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## **Constitution of National Environmental Law Association Ltd ACN 008 657 761**

**A Public Company Limited by Guarantee and not having a Share Capital Corporations Act  
2001**

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# Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Other meanings taken from the Act.....	1
1.3	Replaceable rules displaced .....	1
1.4	Inconsistency with Act.....	2
1.5	Interpretation.....	2
<b>2.</b>	<b>Name .....</b>	<b>2</b>
<b>3.</b>	<b>Objects .....</b>	<b>2</b>
<b>4.</b>	<b>Powers .....</b>	<b>3</b>
<b>5.</b>	<b>Member liability and guarantee .....</b>	<b>3</b>
<b>6.</b>	<b>Application of income and property .....</b>	<b>3</b>
6.1	Promotion of Objects .....	3
6.2	Payments in good faith .....	4
<b>7.</b>	<b>Gift fund.....</b>	<b>4</b>
7.1	Establishment and purpose of the Fund.....	4
7.2	Not-for-profit.....	5
7.3	No conduit funding .....	5
7.4	Winding-up of the Fund.....	5
<b>8.</b>	<b>Membership.....</b>	<b>5</b>
8.1	General .....	5
8.2	Applying for membership .....	5
8.3	Register of Members.....	5
8.4	Member's rights .....	5
8.5	Not transferrable.....	6
8.6	Fees .....	6
<b>9.</b>	<b>Representative .....</b>	<b>6</b>
9.1	Appointment.....	6
9.2	Entry in Register .....	6
9.3	Powers of Representative .....	6
9.4	Replacement of Representative .....	6
<b>10.</b>	<b>Cessation of Membership .....</b>	<b>7</b>
10.1	Grounds for cessation .....	7
10.2	Expulsion .....	7
10.3	Removal from the Register .....	7
10.4	Surviving liability.....	8
<b>11.</b>	<b>Divisions .....</b>	<b>8</b>
<b>12.</b>	<b>General meetings .....</b>	<b>8</b>

12.1	Annual general meeting .....	8
12.2	Extraordinary meeting .....	8
<b>13.</b>	<b>Notice of general meetings .....</b>	<b>8</b>
13.1	General .....	8
13.2	Contents of notice .....	8
13.3	Alteration of procedure .....	9
13.4	Failure to receive notice .....	9
<b>14.</b>	<b>Proceedings at general meetings.....</b>	<b>9</b>
14.1	Business .....	9
14.2	Quorum .....	9
14.3	Chairperson .....	10
14.4	General conduct of proceedings .....	10
14.5	Adjournment.....	10
14.6	Show of hands .....	11
14.7	Poll .....	11
14.8	Demand for poll .....	11
14.9	Evidence of resolution.....	11
14.10	Auditor's right to be heard .....	11
14.11	Meetings conducted by electronic means .....	12
<b>15.</b>	<b>Proxy .....</b>	<b>12</b>
15.1	General .....	12
15.2	Instrument appointing proxy.....	12
15.3	Form of proxy .....	12
15.4	Voting instructions .....	13
15.5	Authority .....	13
<b>16.</b>	<b>Attorneys .....</b>	<b>13</b>
16.1	Appointment by Member .....	13
16.2	Appointment by Directors.....	13
<b>17.</b>	<b>Board.....</b>	<b>13</b>
17.1	Number and qualifications of Directors.....	13
17.2	Election of Directors .....	13
17.3	Term of appointment.....	14
17.4	Minimum number and vacancies.....	14
17.5	Vacation of office of Director .....	14
17.6	Officers on the Board .....	15
<b>18.</b>	<b>Powers of the Board .....</b>	<b>15</b>
<b>19.</b>	<b>Proceedings of the Board .....</b>	<b>15</b>
19.1	General .....	15
19.2	Convening and notice of Board meetings.....	15
19.3	Quorum .....	16
19.4	President.....	16
19.5	Written resolutions of the Board .....	16
19.6	Delegation by the Board .....	17

19.7	Defects in appointment .....	17
<b>20.</b>	<b>Minutes.....</b>	<b>17</b>
20.1	Minutes to be kept .....	17
20.2	Evidence of proceedings and resolutions .....	17
<b>21.</b>	<b>Accounts.....</b>	<b>18</b>
21.1	Books of account to be kept .....	18
21.2	Location of books of account .....	18
<b>22.</b>	<b>Amendments to this Constitution .....</b>	<b>18</b>
<b>23.</b>	<b>Indemnity .....</b>	<b>18</b>
<b>24.</b>	<b>Service of notices.....</b>	<b>19</b>
<b>25.</b>	<b>Distribution of property on winding-up.....</b>	<b>19</b>

# Constitution

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## 1. Definitions and interpretation

### 1.1 Definitions

In this Constitution, unless expressed or implied to the contrary:

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

**Board** means the board of directors of the Company.

**Company** means the company described in clause 2.

**Constitution** means this constitution, including any amendments.

**Directors** means the members individually or collectively of the Board.

**Fund** means the gift fund established under clause 7.1.

**General Member** means a Member as described in clause 8.2.

**ITAA97** means the *Income Tax Assessment Act 1997* (Cth).

**Member** means a person admitted to membership of the Company in accordance with this Constitution.

**Objects** means the objects of the Company set out in clause 3.

**President** means the Director who is elected to this office under clause 17.6.

**Register** means the register of Members kept in accordance with the Act.

**Registered Address** means the address of a Member as shown in the Register.

**Representative** means the representative of a Member appointed under clause 9.1.

**Secretary** means the Director who is elected to this office under clause 17.6.

**Treasurer** means the Director who is elected to this office under clause 17.6.

**Vice-President** means the Director who is elected to this office under clause 17.6.

### 1.2 Other meanings taken from the Act

In this Constitution, except where the context otherwise requires:

1.2.1 a word or expression used in a clause has the same meaning as in the Act;

1.2.2 where the word or expression has more than one meaning in the Act and a provision of the Act deals with the same matter as a clause of this Constitution, that word or expression has the same meaning as in the that provision of the Act.

### 1.3 Replaceable rules displaced

The provisions of the Act designated as replaced rules are displaced by this Constitution in their entirety and do not apply to the Company.

#### 1.4 **Inconsistency with Act**

The Act prevails over any inconsistency with this Constitution.

#### 1.5 **Interpretation**

In this Constitution, unless the context requires otherwise:

- 1.5.1 a person includes a corporate body, association, firm, partnership, or other unincorporated body;
- 1.5.2 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.5.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.5.4 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.5.5 a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- 1.5.6 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.5.7 the singular includes the plural and vice versa;
- 1.5.8 a gender includes all other genders;
- 1.5.9 where the expression **including** or **includes** is used, it means 'including but not limited to' or 'including without limitation'; and
- 1.5.10 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

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## 2. **Name**

The name of the company is National Environmental Law Association Limited.

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## 3. **Objects**

- 3.1 The Company is established to advance the role of environmental law in protecting, conserving and restoring the environment by facilitating collaboration, discussion, research, and law reform activities between environmental law professionals, academics, students and organisations.
- 3.2 In pursuing the objective in clause 3.1, this Constitution refers to the environment and environmental law in the broadest sense of those terms including, for example, all duties and rights, the common law and legislation relating to the environment and nature.
- 3.3 Further, in pursuing the objective in clause 3.1, the Company:
  - 3.3.1 seeks to work side by side with Aboriginal and Torres Strait Islander peoples in respectful partnerships; and

- 3.3.2 recognises Aboriginal and Torres Strait Islander peoples, their rights and interests in the environment, and their distinctive spiritual, material and economic relationships and connection to Country across the continent and its waters, under traditional laws and customs.
- 3.4 To achieve the Company's purpose, the Company may:
- 3.4.1 provide a forum for and otherwise assist the discussion, consideration and advancement of environmental law among the legal profession and the wider community;
  - 3.4.2 to undertake, facilitate and encourage research into environmental law for the purpose of making and encouraging the making of recommendations and submissions to advance environmental law;
  - 3.4.3 to gather information in respect of, and consider and make recommendations and submissions in relation to, any environmental law proposed or enacted in Australia;
  - 3.4.4 to convene and hold seminars, lectures and conferences in relation to environmental law;
  - 3.4.5 to produce, publish and distribute reports, journals, books, papers and other information material in relation to environmental law; and
  - 3.4.6 to do all such other lawful things as are incidental or conducive to the attainment of the above objects.
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#### **4. Powers**

Solely for carrying out the Objects, the Company has the legal capacity and powers of an individual and all the powers of a body corporate other than the power to issue shares.

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#### **5. Member liability and guarantee**

- 5.1 The liability of each Member is limited to the amount specified in clause 5.2.
- 5.2 Each Member undertakes to contribute a maximum of \$10.00 to the Company if it is wound up:
- 5.2.1 while the Member is a Member; or
  - 5.2.2 within one year after that Member ceases to be a Member, in respect of:
    - 5.2.3 the debts and liabilities of the Company contracted before that Member ceases to be a Member;
    - 5.2.4 the costs, charges and expenses of winding up; and
    - 5.2.5 the adjustments of the rights of Members among themselves.
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#### **6. Application of income and property**

##### **6.1 Promotion of Objects**

- 6.1.1 All of the income and property of the Company must be applied solely towards the furtherance and promotion of the Objects.
- 6.1.2 No part of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or other profit distribution to any of the Members (in their capacity as Members) or Directors.

## 6.2 **Payments in good faith**

- 6.2.1 Clause 6.1 does not prevent payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner:
- (a) of remuneration for services to the Company;
  - (b) of reimbursement for expenses properly incurred on behalf of or for the purposes of the Company;
  - (c) for goods supplied to the Company in the ordinary course of business;
  - (d) of interest on money borrowed by the Company and rent for premises let to the Company, where:
    - (i) the interest or rent of the service has the prior approval of the Board; and
    - (ii) the amount payable is not more than an amount which commercially would be reasonably paid,

provided that any such payment to a Director must comply with clause 6.2.2.

- 6.2.2 The Company must not make any payment to a Director for services rendered by that Director to the Company, including services as a Director, unless:
- (a) the provision of those services has the prior consent of the Board;
  - (b) the amount payable is on reasonable commercial terms; and
  - (c) the payment has the prior approval of the Board.
- 6.2.3 The total of payments made to Directors under this clause 6.2 must be disclosed to the Members at the annual general meeting.
- 6.2.4 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by law and this Constitution.

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## 7. **Gift fund**

### 7.1 **Establishment and purpose of the Fund**

- 7.1.1 The Company will establish and maintain a gift fund called the NELA Gift Fund (**Fund**) for the specific purpose of supporting the Company's Objects.
- 7.1.2 The Fund is established to receive all gifts and deductible contributions of money or property for this purpose and any money received because of such gifts or deductible contributions must be credited to its account. The Fund must not receive any other money or property into its account.



## 7.2 **Not-for-profit**

The Fund will operate on a not-for-profit basis.

## 7.3 **No conduit funding**

Any allocation of funds or property to other persons or organisations will be made in accordance with the Objects of the Company and will not be influenced by the preference of the donor. The Company will not pass a donation of money or property to other organisations, bodies or persons as a condition of a donation.

## 7.4 **Winding-up of the Fund**

If the Company is wound up or if the endorsement (if any) of the Company as a deductible gift recipient is revoked, any surplus assets of the Fund remaining after the payment of liabilities attributable to it, shall be transferred to an entity with a similar charitable purpose and is endorsed as a deductible gift recipient under Subdivision 30-BA the ITAA97.

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# 8. **Membership**

## 8.1 **General**

8.1.1 The following persons are Members:

- (a) the persons who are Members as at the date of adoption of this Constitution;  
and
- (b) any other person the Board admits to membership under clause 8.2.

8.1.2 Subject to clause 8.6, the Board may create eligibility criteria for membership and categories of membership with the same or differing rights or privileges.

## 8.2 **Applying for membership**

8.2.1 Every applicant for membership of the Company must apply in the form and manner determined by the Board.

8.2.2 After receipt of an application for membership, the Board must consider the application and determine whether to accept or reject the application. The Board need not give any reason for rejecting an application. If the Board rejects the application, as soon as practicable thereafter the Secretary will notify the applicant.

8.2.3 If the Board approves the application, as soon as practicable thereafter the Secretary will notify the applicant and enter their name in the Register. The applicant becomes a Member upon entry of their name in the Register.

## 8.3 **Register of Members**

The Company must establish and maintain a Register at its registered office or its principal place of business.

## 8.4 **Member's rights**

A Member has the right to receive notices of any general meeting and if the member is financial (see clause 8.6.4), has the right:

- 8.4.1 to attend and be heard at any general meeting of the Company;
- 8.4.2 to one vote at any general meeting; and
- 8.4.3 if an individual and subject to clause 17.1.2, to stand as a candidate for election as a Director.

## 8.5 **Not transferrable**

Membership is not transferrable.

## 8.6 **Fees**

- 8.6.1 The Board may determine the Membership fee or any other fee payable by Members for a particular period. In determining the fee, the Board may provide for different fees for different Members, based on such factors as it sees fit.
- 8.6.2 The Board must give Members not less than one month's notice of any change to the fees.
- 8.6.3 If a Member fails to pay their fees by the due date, the Board must notify the Member of the non-payment and if a period of two months (or other period specified in regulations made by the Board) passes without payment having been made in full, the Member will be deemed to have allowed their Membership to lapse.
- 8.6.4 Payment of fees renders a Member financial. A Member whose fees are not paid by the due date is not financial and, for so long as any amount of their fees is outstanding, is not entitled to attend meetings of the Company, is not entitled to vote at general meetings and is not entitled to nominate a candidate or stand as a candidate for election as a Director.

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## 9. **Representative**

### 9.1 **Appointment**

A Member that is not a natural person must appoint a natural person as its Representative by written notice to the Board in a form approved by the Board.

### 9.2 **Entry in Register**

The name and address of the Representative will be entered in the Register and all correspondence and notices from the Company will be served on that Representative.

### 9.3 **Powers of Representative**

The notice of appointment must set out what the Representative is appointed to do and may set out restrictions on the Representative's powers. If the appointment is made by reference to a position held, the appointment must identify the position. Unless otherwise specified, the Representative may exercise on the Member's behalf, all the powers that the Member could exercise at a meeting or in voting on a resolution.

### 9.4 **Replacement of Representative**

A Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.

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## **10. Cessation of Membership**

### **10.1 Grounds for cessation**

A Member will cease to be a Member if the Member:

- 10.1.1 resigns in writing to the Company;
- 10.1.2 allows its Membership to lapse under clause 8.6.3;
- 10.1.3 is expelled in accordance with clause 10.2;
- 10.1.4 is a corporate entity and becomes insolvent, becomes subject to the appointment of a liquidator, is wound up, dissolved, deregistered or otherwise ceases to exist; or
- 10.1.5 becomes, if the Board determines in its absolute discretion, an untraceable member because the person has ceased to be located at, attend or otherwise communicate with their registered address.

### **10.2 Expulsion**

10.2.1 The Board, by a resolution passed by at least 75% of those present and voting, may expel a Member or implement appropriate disciplinary action (including temporary suspension of membership rights) if the Member:

- (a) has committed a breach of any obligation or duty under this Constitution; or
- (b) has engaged in conduct detrimental to the interests of the Company.

10.2.2 At least one month before the meeting of the Board at which a resolution referred to in clause 10.2.1 is considered, the Member must be:

- (a) served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and
- (b) given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit,

and the Board will take the explanation into consideration.

10.2.3 The Board will serve the Member with notice of any Board resolution made at the meeting described in clause 10.2.2. If the Board resolves to expel the Member, that Member will cease to be a Member on the service of such notice.

### **10.3 Removal from the Register**

10.3.1 Where a Member ceases to be a Member, their name must be removed from the Register.

10.3.2 Upon the removal of a Member's name from the Register:

- (a) the Member will forfeit all rights and privileges attaching to Membership and all rights which the Member may have against the Company arising out of the Membership; and
- (b) the Company will have no liability to such Member in respect of the removal from the Register.

#### 10.4 **Surviving liability**

Any Member who ceases to be a Member remains liable for:

10.4.1 any moneys which may be owing to the Company; and

10.4.2 in the case of the Company being wound up within one year of the date of cessation of Membership, the relevant contribution under clause 5.2.

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### 11. **Divisions**

11.1 The Board may from time to time resolve to establish a Division whose boundaries coincide with the boundaries of the States of Australia, the Australian Capital Territory and the Northern Territory, or a combination of those States and Territories. The Board may increase or reduce the number of Divisions or alter the boundaries of existing Divisions and may determine the circumstances in which a Division is operational and ceases to be operational.

11.2 The function of any operational Division will be the furtherance of the Objects within the geographical area covered by that Division.

11.3 The Board may from time to time determine:

11.3.1 which of the rules of this Constitution apply to an operational Division; and

11.3.2 the arrangements for the conduct, operation and governance of such Divisions.

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### 12. **General meetings**

#### 12.1 **Annual general meeting**

The Company must hold an annual general meeting within 5 months after the end of its financial year at the time and place determined by the Board.

#### 12.2 **Extraordinary meeting**

The Board may convene an extraordinary meeting at such time and place as the Board thinks fit, but such extraordinary meeting must be convened in accordance with the Act. Members may also convene an extraordinary meeting, but only in accordance with the Act.

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### 13. **Notice of general meetings**

#### 13.1 **General**

Subject to the Act, the Board must give not less than 21 days' written notice of a general meeting to the Members, the Directors and the Auditor.

#### 13.2 **Contents of notice**

The notice of general meeting must specify the following information:

13.2.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);

13.2.2 the general nature of the meeting's business;

13.2.3 the details of any special resolutions to be proposed at the meeting; and

13.2.4 that Members are entitled to appoint a proxy.

### 13.3 **Alteration of procedure**

With the consent of all the Members entitled to vote at some particular meeting, that meeting may be convened by such shorter notice and in such manner as those Members may think fit provided that such action complies with the Act.

### 13.4 **Failure to receive notice**

13.4.1 The accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.

13.4.2 A person's attendance at a general meeting waives any objection that the person may have to:

- (a) a failure to give notice, to the giving of a defective notice, of a general meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
- (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

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## 14. **Proceedings at general meetings**

### 14.1 **Business**

The business of an annual general meeting may include:

14.1.1 any of the following matters, even if not referred to in the notice of meeting:

- (a) consideration of the annual financial report, directors' report and, if required by the Act, auditor's report;
- (b) election of Directors;
- (c) if required by the Act, appointment of the auditor and the fixing the auditor's remuneration; and

14.1.2 any other business which may lawfully be transacted at a general meeting.

All other business transacted at an annual general meeting and all business transacted at an extraordinary meeting is deemed special business.

### 14.2 **Quorum**

14.2.1 No business may be transacted at a general meeting, except the adjournment of the meeting, unless a quorum is present.

14.2.2 A quorum is the lesser of 10 Members and 10% of the Members entitled to vote present by person or by Representative, proxy or attorney.

- 14.2.3 If a quorum is not present within 30 minutes from the time appointed for a general meeting:
- (a) if convened on the requisition of Members, the meeting will be dissolved; and
  - (b) in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned meeting a quorum is not present within 30 minutes from the time appointed for holding the meeting, the Members present will be a quorum.

### 14.3 **Chairperson**

- 14.3.1 The President, or in the President's absence the Vice-President will be the chairperson at every general meeting.
- 14.3.2 If at any general meeting neither the President nor the Vice-President is present within 15 minutes after the time appointed for holding the meeting or if neither is willing to preside, the Members present will choose a Director to preside. If no Director is present or if all Directors present decline to preside, then those Members present will choose a Member who is present to preside as President.
- 14.3.3 At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson of the meeting and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- 14.3.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

### 14.4 **General conduct of proceedings**

- 14.4.1 The general conduct of each general meeting and the procedures to be adopted at the meeting will be determined by the chairperson.
- 14.4.2 The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
- (a) ask questions about or make comments on the management of the Company; and
  - (b) ask the auditor or their representative (if present) questions relevant to the conduct of the audit and the preparation and content of the auditor's report for the Company.

### 14.5 **Adjournment**

- 14.5.1 The chairperson of a general meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by the meeting adjourn the meeting to another time or place (or both).
- 14.5.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a general meeting.

14.5.3 Where a general meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

14.5.4 A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.

#### 14.6 **Show of hands**

Every item of business submitted to a general meeting will be decided in the first instance by a show of hands. Those entitled to vote on a show of hands are the Members present in person or their Representative, proxy or attorney. The chairperson will not have a casting vote if a vote is tied.

#### 14.7 **Poll**

14.7.1 The chairperson or any 3 Members present personally or by Representative, proxy or attorney may demand a poll before or on the declaration of the result of a show of hands.

14.7.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.

14.7.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

14.7.4 The demand for a poll may be withdrawn.

14.7.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.

14.7.6 At a poll, the chairperson will have a casting vote in addition to any deliberative vote to which he or she may be entitled.

#### 14.8 **Demand for poll**

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

#### 14.9 **Evidence of resolution**

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

#### 14.10 **Auditor's right to be heard**

The auditor is entitled to:

14.10.1 attend any general meeting of the Company;

14.10.2 be heard at any general meeting of the Company on any part of the business of the meeting that concerns the auditor in their capacity as auditor, even if:

(a) the auditor retires at the general meeting; or

(b) the Members pass a resolution to remove the auditor from office; and

14.10.3 authorise a person in writing to attend and speak at any general meeting as the auditor's representative.

#### 14.11 **Meetings conducted by electronic means**

14.11.1 All provisions of this Constitution relating to general meetings apply, as far as they can and with any necessary changes, to general meetings by telephone or other electronic means.

14.11.2 A Member who participates in a general meeting by telephone or other electronic means is taken to be present in person at the meeting.

14.11.3 A general meeting by telephone or other electronic means is taken as held at the place determined by the President of the meeting, as long as at least one of the Members involved was at the place for the duration of the meeting.

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### 15. **Proxy**

#### 15.1 **General**

Any Member may appoint a natural person as a proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.

#### 15.2 **Instrument appointing proxy**

15.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

- (a) the Registered Office;
- (b) a fax number at the Registered Office;
- (c) a place, fax number or electronic address specified for such purpose in the notice of meeting,

not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

15.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

#### 15.3 **Form of proxy**

An instrument appointing a proxy must contain the following information:

15.3.1 the Member's name and address;

15.3.2 the Company name;

15.3.3 the type of Membership held by the Member;

15.3.4 the proxy's name or the name of the office held by the proxy; and

15.3.5 the meetings at which the appointment may be used, and be signed by the appointor or his or her attorney.



#### 15.4 **Voting instructions**

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

#### 15.5 **Authority**

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

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### 16. **Attorneys**

#### 16.1 **Appointment by Member**

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. That power of attorney must be produced for inspection at the Registered Office or any other place the Board determines, together with evidence of the due execution of it the Board requires, before the attorney will be entitled to appoint a proxy for the Member granting the power of attorney.

#### 16.2 **Appointment by Directors**

The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as the Directors think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

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### 17. **Board**

#### 17.1 **Number and qualifications of Directors**

17.1.1 The Board will consist of a minimum of 9 and a maximum of 13 Directors, drawn as far as is possible from each State, the Australian Capital Territory and the Northern Territory.

17.1.2 Each Director must be a financial Member or a Representative of a financial member.

#### 17.2 **Election of Directors**

The election of Directors will take place in the following manner:

17.2.1 Any financial Member may nominate themselves (if an individual) or their Representative (if the Member is an organisation) as a candidate for election as a Director, provided the nominee meets the general criteria under clause 17.1 to serve as a Director.

17.2.2 The nomination of any Member or Representative as a candidate for election as a Director must be in writing and signed by the nominated person and, if the nominee is a Representative, by the proposing Member. The nomination must be lodged with the Secretary at least 5 business days before the annual general meeting at which the election is to take place.

17.2.3 If there are more candidates nominated than there are vacancies, balloting lists will be prepared containing the names of the candidates in an order determined by lot. The Board may determine the method of the ballot. Each Member is entitled to vote for any number of candidates not exceeding the number of vacancies. The chairperson of the annual general meeting will declare the candidates with the greatest number of votes elected as Directors.

17.2.4 If there are no more candidates nominated than there are vacancies, then the chairperson of the annual general meeting will declare those candidates elected as Directors.

### 17.3 **Term of appointment**

Except as provided in clause 17.4.3, a Director is appointed for a term commencing at the end of the annual general meeting at which he or she is elected until the end of the next annual general meeting, at which time the Director will retire but will be eligible for re-election.

### 17.4 **Minimum number and vacancies**

17.4.1 If the number of Directors is less than 9 at any time, the Board must act immediately to appoint sufficient Directors, having regard to the composition of the Board described in clause 17.1.1, so that there is at least the minimum number required under this Constitution.

17.4.2 The Board may appoint a person as a Director to fill any casual vacancy or as an additional Director, having regard to the composition of the Board described in clause 17.1.1.

17.4.3 Any Director appointed under this clause 17.4 will retire at the end of the next annual general meeting but will be eligible for re-election.

### 17.5 **Vacation of office of Director**

The office of a Director will be vacated if:

17.5.1 the Director becomes bankrupt or makes any arrangement or composition with his or her creditors or if being a director of a company which is a Member, a winding up order is made in respect of such company;

17.5.2 the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;

17.5.3 without leave of the Board the Director is absent from meetings of the Board for 3 consecutive Board meetings, unless the Board makes a resolution to the contrary;

17.5.4 by notice in writing to the Company the Director resigns from office;

17.5.5 the Director is disqualified from managing corporations under the Act; or

17.5.6 ceases to hold office by reason of any order made under the Act.

## 17.6 Officers on the Board

At the first meeting of the Board after each annual general meeting, the Directors will elect from among their number a President, a Vice-President, a Treasurer and a Secretary, each of whom will hold office until the end of the next annual general meeting but who will be eligible for re- election.

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## 18. Powers of the Board

The Board is responsible for managing the business and affairs of the Company. The Board may exercise all powers and do all things that are within the Company's power and are not expressly required by the Act or this Constitution to be exercised by the Company in a general meeting.

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## 19. Proceedings of the Board

### 19.1 General

- 19.1.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 19.1.2 The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to a meeting of the Board by telephone or other electronic means.
- 19.1.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present at the meeting.
- 19.1.4 A meeting by telephone or other electronic means is taken as held at the place determined by the President of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

### 19.2 Convening and notice of Board meetings

- 19.2.1 The Board may meet and adjourn and otherwise regulate its meeting as the Board sees fit.
- 19.2.2 The President or the Vice-President may convene a meeting of the Board whenever he or she thinks fit.
- 19.2.3 The Secretary must, on the request of at least 2 Directors, convene a meeting of the Board.
- 19.2.4 Notice of a Board meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Board.
- 19.2.5 Notice of a Board meeting:
  - (a) must specify the time and place of the meeting;
  - (b) need not state the nature of the business to be transacted at the meeting; and
  - (c) may be given in person or by post, telephone, fax or other electronic means.

19.2.6 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.

19.2.7 A Director's attendance at a Board meeting waives any objection that Director may have to a failure to be given notice of the meeting.

### 19.3 **Quorum**

19.3.1 No business may be transacted at a Board meeting unless a quorum is present at the time the business is considered.

19.3.2 A quorum for meetings of the Board is greater than half of the Directors.

19.3.3 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:

- (a) must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and
- (b) until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### 19.4 **President**

19.4.1 The President will be the chairperson of the Board meetings.

19.4.2 If the President is not present at any Board meeting within 10 minutes after the time appointed for the meeting to begin or is present but is unwilling to act, the Vice-President will be the chairperson of the meeting.

19.4.3 If the Vice-President is not present at the meeting within 10 minutes after the time appointed for the meeting to begin or is present but is unwilling to act, the directors present must elect a director to be chairperson of the meeting.

19.4.4 Except as provided by the Act and by clause 10.2, questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.

19.4.5 The chairperson of a Board meeting will not have a casting vote.

### 19.5 **Written resolutions of the Board**

19.5.1 If at least 75% of the Directors (other than a Director on leave of absence approved by the Directors) have approved a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the resolution was approved and at that time at which the document was last approved by a Director or, if the Directors approved the document on different days, on the day on which, and at the time at which, the document was last approved by a Director.

19.5.2 Any such resolution in writing may consist of several documents in identical terms, each approved by one or more Directors and must be entered in the relevant book of minutes of the Company.

19.5.3 In this clause 19.5, a Director gives approval by:

- (a) signing a document containing the resolution;

- (b) affixing an electronic signature to a document containing the resolution; or
- (c) using such other written means approved by the Directors.

19.5.4 A reference in clause 19.5.1 to all Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

## 19.6 Delegation by the Board

19.6.1 Except as provided in clause 19.6.3, the Board may delegate any of its powers to employees, individual Directors, Members or to committees consisting of such employees, Directors, Members or such other individuals as the Board thinks fit. Any individual or committee so formed must conform to any direction given to it by the Board in the execution of the delegated powers.

19.6.2 Any such delegations must be specified in writing and maintained in a register of delegated authorities.

19.6.3 The Board may not delegate its power to delegate.

19.6.4 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

## 19.7 Defects in appointment

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

- 19.7.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
- 19.7.2 the disqualification of any of them.

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## 20. Minutes

### 20.1 Minutes to be kept

The Board must cause:

20.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;

20.1.2 the minutes to be entered in books kept for that purpose; and

20.1.3 the minutes to be signed within a reasonable time by the chairperson of the meeting or by the chairperson of the next meeting.

### 20.2 Evidence of proceedings and resolutions

A minute that is recorded and signed in accordance with clause 20.1 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

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## 21. Accounts

### 21.1 Books of account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

### 21.2 Location of books of account

The books of account will be kept at the registered office or place or places as the Board thinks fit and will be open to the inspection of the Directors during usual business hours.

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## 22. Amendments to this Constitution

The Company may modify or repeal this Constitution, or a provision of this Constitution, by a special resolution, in accordance with the Act.

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## 23. Indemnity

23.1 To the extent permitted by law and subject to the restrictions in section 199A of the Act, the Company indemnifies every person who is or has been an Officer against any liability (other than for legal costs) incurred by that person as an Officer.

23.2 To the extent permitted by law and subject to the restrictions in section 199A of the Act, the Company indemnifies every person who is or has been an Officer against reasonable legal costs incurred in defending an action for a liability incurred or allegedly incurred by that person as an Officer.

23.3 The amount of any indemnity payable under clauses 23.1 or 23.1 will include an additional amount equal to any GST payable by the Officer being indemnified in connection with the indemnity (less the amount of any input tax credit claimable by the Officer being indemnified in connection with the indemnity). Payment of any indemnity which includes an additional amount is conditional upon the Officer being indemnified providing the Company with a GST tax invoice for that amount.

23.4 The Directors may agree to advance to an Officer an amount which it might otherwise be liable to pay to the Officer under clause 23.1, on such terms as the Directors think fit but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Company is in fact liable to indemnify the Officer under clause 23.1. If, after the Company makes the advance, the Directors form the view that the Company is not liable to indemnify the Officer, the Company may recover any advance from the Officer as a debt due by the officer to the Company.

23.5 For the purposes of this clause 23, **Officer** means:

23.5.1 a Director;

23.5.2 a Secretary; or

23.5.3 any other officer of the Company, and includes former officers, but does not include an auditor or agent of the Company.

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## **24. Service of notices**

- 24.1 The Company may service notice on any person who is entitled to notice under this Constitution by:
- 24.1.1 serving it on the person; or
  - 24.1.2 sending it by post, courier, 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.
- 24.2 A notice sent by post or courier is taken to be served:
- 24.2.1 by properly addressing, prepaying and posting or directing the delivery of the notice; and
  - 24.2.2 on the day after the day on which it was posted or given to the courier for delivery.
- 24.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- 24.3.1 by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - 24.3.2 on the day of its transmission except if transmitted after 5:00 pm, in which case it is taken to be served on the next day.
- 24.4 A Member whose address recorded in the register is not in Australia may specify in writing an address in Australia for the purposes of this clause 24.

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## **25. Distribution of property on winding-up**

- 25.1 If, upon the winding-up or dissolution of the Company after the satisfaction of all its debts and liabilities, there remains any property, this property must not be paid to or distributed among the Members.
- 25.2 Instead, this property must be given or transferred to some other institution or institutions:
- 25.2.1 which has purposes similar to the Objects;
  - 25.2.2 which prohibits the distribution of profit, income and assets to its members to at least the same extent as this Constitution; and
  - 25.2.3 to which income tax deductible gifts may be made.
- 25.3 This institution or institutions must be determined:
- 25.3.1 by a special resolution of the Members at or before the time of dissolution; or
  - 25.3.2 if no such special resolution is passed, by a Judge of the Supreme Court or such other court of competent jurisdiction.