

# **Constitution**

**Of**

## **Swimming Pool & Spa Association of Australia Ltd**

**(ACN 150 541 816)**

**(A Company Limited By Guarantee)**

## TABLE OF CONTENTS

1. NAME .....	3
2. COMPANY .....	3
3. LEGAL CAPACITY AND POWERS .....	3
4. OBJECTS .....	3
5. MEMBER CONTRIBUTION .....	4
6. REPLACEABLE RULES .....	4
7. DEFINITIONS.....	4
8. INTERPRETATION .....	5
9. EXERCISE OF POWERS .....	6
10. MEMBERS .....	6
11. ANNUAL GENERAL MEETINGS.....	9
12. GENERAL MEETINGS .....	9
13. PROCEEDINGS AT GENERAL MEETINGS .....	10
14. ADJOURNMENT OF GENERAL MEETING .....	10
15. NOTICE OF GENERAL MEETINGS.....	10
16. BOARD OF DIRECTORS .....	11
17. ELECTION OF CHAIRPERSON .....	11
18. CASUAL VACANCY.....	11
19. POWERS AND DUTIES OF THE BOARD .....	12
20. PROCEEDINGS OF THE BOARD .....	13
21. RESOLUTIONS OF THE BOARD.....	13
22. MINUTES .....	13
23. SECRETARY.....	14
24. DELEGATION .....	14
25. COMMITTEES.....	14
26. AUDIT & COMPLIANCE COMMITTEE.....	15
27. AUDITORS.....	15
28. BORROWING POWERS .....	15
29. EXECUTION OF DOCUMENTS .....	15
30. BY-LAWS .....	16
31. INDEMNITY.....	16
32. DISSOLUTION AND WINDING UP .....	17
33. NOTICE .....	17
34. COMPLIANCE.....	17
35. ADOPTION AND MODIFICATION OF CONSTITUTION.....	17
36. CONFIDENTIALITY .....	18
37. TRANSITIONING AGREEMENTS .....	18

## **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 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.
- 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.

## **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. Pursue issues of State, Territory, National and International concerns relating to the Industry.
  - c. To 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 or any of them; 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. To educate the Industry, associated industries, government and statutory bodies and members of the public about water safety, development of swimming pools, spas and associated equipment and services, their manufacture, installation, construction, renovation or use.

- e. To 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.
- f. 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 undertakes 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. 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.
- 6.2. 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;

“Business Day” means a day except a Saturday, Sunday or public holiday;

“By-laws” means the By-laws of the Company made pursuant to Article 31;

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

“Chairman” means the person holding that office/position under this Constitution;

“Chapter” means an area within a Region which represents the Members in that area;

“Company” means the Swimming Pool & Spa Association of Australia Ltd;

“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 other than an Annual General Meeting;

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

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

“Member” means an Individual or Organisation that meets the criteria defined from time to time by the Board and is admitted as such;

“Month” shall mean a calendar month;

“Notice” means a notice given pursuant to, or for the purpose of, this Constitution or the Act;

“Officer” means the same as given to that term in the Act;

“Organisation” means any legally recognised entity other than an Individual;

“Region” means the geographical areas that are defined from time to time by the board;

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

“Registered Address” means the Company’s registered address in accordance with the Act;

“Representative” means a person appointed by a Member pursuant to Article 10.4.1;

“Resolution” means with respect to the Board a resolution that has been passed in favour with a requirement of a majority vote of more than 50% of all Directors and with respect to a meeting of Members either an ordinary resolution more than 50% or special resolution more than 75% as required under the Act;

“Secretary” means any person appointed to perform the duties of Secretary of the Company and may be an Honorary Secretary;

“SPASA Australia” means the Swimming Pool and Spa Association of Australia Ltd.

## **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 his Representative is present in person or by 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,
- f. unincorporated enterprise, sole trader, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- g. where a word or phrase is given a defined meaning, any other part of speech or
- h. grammatical form of that word or phrase has a corresponding meaning; and
- i. 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 an Article is to an article of this Constitution; and
  - b. 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.

## **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. Upon the application being correctly and fully completed the membership application is forwarded to the Secretary to be processed in accordance with the Board's instructions.
- 10.1.5. Every Member 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.
- 10.1.6. The Secretary shall, on advice from the Board of acceptance of the Member application, enter the Member's name in the Register of Members and, upon the Member's name being so entered, the applicant becomes a Member of the Company.
- 10.1.7. 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, or take such other action as it sees fit.

## 10.2. Register of Members

10.2.1. A register of Members must be kept at the Registered Address and contain:

- a. the name and relevant contact details of each Member;
- b. the name and relevant contact details of the Representative of each Member;
- c. the date on which each Member was admitted to the Company; and
- d. if applicable, the date of, and reason(s) for, resignation or termination of membership.

10.2.2. The register of Members may be inspected by a Member giving to the Secretary seven (7) days' notice in writing or such lesser time to which the Secretary agrees. Copies will not be provided unless specifically authorised by the Board.

## 10.3. Member Entitlements

10.3.1. A Member shall be entitled to:

- a. nominate its Representative of the Company;
- b. vote through its Representative, as per Article 10.4.1, at General Meetings of the Company; and
- c. be listed in any Company directory, whether print or electronic.

## 10.4. Representative

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

- a. in person; or
- b. by its Representative; or
- c. by proxy. In the absence of its Representative a Member shall be entitled to appoint in writing a natural person to be their proxy, and attend and vote at any General Meeting of the Company.

10.4.2. Each Member must notify the Secretary of the name and contact details of its Representative under Article 10.4.1 and any changes thereto.

## 10.5. Members Obligations

The 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, and any changes to it enacted by Special Resolution at a General Meeting
- 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.

## 10.6. Membership Not Transferable

The rights and privileges of any Member shall not be transferable.

## 10.7. Ceasing to be a Member

- 10.7.1. 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 10.9;
  - 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;
  - 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 Secretary to pay the same, it remains unpaid for a further thirty (30) days after such notice; or
  - d. If the Member commences legal action against the Company.
- 10.7.2. The Secretary shall make an appropriate notation in the register of Members upon an Organisation or Individual ceasing to be a Member of the Company.
- 10.7.3. Any resignation or other termination of membership shall not relieve a Member from the liability to pay any money due to the Company.
- 10.7.4. 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.

## 10.8. Resignation

- 10.8.1. Unless the notice provides otherwise, a resignation by a Member takes effect immediately following the giving of written notice to the Company.
- 10.8.2. Any Member so resigning shall remain liable for any and all monies due and owing to the Company.

## 10.9. Termination

- 10.9.1. If the Company reasonably believes that a Member has breached any of the terms of this Constitution or the By-laws, the Company must send to the Member a Notice to that effect advising the specifics of such breach.
- 10.9.2. 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.
- 10.9.3. 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.



#### 10.9.4. Subsequent actions

If the period specified in the Notice expires and, taking full account of any responses received under Article 10.9.2, 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 document 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; and

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.

#### 10.10. Company Documentation

10.10.1. 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 he does 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 the Constitution.
- 11.2. The Annual General Meeting shall be held within five Months after the end of its financial year.

### 12. GENERAL MEETINGS

- 12.1. Any Members' meeting, other than an Annual General Meeting, shall be called a General Meeting.
- 12.2. The Board or at least 25% of Members may convene a General Meeting, and General Meetings shall be convened on such requisition or in default may be convened by such requisitions as provided by the Act.
- 12.3. Subject to the provisions of the Act and agreements for shorter notice, 14 days' notice at the least (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) specifying the place, the day and the hour of meeting and in case of special business the general nature of that business shall be given to all Members who are entitled to receive such notices from the Company.
- 12.4. All business of a General Meeting shall require approval by way of Resolution by the Members present and entitled to vote.
- 12.5. At any Annual General Meetings, General Meetings or meeting of classes of Members, each Member entitled to vote may vote:
  - a. in person, or
  - b. by postal vote which may be communicated electronically including via email or facsimile communications, or
  - c. by Representative, or
  - d. by proxy; and
- 12.6. On a show of hands or on a secret ballot every Member represented in a manner referred to in Article 12.5 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 and the quorum is double the number of Directors 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 as a whole 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. Any such meeting shall stand adjourned to such other time and place as the meeting may determine.
- 13.5. The Chair shall preside as Chairman, at every General Meeting of the Company, 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 the Members' present shall elect one of their number to be Chairman of the meeting.
- 13.6. A declaration by the Chairman that a resolution has, on a show of hands, 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.

### **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 1 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 14 days' Notice of any General Meeting shall be given to Members. The Notice shall set out where and when the meeting will be held, and particulars of the nature and order of the business to be transacted at the meeting.
- 15.2. Notice of a General Meeting may be waived if at least 75% of Members who are present in person, by their Representative or Proxy, vote in favour.
- 15.3. 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, email or fax to the address appearing in the register of Members.
- 15.4. 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 the ordinary course of post.

## **16. BOARD OF DIRECTORS**

- 16.1. The Board shall, following the adoption of this Constitution, comprise of the existing Directors who shall hold such positions for one (1) or two (2) years from appointment to facilitate the transition to a succession plan.
- 16.2. The Board shall comprise of a maximum of nine (9) Directors, with not more than five (5) elected Directors and not more than four (4) appointed Directors.
- 16.3. Any Director elected shall hold office for two (2) years and shall be eligible for re-election.
- 16.4. To be eligible for election as a Director, a person must be a current Member or a Representative of a Member with appropriated rights and PROVIDED THAT:
  - a. the nominee of an Organisation must be either a shareholder, Director or employee of that Organisation; and
  - b. the member Organisation shall not be entitled to nominate more than one person for each election term of Directors;
  - c. no more than one person from an Organisation may hold a Board position at any time.
  - d. Each Director elected shall hold office only whilst that person or the Member they are representing continues as a Member of the Company and for such period as is determined by this Constitution from time to time.
- 16.5. All elected Directors shall take office with effect from the Annual General Meeting of the Company in the year of their election.
- 16.6. Appointed Directors are appointed by the full board of elected and appointed Directors prior to the Annual General Meeting.
- 16.7. Appointed Directors may not be Members of the Company.
- 16.8. The Board composition shall be restricted to no more than:
  - a. three (3) persons per Category;
- 16.9. Appointed Directors shall hold office for up to two (2) years and shall be eligible for re-appointment.
- 16.10. Subject to the approval of the Board in every instance each Director shall be entitled to appoint an alternate Director within the meaning of, and on the terms contained in, Section 201K of the Act;
- 16.11. All Directors shall consent to act in writing prior to their confirmation as a Director;
- 16.12. All Directors shall be entitled to be reimbursed for reasonable out of pocket, travel and accommodation expenses incurred in conducting Company business.
- 16.13. The Board may by ordinary resolution remove any officer or other member of the Board before the expiration of his period of office, and may by an ordinary resolution appoint another person in his place so that the person so appointed shall hold office only until the next election.

## **17. ELECTION OF CHAIRPERSON**

- 17.1. A meeting of the Directors shall be held not less than seven (7) days after the Annual General Meeting of the Company at which time the directors shall elect from their number the Chairperson who will preside until further election.

## **18. CASUAL VACANCY**

- 18.1. The Board shall have the power to appoint any Member to the Board to fill a casual vacancy 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. Is found by the Board, to be in breach of the Constitution, the Act or By-laws;
- b. Ceases to be a Director of the Board by virtue of the Act;
- c. Becomes bankrupt or makes any arrangement or composition with their creditors generally;
- d. Becomes prohibited from being a Director of a company by reason of any order made under the Act;
- e. 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
- f. Resigns the office by notice in writing to the Company;
- g. Ceases to be the nominated representative of a Member;
- h. Dies;
- i. Is convicted of a criminal offence; or
- j. Ceases or his nominating organisation ceases to continue as a Member of the Company for any reason.

## **19. POWERS AND DUTIES OF THE BOARD**

- 19.1. 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.
- 19.2. The business of the Company is to be managed by, or under the direction of, the Board.
- 19.3. 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.
- 19.4. The Board may delegate any of their powers to a committee of any one or more Directors, or the Secretary, and:
  - a. the Board may revoke or vary any power delegated under this Article;
  - b. a committee or delegate must exercise the powers delegated in accordance with any directions of the Board;
  - c. the exercise of a delegated power by the committee or delegate is as effective as if the Board exercised the power.
- 19.5. 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
- 19.6. The Board shall from time to time determine by Resolution how to fund the operations of the Company.

## **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 vote on the resolution and 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:
  - a. in a manner permitted by Article 20.1; or
  - b. by any technology including telephone, fax or email. The secretary will record all verbal votes or assents.
- 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 Board.
- 20.6. The consent of the Directors 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 Chairman of the meeting that he or she is discontinuing participation in the meeting; and
  - b. the Chairman 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 meeting of the Board is at least four (4) Directors, who must be present at all times during 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.

## **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 members of the Board without a meeting.
- 22.2. The minutes kept pursuant to this Article must be confirmed by the Members of the Company or the members of the Board (as relevant) at a subsequent meeting.
- 22.3. 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.

- 22.4. 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.
- 22.5. Where the Directors agree to the passing of a Resolution without holding a meeting, they shall each sign a minute of the Resolution within a reasonable time thereafter.
- 22.6. 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 members of the Board appoint the Secretary. It is not necessary for the 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 to act as Secretary during the illness or absence of the Secretary, and the person, while so acting, has and may exercise all the functions of the Secretary and is taken to be 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 the Constitution.
- 23.6. The Secretary is responsible for:
  - a. conducting the correspondence;
  - b. maintaining the Company's records; and
  - c. performing such duties as pertain to his or her office.
- 23.7. The Secretary may delegate to a person the exercise of:
  - a. any of the functions of the Secretary under the 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. The Board may delegate any of its powers to a committee of the Board consisting of such members of the Board as the Board decides.
- 24.2. The delegation must be recorded in the minute book.
- 24.3. The Board may delegate to the Secretary or any other person the exercise of any of its functions, other than this power of delegation.

### **25. COMMITTEES**

- 25.1. Each Director may be allocated a portfolio, and asked to form a working committee for that portfolio. The purpose of committees is:
  - a. To spread the workload more evenly amongst Members;
  - b. To gain a wider Member input to help formulate Policy; and
  - c. To groom, train, and evaluate future Board members.

- 25.2. The function of a committee is to provide input into the formulation of Policy as a recommendation to the Board, which may or may not approve such recommendations with or without amendments. A committee has no power of its own to give directions to any Member or staff or to otherwise implement Policy. A committee may meet as the workload demands, as determined by its Chairman.
- 25.3. A committee must exercise the powers delegated to it in accordance with any directions of the Board.
- 25.4. The effect of the committee exercising a power in this way is the same as if the Board exercised it.
- 25.5. The members of such a committee may elect one of their number as chair of their meetings.
- 25.6. The procedure for the calling of meetings of any such committee and for the conduct of business at those meetings is as determined by the Board or (subject to any direction of the Board) by the committee.
- 25.7. A committee may meet and adjourn as it thinks proper.
- 25.8. Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.
- 25.9. Regions may have committees established by the Regions themselves or appointed by the Board. Such committees are entitled to delegate to subcommittees.

## **26. AUDIT & COMPLIANCE COMMITTEE**

- 26.1. The Board shall have responsibility for all financial matters of the Company. The Board may appoint one of their number to be the chair of an Audit & Compliance Committee. The Audit & Compliance Committee may be delegated certain responsibilities, as determined by the Board.

## **27. AUDITORS**

- 27.1. If required an auditor shall be appointed by Members at a General Meeting.
- 27.2. If the auditor or his or her 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 the audit and the preparation and content of the auditor's report
- 27.3. The auditor is entitled to attend and be heard at the General Meeting on any part of the business of the 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 deal with
  - a. the rights or obligations of Members,
  - b. the operations and functions of Chapters,
  - c. other matters; which are not specified by the Constitution or the Act, and
  - d. may be documented in a separate publication.
- 30.3. A By-law, which, directly or indirectly, is inconsistent with a provision of the Constitution or the Act, is invalid.
- 30.4. Each Member is to receive a copy of the By-laws, which may be provided in printed or digital format.
- 30.5. Members are to be advised of any changes in the By-laws.

### **31. INDEMNITY**

- 31.1. Every person who is or has been a Director, Secretary, Chairman, 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, Chairman, 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 in place at all times insuring a person who is or has been a Director, Secretary or Chief Executive 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 notification.



## **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, 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 object 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 three (3) 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 Business Day after it is sent.

## **34. COMPLIANCE**

- 34.1. Every Member, Director, committee member and every other officer of the Company must comply with the provisions of this Constitution and any By-laws of the Company.

## **35. ADOPTION AND MODIFICATION OF CONSTITUTION**

- 35.1. The Members may modify or repeal the Constitution, or a provision of the Constitution, by a special resolution passed at either an Annual General Meeting or at a General Meeting.
- 35.2. A Notice of the proposed alterations must be provided to every Member at least 21 days prior to the date of the meeting, unless all Members otherwise agree to a lesser period.
- 35.3. A Resolution adopting, modifying or repealing the 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.
- 35.4. The Company must send a copy of the Constitution to a Member within 21 days of a request; such delivery may be of printed or digital material.
- 35.5. The Secretary must send a copy of any amendments to the Constitution to all Members within 21 days of such amendment being carried; delivery may be of printed or digital material.

**36. CONFIDENTIALITY**

- 36.1. Every Director, Chairman, 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 his duties or at any time if so required by the Board, to sign a declaration pledging himself to observe a strict secrecy respecting all transactions of the Company and in matters relating thereto and shall by such declaration pledge himself not to reveal any of the matters which may come to his knowledge in the discharge of his duties except when required so to do by the Board or a Court of Law and except, so far as may be necessary, in order to comply with any of the provisions of these Articles or in order to carry out the administrative activities of the Company.

**37. TRANSITIONING AGREEMENTS**

- 37.1. In furtherance of the Objects appearing in Article of 4.1a) of this Constitution the Company must abide by and implement any merger, transitional, or other agreements' entered into between the Company and any entity listed in Article 4.1a).