

Constitution Of

Swimming Pool & Spa Association of Australia Ltd

(ABN 74 150 541 816)

(A Company Limited By Guarantee)

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1. NAME

- 1.1. The name of the company is Swimming Pool & Spa Association of Australia Ltd (hereinafter called "the Company").

2. COMPANY

- 2.1. The public Company is a company limited by guarantee.

3. LEGAL CAPACITY AND POWERS

- 3.1. The Company:
 - a. Has the legal capacity and, subject to the provisions of the Act, all the rights, powers and privileges of a natural person;
 - b. Does not have the power to issue shares.
- 3.2. The income and property of the Company must be applied solely towards the promotion of its objects and no portion may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any Member in their capacity as a Member.
- 3.3. The Company must not subscribe to, or support with its funds or amalgamate with, any Company or Organisation, which does not prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Company.
- 3.4. Subject to this Constitution, the Company may exercise, in any manner permitted by the Corporations Act, any power, which a public company limited by guarantee, may exercise under the Corporations Act.

4. OBJECTS

- 4.1. The objects for which the Company is established are to:
 - a. Promote and expand the Industry and associated industries and activities throughout Australia and other countries and to further the standards, goodwill, ethics, reputation, professional development and training within such industries for the betterment of Members, consumers and the Industry in general.
 - b. Advocate on behalf of Members on issues of state, territory, national and international concerns relating to the Industry.
 - c. Make representations and enter into any arrangements with any government or authority, supreme, municipal, local or otherwise that may seem conducive to the Company's objects; and to obtain from any such government or authority any rights, privileges and concessions which the Company thinks it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
 - d. Educate the Industry, associated industries, government and statutory bodies and members of the public about water health and safety, development of swimming pools, spas and associated products and services, their manufacture, installation, construction, renovation or use.
 - e. Establish or amalgamate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as that imposed upon the Company under or by virtue of Article 3.2 of this Constitution and the law.
 - f. Promote sustainability, environmental responsibility and leading practice in the design, construction, operation and maintenance of swimming pools, spas and associated infrastructure.

- g. Do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

5. MEMBER CONTRIBUTION

- 5.1. The liability of the Members is limited.
- 5.2. Each Member and past Member for a period of twelve (12) Months after they cease to be Members undertake to contribute an amount as may be required not exceeding \$1.00 to the property of the Company in the event of the Company being wound up.

6. REPLACEABLE RULES

- 6.1. The replaceable rules referred to in the Act are displaced by this Constitution.

7. DEFINITIONS

In this Constitution:

“Act” means the Corporations Act 2001 (Commonwealth);

“Article” means a clause or sub-clause of this Constitution;

“Board” means the board of Directors of the Company, which is constituted by the persons who hold office as Directors, from time to time;

“Board Charter” means the board charter adopted by the Board from time to time setting out the Board's role, responsibilities, composition and meeting procedures;

“Business Day” means a day except a Saturday, Sunday or public holiday in New South Wales;

“By-laws” means the By-laws of the Company made pursuant to Article 30;

“Category” means the Membership Category that meets the criteria defined from time to time by the Board;

“CEO” means the Company's Chief Executive Officer, if any, appointed under Article 19.5;

“Chair” refers to the individual in the position of the head of the Board; “chair” refers to an individual chairing a meeting;

“Code of Conduct & Ethics” means the code of conduct and ethics adopted by the Board from time to time governing the behaviour and obligations of Members;

“Committee” means a committee established by the Board under Article 25;

“Company” means the Swimming Pool & Spa Association of Australia Ltd (ACN 150 541 816);

“Director” means a director of the Company;

“Fees” means a fee or levy payable by Members as determined by the Board from time to time;

“Financial Year” means the twelve month period determined by the Board to be the financial year of the Company;

“General Meeting” means a meeting of the Members of the Company including the Annual General Meeting;

“Groups” means a group formed by the Company under Article 26;

“Individual” means any individual person who operates within or has an interest in the Industry;

“Industry” means the swimming pool and spa industry, including the Individuals and Organisations participating in it;

“Member” means an Individual or Organisation that meets the criteria defined in the By-laws;

“Month” means a calendar month;

“Notice” means a notice given pursuant to, or for the purpose of, this Constitution or the Act; “Officer” has the same meaning as in the Act; “Organisation” means any legally recognised entity other than an Individual;

“Register” means the register of Members kept under the Act;

“Registered Office” means the Company’s registered place of business in accordance with the Act;

“Representative” means a person appointed by a Member pursuant to Article 10.3.1 who must be either a shareholder, director or employee of that Member;

“Resolution” means:

- a. with respect to the Board, a resolution that has been passed under Article 21; and
- b. with respect to a meeting of Members, either an ordinary resolution or a special resolution passed in accordance with the Act; and

“Secretary” means any person appointed to perform the duties of Secretary of the Company.

8. INTERPRETATION

8.1. In this Constitution:

- a. reference to a meeting of Members includes a meeting of any category of Members;
- b. a Member is taken to be present at a meeting of Members if Member or their Representative is present in person or the Members proxy; or
- c. a reference to a Notice or document in writing includes a notice or document given by fax, email or any other form of written communication.

8.2. In this Constitution, headings are for convenience only and do not affect interpretation and unless the context indicates a contrary intention:

- a. reference to a function includes a reference to a power, authority or duty;
- b. a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- c. words importing the singular include the plural (and vice versa);
- d. words indicating a gender include every other gender;
- e. the word “person” includes an individual, the estate of an individual, a corporation, unincorporated enterprise, sole trader, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- f. where a word or phrase is given a defined meaning, any other part of speech or
- g. grammatical form of that word or phrase has a corresponding meaning; and
- h. the word “includes” in any form is not a word of limitation.

8.3. Unless the context indicates a contrary intention, in this Constitution:

- a. a reference to “this Constitution” is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.

8.4. Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.

8.5. Unless the context indicates a contrary intention, in this Constitution:

- a. an expression that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision; and
- b. an expression that is defined in the Act has the same meaning as in that section.

- 8.6. Expressions referring to “writing” shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form.
- 8.7. Except where the contrary intention appears in this Constitution, an expression in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, has the same meaning as in the provision of the Act.

9. EXERCISE OF POWERS

- 9.1. Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed, from time to time, as the occasion requires.

10. MEMBERS

10.1. Membership Application

- 10.1.1. Membership shall be available to Organisations and Individuals.
- 10.1.2. An Organisation or an Individual may apply to become a Member of the Company. The application for membership shall be made in writing. The application shall be in such form as the Board may prescribe from time to time.
- 10.1.3. The Board shall determine the various classifications and categories of the Company membership, along with their Fees, rights and privileges. To remove doubt the Board may place restrictions on voting rights or attendance rights at meetings. The rights and privileges attaching to the various classifications and categories of membership will appear in By-laws passed from time to time under Article 30.
- 10.1.4. Every applicant for membership of the Company shall be required to meet certain criteria as determined by the Board from time to time. The Board shall consider an application as soon as practicable after it has been received and determine whether to approve the application. The Board may decline approval at its sole discretion and is under no obligation to provide to the applicant any reasons for not approving the application.
- 10.1.5. The Secretary (or delegate) shall, on advice from the Board of acceptance of the Member application, enter the Member’s name in the Register and, upon the Member’s name being so entered, the applicant becomes a Member of the Company.
- 10.1.6. A Member having any change of directors, name or trading name, corporate structure, operating status or change in its beneficial ownership of shares so that there is a change in the controlling interest of such Member, shall be required to notify the Company of such change in writing within one (1) Month and the Board may at its absolute discretion require such Member to lodge a new membership application and to meet the membership criteria then applicable.

10.2. Register of Members

- 10.2.1. The Register must be kept at the Registered Office or place of business where the work involved in maintaining the register is done and contain:
- a. the name and relevant contact details of each Member;
 - b. the date on which each Member was admitted to the Company; and
 - c. the date on which the Company or person stopped being a Member.
- 10.2.2. The Register may be inspected in business hours at the Registered Office.

10.3. Member Entitlements

10.3.1. A Member has the right to:

- a. nominate its Representative of the Company;
- b. vote through its Representative at General Meetings; and
- c. access the privileges and benefits set out on the By-laws and otherwise advised to Members from time to time.

10.3.2. Each Member may be represented at meetings of the Company:

- a. in person; or
- b. by its Representative or Representatives; or
- c. by proxy.

For the avoidance of doubt, a Member may only exercise its vote through one channel (in person, by Representative, or by proxy) in respect of any single resolution.

10.3.3. Each Member must notify the Company of the name and contact details of its Representative under Article 10.3.1 and any changes thereto.

10.4. Members Obligations

Members acknowledge and agree that:

- a. this Constitution constitutes a contract between each of them and the Company and they are bound by the Constitution and the Act;
- b. they will comply with and observe the Constitution, the By-laws and the Code of Conduct as amended from time to time;
- c. by submitting to the Constitution they are subject to the jurisdiction of the Company; and
- d. the Constitution is necessary and reasonable for promoting the Objects.

10.5. Member's Obligations

The rights and privileges of any Member shall not be transferable unless otherwise specified in the By-laws.

10.6. Ceasing to be a Member

10.6.1. An Organisation or Individual will cease to be a Member of the Company upon the occurrence of any of the following events:

- a. the Member resigns in accordance with Article 10.7;
- b. upon the appointment of a liquidator or provisional liquidator or if a receiver or receiver and manager of its assets is appointed or if it enters into any scheme of arrangement or composition with its creditors or is placed under official management or other form of insolvency administration; or
- c. If any Member of the Company fails to pay monies due to the Company within one (1) Month after the same becomes due and upon having been given notice in writing by the Company to pay the same, it remains unpaid for a further thirty (30) days after such notice.

10.6.2. The Secretary (or delegate) shall make an appropriate notation in the Register upon an Organisation or Individual ceasing to be a Member of the Company.

10.6.3. Any resignation or other termination of membership shall not relieve a Member from the liability to pay any money due to the Company.

10.6.4. On the termination of membership for any reason a Member shall not have any interest in the Company or its property, nor shall such Member have or be entitled to claim any rights or privileges of membership of the Company.

10.7. Resignation

10.7.1. Unless the notice provides otherwise, a resignation by a Member takes effect immediately following the giving of written notice to the Company, is no longer eligible or is declared bankrupt.

- 10.7.2. Any Member so resigning shall remain liable for any and all monies due and owing to the Company.
- 10.8. Termination
- 10.8.1. If the Company reasonably believes that a Member has breached any of the terms of this Constitution, the Code of Conduct & Ethics or the By-laws, the Company must send to the Member a Notice to that effect advising the specifics of such breach.
- 10.8.2. The Notice must:
- a. Describe the nature of the breach that the Company believes has occurred, and the course of action necessary to remedy the breach;
 - b. Specify a reasonable period as determined by the Company in its sole discretion for the Member to provide a response to the breach notice within the terms of the Notice, or to take the action necessary to remedy the breach; and
 - c. Advise the Member of the Company's intended action if the breach is not remedied.
- 10.8.3. Response to Notice
- The Member must, by the time specified in the Notice respond to the Company in writing advising:
- a. when and how the breach has been remedied, or
 - b. what exceptional circumstances exist which may justify the Company retracting or revising the Notice.
- 10.8.4. Subsequent actions
- If the period specified in the Notice expires and, taking full account of any responses received under Article 10.8.3, the Company continues to reasonably believe that the breach has not been remedied then the Company may, in its sole discretion, send to the Member a written notice immediately revoking some or all of the Member's rights under the terms of this Constitution and/or the By-laws, together with any other relevant documents as exist, and/or immediately terminating Membership, without the need to provide reasons for doing so.
- If the Member fails to meet the obligations set out in this process as at the due date(s) then the Member must immediately cease acting as a Member of the Company.
- Upon any failure on the part of the Member to comply with the Notice, the Company may by an injunction or similar remedy restrain the Member from acting as if it continues to be a Member of the Company and recover any of the reasonable costs and expenses incurred by the Company as a result of the Member's breach and to collect the full amount of monies due and Fees outstanding at the date of termination.
- 10.9. Upon receiving Notice of termination of membership the Member shall immediately cease using the Company logo in advertising material, letters, contracts or other documents and take all measures necessary to ensure that they do not in any manner purport to be a Member.

11. ANNUAL GENERAL MEETINGS

- 11.1. The Board shall call an Annual General Meeting in accordance with the Act and this Constitution.
- 11.2. The Annual General Meeting shall be held within five Months after the end of its financial year.
- 11.3. The business of an Annual General Meeting may include:
- a. receiving and considering the financial statements and reports required by the Act;
 - b. electing Directors;
 - c. appointing or removing the auditor; and
 - d. any other business properly brought before the meeting.

12. GENERAL MEETINGS

- 12.1. The Board or at least 5% of Members may convene a General Meeting, and General Meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.
- 12.2. A General Meeting may be held at a physical location, by means of technology that allows Members a reasonable opportunity to participate, or a combination of both (a hybrid meeting). The Board may also resolve to hold a General Meeting wholly by means of technology (a virtual meeting), provided that the technology used gives Members a reasonable opportunity to participate, including to ask questions and vote.
- 12.3. At any General Meeting or meeting of classes of Members, each Member entitled to vote may vote:
 - a. in person, or
 - b. by postal or electronic vote including via email, or
 - c. by Representative, or
 - d. by proxy.
- 12.4. Every Member represented in a manner referred to in Article 12.3 has one vote.

13. PROCEEDINGS AT GENERAL MEETINGS

- 13.1. No business shall be transacted at any General Meeting unless a quorum of Members is present at the opening of the meeting and the quorum is double the number of Directors in office plus one present in person or by way of proxy at the time when the meeting proceeds to business.
- 13.2. A General Meeting must be held at a reasonable time and place.
- 13.3. A General Meeting may be held at two or more venues using any technology that gives the Members a reasonable opportunity to participate.
- 13.4. If, within half an hour from the time appointed for the meeting, a quorum is not present, the meeting shall lapse and stand adjourned to such other time and place as determined by the Chair.
- 13.5. The Chair shall preside as Chairperson, at every General Meeting, or if there is no Chair, or if he/she is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, then an attending Director shall preside, if he/she is unwilling to act then the Members present shall elect one of their number to chair of the meeting.
- 13.6. A declaration by the Chair that a resolution has been carried unanimously or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact.
- 13.7. The chair of a General Meeting does not have a casting vote. In the event of an equality of votes, the resolution is taken to be lost.
- 13.8. The accidental omission to give notice of a General Meeting to, or the non-receipt of a notice by, any Member entitled to receive notice does not invalidate any resolution passed at the meeting.

14. ADJOURNMENT OF GENERAL MEETING

- 14.1. The Chair may adjourn the meeting from time to time but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 14.2. When a General Meeting is adjourned for more than one Month a new Notice of that resumed meeting shall be given to Members.
- 14.3. Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- 14.4. A resolution passed at a meeting resumed after an adjournment shall, unless a later date is provided for in the resolution, take effect on and from the date of the adjourned meeting.

15. NOTICE OF GENERAL MEETINGS

- 15.1. Subject to sub-Article 15.2 below, at least twenty one (21) clear days' notice (exclusive of the day on which the Notice is served or deemed to be served, but inclusive of the day for which notice is given) of any General Meeting shall be given to all Members entitled to receive the notice. The Notice shall specify the place, the day and the hour of meeting and particulars of the nature and order of the business to be transacted at the meeting.
- 15.2. A Notice may be given by the Company to any Member by serving the Member with the Notice personally, or by sending it by post or email to the address appearing in the Register.
- 15.3. Where a Notice is sent by post:
 - a. the service is effected by properly addressing, prepaying and posting a letter or packet containing the Notice; and
 - b. unless the contrary is proved, service will be taken to have been effected at the time at which the letter or packet would be delivered in five (5) days.
- 15.4. Where a Notice is sent by email or other electronic means, service is taken to have been effected on the next Business Day after it is sent.

16. BOARD OF DIRECTORS

- 16.1. Each Director shall comply with this Constitution, the By-laws and the Board Charter.
- 16.2. The Board shall comprise of a:
 - a. minimum of five (5) Directors, with no less than three (3) elected Directors and one (1) appointed Director; and
 - b. maximum of nine (9) Directors, with not more than five (5) elected Directors and not more than four (4) appointed Directors.
- 16.3. Directors shall hold office for two (2) years and shall be eligible for re-election or re-appointment for a maximum number of four (4) consecutive terms (eight years). To avoid doubt, the maximum term applies regardless of whether a Director is appointed or elected or a mixture of both during their tenure.
- 16.4. To be eligible for election as a Director, a person must:
 - a. be a current Member or a Representative of a current Member;
 - b. have been, or their member Organisation has been, a Member for at least 12 months; and
 - c. provide a signed consent to act as a Director of the Company before being elected.
- 16.5. A member Organisation shall not be entitled to nominate more than one person for each election at any one time, and no more than one person from a member Organisation may hold a Board position at any time.
- 16.6. Each Director elected shall hold office only whilst that person or their member Organisation continues as a financial Member of the Company and for such other period as is provided by this Constitution from time to time.
- 16.7. All elected Directors shall take office with effect at the conclusion of the Annual General Meeting of the Company in the year of their election.
- 16.8. Appointed Directors are appointed by all Directors eligible to vote prior to the Annual General Meeting or otherwise as required to fill a casual vacancy under Article 18.1.
- 16.9. Appointed Directors need not be a Member or a Representative of a Member of the Company.
- 16.10. The Board Composition shall have a minimum of one (1) Director from each of the following membership category groups:
 - a. Building and Installation;
 - b. Retail and Service; and
 - c. Manufacture and Supply.

- 16.11. No more than three (3) persons per category may hold a Board position at any one time. Directors shall be entitled to be reimbursed for reasonable out of pocket, travel and accommodation expenses incurred in conducting Company business.

17. ELECTION OF THE CHAIR

- 17.1. At the first meeting after the Annual General Meeting the directors shall elect from their number the Chair who will preside until further election.
- 17.2. A person is not eligible to be elected as Chair unless they have served at least one two-year term as a Director prior to their election as Chair.
- 17.3. The Directors may also elect a Deputy Chair from among their number. The Deputy Chair shall act in the Chair's absence or incapacity.

18. CASUAL VACANCY

- 18.1. The Board shall have the power to appoint any Member to the Board to fill a casual vacancy including the Chair and any person so appointed shall hold office only until the next election.
- 18.2. Any appointment filling a casual vacancy must maintain the Board composition as determined by this Constitution.
- 18.3. The office of a Director of the Board shall become vacant if the Director:
- a. ceases to be a Director of the Board by virtue of the Act;
 - b. becomes bankrupt or makes any arrangement or composition with their creditors generally, unless the Board resolves otherwise;
 - c. becomes prohibited from being a director of a company by reason of any order made under the Act;
 - d. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health
 - e. resigns the office by notice in writing to the Company;
 - f. ceases to be the Representative of a Member;
 - g. dies;
 - h. is convicted of a criminal offence;
 - i. as an elected Director, ceases, or their nominating Organisation ceases, to continue as a Member of the Company for any reason;
 - j. fails to declare a material personal interest;
 - k. joins the board of a competitive organisation; or
 - l. is removed by the Members in general meeting.

19. POWERS AND DUTIES OF THE BOARD

- 19.1. The business of the Company is to be managed by, or under the direction of, the Board.
- 19.2. The Board may exercise all the powers of the Company except any powers that the Corporations Act or this Constitution require the Company to exercise in General Meeting.
- 19.3. The Board must adopt and maintain a Board Charter setting out such matters including the Board's role, responsibilities, composition and meeting procedures.
- 19.4. All acts done by any meeting of the Board or of a committee of the Board or by any person acting as a member of the Board are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a member of the Board or a member of the committee, or to act as a member of the Board, or that a person so appointed was disqualified, is valid as if the person had been duly appointed and was qualified to be a member of the Board or to be a member of the committee.
- 19.5. The Board may appoint a Chief Executive Officer on such terms and conditions as the Board

determines.

20. PROCEEDINGS OF THE BOARD

- 20.1. The Board may pass a resolution, without a meeting of the Board being held, provided that a majority of all of the Directors eligible to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- 20.2. Separate copies of a document referred to in Article 20.1 above may be used for assent by Directors if the wording of the resolution and the statement is identical in each copy.
- 20.3. A Director may signify assent to a document by signing the document or by notifying the Company of that assent by email.
- 20.4. The Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- 20.5. A meeting of the Board may be held using any technology consented to by the Chair.
- 20.6. The consent of the Chair under Article 20.5 above may be for all meetings of the Board or for any one or more specified meetings.
- 20.7. If a meeting of the Board is held in two or more places linked together by any technology:
 - a. a Director present at one of the places is taken to be present at the meeting unless and until that Director states to the Chair of the meeting that they are discontinuing participation in the meeting; and
 - b. the Chair of that meeting may determine at which place the meeting will be taken to have been held.
- 20.8. On request of the Chair or any three (3) Directors, the Secretary must call a meeting of the Board by giving not less than five (5) working days' notice of the meeting to each Director, unless all Directors agree otherwise.
- 20.9. A notice of meeting of the Board must be given to each Director and:
 - a. set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - b. state the general nature of the business of the meeting.
- 20.10. A quorum for a Board meeting is a majority of the Directors then in office. A quorum must be in place for any resolution to be validly passed.
- 20.11. For the purposes of Article 20.11, a Director participating by telephone, video link or other electronic means that allows that Director to hear and be heard by all other participants is taken to be present at the meeting.

21. RESOLUTIONS OF THE BOARD

- 21.1. Each Director has one vote on a matter arising at a meeting of the Board and a Resolution is passed if a majority of all Directors of the Board vote in favour of the Resolution.
- 21.2. The Chair of the Board does not have a casting vote. In the event of an equality of votes on any matter at a Board meeting, the Resolution is taken to be lost.

22. MINUTES

- 22.1. The Company must keep minute books in which it records:
 - a. proceedings and Resolutions of General Meetings;
 - b. proceedings and Resolutions of Board meetings (including meetings of a committee of the Board);
 - c. Resolutions passed by Directors without a meeting.
 - d. any delegations.
- 22.2. The minutes kept pursuant to this Article shall be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting at which the minutes are confirmed.

- 22.3. Where minutes are entered and signed they shall, until the contrary is proved, be evidence that a meeting was convened and duly held and that all decisions and appointments made at such meeting are valid.
- 22.4. A minute that is so recorded and signed shall be conclusive evidence of the proceeding, Resolution or declaration to which it relates, unless the contrary is proved.

23. SECRETARY

- 23.1. The Directors shall appoint one (1) or more Secretaries. It is not necessary for a Secretary to be a Member or a Director.
- 23.2. The Secretary may be a member of the Board.
- 23.3. The Board may, from time to time, appoint a person or persons to act as Secretary during the illness or absence of the Secretary.
- 23.4. The Secretary must consent in writing to holding the position of Secretary.
- 23.5. The Secretary has and may exercise such functions as are conferred or imposed on the Secretary by or under this Constitution and the law.
- 23.6. The Secretary is responsible for:
- a. maintaining the Company's records; and
 - b. performing such duties as pertain to their office.
- 23.7. The Secretary may delegate to a person the exercise of:
- a. any of the functions of the Secretary under this Constitution, other than this power of delegation; or
 - b. any functions delegated to the Secretary by the Board, unless the Board otherwise provides in its instrument of delegation to the Secretary.
- 23.8. The Secretary may resign by giving written notice of the resignation to the Company.

24. DELEGATION

- 24.1. Directors remain responsible for the exercise of delegated powers.
- 24.2. The Board may delegate any of its powers to a committee of the Board consisting of such Directors as the Board decides.
- 24.3. The Board may delegate to the CEO, Secretary or any other person the exercise of any of its functions, other than this power of delegation.
- 24.4. All delegations must be in writing, specify the scope of the delegation (including any financial limits), and be recorded in a delegations register maintained by the Secretary.

25. COMMITTEES

- 25.1. The Board may, from time to time, form and/or delegate any of its powers to Committees consisting of such Directors and other persons as it thinks fit, including to oversee the Board's financial and risk oversight responsibilities. Such delegations may be revoked at any time.
- 25.2. Each Committee must have a Charter or Terms of Reference approved by the Board (which may be in the Board Charter) and must in exercising the powers delegated to it conform to any directions and restrictions imposed by the Board. A power so exercised shall be taken to be exercised by the Board.
- 25.3. A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

26. MEMBER GROUPS

- 26.1. The Company may establish Groups from time to time. A Group may take any form the Company considers appropriate, including advisory groups, special interest groups, working

groups, Industry sector groups or community groups, and may be known by any name the Company determines.

- 26.2. Groups are member-driven consultative bodies and are distinct from Committees established under Article 25.
- 26.3. Each Group must have a Terms of Reference approved by the Company.
- 26.4. A Group may be wound up at any time at the discretion of the Company.

27. AUDITORS

- 27.1. An auditor shall be appointed in accordance with the Act.
- 27.2. If the auditor or their representative is at the meeting, the chair of an Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of any audit and the preparation and content of any audit report.
- 27.3. The auditor is entitled to attend and be heard at the Annual General Meeting on any part of the business of the Annual General Meeting that concerns the auditor in their capacity as auditor.
- 27.4. The auditor is entitled to be heard even if:
 - a. the auditor retires at the General Meeting; or
 - b. the General Meeting passes a Resolution to remove the auditor from office.
- 27.5. The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.

28. BORROWING POWERS

- 28.1. The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the Company.

29. EXECUTION OF DOCUMENTS

- 29.1. The Company may execute documents in accordance with delegated authorities as determined by the Board.

30. BY-LAWS

- 30.1. The Board may make, amend or revoke By-laws from time to time regulating the affairs of the Company.
- 30.2. By-laws may be documented in a separate publication and may deal with:
 - a. the rights or obligations of Members,
 - b. the operations and functions of the Company, and
 - c. other matters which are not specified by this Constitution or the Act.
- 30.3. A By-law, which, directly or indirectly, is inconsistent with a provision of the Constitution or the Act, is invalid to the extent of the inconsistency.
- 30.4. Members must be advised of any changes to the By-laws, which may occur by publication of the latest By-laws on the Company's website.

31. INDEMNITY

- 31.1. Every person who is or has been a Director, Secretary, Officer or appointed representative of the Company is entitled to be indemnified, to the maximum extent permitted by law, out of the funds and property of the Company against any liabilities, costs and expenses incurred by that person:
- a. in defending any proceedings in relation to that person's position with the Company, whether civil or criminal, in which judgement is given in that person's favour or in which that person is acquitted or which are withdrawn before judgement is made; or
 - b. in connection with any administrative proceedings relating to that person's position with the Company, except proceedings which give rise to civil or criminal proceedings against that person in which judgement is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving a lack of good faith; or
 - c. in connection with any application in relation to proceedings relating to that person's position in the Company, whether civil or criminal, in which relief is granted to that person under the Act by the court.
- 31.2. Every person who is or has been a Director, Secretary, Officer or appointed representative of the Company is entitled to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability to another person (other than the Company) as such an officer unless the liability arises out of conduct involving a lack of good faith.
- 31.3. The Company must ensure that sufficient protection is always in place by way of insurance covering a person who is or has been a Director, Secretary or Officer of the Company against:
- a. any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of the Act; and
 - b. any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome.
- 31.4. The indemnity granted by the Company contained in the above clauses shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

32. DISSOLUTION AND WINDING UP

- 32.1. If upon the dissolution or winding-up of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members in their capacity as Members, but shall be given or transferred to some other fund, authority or institution:
- a. having objects similar to the objects of the Company;
 - b. which prohibits the distribution of its income and property to a similar extent to that imposed on the Company under Article 3.2; and
- 32.2. That fund, authority or institution may be determined by the Members at or before the time of dissolution, and insofar as effect cannot be given to such provision, then to some other charitable organisation which satisfies the criteria prescribed by Article 32.1.

33. NOTICE

- 33.1. A Notice may be given by the Company to any Member by any means to the last known contact address.
- 33.2. A Notice of a General Meeting sent by post is taken to be given five (5) days after the letter is posted.
- 33.3. A Notice sent by fax, e-mail or other electronic means is taken to be given on the next Business Day after it is sent.

34. ADOPTION AND MODIFICATION OF CONSTITUTION

- 34.1. The Members may modify or repeal this Constitution, or a provision of this Constitution, by a special resolution passed at either an Annual General Meeting or at a General Meeting.
- 34.2. A Notice of the proposed alterations must be provided to every Member at least 21 clear days prior to the date of the meeting.
- 34.3. A Resolution adopting, modifying or repealing this Constitution takes effect:
 - a. if no later date is specified in the Resolution, then on the date on which the resolution is passed; or
 - b. on a later date specified in, or determined in accordance with, the resolution.
- 34.4. The Company must at all times make a digital copy of the current Constitution available to Members and must provide a copy to a Member on request.

35. CONFIDENTIALITY

- 35.1. Every Director, Officer, Member, Secretary, Auditor, committee member, alternate Director, Servant, Agent, Accountant or other person employed in the business of the Company shall be required, before entering upon their duties or at any time if so required by the Board under legislation, to sign a declaration pledging to observe a strict secrecy respecting all transactions of the Company.