

# Constitution

Australian Council of National Trusts

ABN 54 008 444 684

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As amended on 28 March 2015

MinterEllison

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# Constitution of Australian Council of National Trusts

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# Preliminary

## 1. Defined terms & interpretation

1.1 In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under clause 38.

**Appointor** has the meaning given in clause 38.1.

**Auditor** means the Company's auditor.

**Chair** means the Director appointed as Chair under clause 30.

**Company** means the Australian Council of National Trusts ABN 54 008 444 684.

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

**Deputy Chair** means the Director (if any) elected as deputy chairperson under clause 40.2.

**Director** includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Executive Officer** means the person appointed as Executive Officer of the Company by the Directors.

**Member** means a member under clause 4.

**National Trust** means a corporation formed and operating within the Commonwealth of Australia, any external Australian territory or New Zealand and having objects wholly, substantially or in part similar to those in clause 2.1 of this Constitution.

**Office** means the Company's registered office.

**Register** means the register of Members of the Company.

**Registered Address** means the last known address of a Member as noted in the Register.

**Representative** means a person appointed as such under clause 10.

**Seal** means the Company's common seal (if any).

**Secretary** means any person appointed under clause 48 to perform any of the duties of a secretary of the Company.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the *Corporations Act 2001* (Cth) have the same meaning in this Constitution;
- (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (e) a reference to the *Corporations Act 2001* (Cth) is a reference to the *Corporations Act 2001* (Cth) as modified or amended from time to time.

- 1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the *Corporations Act 2001* (Cth) that deals with the same matter as the clause.
- 1.4 To the extent permitted by law, the replaceable rules in the *Corporations Act 2001* (Cth) do not apply to the Company.

## Objects

### 2. Objects

- 2.1 The objects for which the Company is established are to:
- (a) provide forums and other means of communication to ensure the sharing of information and knowledge and, where appropriate, consideration and discussion of matters of interest and benefit to the Members;
  - (b) represent and advocate for Members' and heritage interests generally at the national level;
  - (c) monitor, assess and act upon a range of issues which impact directly and indirectly on the conservation of the nation's heritage;
  - (d) promote and foster public appreciation, understanding and knowledge of the nation's heritage;
  - (e) maintain a library and ensure proper maintenance of archival material for reference and circulation to the Members and to the public;
  - (f) undertake research and investigation, either independently or in conjunction with other individuals or organisations in support of the heritage conservation role;
  - (g) undertake an international liaison role, including representational duties where appropriate, aimed at sharing information and knowledge amongst the Members and providing assistance to like-minded organisations where possible and appropriate;
  - (h) procure, in conjunction with the Members, heritage places, structures, lands and objects for the public benefit and assist through encouragement, support, instruction and cooperation with individuals or other organisations intent on the same purpose; and
  - (i) facilitate coordination amongst the Members on a range of matters aimed at minimising duplication and maximising cooperation.
- 2.2 The Company may only exercise the powers in section 124(1) of the *Corporations Act 2001* (Cth) to:
- (a) carry out the objects in this clause 2; and
  - (b) do all things incidental or convenient in relation to the exercise of power under clause 2.2(a).

## Income and property of Company

### 3. Income and property of Company

- 3.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 2.

- 3.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## Membership

### 4. Admission

- 4.1 The number of Members with which the Company proposes to be registered is eight.
- 4.2 Subject to clause 6, the Members of the Company will be:
- (a) National Trust of Australia (New South Wales);
  - (b) National Trust of Australia (Victoria);
  - (c) National Trust of Queensland;
  - (d) National Trust of Australia (Western Australia);
  - (e) National Trust of South Australia;
  - (f) National Trust of Australia (Tasmania);
  - (g) National Trust of Australia (ACT); and
  - (h) National Trust of Australia (Northern Territory).
- 4.3 The rights and privileges of every Member will be personal to each Member and will not be transferable by the Member's own act or by operation of law.

### 5. Subscriptions

- 5.1 The Directors may from time to time determine the entrance fee and annual subscription payable by each Member or each category of Member.
- 5.2 The annual subscription period will commence on 1 July of each year, and the annual subscription will be payable in equal quarterly instalments due on the following dates:
- (a) the first day of July;
  - (b) the first day of October;
  - (c) the first day of January; and
  - (d) the first day of April.
- 5.3 The Directors may determine that any Member admitted to membership between 1 January and 30 June will pay only one-half of the annual subscription until that Member's next annual subscription falls due.
- 5.4 If a Member does not pay a subscription within 30 days after it becomes due the Directors:
- (a) will give the Member notice of that fact; and
  - (b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

## 6. Ceasing to be a Member

6.1 A Member's membership of the Company will cease:

- (a) 12 months after providing the Executive Officer with notice in writing of its intention to resign, provided that the Member may at any time within that period revoke such notice of intention to resign;
- (b) if a majority of three-quarters of the Members present and voting at a general meeting of Members by resolution terminate the membership of a Member (who will not be entitled to vote):
  - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company;
  - (ii) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- (c) if membership is forfeited under clause 5.4(b);
- (d) if a liquidator is appointed in connection with the winding-up of the Member; or
- (e) if an order is made by a Court for the winding-up or deregistration of the Member.

6.2 Any Member ceasing to be a Member:

- (a) will not be entitled to any refund (or part refund) of a subscription; and
- (b) will remain liable for and will pay to the Company all subscriptions and moneys which were due at the date of ceasing to be a Member.

## 7. Patrons

7.1 The Directors may from time to time invite a person to be Patron of the Company.

7.2 For the avoidance of doubt, the Patron is not a Member or Director of the Company unless otherwise admitted or appointed as such.

## 8. Observers

The Directors may from time to time invite any National Trust, whether or not such National Trust is a Member, to be represented by an observer at any general meeting of the Company or at any meeting of Directors for the purposes of consultation on and discussion of matters of general or common interest to the National Trusts, provided that such observer will not be, and will not have any of the rights of, a Member or Director as the case may be.

## 9. Powers of attorney

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

## 10. Representatives

- 10.1 Any Member may by written notice to the Executive Officer:
  - (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the *Corporations Act 2001* (Cth); and
  - (b) remove its Representative.
- 10.2 A Representative is entitled to:
  - (a) exercise at a general meeting all the powers which the Member which appointed him or her could exercise if it were a natural person;
  - (b) stand for election as an office bearer or Director; and
  - (c) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.
- 10.3 A certificate executed in accordance with section 127 of the *Corporations Act 2001* (Cth) is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 10.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 10.5 The appointment of a Representative may set out restrictions on the Representative's powers.

## General meetings

### 11. Calling general meeting

- 11.1 The Directors may, at any time, call a general meeting.
- 11.2 A Member may:
  - (a) only request the Directors to call a general meeting in accordance with section 249D of the *Corporations Act 2001* (Cth); and
  - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the *Corporations Act 2001* (Cth).

## 12. Notice of general meeting

- 12.1 Subject to the provisions of the *Corporations Act 2001* (Cth) allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 12.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (b) must state the general nature of the business to be transacted at the meeting; and
  - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 12.3 The business to be transacted at an annual general meeting may, regardless of whether stated in the notice of meeting, include:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the election of directors; or
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 12.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 11.2).
- 12.5 The Directors must give notice of the postponement or cancellation to all persons referred to in clause 53.1 entitled to receive notices from the Company.
- 12.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## Proceedings at general meetings

### 13. Member

In clauses 14, 15, 17 and 21, **Member** includes a Member present in person or by proxy, attorney or Representative.

### 14. Quorum

- 14.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 14.2 A quorum of Members is five Members. If the total number of Members is less than five at any time, the quorum will be all Members at that time.
- 14.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:

- (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
- (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

## 15. Chairperson

- 15.1 The Chair, or in the Chair's absence the Deputy Chair, will be the chairperson at every meeting of Members.
- 15.2 If:
- (a) there is no Chair or Deputy Chair; or
  - (b) neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the Chair and Deputy Chair are unwilling to act as chairperson of the general meeting, the Directors present may elect a chairperson of the general meeting of the Members.
- 15.3 If no election is made under clause 15.2, then:
- (a) the Members may elect one of the Directors present as chairperson; or
  - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 15.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

## 16. Adjournment

- 16.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 16.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 16.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 16.4 Notice of an adjourned general meeting must only be given in accordance with clause 12.1 if a general meeting has been adjourned for more than 21 days.

## 17. Decision on questions

- 17.1 Subject to the *Corporations Act 2001* (Cth) in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 17.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the *Corporations Act 2001* (Cth).
- 17.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 17.4 The demand for a poll may be withdrawn.
- 17.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## 18. Taking a poll

- 18.1 A poll will be taken when and in the manner that the chairperson directs.
- 18.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 18.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 18.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 18.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 18.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## 19. Casting vote of chairperson

The chairperson does not have a casting vote at a general meeting in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

## 20. Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
  - (i) electronic or recording device;
  - (ii) placard or banner; or
  - (iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

# Votes of Members

## 21. Entitlement to vote

- 21.1 Subject to this clause 21, a Member is entitled to attend, speak and vote at a general meeting.
- 21.2 A Member is not entitled to vote at a general meeting if the Member's annual subscription is more than one month in arrears at the date of the meeting.
- 21.3 A Member entitled to vote has one vote.

## 22. Objections

- 22.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 22.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 22.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

## 23. Votes by proxy

- 23.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 23.2 A proxy need not be a Member.
- 23.3 A proxy may demand or join in demanding a poll.
- 23.4 A proxy or attorney may vote on a poll.
- 23.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

## 24. Document appointing proxy

- 24.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the *Corporations Act 2001* (Cth). The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the *Corporations Act 2001* (Cth).
- 24.2 For the purposes of clause 24.1, an appointment received at an electronic address will be taken to be signed by the Member if:
  - (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 24.3 A proxy's appointment is valid at an adjourned general meeting.
- 24.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.

24.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:

(a) to vote on:

(i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and

(ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and

(b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

24.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more directors or the Executive Officer.

## 25. Lodgment of proxy

25.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

(a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or

(b) the taking of a poll on which the appointee proposes to vote.

25.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:

(a) the Office;

(b) a facsimile number at the Office; or

(c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## 26. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

(a) died;

(b) became mentally incapacitated; or

(c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## Appointment and removal of Directors

### 27. Number of Directors

There will not be less than eight nor more than twelve Directors.

### 28. Appointment and removal of Directors

28.1 Each Member may:

- (a) subject to clause 28.4, appoint one Director by notice in writing to the Executive Officer;
- (b) remove a Director appointed by that Member (including a Director elected as Chair) by notice in writing to the Executive Officer; and
- (c) appoint at any time another person in place of a Director appointed by that Member, by notice in writing to the Executive Officer, where the Director has resigned, retired, been removed, or whose office has become vacant under clause 31.

28.2 Not used.

28.3 Subject to clause 27, the Directors appointed pursuant to clause 28.1 may at any time appoint up to two additional Directors, provided that such appointees are members of a Member.

28.4 The only persons eligible to be appointed by a Member as a Director pursuant to clause 28.1 are the members of that Member's governing board (or equivalent). That qualification requirement does not apply to Directors appointed pursuant to clause 28.3.

28.5 The Company may by resolution passed in general meeting remove any Director before the end of the Director's period of office.

28.6 The Directors must hold a meeting of Directors to be held at a date determined by the Directors within the period from 1 February to 31 May each year which meeting of Directors will include in its business the consideration and if resolved at the meeting appointment of Directors pursuant to clauses 28.3 to replace any Directors retiring as Directors pursuant to clause 29.1(b) ('**Mid Year Board Meeting**').

## 29. Retirement

29.1 Except as set out in clause 29.3:

- (a) all Directors other than Directors appointed pursuant to clause 28.3 must retire from office no later than the conclusion of the third annual general meeting after the Director was last appointed; and
- (b) Directors appointed pursuant to clause 28.3 must retire from office no later than the conclusion of the third Mid Year Board Meeting after the Director was last appointed.

29.2 Subject to clause 29.3, a retiring Director will be eligible for re-appointment.

29.3 Directors will be ineligible for re appointment after serving two consecutive terms in office, but will become eligible for reappointment again after a period of more than 12 months has transpired since the Director ceased to be a Director in which period he or she was not a Director.

## 30. Chair

30.1 The Directors shall elect from amongst the Directors a Chair to hold office until the conclusion of the next annual general meeting.

30.2 The Chair must retire from office as Chair at the conclusion of the first annual general meeting after he or she was last elected as Chair.

30.3 Subject to clause 30.4, a retiring Chair is eligible for re-election as Chair.

30.4 A retiring Chair will be ineligible for re-election immediately after serving five consecutive terms in office, but will be eligible for election after another person has served as Chair.

## 31. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the *Corporations Act 2001* (Cth) from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
- (c) resigns by notice in writing to the Executive Officer;
- (d) is removed by a resolution of the Company;
- (e) is absent from Directors' meetings for three consecutive meetings without leave of absence from the Directors;
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the *Corporations Act 2001* (Cth);
- (g) in the case of a Director appointed by a Member pursuant to clause 28.1:
  - (i) is removed by notice in writing to the Executive Officer by that Member;

- (ii) ceases to be a member of the governing board (or equivalent) of that Member; or
- (h) in the case of a Director appointed pursuant to clause 28.3, ceases to be a member of a Member.

## Payments to Directors

### 32. Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the *Corporations Act 2001* (Cth) or a contract of insurance permitted by section 199B.

## Powers and Duties of Directors

### 33. Powers and duties of Directors

33.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the *Corporations Act 2001* (Cth) do not require to be exercised by the Company in general meeting.

33.2 Without limiting the generality of clause 33.1, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company;
- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

### 34. By-Laws

34.1 The Directors may by resolution make, amend and repeal by-laws not inconsistent with this Constitution or with each other for any or all of the following purposes:

- (a) regulating the proceedings and affairs of the Company and the conduct of its meetings;
  - (b) providing for the maintenance, care, control and custody of the property of the Company and the custody and use of the common seal of the Company; and
  - (c) such other purposes as may be deemed necessary or expedient for duly carrying out the functions and work of the Company.
- 34.2 The Directors shall give notice to the Members of all such by-laws and any amendments and repeals.
- 34.3 The by-laws shall be binding upon all Members to the extent applicable.
- 34.4 A by-law may be repealed by the Members at a general meeting of the Company.

## Proceedings of Directors

### 35. Director's meetings

- 35.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 35.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director and each Alternate Director.
- 35.3 Subject to the *Corporations Act 2001* (Cth), a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 35.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 35.5 Subject to clause 37, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 35.6 Clauses 35.3, 35.4 and 35.5 apply to meetings of Directors' committees as if all committee members were Directors.
- 35.7 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 35.8 A quorum of Directors is six Directors.
- 35.9 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting of Members to deal with the matter.
- 35.10 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

### 36. Decision on questions

- 36.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 37, each Director has one vote.
- 36.2 In the event of an equality of votes, the chairperson of a meeting of Directors does not have a casting vote in addition to his or her deliberative vote.
- 36.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.

36.4 If the Alternate Director is a Director, he or she also has a vote as a Director.

## 37. Directors' interests

37.1 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 avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

37.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

37.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

37.4 Subject to clause 32, a Director or a body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any agreement or arrangement with the Company;
- (b) hold any office or place of profit other than as auditor in the Company; and
- (c) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

37.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted by the *Corporations Act 2001* (Cth) to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

37.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

## 38. Alternate Directors

38.1 Subject to clause 38.2, a Member that appoints a Director pursuant to clause 28.1 or 28.2 (**Appointor**) may appoint any person as an Alternate Director for that Director, for a period determined by that Appointor.

- 38.2 The only persons eligible to be appointed by a Member as an Alternate Director are the members of that Member's governing board (or equivalent).
- 38.3 An Alternate Director is entitled to notice of Directors' meetings and, if the Director for which he or she is an alternate is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 38.4 An Alternate Director is an officer of the Company and is not an agent of the Appointor.
- 38.5 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 38.6 The appointment of an Alternate Director may be revoked at any time by the Appointor.
- 38.7 An Alternate Director's appointment ends automatically when the Director for which he or she is an alternate ceases to be a Director.
- 38.8 Any appointment or revocation under this clause 38 must be effected by written notice delivered to the Executive Officer.

## 39. Remaining Directors

- 39.1 The Directors may act even if there are vacancies on the board.
- 39.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director pursuant to clause 28.3; or
  - (b) call a general meeting.

## 40. Chairperson

- 40.1 The Chair shall hold office as chairperson of Directors' meetings.
- 40.2 The Directors may elect a Director as Deputy Chair, to act as chairperson in the Chair's absence.
- 40.3 If:
- (a) there is no Chair or Deputy Chair; or
  - (b) neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for holding a Directors' meeting; or
  - (c) the Chair and Deputy Chair are unwilling to act as chairperson of the Directors' meeting, the Directors present must elect another Director to be a chairperson of the Directors' meeting.

## 41. Committees

- 41.1 The Directors may establish any committee or committees to exercise delegated powers pursuant to clause 42 (**Committees**).
- 41.2 Committee members will be appointed by the Directors.
- 41.3 At least one member of each Committee must be a Director.

## 42. Delegation to committees

- 42.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to one or more Committees established pursuant to clause 41.

- 42.2 The Directors may at any time revoke any delegation of power to a Committee.
- 42.3 A Committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 42.4 A Committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 42.5 Meetings of any Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

## 43. Written resolutions

- 43.1 If:
- (a) a copy of the document with the proposed resolution has been notified to all Directors; and
  - (b) a Referral to Directors Meeting Notice has not been given in accordance with clause 43.2,
- the Directors may pass a resolution without a Director's meeting being held if in excess of 70 per cent of the Directors entitled to vote on the resolution sign and return to the Executive Officer a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director to constitute in excess of the required 70 per cent signs and returns the document to the Executive Officer.
- 43.2 If within 5 days after a copy of the document with the proposed resolution has been notified to all Directors, one or more Directors, by written notice to the Executive Officer, notifies the Executive Officer that he or she wishes the resolution to instead be considered at a meeting of Directors (**'Referral to Directors Meeting Notice'**), the resolution will not be considered or passed in accordance with clause 43.1 and instead shall be referred for consideration at a meeting of Directors conducted in accordance with clause 36.
- 43.3 For the purposes of clause 43.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 43.4 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 43.5 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 43.
- 43.6 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

## 44. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 45. Minutes and registers

- 45.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
  - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
  - (c) all resolutions passed by Directors in accordance with clause 43;
  - (d) all appointments of officers;
  - (e) all orders made by the Directors and Directors' committees; and
  - (f) all disclosures of interests made under clause 37.
- 45.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 45.3 The Company must keep all registers required by this Constitution and the *Corporations Act 2001* (Cth).

## Local management

### 46. Local management

- 46.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 46.2 Without limiting clause 46.1 the Directors may:
- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
  - (b) delegate to any person appointed under clause 46.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,
- on any terms and subject to any conditions determined by the Directors.
- 46.3 The Directors may at any time revoke or vary any delegation under this clause 46.

### 47. Appointment of attorneys and agents

- 47.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the *Corporations Act 2001* (Cth) appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions,
- determined by the Directors.

- 47.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any company;
  - (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 47.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 47.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 47.5 An attorney or agent appointed under this clause 47 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## Secretary

### 48. Secretary

- 48.1 The Executive Officer will be Secretary of the Company, unless determined otherwise by the Directors.
- 48.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 48.3 The Directors may, subject to the terms of the Secretary's employment contract (if any), suspend, remove or dismiss a person from the office of Secretary.

## Seals

### 49. Common seal

- 49.1 If the Company has a Seal:
- (a) the Directors must provide for the safe custody of the Seal;
  - (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
  - (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Executive Officer or another person appointed by the Directors to countersign the document.

### 50. Duplicate seal

- 50.1 If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:
- (a) must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal';
  - (b) must not be used except with the authority of the Directors.

# Inspection of records

## 51. Inspection of records

- 51.1 Subject to clause 51.2 and applicable obligations of confidentiality, each Member has the right to inspect any financial records and associated documents of the Company. A Member other than a Director does not have the right to inspect any other documents of the Company except where authorised by the Directors or required by law.
- 51.2 The Directors may determine at what times and places and under what conditions the financial records and associated documents of the Company will be open for inspection by Members other than Directors.

## Notices

### 52. Service of notices

- 52.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
  - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 52.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 52.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 52.4 If a Member has no Registered Address a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.
- 52.5 A Member whose Registered Address is not in Australia may specify in writing an address in Australia to be taken to be the Member's Registered Address within the meaning of this clause.
- 52.6 A certificate in writing signed by a Director, the Executive Officer or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 52.7 Subject to the *Corporations Act 2001* (Cth) the signature to a written notice given by the Company may be written or printed.
- 52.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

### 53. Persons entitled to notice

- 53.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director and Alternate Director; and
- (c) any Auditor.

53.2 No other person is entitled to receive notice of a general meeting.

## Audit and accounts

### 54. Audit and accounts

- 54.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the *Corporations Act 2001* (Cth).
- 54.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the *Corporations Act 2001* (Cth).
- 54.3 The Executive Officer must provide current profit and loss statements and balance sheets for the Company to the Directors once every three months.

## Winding Up

### 55. Winding up

- 55.1 If the Company is wound up:
- (a) each Member; and
  - (b) each person who has ceased to be a Member in the preceding year,  
undertakes to contribute to the property of the Company for the:
    - (c) payment of debts and liabilities of the Company (in relation to clause 55.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
    - (d) adjustment of the rights of the contributories amongst themselves,such amount as may be required, not exceeding \$10.
- 55.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another body corporate which, by its constitution, is:
- (a) required to pursue objects similar to the objects of the Company;
  - (b) required to apply its profits (if any) or other income in promoting its objects; and
  - (c) prohibited from making any distribution to its members or paying fees to its directors,
- such body corporate to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of the Australian Capital Territory for determination.

# Indemnity

## 56. Indemnity

- 56.1 To the extent permitted by law and subject to the restrictions in section 199A of the *Corporations Act 2001* (Cth) the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 56.2 To the extent permitted by law and subject to the restrictions in section 199A of the *Corporations Act 2001* (Cth), the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 56.3 The amount of any indemnity payable under clauses 56.1 or 56.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- 56.4 For the purposes of this clause 56, **officer** means:
- (a) a Director; or
  - (b) the Secretary.