
Constitution

Parties STANDARDS AUSTRALIA LIMITED (ABN 85 087 326 690)
A Company Limited by Guarantee

Date 28 May 2021

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THIS CONSTITUTION dated 28 May 2021

PREAMBLE

1. Name of Company

The name of the Company is Standards Australia Limited ABN 85 087 326 690.

2. Type of Company

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited Liability of Members

Each Member must contribute an amount not more than \$100.00 (the guarantee) to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

4. Definitions

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

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*.

Act means the *Corporations Act 2001*.

ASIC means the Australian Securities and Investments Commission.

Authority includes any government or governmental, semi-governmental, statutory, administration, fiscal or financial body, department, commission, council, authority, tribunal, agency or entity whether public or private, which has authority, jurisdiction or rights over or relating to the Company or the business and activities of the Company.

Board means the Board of Directors.

Business Day means a day that is not a Saturday, Sunday, public or bank holiday in Sydney, New South Wales or a day between Christmas Day and New Year's Day.

Chair of the Board means the person holding that office under this Constitution.

Chief Executive Officer means the person holding that office under this Constitution.

Committee means a committee established in accordance with **clause 49**.

Company means Standards Australia Limited.

Constitution means this Constitution as amended or supplemented from time to time by a Special Resolution of the Members in a general meeting.

Director means any person holding the position of a director of the Company and **Directors** means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Financial Year means the financial year of the Company ending on 30 June.

Government Agency or Department means an agency, department, statutory authority or state-owned enterprise of the Commonwealth or a State or Territory government.

Member means a Member of the Company in accordance with **clause 8**.

Member Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate that is a Member of the Company.

Membership Criteria means the membership criteria in accordance with **clause 9.2(a)** or as otherwise resolved by the Board in accordance with **clause 9.2(b)**.

Office means the registered office for the time being of the Company which must always be located in Australia.

Officer has the same meaning as given to that term in section 9 of the Act.

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

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Special Resolution means a resolution:

- (a) of which notice has been given in accordance with the Act; and

- (b) that has either:
 - (i) been passed by at least 75% of the votes cast by Members present at a general meeting (either in person or by proxy) and entitled to vote on the resolution, who must also make up more than 50% of the total number of Members entitled to vote on the resolution; or
 - (ii) been passed by way of circulating resolution pursuant to **clause 29** by at least 75% of the Members entitled to vote on the resolution voting in favour of it.
- 4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:
- (a) the singular includes the plural and vice versa;
 - (b) each gender includes the other gender;
 - (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (f) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- 4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 4.4 The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.
- 4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5. Objects and Powers

- 5.1 The charitable objects for which the Company is established are advancing purposes beneficial to the general public by:
- (a) preparing and maintaining standards as a principal activity both at the national and international levels and to promote the general adoption of standards (including international standards) as well as preparing other related publications, handbooks, codes and guides including but not limited to those relating to structures, commodities, materials, practices, operations, services, safety, environmental, economic and business efficiency, consumer matters, and from time to time to revise, alter and amend the same;
 - (b) utilising all available forms of communications and media to ensure that the standards and related services needs of all stakeholder groups are met, with particular emphasis on the needs of existing and potential customers;
 - (c) coordinating the efforts of business and industries for the improvement and standardisation of but not limited to materials, products and processes in relation to fitness for purpose, terminology, classification, testing, variety, reduction, interchangeability, design and safety generally in order to promote economic and business efficiency;
 - (d) accrediting other bodies to prepare and maintain standards;
 - (e) adopting such measures and taking such steps and doing all such things as may, in the opinion of the Board, be conducive to the promotion of the interests of the Company;
 - (f) registering in the name of the Company a mark or marks and using or licensing the use of such mark or marks in relation to certain materials, goods or processes and to enforce and protecting the use of such marks or marks and opposing any proceedings or applications which may seem calculated directly or indirectly to prejudice the objects or interests of the Company;
 - (g) procuring the recognition of the Company in any country or place outside the Commonwealth;
 - (h) establishing, subscribing or making advances or donations to, promoting, becoming a member of, supporting, or co-operating or amalgamating with any association or person, whether incorporated or not, whose objects are altogether or in part similar to those of the Company;
 - (i) delivering information and education services including but not limited to seminars, workshops and conferences in the cause of education in the application and benefits of standardisation;
 - (j) preparing and making available or distributing materials associated with standardisation, as may seem conducive to the objects of the Company;
 - (k) undertaking and executing any trusts or any agency business which may seem to the Company conducive to any of its objects;

- (l) promoting or supporting changes in the law designed or likely to help all or any of the objects of the Company and opposing any changes therein designed or likely to impede the same and to effect or attempt to effect improvements in administration for the purposes aforesaid;
- (m) soliciting and receiving subscriptions and gifts of all kinds (whether absolute or conditional and whether subject to any special trust or not) for any one or more of the objects of the Company;
- (n) continuing the business of the Body Corporate and Politic known as Standards Association of Australia that was formed and governed under a Supplemental Royal Charter;
- (o) investing any monies of the Company not immediately required for any of its objects in such a manner as may from time to time be determined;
- (p) doing all such lawful things as the Company may think incidental or conducive to the attainment of the objects of the Company or any of them;
- (q) doing all or any of the things hereinbefore set out either in Australia or in such other place or places as may seem expedient;
- (r) taking such action as may be desirable or necessary to protect the objects and interests of the Company; and
- (s) undertaking any other activities in furtherance of the above.

5.2 The Company can only exercise the powers in section 124(1) of the Act to:

- (a) carry out the objects of the Company set out in **clause 5.1**; and
- (b) do all things incidental or convenient in relation to the attainment of an object under **clause 5.1**.

6. Not-For-Profit

6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 5.1**.

6.2 No income or assets of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company unless it is paid, transferred or distributed in carrying out the Company's objects. However nothing in this Constitution will prevent payment in good faith to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to the Company;
- (c) of reasonable and proper rent for premises leased by any Member to the Company,

for carrying out the Company's charitable purposes.

7. Amending the Constitution

The Members may amend this Constitution by passing a Special Resolution.

8. Membership

The Members of the Company are:

- (a) the Members of the Company as at the date of the adoption of this Constitution;
- (b) thereafter:
 - (i) any Member who has not ceased to be a Member pursuant to **clauses 13 or 14**; and
 - (ii) any other person that is admitted as a Member, in accordance with this Constitution.

9. Eligibility for Membership

9.1 Eligible entities

- (a) In this **clause 9**, 'person' does not include a natural person.
- (b) A person is eligible for membership of the Company if that person:
 - (i) is:
 - (A) a Government Agency or Department; or
 - (B) an entity (whether incorporated or unincorporated) which is:
 - (I) a not-for-profit entity;
 - (II) a professional association;
 - (III) a member association;
 - (IV) a university;
 - (V) a peak body; and/or
 - (VI) an industry association;
 - (ii) satisfies the Membership Criteria; and
 - (iii) in the opinion of the Board holds the ideals of the promotion of the objects of the Company as set out in **clause 5.1**.

9.2 Membership Criteria

- (a) In order to be eligible for Membership, an applicant must, in the view of the Board, be able to make a positive contribution to the Company having regard to one or more of the following factors:
 - (i) the applicant has a demonstrated capacity to make a positive contribution to the Company;
 - (ii) the applicant has a demonstrated capacity to use its influence to support the Company;
 - (iii) the applicant has a demonstrated breadth of focus (which does not conflict with the objects of the Company);
 - (iv) the applicant has a demonstrated standing in the community; and/or
 - (v) the applicant has made a demonstrated contribution to standards development.
- (b) The Board may from time to time resolve to adopt further or other Membership Criteria.

10. Application for Membership

- 10.1 Every application for Membership of the Company must:
 - (a) be lodged with the Secretary and must set forth the name and address of the applicant;
 - (b) specify the relevant credentials of the applicant to qualify as a Member;
 - (c) state that the applicant agrees to:
 - (i) comply with the terms of the Company's Constitution; and
 - (ii) act in the best interests of the Company.
- 10.2 Applications for Membership of the Company must be made in writing in a form approved by the Board for that purpose and signed by the applicant.
- 10.3 An applicant will be admitted to Membership of the Company if a majority of Directors entitled to vote resolve to admit the applicant.
- 10.4 If the Board approves an application for Membership, the Secretary must, as soon as practicable, notify the applicant in writing of their approval for Membership.
- 10.5 If the Board rejects an application for Membership, the Secretary must, as soon as practicable, notify the applicant in writing that their application has been rejected. The decision of the Board will be final.

11. Member Representatives

- 11.1 Each Member must appoint an individual to act as their Member Representative by written notice to the Secretary in a form approved by the Board from time to time.

- 11.2 The Member Representative will be the Member's Chief Executive Officer or Managing Director (or equivalent), unless the Member nominates another person by written notice to the Secretary.
- 11.3 The Member Representative will be entitled to exercise all or any of the powers of the Member:
- (a) at general meetings;
 - (b) at meetings of creditors; or
 - (c) in relation to resolutions to be passed without meetings.
- 11.4 The appointment will be a standing one unless otherwise specified in the notice of appointment.
- 11.5 The appointment may set out restrictions on the Member Representative's powers.
- 11.6 Unless otherwise specified in the appointment, the Member Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.
- 11.7 A Member may revoke its appointment of a Member Representative at any time by notice in writing to the Company. That notice should also provide the details of that Member's new Member Representative for inclusion in the Register.

12. Register of Members

- 12.1 The Company must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:
- (a) for each Member:
 - (i) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email); and
 - (iv) the date the Member was admitted as a Member in accordance with **clause 10.3**.
 - (b) for each person who stopped being a Member in the last 7 years:
 - (i) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email); and
 - (iv) the dates the Membership started and ended.

- (c) for each Member Representative:
 - (i) name;
 - (ii) name of the Member which appointed the Member Representative;
 - (iii) address (which may also include an electronic address such as email and a contact phone number); and
 - (iv) the date from which the Member Representative was authorised to represent the relevant Member;
- (d) for each person who stopped being a Member Representative in the last 7 years:
 - (i) name;
 - (ii) name of the Member which appointed the Member Representative;
 - (iii) address (which may also include an electronic address such as email); and
 - (iv) the dates from which the Member Representative was authorised to represent the relevant Member and the date on which that authority was revoked.

12.2 The Company must give Members reasonable access to the Register of Members.

12.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

13. Term of Membership

13.1 Each Member will have a term of Membership of 5 years.

13.2 The term of Membership of all Members who are Members of the Company immediately before the adoption of this Constitution will commence on the date on which the Members pass a Special Resolution to adopt this Constitution.

13.3 The term of Membership of all new Members will commence on the date that the Board resolves to admit that Member as a Member.

13.4 At the end of a Member's term of Membership, that Member will be able to apply for their Membership to be renewed.

13.5 The Board will, from time to time, adopt a policy in relation to the procedure for renewals of Membership and may prescribe Membership procedures from time to time for this purpose.

13.6 All applications for renewal of Membership will be considered by the Board having regard to the Membership Criteria. The decision of the Board will be final.

14. When a Member Stops Being a Member

Without limitation to **clause 13**, a Member immediately stops being a Member if:

- (a) they are wound up or otherwise dissolved or deregistered;
- (b) they resign, by writing to the Secretary;
- (c) they fail to renew their Membership by the due date in accordance with **clause 13**;
- (d) the Board resolves that the Member is no longer eligible for Membership after first following the procedure set out in **clause 14.2**;
- (e) the Company, in a general meeting, resolves by Special Resolution to terminate the Membership of a Member:
 - (i) whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company;
 - (ii) which no longer satisfies the eligibility criteria set out in **clause 9**, subject to the Member having been given at least 21 days' notice of the proposed Special Resolution and being given the opportunity to be heard at the meeting at which the Special Resolution is proposed; or
- (f) they have not responded within 3 months to a written request from the Secretary that they confirm in writing that they want to remain a Member.

14.2 If, in the view of a majority of the Board, a Member is no longer eligible for Membership of the Company, the Board may resolve to serve a written notice (**Eligibility Notice**) on that Member which:

- (a) puts the Member on notice that in the view of the Board the Member is no longer eligible for Membership of the Company and the reason(s) why; and
- (b) allows the Member at least 14 days to provide a written submission (**Eligibility Response**) to the Board as to why it should not be removed as a Member and the reason(s) why.

14.3 Upon receiving any Eligibility Response, the Board must within 14 days, advise the Member in writing whether the Member has been retained or removed as a Member. The decision of the Board will be final.

15. Membership Entitlements Not Transferable

A right privilege or obligation which a person has by reason of being a Member of the Company:

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

16. Entrance Fee and Subscriptions

There shall be no entrance fee, annual membership fee or membership subscription payable by any Member to the Company.

17. Members' Rights

17.1 Members of the Company will be entitled to:

- (a) receive notice of and attend and vote at general meetings of the Company; and
- (b) receive annual reports of the Company including financial reports in relation to each Financial Year.

17.2 All other rights, privileges and obligations of Members are in accordance with the Act.

18. Dispute Resolution

18.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member, Member Representative or Director and:

- (a) one or more Members;
- (b) one or more Member Representatives;
- (c) one or more Directors; or
- (d) the Company,

but does not apply to any disputes which arise between members of Committees in relation to the activities of such Committee.

18.2 A Member or Member Representative must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under **clause 19** until the disciplinary procedure is completed.

18.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

18.4 If those involved in the dispute do not resolve it under **clause 18.3**, they must within 10 days:

- (a) tell the Directors about the dispute in writing;
- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

18.5 The mediator must:

- (a) be chosen by agreement of those involved; or

- (b) where those involved do not agree:
 - (i) for disputes between Members and/or Member Representatives, a person chosen by the Chair of the Board; or
 - (ii) for other disputes, a person chosen by either the Deputy Commissioner of the Australian Charities and Not-for-profits Commission or the president of the Law Society of New South Wales.

18.6 A mediator chosen by the Chair of the Board under **clause 18.5**:

- (a) may be a Member Representative or former Member Representative of the Company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

18.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

19. Disciplinary Procedures

19.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member from the Company if the Directors consider that:

- (a) the Member has failed to comply with this Constitution; or
- (b) the Member's behaviour is unbecoming and/or is causing, has caused, or is likely to cause harm to the Company.

19.2 For the avoidance of doubt, conduct will be considered to be unbecoming if it:

- (a) causes a majority of the Board to think less of the Member's integrity; or
- (b) brings the Company into disrepute; or
- (c) breaches any of the Company's codes of conduct.

19.3 At least 14 days before the Board meeting at which a resolution under **clause 19.1** will be considered, the Secretary must notify the Member in writing:

- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
- (b) that this resolution will be considered at a Board meeting and the date of that meeting;
- (c) what the Member is said to have done or not done;

- (d) the nature of the resolution that has been proposed; and
 - (e) that the Member may provide an explanation to the Directors, and details of how to do so.
- 19.4 Before the Directors pass any resolution under **clause 19.1**, the Member must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Board meeting; and/or
 - (b) speaking at the meeting.
- 19.5 After considering any explanation under **clause 19.4**, the Directors may:
- (a) take no further action;
 - (b) warn the Member;
 - (c) suspend the Member's rights as a Member for a period of no more than 12 months;
 - (d) expel the Member;
 - (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or
 - (f) require the matter to be determined at a general meeting.
- 19.6 The Directors cannot fine a Member.
- 19.7 The Secretary must give written notice to the Member of the decision under **clause 19.5** as soon as possible.
- 19.8 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.9 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.
- 19.10 For the avoidance of doubt, in this **clause 19**, a reference to a Member includes that Member's Member Representative, as appropriate.

20. Right of Appeal Against Discipline or Suspension

A Member has a right to appeal against their expulsion under **clause 19** in accordance with the Company's guidelines on disciplinary and dispute resolution procedures.

21. Convening of General Meetings

- 21.1 Any 5 Directors may whenever those Directors think fit convene a general meeting of the Company in accordance with the provisions of the Act.
- 21.2 5% of Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.

- 21.3 If a general meeting is convened pursuant to either of **clauses 21.1 or 21.2**, the Directors or Members requiring the general meeting must:
- (a) submit their request to the Company in writing;
 - (b) specify the resolution(s) sought to be passed at the general meeting and whether any of the resolution(s) sought is a Special Resolution; and
 - (c) each sign the request.
- 21.4 A general meeting of the Company may be convened using any technology that gives the Members a reasonable opportunity to participate in the meeting, including to hear and be heard.

22. Annual General Meeting

- 22.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year and within 5 months of the end of the Company's Financial Year.
- 22.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of Directors; and
 - (e) the appointment and payment of auditors.
- 22.3 Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.
- 22.4 The Chair of the annual general meeting must give Members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

23. Notice of General Meetings

- 23.1 Notice of a general meeting must be given to:
- (a) each Member entitled to vote at the meeting;
 - (b) each Director; and
 - (c) the auditor.
- 23.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

- 23.3 Subject to **clause 23.4**, notice of a meeting may be provided 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.
- 23.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
 - (b) appoint a Director in order to replace a Director who was removed; or
 - (c) remove an auditor.
- 23.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held using technology, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
 - (d) any other information required under the Act.
- 23.6 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- 23.7 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

24. Right of Non-Members to Attend General Meeting

The Chair of a general meeting:

- (a) may invite or allow any person who is not a Member to attend and/or address a meeting; and

- (b) should not unreasonably refuse a request from a Member to allow any person who is not a Member to attend a general meeting as an observer.

25. Quorum

- 25.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- 25.2 The greater of:
 - (a) 20 Members; or
 - (b) 25% of Members,present either in person or by proxy shall constitute a quorum for all general meetings (rounded down in the event of a fraction).
- 25.3 If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
 - (a) the meeting if convened upon the requisition of Members shall be dissolved;
 - (b) in any other case:
 - (i) the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.
- 25.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

26. Chair of General Meetings

- 26.1 Unless the Board resolves otherwise, the Chair of the Board shall be elected at the first Board meeting after incorporation and then annually by majority vote of the Board at the first Board meeting held after the annual general meeting of the Company.
- 26.2 The Chair of the Board shall be entitled to preside as Chair at every general meeting.
- 26.3 Where a general meeting is held and:
 - (a) there is no Chair of the Board; or

- (b) the Chair of the Board is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chair of the meeting,

then the other Directors present may choose another Director as Chair of the meeting by two-thirds majority, or if their number is not 3 or a multiple of 3, then the nearest number to two-thirds. If no Director is so chosen or if all the Directors present decline to take the Chair, the Member Representatives present may choose one of their number to be Chair of the meeting.

- 26.4 The rulings of the Chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

27. No Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll, the Chair of the general meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

28. Adjournment of Meetings

- 28.1 The Chair of a general meeting at which a quorum is present:
- (a) may adjourn a meeting with the consent of the meeting; and
 - (b) must adjourn the meeting if the meeting so directs,
- to a time and place as determined by the Chair.
- 28.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 28.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- 28.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 21 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

29. Circulating Resolution of Members

- 29.1 Subject to **clause 29.3**, the Directors may put a resolution to the Members to pass a resolution without a general meeting being held.
- 29.2 The Directors must notify the auditor as soon as possible that a circulating resolution has or will be put to Members and set out the wording of the resolution.
- 29.3 Circulating resolutions cannot be used where the Act or this Constitution requires a meeting to be held.

- 29.4 A circulating resolution is passed if a majority of Members or in the case of a Special Resolution at least 75% of all Members entitled to vote on the resolution, sign or agree to the circular resolution, in the manner set out in **clause 29.5** or **clause 29.6**.
- 29.5 Members may sign:
- (a) a single document setting out the circulating resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 29.6 The Company may send a circulating resolution by electronic transmission such as email to Members and Members may agree by sending a reply to that effect (including by electronic transmission such as email), including the text of the resolution in their reply.

30. How Voting is Carried Out

- 30.1 At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
- (a) the Chair of the meeting; or
 - (b) at least 2 Members entitled to vote on the resolution.
- 30.2 Before a vote is taken, the Chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 30.3 On a show of hands, the Chair's decision is conclusive evidence of the result of the vote.
- 30.4 The Chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

31. Polls

- 31.1 A poll may be demanded:
- (a) before a vote on a resolution is taken;
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
- 31.2 If a poll is demanded it must be taken in such manner and at such time and place as the Chair of the meeting directs subject to **clause 31.5**.
- 31.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 31.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 31.5 A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.

31.6 The demand for a poll may be withdrawn.

32. Voting Rights

32.1 A Member entitled to vote has one vote.

32.2 No person other than a Member shall be entitled to vote at a general meeting.

33. Challenge to a Member's Right to Vote

33.1 A Member or the Chair of a meeting may only challenge a person's right to vote at a general meeting at that meeting.

33.2 If a challenge is made under **clause 33.1**, the Chair of the meeting must decide whether or not the person may vote. The Chair's decision is final.

34. Right to Appoint Proxies

A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.

35. Appointing a Proxy

35.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised Officer or attorney of the corporation.

35.2 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:

- (a) the name and address of the Member;
- (b) the name of the Company;
- (c) the proxy's name or the name of the office of the proxy; and
- (d) the meetings at which the instrument of proxy may be used.

35.3 An instrument of proxy may, if agreed by the Company, be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.

35.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by this **clause 35**.

35.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

36. Lodgement of Proxies

36.1 An instrument appointing:

- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
- (b) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be, at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

36.2 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by electronic transmission such as email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the transmission by the Company.

37. Validity of Proxies

37.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) the death or unsoundness of mind of the Member Representative;
- (b) the bankruptcy or liquidation of the Member;
- (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

unless the Company has received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

37.2 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

38. Voting by Proxy

38.1 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;

- (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.
- 38.2 A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.

39. Number of Directors

- 39.1 The Company must have at least 5 and no more than 9 Directors.
- 39.2 The Directors will include:
- (a) up to 6 Directors elected by the Members in accordance with **clause 40**; and
 - (b) up to 3 Directors appointed by the Board in accordance with **clause 42**.
- 39.3 Notwithstanding **clause 39.2**, but subject to **clause 44**, the number of Directors elected by Members must at all times make up a majority of the Directors.
- 39.4 If the number of Directors is reduced to fewer than 3 or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to 3 (or higher if required for a quorum) or calling a general meeting, but for no other purpose.
- 39.5 A Director may not appoint an alternate to exercise some or all of the Director's powers.

40. Election of Directors by Members

- 40.1 Directors required to be elected by the Members (**Elected Directors**) will be elected in accordance with the election process determined by the Board from time to time.
- 40.2 The Board will pass, in accordance with **clause 67**, By-Laws to govern the election process.
- 40.3 Elected Directors will take office immediately upon the conclusion of the next annual general meeting conducted after their election.

41. Term of Office of Elected Directors

- 41.1 At each annual general meeting:
- (a) any Elected Director appointed to fill a casual vacancy must retire, and
 - (b) any Elected Director whose terms has expired must retire.
- 41.2 Each Elected Director must retire at least once every 3 years.

- 41.3 Other than an Elected Director elected under **clause 41.5**, an Elected Director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 41.4 An Elected Director who retires under **clause 41.1** may be nominated for re-election, subject to **clause 41.5**.
- 41.5 An Elected Director who has held office for a total period of 9 years or more (whether consecutive or non-consecutive and whether as an Elected Director or an Appointed Director) may only be elected or re-elected by a Special Resolution.
- 41.6 For the avoidance of doubt:
- (a) when calculating an Elected Director's term of office for the purposes of **clause 41.5**, any term of office (whether as an Elected Director or an Appointed Director) which commenced prior to the adoption of this Constitution will be counted; and
 - (b) if as at the date of adoption of this Constitution an Elected Director has held office for the maximum term specified in **clause 41.5** or longer (whether as an Elected Director or an Appointed Director or both), this clause is not intended to have the effect of removing them as a Director before the end of their then current term.

42. Appointment of Directors by Board

- 42.1 So long as the number of Elected Directors (but not including any person appointed to fill a casual vacancy of an Elected Director position pursuant to **clause 44.2(a)**) make up a clear majority of the Board, the Directors may appoint up to 3 persons as Director (**Appointed Directors**).
- 42.2 A person is eligible for appointment as an Appointed Director if they:
- (a) are nominated by 2 Directors;
 - (b) give the Company their signed consent to act as a Director of the Company; and
 - (c) are not ineligible to be a Director under the Act or the ACNC Act.

43. Term of Office of Appointed Directors

- 43.1 Appointed Directors shall hold office for a period:
- (a) commencing on the date so specified by the Board; and
 - (b) ending on a date so specified by the Board, provided that such date is no more than 3 years from the commencement date.
- 43.2 The Board may at any time remove an Appointed Director.
- 43.3 At the end of an Appointed Director's term pursuant to **clause 43.1(b)**, a person may be nominated for re-appointment, subject to **clause 43.4**.

- 43.4 An Appointed Director who has held office for a total period of 9 years or more (whether consecutive or non-consecutive and whether as an Elected Director or an Appointed Director) may only be appointed or re-appointed by a Special Resolution.
- 43.5 For the avoidance of doubt:
- (a) when calculating an Appointed Director's term of office for the purposes of **clause 43.4**, any term of office (whether as an Elected Director or an Appointed Director) which commenced prior to the adoption of this Constitution will be counted; and
 - (b) if as at the date of adoption of this Constitution an Appointed Director has held office for the maximum term specified in **clause 43.4** or longer (whether as an Elected Director or an Appointed Director or both), this clause is not intended to have the effect of removing them as a Director before the end of their then current term.

44. Casual Vacancies

- 44.1 For the purposes of this **clause 44**, **casual vacancy** means a vacancy on the Board which occurs between annual general meetings.
- 44.2 If the casual vacancy is for:
- (a) an Elected Director position, the Board may appoint another person to fill that vacancy and that person must resign at the Company's next annual general meeting;
 - (b) an Appointed Director position, the Board may appoint another person to fill that vacancy for the remainder of the original Appointed Director's term.

45. When a Director Stops Being a Director

A Director stops being a Director if they:

- (a) give written notice of resignation as a Director to the Office of Company and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company);
- (b) die;
- (c) in the case of Elected Directors, they are removed as a Director by a resolution of the Members;
- (d) are absent for 3 consecutive Board meetings without approval from the Chair and the Directors resolve that his or her office be vacated;
- (e) become ineligible to be a Director of the Company under the Act or the ACNC Act; or

- (f) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health.

46. Negotiable Instruments

The Directors must decide on the responsible financial management of the Company including:

- (a) any suitable written delegations of power under **clause 48**, and
- (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

47. Power of Directors

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

48. Delegation of Directors' Powers

- 48.1 The Directors may delegate any of their powers and functions to a Committee, a Director, an employee of the Company (such as the Chief Executive Officer) or any other person, as they consider appropriate, on such terms and conditions and with such restrictions as it may think expedient.
- 48.2 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- 48.3 The delegation must be recorded in the Company's minute book.

49. Committee of Directors

- 49.1 The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- 49.2 Without limitation to **clause 49.1**, the Committees will include:
 - (a) a Committee formed for the purpose of assisting the Board with standards development and accreditation; and
 - (b) a Committee formed for the purpose of providing advice to the Board in relation to Membership of the Company.

- 49.3 A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 49.4 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- 49.5 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be made available to the Board.

50. Payments to Directors

- 50.1 Subject to compliance with the terms of any applicable laws, the Directors may, if the Members resolve by ordinary resolution, be paid reasonable remuneration for their services up to the aggregate annual sum that is fixed by the Members from time to time. If a sum is voted by the Members, that sum (or less) will be divided amongst the Directors as the Board decides.
- 50.2 Despite **clause 50.1**, the Company may:
- (a) pay a Director for any services rendered to the Company in a professional or technical capacity, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
 - (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- 50.3 Any payment made under **clause 50.2** must be approved by the Directors.
- 50.4 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this Constitution.

51. Conflicts of Interest

- 51.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of the Board (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.
- 51.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 51.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution) must not, except as provided under **clause 51.4**:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.

- 51.4 A Director may still be present and vote if:
- (a) their interest arises because they are a Member and the other Members have the same interest;
 - (b) 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;
 - (c) their interest relates to an indemnity payment by the Company, or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (d) ASIC makes an order allowing the Director to vote on the matter; or
 - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) 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
 - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

52. Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to 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) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause **5.1**;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in **clause 52**;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

53. When the Directors Meet

The Directors may decide how often, where and when they meet, provided that they shall meet together not less than 4 times each calendar year.

54. Calling Board Meetings

- 54.1 A Director may at any time and the Secretary upon the request of a Director shall convene a Board meeting by giving at least 24 hours' notice of the meeting to all Directors (or, if applicable, any shorter notice period that is agreed to by all of the Directors).
- 54.2 Notice of a Board meeting need not be in writing.

55. Using Technology to Hold Board Meetings

- 55.1 The Directors may hold Board meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 55.2 The Directors' agreement may be a standing one.
- 55.3 A Director may only withdraw their consent within a reasonable period before the meeting.

56. Quorum at Board Meetings

- 56.1 Unless the Directors determine otherwise, the quorum for a Board meeting is 5 Directors.
- 56.2 No business may be transacted at any Board meeting unless a quorum of Directors is present at all times during the meeting.
- 56.3 Directors who are personally present (or in conference in accordance with **clause 55**) form a quorum. A Director who is disqualified from voting on a matter pursuant to **clause 51** shall be counted in the quorum despite that disqualification.
- 56.4 All resolutions of the Directors passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Directors.

57. Chair of Board Meetings

- 57.1 The Chair of the Board shall, if present, preside as Chair of every Board meeting.
- 57.2 If a Board meeting is held and the Chair of the Board is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be Chair of the meeting.

58. Voting

- 58.1 A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- 58.2 Each Director shall have one vote.
- 58.3 In case of an equality of votes at a Board meeting, the Chair of the Board will have a casting vote in addition to a deliberative vote.

59. Resolutions by Directors

- 59.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- 59.2 The resolution is passed when the last Director signs.
- 59.3 A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.
- 59.4 The Company may send a circular resolution by electronic transmission such as email to the Directors and the Directors may agree to the resolution by sending a reply to that effect (including by electronic transmission such as email), including the text of the resolution in their reply.

60. Validation of Acts of Directors

All acts done:

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

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

61. Minutes and Records

- 61.1 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;

- (b) circular resolutions of Members;
 - (c) a copy of a notice of each general meeting.
- 61.2 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees); and
 - (b) circular resolutions of Directors.
- 61.3 To allow Members to inspect the Company's records:
- (a) the Company must give a Member reasonable access to the records set out in **clause 61.1**; and
 - (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in **clause 61.2** and **clause 65.1**.
- 61.4 The Directors must ensure that minutes of a general meeting or a Board meeting are signed within a reasonable time after the meeting by:
- (a) the Chair of the meeting; or
 - (b) the Chair of the next meeting.
- 61.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by the Chair of the Board within a reasonable time after the resolution is passed.

62. Chief Executive Officer

- 62.1 The Board will employ a Chief Executive Officer who will manage the day to day business of the Company.
- 62.2 The Chief Executive Officer will report to and be responsible to the Board for the Company's activities and operations.
- 62.3 The Chief Executive Officer will be entitled and required to attend all meetings of all Committees but will not have a vote unless the Chief Executive Officer is also a member of such Committee.

63. Appointment and Role of Secretary

- 63.1 The Company must have at least one Secretary, who may also be a Director.
- 63.2 A Secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed from that role by the Directors.
- 63.3 The Directors must decide the terms and conditions under which the Secretary is appointed, including any remuneration.
- 63.4 The role of the Secretary includes:
- (a) maintaining a Register of the Company's Members;

- (b) maintaining the minutes and other records of general meetings (including notices of meetings), Board meetings and circular resolutions.

64. Execution of Documents

Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

65. Financial and Related Records

- 65.1 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.
- 65.2 The Company shall appoint an auditor.
- 65.3 The Company must also keep written records that correctly record its operations.
- 65.4 The Company must retain its records for at least 7 years.
- 65.5 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

66. Directors' Access to Documents

- 66.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 66.2 If the Directors agree, the Company must give a Director or former Director access to:
 - (a) certain documents, including documents provided for or available to the Directors; and
 - (b) any other documents referred to in those documents.

67. By-Laws

- 67.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution. By-laws may not be inconsistent with this Constitution and, in the event of any inconsistency, the provisions of the Constitution will prevail.
- 67.2 Members and Directors must comply with by-laws as if they were part of this Constitution.

68. When Notice is Taken to be Given

Written notice under this Constitution may be:

- (a) delivered in person, or left at the recipient's address, and is taken to be given on the day it is delivered;
- (b) sent by post, and is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method as agreed to by the recipient, and is taken to be given on the Business Day after it is sent.

69. Winding Up

69.1 The Company may be dissolved by a Special Resolution of Members at a meeting of Members. If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members UNLESS THE Members satisfy the criteria in **69.1(a) to (c)**, but will be given or transferred to one or more corporations or institutions which have:

- (a) charitable objects which are similar to the objects of the Company as set out in **clause 5.1**;
- (b) a governing document which requires its income and property to be applied in promoting its objects; and
- (c) a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 6**.

69.2 The identity of the corporation(s) or institution(s) is to be determined by a Special Resolution of the Members at or before the time of dissolution and failing such determination being made, by application to the New South Wales Supreme Court for determination.

70. Indemnity

Subject to **clause 71**, each person who is or has been an Officer of the Company or a member of any of the Company's committees including, but not limited to committees that are formed to prepare standards or other services in the further pursuit of the interests of the Company are entitled to be indemnified, to the relevant extent, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (a) in the case of an Officer, relating to that person's position with the Company or its subsidiaries; and

- (b) in the case of a member of any of the Company's committees, relating to that person's involvement in the affairs of the Company or its subsidiaries,

save in relation to:

- (c) a liability owed to the Company or a related body corporate of the Company;
- (d) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
- (e) a liability that is owed to someone other than the Company or a related body corporate of the Company and which did not arise out of conduct in good faith.

71. Legal Costs

Each person who is or has been an Officer of the Company or a member of any of the Company's committees including, but not limited to committees that are formed to prepare standards or other services in the further pursuit of the interests of the Company are entitled to be indemnified, to the relevant extent, out of the property of the Company against any liabilities for legal costs and expenses incurred by that person (including in connection with proceedings other than criminal or civil proceedings such as but not limited to a Royal Commission of Inquiry or Inquiries constituted by any Act of Parliament or Government or Statutory Authority) unless the legal costs and expenses are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under **clause 70**;
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (provided that the person shall be entitled to be indemnified in respect of costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.

72. Payment of GST to Indemnified Person

The amount of any indemnity payable under **clause 70** or **clause 71** will include an additional amount (**GST Amount**) equal to any GST payable by the person being indemnified (**Indemnified Person**) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Person in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Person providing the Company with a GST tax invoice for the GST Amount.

73. Terms used in clauses 70 and 71

In **clauses 70** and **71**:

- (a) "to the relevant extent" means:
 - (i) to the extent that the Company is not precluded by law from doing so;
 - (ii) where the liability is incurred in the conduct of the business of another corporation or in the discharge of the duties of the person in relation to another corporation, to the extent and for the amount that the person is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation;
 - (iii) to the extent and for the amount that the person is not otherwise actually indemnified, including an indemnity under any insurance policy or contract;
 - (iv) where the indemnity consists of a payment or an agreement to make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by the person in defending an action for a liability incurred as an officer of the Company, the indemnity may only be provided on the condition that the person agrees to repay the amount if the costs become costs for which the Company is prohibited under **clauses 70** and/or **71** from giving the person such an indemnity, unless the Board resolves otherwise;
- (b) the "outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

74. Indemnity to continue

The benefit of any indemnity given under **clauses 70** and **71** continues, despite any amendment to or deletion of **clauses 70** and/or **71**, in respect of liability arising from acts or omissions occurring before the amendment or deletion.

75. Insurance

To the extent permitted by law, the Company may pay a premium for a contract insuring a person who is or has been an Officer of the Company or a committee member of the Company and its related bodies corporate against:

- (a) any liability incurred by that person:
 - (i) in the case of an Officer, as such an Officer, which does not arise out of conduct involving a wilful breach of duty in relation to that person's position with the Company or its subsidiaries; and

- (ii) in the case of a member of any of the Company's committees, relating to that person's involvement in the affairs of the Company or its subsidiaries which does not arise out of fraudulent conduct relating to that person's involvement in the affairs of the Company or its subsidiaries; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with or involvement in the affairs of the Company, whether civil or criminal, and whatever their outcome.