded at a General Meeting must be taken when and in the manner the chairperson of the General Meeting directs including in relation to how votes of Members attending by technology are to be collected.



- 22.9. A poll on the election of a chairperson of a General Meeting or on the question of an adjournment of a General Meeting must be taken immediately.

### **23. Members' Resolutions**

- 23.1. Members with at least 5% of the votes that may be cast on a resolution or at least 100 Members entitled to vote at a General Meeting may give:
- a) written notice to the Company of a resolution, to be called a Members Resolution, which they propose to move at a General Meeting, such resolution being one that may be properly considered at a General Meeting; and/or
  - b) a written request to the Company that the Company give all Members a statement, to be called a Members Statement, about a proposed resolution or any other matter that may properly be considered at a General Meeting.
- 23.2. A notice of a Members Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- 23.3. A request to distribute a Members Statement must set out the statement to be distributed and be signed by the Members making the request.
- 23.4. Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- 23.5. The percentage of votes of Members is to be calculated as at midnight before the request or notice is given to the Company.
- 23.6. If the Company has been given notice of a Members Resolution, the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- 23.7. This clause does not limit any other right that a member has to propose a resolution at a General Meeting.
- 23.8. If the Company has received a notice or request under this clause:
- a) in time to send the notice of proposed Members Resolution or a copy of the Members Statement to Members with a notice of meeting, it must do so at the Company's cost; or
  - b) too late to send the notice of proposed Members Resolution or a copy of the Members Statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving Members notice of the proposed Members Resolution or a copy of the Members Statement.
- 23.9. The Company does not need to send the notice of proposed Members resolution or a copy of the Members statement to Members if:
- a) it is more than 1,000 words long;
  - b) the Board considers it may be defamatory;
  - c) the Members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending

the notice of the proposed Members Resolution or a copy of the Members Statement to Members; or

- d) in the case of a proposed Members Resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Members.

## **24. Cancellation or Postponement of a General Meeting**

- 24.1. The Board may cancel, postpone or change the venue of a General Meeting at any time prior to the meeting except in the case of a General Meeting called upon the requisition of Members.
- 24.2. The Board must give notice of the postponement, cancellation or change of venue of a General Meeting to all persons entitled to receive notices of a General Meeting.

## **PART D — BOARD OF DIRECTORS**

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### **25. Board Composition**

- 25.1. The Board will comprise a maximum of ten Directors comprising:
  - a) Up to eight **Member Directors** being one Director from each State and Territory of Australia to be appointed by the governing Board of the Division Member representing that State or Territory or where there is no Division Member in that State or Territory, by the respective State Committee for that State or Territory; and
  - b) up to two **Independent External Directors** appointed by the Board.
- 25.2. The procedure for the appointment of Member Directors will be prescribed in the By-Laws.
- 25.3. Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors is reduced to fewer than the legal minimum of three Directors, in which case the continuing Directors may act only:
  - a) to appoint Directors for the purpose of increasing the number of Directors to three or higher;
  - b) to convene a General Meeting; or
  - c) in an emergency.

### **26. Eligibility of Directors**

- 26.1. A person is eligible for election or appointment as a Director if they:
  - a) are over the age of 18 years;
  - b) provide their signed consent to act as a Director;
  - c) are not ineligible to be a Director under law, including under the Act; and
  - d) are not an employee of the Company.

- 26.2. A Member Director must be a Full Member or a Representative, owner, employee, principal or director of a Full Member at the time of appointment.
- 26.3. Subject to clause 26.4, there must be no more than one Member Director from any one Full Member or any one Corporate Group. A Corporate Group for the purposes of this clause 26.3 and clause 26.4 means a group of two or more related bodies corporate. Two bodies corporate are related if any of the following apply:
- a) one is a holding company of the other;
  - b) one is the subsidiary of the other;
  - c) one is the subsidiary of a holding company of the other.
- 26.4. A Member Director who, at the time of their appointment, was not from the same Full Member or the same Corporate Group as another Director but subsequently becomes part of that Corporate Group or becomes a Representative, owner, employee, principal or director of the same Full Member as another Director, may remain on the Board as a Director for the remainder of their term even if this results in there being more than one Director from any one Full Member or any one Corporate Group on the Board.
- 26.5. An Independent External Director must not be:
- a) a Full Member;
  - b) a Representative, owner, employee, principal or director of a Full Member; or
  - c) an Associate Member.

## **27. Appointment of Independent External Directors**

- 27.1. An Independent External Director may be appointed upon such terms and conditions as the Board determines.
- 27.2. An Independent External Director will have the experience, perspectives, capabilities or skills that the Board considers desirable.

## **28. Terms of office of Directors**

- 28.1. Member Directors hold office from the end of the Annual General Meeting at which their appointment is declared or announced until the end of the second following Annual General Meeting.
- 28.2. An Independent External Director is to serve a term up to two years as determined by the Board and may, if eligible, be re-appointed as Appointed Director at the discretion of the Board.
- 28.3. The maximum continuous period that a Director may serve as a Director (**Maximum Continuous Period**) is as follows:
- a) a Member Director may serve up to three consecutive terms; and
  - b) no Director may serve more than six consecutive years.

- 28.4. A person who has held office as a Director for the Maximum Continuous Period is eligible for re-election or reappointment after a period 18 months from the date that the person last held office as a Director.
- 28.5. The Maximum Continuous Period does not include any period of a person's appointment to fill a casual vacancy in the position of a Member Director under clause 28.6 or clause 28.7.
- 28.6. If a casual vacancy in the position of a Member Director occurs, the State Committee or governing board of the Division Member that appointed the vacated Member Director may appoint an eligible individual to fill the vacancy until the expiration of the remainder of the term.
- 28.7. If the position of a Member Director remains vacant for three months or more, the Board may fill the position by appointing an eligible individual to fill the vacancy until the expiration of the remainder of the term.
- 28.8. If a casual vacancy in the position of an Independent External Director occurs, the Board may appoint a new Independent External Director for a term as determined by the Board in accordance with clause 28.2.

## **29. Ceasing to be a Director**

- 29.1. In addition to any other way under this Constitution that a Director vacates office, a Director ceases to be a Director if they:
  - a) resign by written notice to the Secretary;
  - b) are subject to any of the circumstances prescribed by the Act resulting in the ending or vacating of the position of Director;
  - c) are a Member Director who ceases to meet the eligibility criteria under clause 26.2;
  - d) are a Member Director and the appointing State Committee or Division Member governing board revokes their appointment by written notice to the Secretary;
  - e) become a mentally incapacitated person under the law relating to mental health unless in the opinion of a majority of Directors the Director can fully participate in the governance of the Company, despite their mental incapacity;
  - f) die;
  - g) become bankrupt or make any arrangement or composition with their creditors generally, unless, subject to the Act, the Board resolves otherwise;
  - h) are convicted on indictment of an offence and the Board does not at the next meeting of the Board after that conviction resolve to confirm the Director's appointment to the position of Director;
  - i) are absent from all Board Meetings held during a period of six months, unless at the next Board Meeting the Board resolves otherwise;
  - j) fail to disclose a material personal interest in breach of the law unless at its next Board Meeting the Board resolves otherwise;
  - k) are removed from office by the Members pursuant to clause 36.1;

- l) become an employee of the Company;
- m) are found guilty by a tribunal, industrial commission, court of competent jurisdiction or other similar authority of engaging in discriminatory conduct or harassment towards employees of the Company or other Members or their employees; or
- n) are prohibited from being a director under the Act.

### **30. No Alternate Directors**

30.1. Directors are not entitled to appoint alternate directors.

### **31. Office Bearers**

31.1. The Board will elect from amongst the Directors the following Office Bearers:

- a) a President; and
- b) a Vice President.

31.2. The Board will determine the period for which a Director holds the office as President or Vice President, subject to clause 31.3.

31.3. A Director may serve no more than four consecutive years as President.

31.4. The President or Vice President have such powers and duties as specified in this Constitution, as required by law and as determined by the Board.

31.5. The President or Vice President are not to hold office beyond their retirement or removal from the Board as a Director.

### **32. Powers of the Board**

32.1. The business and affairs of the Company are to be administered by the Board which is to, subject to the Act and this Constitution:

- a) control and manage the affairs of the Company;
- b) exercise all the functions as may be exercised by the Company other than those functions that are required by this Constitution or the Act to be exercised by a General Meeting; and
- c) have the power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Company.

32.2. The Board may delegate any of its powers to:

- a) a committee, including a State Committee;
- b) a Director;
- c) an employee of the Company; or
- d) any other person,

and may revoke that delegation.

32.3. The delegate must exercise the powers delegated in accordance with any directions, terms and conditions as set by the Board.

### **33. Duties of Directors**

- 33.1. The Directors must comply with their duties as Directors under legislation and common law which includes the duty to:
- a) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
  - b) act in good faith in the best interests of the Company and to further the Purpose of the Company;
  - c) not to misuse their position as a Director;
  - d) not to misuse information they gain in their role as a Director;
  - e) maintain the confidentiality of information received in their role as a Director;
  - f) act in the best interests of the Company;
  - g) disclose any material personal interest in a matter that relates to the affairs of the Company;
  - h) disclose any conflict of interest which may prevent them from properly fulfilling their duties as a Director;
  - i) ensure that the financial affairs of the Company are managed responsibly; and
  - j) not to allow the Company to operate while it is insolvent.
- 33.2. A Director must disclose the nature and extent of any material conflict of interest in a matter that is being considered at a Board Meeting or that is proposed in a circular resolution:
- a) to the other Directors; or
  - b) 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.
- 33.3. Each Director who has a material personal interest in a matter that is being considered at a Board Meeting or that is proposed in a circular resolution must not:
- a) be present at the meeting while the matter is being discussed; or
  - b) vote on the matter.
- 33.4. Despite the existence of a conflict or a material personal interest, a Director may still be present and vote if:
- a) the Directors who do not have a material personal interest in the matter pass a resolution that identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company and states that those Directors are satisfied that the interest should not prevent the Director from voting or being present;

- b) their interest arises because they are a Member of the Company (or a Representative, owner, employee, principal or director of a Member), and the other Members have the same interest;
  - c) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company;
  - d) their interest relates to a payment by the Company in respect of an indemnity provided for in this Constitution, or any contract relating to an indemnity that is allowed under the Act; or
  - e) Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter.
- 33.5. No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is voided or rendered voidable merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- 33.6. The Board may make By-laws or adopt a policy consistent with the Act dealing with the disclosure and management of Directors' conflicts of interest.

#### **34. By-laws**

- 34.1. The Board may make, amend, or repeal such By-laws as it determines are appropriate for the purposes of giving effect to any provision of this Constitution or to govern the procedures and activities of the Company.
- 34.2. Any By-laws:
- a) must be consistent with the provisions in this Constitution; and
  - b) are binding on the Members.

#### **35. Payments to Directors**

- 35.1. Directors are entitled to:
- a) be reimbursed for expenses properly incurred by the Director in connection with the affairs of the Company where the amount payable does not exceed an amount previously agreed by the Board; and
  - b) be paid for any work they do for the Company, other than as a Director, where the provision of work has the prior approval of the Board and the amount payable is no more than a reasonable fee for the work done.
- 35.2. Member Directors are not entitled to be paid fees for being a Director.
- 35.3. Subject to the Board's discretion, Independent External Directors may be entitled to paid reasonable fees for being a Director as determined by the Board.

### **36. Removing a Director**

- 36.1. Members may by ordinary resolution in a General Meeting remove any Director from office in accordance with the Act.

### **37. Board Meetings**

- 37.1. The Board may meet, including by technological means, for the dispatch of business, and adjourn and otherwise regulate its meetings.
- 37.2. The President alone, or any three Directors, may convene a Board Meeting.
- 37.3. At a Board Meeting:
  - a) the President or, in the President's absence, the Vice President is to preside as chairperson; or
  - b) if the President and the Vice President are absent or unwilling to act, one of the remaining Directors as may be chosen by the Directors present at the Board Meeting to preside as chairperson.
- 37.4. Questions arising at any Board Meeting are to be decided by a simple majority of votes of those Directors present and entitled to vote.
- 37.5. Directors are to have one vote on any question at a Board Meeting.
- 37.6. Directors may not assign proxies at a Board Meeting.
- 37.7. In the event of an equality of votes on any question at a Board Meeting, the chairperson of the Board Meeting does not have a casting vote and the motion is not passed.
- 37.8. A Board Meeting may be held using technology that allows the Directors in attendance to clearly and simultaneously communicate with each other.
- 37.9. A Director who participates in a Board Meeting using technology is taken to be present at the Board Meeting and, if the Director votes at the Board Meeting, is taken to have voted in person.

### **38. Notice of a Board Meeting**

- 38.1. Notice of a Board Meeting must be given to each Director at least seven days or such other period as may be unanimously agreed upon by the Directors before the time appointed for the holding of the Board Meeting.
- 38.2. Notice of a Board Meeting must be given by such means as agreed by the Directors.
- 38.3. In cases of urgency, a Board Meeting can be held without the usual notice provided that as much notice as practicable is given to each Director by the quickest means practicable.
- 38.4. Non receipt of any notice of a Board Meeting by a Director does not affect the validity of the convening of the Board Meeting.

### **39. Quorum at a Board Meeting**



- 39.1. To transact business at a Board Meeting, a quorum of Directors is required during the time in which the business is dealt with at the Board Meeting.
- 39.2. The quorum for a Board Meeting is the number that is a majority of the Directors currently in office.

#### **40. Decisions of the Board without a Board Meeting**

- 40.1. The Board may pass a resolution without a Board Meeting being held if the proposed resolution is sent to the Directors and a majority of Directors assent to the resolution in writing within the time specified.
- 40.2. A resolution is taken to have been passed on the date the resolution was assented to by the last Director who constituted the majority of Directors in favour provided the number of Directors who vote in favour of the matter equals or exceeds the number for a quorum.
- 40.3. The resolution may consist of multiple copies of the same document, which may be in the form of electronic communication, each signed or authorised by one or more of Directors.

#### **41. Validity of Acts of Directors**

- 41.1. All acts done at any Board Meeting or by any individual acting as a Director are valid even if it is later discovered that there was a defect in the appointment of a person as a Director or the person not being entitled to vote.

### **PART E – STATE BRANCHES AND COMMITTEES**

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#### **42. State Branches and State Committees**

- 42.1. State Branches are geographical segments of the membership representing one or more State or Territory of Australia. The Board may establish, dissolve and amend State Branches according to the needs of the Company.
- 42.2. The Board will prescribe By-Laws to govern the operations of the State Branches.
- 42.3. Each State Branch will have a State Committee to be constituted in accordance with the By-laws.
- 42.4. The State Committees must comply with any By-laws or terms or conditions set by the Board.

### **PART F — ADMINISTRATIVE MATTERS**

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#### **43. Secretary**

- 43.1. The Board must appoint at least one Secretary.
- 43.2. The Secretary holds office on such terms and conditions as the Board determines.
- 43.3. The Board may remove any Secretary, subject to the terms of any contract and the law.

43.4. The Secretary has such powers and duties as specified in this Constitution, the Act, and as determined by the Board.

#### **44. Minutes**

44.1. The Company must keep minutes of:

- a) proceedings and resolutions of General Meetings;
- b) proceedings and resolutions of Board Meetings;
- c) proceedings of committee meetings; and
- d) resolutions passed by the Board without a meeting.

#### **45. Service of Notices to Members**

45.1. A notice may be given by the Company to a Member by:

- a) serving it on the Member personally;
- b) sending it by post to the Member's address as shown in the register of Members;
- c) sending it to an electronic contact address such as an e-mail address, that the Member has supplied to the Company or to an address which the Member has contacted the Company in the past; or
- d) making a copy of it accessible electronically and advising the Member of its availability via the electronic contact address.

45.2. Where a notice is sent by post, service of the notice is taken to be effected three days after it is posted.

45.3. Where a notice is sent by email or by other electronic means, service of the notice is taken to be effected on the day it is sent or on the day the Member is advised via the electronic contact address that the notice is accessible electronically.

#### **46. Accounts and Audit**

46.1. The Company must make and keep written financial records that:

- a) correctly record and explain its transactions and financial position and performance; and
- b) enable true and fair financial statements to be prepared and to be audited if required.

46.2. The financial year of the Company commences on the first day of January and ends on the 31st day of December or such other period as may be prescribed by the Board.

#### **47. Inspection of Records**

47.1. A Member other than a Director does not have the right to inspect any books, records or documents of the Company except as provided by law or authorised by the Board.

## **48. Indemnity of Directors**

- 48.1. The Company may indemnify each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities including costs, expenses and charges incurred by that person as an officer of the Company.
- 48.2. In this clause 48:
- a) 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office;
  - b) 'to the relevant extent' means:
    - i. to the extent that the Company is not precluded by law including the Act from doing so; and
    - ii. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person including an insurer under an insurance policy.
- 48.3. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.
- 48.4. To the extent permitted by law, the Company may:
- a) purchase and maintain insurance;
  - b) pay or agree to pay a premium for an insurance against any liability incurred by the officer as an officer including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal.

## **49. Changes to the Constitution**

- 49.1. The Company may modify or repeal this Constitution, or a provision of this Constitution, by the Members passing a Special Resolution and following the requirements of the Act.

## **50. Winding Up the Company**

- 50.1. If the Company is wound up, any surplus assets must not be distributed to a Member or a former Member in their capacity as a Member.
- 50.2. Subject to the Act, any other applicable laws, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more entities:
- a) with purposes similar to, or inclusive of, the Purpose; and
  - b) which prohibits the distribution of any surplus assets to its members to at least the same extent as the Company.
- 50.3. The decision as to the entity/entities to be given the surplus assets must be made by a Special Resolution of Members at or before the time of winding up.
- 50.4. If the Members do not make this decision, the Company may apply to the Supreme Court in the jurisdiction of incorporation to make this decision.

## **51. Transitional Arrangements**

- 51.1. Members

- a) Upon adoption of this Constitution:
  - i. Divisions will continue as Division Members until they otherwise cease to be Members in accordance with this Constitution;
  - ii. Associate Members will continue as Associate Members until they otherwise cease to be Members in accordance with this Constitution;
  - iii. The Board may invite eligible persons to become Full Members at any time.

#### 51.2. Board

- a) Upon adoption of this Constitution:
  - i. Member Directors in office will continue as Member Directors with their terms expiring at the conclusion of the 2025 Annual General Meeting. If eligible, they may be re-appointed as a Member Director;
  - ii. Despite clause 26.5, External Directors in office will continue as Independent External Directors and may serve out the remainder of their term of office;
- b) In conjunction with the 2025 Annual General Meeting, Member Directors will be appointed in accordance with clause 25.1.a) and whose term of office will be in accordance with clause 28.1 commencing at the conclusion of the 2025 Annual General Meeting.
- c) Subject to clause 51.2 d), any time served as a Director immediately prior to the adoption of this Constitution will be taken into account for the purposes of calculating the Maximum Continuous Period under clause 28.3.
- d) If there are no eligible candidates for appointment as a Member Director from a particular State or Territory, a Director may be re-appointed as a Member Director under clause 51.2 b), subject to approval by the Board, despite their re-appointment resulting in their term exceeding the Maximum Continuous Period under clause 28.3.

#### 51.3. Office Bearers

- a) Upon adoption of this Constitution:
  - i. The Directors holding the office bearer positions of President and Vice President will continue in these roles until they are otherwise replaced or vacate office in accordance with this Constitution;
  - ii. Any continuous time served as President immediately prior to the adoption of the Constitution will be taken into account for the purposed of calculating the term limit in clause 31.3;
  - iii. The office bearer position of treasurer will cease. The Director holding the treasurer position will continue as a Member Director in accordance with clause 51.2.a)i.

### **END OF CONSTITUTION**