

Constitution of the Design Institute of Australia

● Public company
limited by guarantee
Corporations Act 2001

November 2017



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Design Institute of Australia ACN 004 412 613
A public company limited by guarantee
of Level 1, 175 Collins Street, Melbourne, Victoria
Corporations Act 2001

1 Definitions and interpretation

1.1 Preamble

This Constitution, together with the Charter, lay out the governance framework for the responsible stewardship of the affairs of the Company.

1.2 Definitions

(a) Unless the context otherwise requires and other than in the case of an expression defined in clause 1.2(b) an expression in a clause that is used in the Act has the same meaning as in the Act.

(b) In this Constitution:

Accreditation means any professional accreditation required of a Member to demonstrate expertise as a Design or Associated Professional.

Act means the *Corporations Act 2001* and any regulations and instruments made under it together with any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that section, part or division as so modified, amended or re-enacted.

ASIC means the Australian Securities and Investments Commission.

Auditor means a person appointed as an auditor of the Company under clause 12.1 who has not vacated their office.

Board means the Directors acting as a board of Directors.

Branch Council means a State or Territory council of representatives recognised by the Design Institute of Australia in any State or Territory, as determined by the Company from time to time.

Business Day means a day on which trading banks are open for business in Melbourne, other than a Saturday or a Sunday.

Chair means the individual elected under clause 7.6.

Charter means the policy document that complements this Constitution and contains a set of rights, responsibilities and obligations that pertain to the functioning of the Company, its Board and Committees.

Chief Executive has the same meaning as in section 295A(4) of the *Corporations Act 2001* (Cth).

Code of Ethics means the code of ethics as prescribed by the Company from time to time and as displayed on the Company's website (www.design.org.au).

Committee means a group of Members as appointed or elected and recognised by the Directors.

Company means the Design Institute of Australia ACN 004 412 613.

Constitution means this constitution as amended from time to time and a reference to a clause is a reference to a clause of this constitution.

Design or Associated Profession means one or more of the following professions or practices:

- (i) industrial design and product design;
- (ii) interior architecture and interior design;
- (iii) interior decoration;
- (iv) graphic design and visual communication;
- (v) textile design;
- (vi) exhibition and display design;
- (vii) web design;
- (viii) multimedia design;
- (ix) furniture design;
- (x) jewellery design;
- (xi) fashion design;
- (xii) architecture (practising in interior architecture/design);
- (xiii) television, film and theatre set design;

- (xiv) design management;
- (xv) design education;
- (xvi) any such other areas of design practice or associated vocations determined by the Board.

Director means a director of the Company.

General Meeting has the same meaning as in clause 9.

Member means a:

- (i) natural person;
- (ii) company or registered Australian body;
- (iii) body corporate (other than a company or registered Australian body);
- (iv) partnership;
- (v) trustee;
- (vi) sole trader;
- (vii) incorporated or non-incorporated association;
- (viii) organisation, institution or other collective; or
- (ix) any other entity, collective or body, which in the sole discretion of the board ought to be,

admitted as a Member under any class of membership referred to in the Charter and admitted under the terms of clause 5.

National Advisory Council means the Council of Members appointed by Branch Councils to provide advice to the Board as detailed in the Charter

National Councillors means members of the National Advisory Council

National Office means the address listed as the National Office on the Company's website (www.design.org.au).

National President means the individual appointed as the Chair in accordance with clause 7.6.

Office Bearers means an Executive Officer, as defined in section 9 of the *Corporations Act 2001* (Cth).

Parliament means any legislative body in any State or Territory in Australia, including legislative bodies of the Commonwealth.

Register of Members means the register listing each person who is a Member which the Company maintains under the Act.

Registered Office means the registered office of the Company from time to time

Secretary means an individual appointed under clause 11 as a secretary of the Company and includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a secretary of the Company.

Special Resolution means a resolution of the National Advisory Council, passed by no less than 75% of the National Councillors.

Terms of Reference means those terms of reference as determined in the Charter.

Treasurer means an individual who holds the position of Treasurer.

1.3 Interpretation

- (a) In this Constitution unless the contrary intention appears:
 - (i) words importing any gender include all other genders;
 - (ii) person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
 - (iii) the singular includes the plural and vice versa;
 - (iv) a reference to an amount paid on a share includes an amount credited as paid on that share; and
 - (v) writing and written includes printing, typing and other modes of reproducing words in a visible form including, but not limited to, any representation of words in a physical document or in an electronic communication or form or otherwise.
- (b) Subject to clause 1.3(c), this Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act the Act prevails to the extent of the inconsistency.
- (c) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules do not apply to the Company.

2 Nature of the Company

2.1 Public company

The Company is a public company limited by guarantee.

2.2 Limitation of the Company

- (a) The Company must not be operated for the purpose of the profit or gain of any Member.
- (b) The Company does not have the power to:
 - (i) issue shares of any kind; or
 - (ii) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of or to a Member, other than payments in good faith:
 - (A) as provided in clause 5.5 & 5.6 and clause 15;
 - (B) for goods supplied in the ordinary and usual course of business;
 - (C) of interest at a reasonable and proper rate on money borrowed from any Member; and
 - (D) of reasonable and proper rent for premises demised or let by any Member to the Company.

2.3 Liability of Members

- (a) The liability of the Members is limited.
- (b) Every Member of the Company undertakes to contribute to the property of the Company in the event of it being wound up while he or she is a member or within one year after he or she ceases to be a member for payment of the debts and liabilities of the Company (contracted before he or she ceases to be a member) and of the costs charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding one hundred dollars (\$100.00)

2.4 Objects of the Company

The objects of the Company are:

- (a) to promote, support and protect the character, status and interests of persons engaged in Design and Associated Professions;

- (b) to have membership of the Company recognised in Design and Associated Professions and among the general public as a professional status of the highest standard;
- (c) to admit to membership Australian and international individuals and businesses who pass the entrance criteria and demonstrate knowledge of, skill in, or an interest or involvement in the lore and techniques of a Design or Associated Profession;
- (d) to improve the knowledge and skills and the general knowledge of those practising in a Design or Associated Profession and to assist persons, whether or not members of the Company, to equip themselves to enter, or advance in, a Design or Associated Profession.
- (e) to consider all questions affecting the interests of a Design or Associated Profession and to initiate, watch over and if necessary arrange to petition Parliament or promote deputations in relation to general measures affecting design professionals and to procure changes of law or practice and to initiate and support measures for the improvement of their conditions of engagement;
- (f) to promote honourable practice, to repress malpractice, settle disputed points of practice and to decide all questions of professional usage or courtesy between or amongst members of a Design or Associated Profession or a Member and a client and to encourage the settlement of disputes amicably, swiftly and inexpensively and to act as or nominate conciliators, mediators, arbitrators or umpires on such terms and in such cases as may seem expedient;
- (g) to arrange and promote the adoption of equitable forms of contracts and other documents used in a Design or Associated Profession
- (h) to institute, promote, oppose, undertake or assist so far as may be lawful, any litigation affecting the Company or its Members or a Design or Associated Profession;
- (i) to enquire into and report on matters of general interest to a Design or Associated Profession and affecting the interests of members and of those industries to which they may be allied;
- (j) to provide opportunities for and organise the holding of permanent or periodical exhibitions either of the works of Members or of any works of interest or service to the Members. To hold conferences and meetings for the discussion of professional affairs, interests and duties and the reading of papers and the delivery of lectures. To compile and revise lists and registers of members of a Design or Associated Profession. To sell copies of papers lectures and professional records from time to time to Members of the Company to form libraries for the use of such Members and generally to collect and collate, publish or make available on electronic media information of service or interest to members of a Design or Associated Profession and to the public at large;

- (k) to provide premises and other conveniences for the use of the Members of the Company and to furnish and maintain the same and to permit the same to be used by the Members of the Company and their friends either gratuitously or upon such terms as shall be agreed upon and to generally do whatever may seem best calculated to promote the interests of the Company;
- (l) to procure information for Members as to the standing and responsibility of parties with whom they propose to transact business; and
- (m) to do any other thing ancillary to, and not inconsistent with, the above.

2.5 Scope of Powers

Subject to any restrictions set out in this Constitution, and provided that its capacities and powers are exercised directly or indirectly in the furtherance of its objects, the Company will have the legal capacity and powers set out in the Act.

3 Internal management of the Company

The internal management of the Company will be governed by this Constitution and by operational guidelines established in the Charter by the Directors from time to time.

4 Members

4.1 Membership

The persons who register the Company and such other persons as the Board shall admit to membership in accordance with this Constitution shall be members of the Company.

4.2 Classes of Members

The Members of the Company comprise of such classes designated by the Directors from time to time and included in the Charter. These classes will include:

- (b) Life Member
- (c) Member
- (d) Such other Members and Membership categories as the Board may determine from time to time and include in the Charter.

4.3 General eligibility

Membership is available to Australian and international individuals over the age of 18 years and businesses.

4.4 Qualification for membership

The Board may set qualifications for membership for individuals and businesses from time to time and these qualifications shall be detailed in the Charter.

4.5 Application for membership

An application for membership must be made in the form approved by the Board from time to time, provided that each such application must contain:

- (a) an undertaking on the part of the applicant to be bound by the Constitution and the Code of Ethics;
- (b) the residential address, telephone number and electronic mail address (if any) of the applicant;
- (c) adequate particulars of the applicant's qualifications for membership as set out in the Charter;
- (d) the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time.

4.6 Lodging of applications

An application for membership, accompanied by the membership fee and any other entrance fees must be addressed to the National Office.

4.7 Determination of application by the Board

- (a) The Board must determine whether or not to approve each application for Membership.
- (b) The Board may require an applicant to give such further information as it desires before approving or refusing the admission of an applicant for Membership.
- (c) An applicant for membership is taken to be admitted as a Member upon the Board approving the application and the name, address and email address of the applicant being entered in the Register of Members.
- (d) The Board may determine the class of membership appropriate for each membership application.
- (e) If a membership application is rejected by the Board, the Board shall not be required to provide any reason for so doing.
- (f) The Board may delegate its powers to determine whether or not to approve applications for membership to a committee or an employee of the Company.

4.8 Notification of change in qualifications or eligibility

Each Member must promptly notify the Company of any change in the qualification of the Member to be a Member of the Company.

4.9 Fees, Subscriptions and Charges

The Board may by resolution set fees, subscriptions and other charges to be paid by Members and all such fees, subscriptions and charges must be paid to the National Office on each anniversary of membership or as otherwise determined by the Board.

4.10 Register of Members

- (a) The Board must cause the Company to keep a register of members in accordance with the Act, in which are entered:
 - (i) the name of each Member;
 - (ii) the residential address, telephone number, electronic mail address (if any) and other contact details for notices last notified by the Member;
 - (iii) the class of membership;
 - (iv) the date of becoming a Member; and
 - (v) in the case of former Members, the date of ceasing to be a Member.
- (b) The Board must ensure that the Company retains information relating to former Members for no less than seven years.
- (c) Each Member must notify the Company in writing of the change in any detail kept in the Register of Members within one month after the change.

4.11 Rights and obligations

- (a) Members will have all the rights granted under this Constitution, including the right to attend and vote at General Meetings of Members.
- (b) Certain classes of Member may be authorised to use post-nominals as approved by the Board and detailed in the Charter from time to time.

4.12 Suspension of rights

Members that have been suspended in accordance with paragraph 4.15 are not eligible to participate in the activities of the Company.

4.13 Rights not transferable

The rights of Members are not transferable, and end when the Member ceases to be a Member.

4.14 Resignation of Members

A Member may resign by giving written notice of resignation to the Company at its registered office.

4.15 Suspension and expulsion

- (a) The Board may by resolution passed with a majority of votes in favour suspend or terminate the membership of a Member.
- (b) The requirements of natural justice do not apply, except to the extent that the Board otherwise resolves.

4.16 Cessation

- (a) A Member ceases to be a Member if the Member:
 - (i) resigns under clause 4.144;
 - (ii) being a natural person, dies, becomes bankrupt, makes a composition with or assigns the Member's estate for the benefit of the Member's creditors;
 - (iii) being a corporation, becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation);
 - (iv) ceases, in the opinion of the Board, to satisfy the criteria for admission to membership of the Company; or
 - (v) has its membership terminated under clause 4.15.
- (b) If a Member ceases to be a Member, the Board must cause the Company without delay to make the necessary entry in the Register.
- (c) If a Member ceases to be a Member, that Member remains liable to pay to the Company any money which that Member owes to the Company and any amount for which that Member has guaranteed under paragraph 2.3.

5 Directors

5.1 Preliminary

(a) Number of Directors

- (i) The Company must have at least four Directors.
- (ii) The maximum number of Directors is seven.
- (b) **Eligibility for election or appointment as Director**
 - (i) To be eligible to be elected or appointed as a Director a person must:
 - (A) be an individual;
 - (B) be at least 18 years old; and
 - (C) not be otherwise ineligible or disqualified from holding office under this Constitution or the Act.
- (c) **Non-eligibility of Auditor**

Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be elected or appointed as a Director.
- (d) **Other offices held by Directors**

A Director may not hold any other office or position of profit in the Company except on such conditions as the Directors determine by resolution.
- (e) **Period of appointment of Directors**

Each Director will hold office for the term for which they are appointed or elected or if within that term they die or vacate the office under clause 5.4.

5.2 Appointment of Directors

The Board may appoint up to three Directors who need not be Members of the Company. These appointments have full rights as Directors and will be appointed on the basis of their skills and experience and on such conditions and for such terms as detailed in the Charter from time to time.

5.3 Election of Directors

The Board of Directors shall include four elected members.

The election of Directors shall take place in the following manner:-

- (a) Any member of the Company shall be eligible to serve as an Elected Director
- (b) The National Advisory Council will form a Nominations Committee that shall set nomination criteria; propose or accept nominations from suitable candidates; interview or otherwise assess candidates; make recommendations to the National

Advisory Council and such other things as may be necessary to the nomination and assessment process as specified in the Charter from time to time.

- (c) The National Advisory Council will, taking into account the recommendations of the Nominations Committee, elect Directors at a meeting held for that purpose not less than 28 days prior to the Annual General Meeting of the Company.
- (d) Directors so elected will be announced at the Annual General Meeting of the Company and will take office as of that date.
- (e) The term of Elected Directors shall be two years with two Directors elected each year.

5.4 Resignation, cessation and termination of a Director

(a) Vacation of office

- (i) A Director vacates office if the Director:
 - (A) resigns their office by written notice to the Company under clause 5.4(b);
 - (B) is removed from the office of Director by a resolution of the National Advisory Council under clause 5.4(c);
 - (C) fails to attend three consecutive Board meetings without leave of absence from the Board;
 - (D) becomes of unsound mind or whose estate is unable to be dealt with in any way under the law relating to mental health;
 - (E) fails to comply with clause 5.6;
 - (F) is an executive Director under an employment or services agreement with the Company and that agreement terminates, unless the Board determines otherwise; or
 - (G) ceases to be a Director or becomes prohibited from being a Director under the Act.
- (ii) A Director whose office is vacated under clause 5.4(a)(i)(G) is not eligible for re-election until the relevant prohibition no longer applies.

(b) Director may resign

- (i) A Director may resign as a Director of the Company by written notice to the Company.
- (ii) If the resignation of a Director under clause 5.4(b)(i) will cause the number of Directors to fall below the minimum number required by this Constitution or by the Act, the Director must not resign or otherwise vacate their office voluntarily until another Director has been appointed.

(c) Removal of a Director by the National Advisory Council

- (i) Where a Director has done or omitted to do The National Advisory Council may, by Special Resolution:
 - (A) remove a Director from office; and
 - (B) appoint another person as a Director in that Director's place.
- (ii) If the removal of a Director under this clause will cause the number of Directors to fall below the minimum required by this Constitution or the Act, the removal under clause 5.4(c)(i) has no effect until a replacement has been appointed.
- (iii) Notice of intention to move the resolution referred to in clause 5.4(c)(i) must be given to the National Advisory Council at least one month before the meeting called for that purpose.
- (iv) The Company must give the Director a copy of the notice as soon as practicable after it is received.
- (v) The Director is entitled to put their case to the National Advisory Council by:
 - (A) giving the National Advisory Council a written statement for circulation and
 - (B) speaking to the motion at the National Advisory Council meeting (whether or not the Director is a Member of the Company).
- (vi) If a person is appointed to replace a Director removed under this clause, the time at which the replacement Director or any other Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed a Director.

5.5 Remuneration of Directors

(a) Remuneration to be under the Act

Any remuneration that is payable to Directors must comply with the Act.

(b) Remuneration of Directors for extra services

Subject to the Act, if the Directors or Members request a Director to perform services or undertake special exertions in addition to those required by the Act, the Board may determine that the Company remunerate the Director for those services.

(c) Reimbursement of expenses incurred by Director

Subject to the Act, a Director is entitled to reimbursement of the travelling and other expenses that the Director properly incurs:

- (i) in attending Board meetings or any meetings of a committee of Directors;
- (ii) in attending any general meeting of the Company.

(d) Financial benefit

- (i) A Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.
- (ii) The Company must not make loans to Directors or provide guarantees or security for obligations undertaken by Directors except as may be permitted by the Act.

5.6 Conflicts of interest

(a) Prohibition on being present or voting

Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (i) must not be counted in a quorum;
- (ii) must not vote on the matter; and
- (iii) must not be present while the matter is being considered at the meeting.

(b) Material personal interest - Director's duty to disclose

- (i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless an exception in the Act applies.
- (ii) A notice required by clause 5.6(b)(i) must include details of:
 - (A) the nature and extent of the interest; and

- (B) the relation of the interest to the affairs of the Company; and
 - (C) be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter.
- (c) **Director may give standing notice about a material personal interest**
- (i) A Director required to give notice under clause 5.6(b) may give standing notice of the nature and extent of the interest in the matter.
 - (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
 - (iii) A notice under clause 5.6(c)(i) may be given:
 - (A) at a Board meeting either orally or in writing; or
 - (B) to the other Directors individually in writing.
 - (iv) If the standing notice is given to the other Directors individually in writing:
 - (A) the notice is effective when it has been given to every Director; and
 - (B) the notice must be tabled at the next Board meeting after it is given.
 - (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

5.7 Charter

The Board will adopt a Charter in respect of its responsibilities under this Constitution and consistent with generally accepted principles of good governance. Without detracting from the generality of the foregoing, the Charter will include:

- (a) The roles and responsibilities of the Board
- (b) Matters reserved to the Board
- (c) The roles and responsibilities of the Chief Executive and Office Bearers of the Company, including the Board's reporting requirements with respect to the operations of the Company
- (d) The roles and responsibilities of the National Advisory Council, committees and working groups established by the Board
- (e) Procedures and processes for the effective functioning of the Board, the National Advisory Council, committees and working groups

- (f) The ethical behaviour of Board members;
- (g) The basis on which the Charter would be regularly reviewed
- (h) The rights and privileges that shall be accorded to all classes of membership
- (i) The qualifications, experience, restrictions and conditions that shall be attached to Members of the Company and the various classes thereof
- (j) Codes of professional conduct, forms of applications for membership, appointments of proxies, membership records and other documents to be signed issued or maintained in accordance with this Constitution
- (k) The formation, governance and administration of any Branch Council of the Institute.
- (l) The requirements of Accreditation and the establishment of a separate Committee to provide advice and recommendations to the Board on Accreditation.
- (m) The establishment of different categories of membership and admission prerequisites and to the setting of membership and other dispensations or the waiving of fees and conditions.
- (n) Such other things as would promote good governance and the responsible stewardship of the Company.

All Board members, National Councillors, committee and working groups and Members must comply with the Charter.

6 Powers and Duties of the Board

6.1 Powers of Directors

- (a) The business of the Company is to be managed by or under the direction of the Directors.
- (b) The office bearers of the Company shall be the Chair of the Board (National President), Secretary and Treasurer all of whom shall be appointed by the Board from amongst their number.
- (c) The Directors may exercise all of the powers of the Company except any powers that any provision of the Act or this Constitution require the Company to exercise in consultation with the National Advisory Council or in general meeting.
- (d) Without limiting the generality of clause 6.1(c), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the

Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

- (e) If the Directors enter into an agreement on behalf of the Company which will cause a significant change to the objects of the Company or involves the Company disposing of its main undertaking, the Directors must first obtain the Members' approval by ordinary resolution at a general meeting, or must enter into the agreement subject to that approval.

6.2 Directors must keep transactions secret

Every Director and other agent or officer of the Company must:

- (a) keep secret all aspects of all transactions of the Company, except:
 - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (ii) as required by law; or
 - (iii) when requested by the Directors to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

6.3 Delegation by the Directors

- (a) Subject to the Act, the Directors may delegate any of their powers to:
 - (i) a committee or working group comprising such members and/or non-members as necessary for the purpose of the committee or working group;
 - (ii) a Director or Directors;
 - (iii) an employee of the Company; or
 - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it under any directions of the Directors and these shall be detailed in Terms of Reference for each and every committee or working group.
- (c) The Terms of Reference for any standing committees shall be included in the Charter
- (d) The effect of the delegate exercising a power is the same as if the Directors exercised it.

- (e) The Directors may at any time revoke or vary any delegation to a person or committee.

6.4 Seals and execution of documents

- (a) The Directors must provide for the safe custody of any seal of the Company.
- (b) If the Company has a common seal or duplicate common seal:
 - (i) it must be used only by the authority of the Board, or of a committee of the Directors authorised by the Board to authorise its use; and
 - (ii) every document to which it is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.
- (c) The Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

6.5 Negotiable instruments

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

7 Board meetings

7.1 Proceedings of the Board of Directors

The Board may meet together for the dispatch of business adjourn and otherwise regulate its meetings as it sees fit.

7.2 Directors' resolution without a meeting

- (a) The Directors may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign or assent to a document (which may include an electronic transmission) containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

- (c) The resolution is passed when a majority of Directors sign or assent in writing (including email).

7.3 Calling Board meetings

A Director may at any time, and the Secretary on the request of a Director must, call a meeting of the Board.

7.4 Notice of meeting

Notice of every Board meeting must be given to each Director, but failure to give or receive that notice will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error, or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

7.5 Conduct of Board meetings

- (a) A Board meeting may be called and held:
 - (i) in person;
 - (ii) by telephone;
 - (iii) by audio-visual linkup; or
 - (iv) by use of any technology consented to by a majority of the Directors before or during the relevant meeting.
- (b) Any consent under clause 7.5(a)(iv) may be a standing consent.
- (c) If a Director gives their consent under clause 7.5(a)(iv) they may only withdraw their consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a meeting where the meeting is conducted by telephone, audio-visual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A meeting conducted by telephone, audio-visual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, a majority of Directors

attending the Directors' meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.

- (h) Subject to this clause 7, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

7.6 Chairing Board meetings

- (a) At the first Board meeting immediately following the AGM the Directors must elect a Director to the office of Chair of the Board. This position will be known as the National President.
- (b) The Chair of the Board (National President) must be an Elected Director.
- (c) The period for which the Chair is to hold office will be two years and they shall be eligible for re-election for a maximum 2 additional terms.
- (d) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
 - (i) no Chair has been elected; or
 - (ii) the Chair is not available or declines to act as Chair for the meeting or part of it.

This is a temporary appointment provision and does not result in the appointee becoming National President.

7.7 Voting by Chair at Board meetings

In case of an equality of votes on a resolution at a Board meeting, the Chair will have a second or casting vote on that resolution in addition to any vote the Chair has in his or her capacity as a Director in respect of that resolution, other than in the case where there are only two Directors competent to vote on the question at issue.

7.8 Quorum at Board meetings

- (a) The quorum for a Board meeting is at least half of the current number of Directors including a majority of Elected Directors, and the quorum must exist at all times during the meeting.
- (b) If, and so long as, a quorum does not exist for the consideration of a particular matter at a Board meeting because one or more of the Directors is prohibited from voting under clause 5.6(a), the Directors, including the Director or Directors prohibited, are entitled to vote on a resolution to call, and put the matter before, a meeting of the National Advisory Council.

7.9 Meeting competent to exercise all powers

A Directors' meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

7.10 Passing of Directors' resolutions

A resolution of the Directors will be passed if a majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.

7.11 Resolution passed deemed to be a determination of the Board

Any resolution properly passed at a duly called Directors' meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

7.12 Committee and Working Group powers and meetings

- (a) Any committee or working group may exercise the powers delegated to it under any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee or working group will be included in their Terms of Reference.

7.13 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or Member of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

All acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

8 National Advisory Council

8.1 The Company will form a National Advisory Council to provide guidance, advice and input to the Board.

(a) Branch Council representation

Each Branch Council is entitled to appoint one Councillor to the National Advisory Council. The National Advisory Council may appoint additional Councillors from

Branch Councils or from within the membership of the Company as detailed in the Charter from time to time.

(b) Chair of the National Advisory Council

The National President will act as Chair at meetings of the National Advisory Council and will have a casting vote in the event of an equality of votes but shall not otherwise have a deliberative vote at National Council meetings.

(c) Proceedings of the National Advisory Council

The National Advisory Council shall meet together for the conduct of business as provided for in the Charter from time to time.

9 General meetings

9.1 An Annual General Meeting of the Company shall be held in accordance with the provisions of the Law.

9.2 Right to call and attend general meetings

(a) Calling a general meeting

- (i) Any three Directors may whenever they think fit convene a General Meeting.
- (ii) General Meetings shall also be convened by the Secretary upon the requisition of not less than 50% of the members or as provided by the Act.
- (iii) The request must:
 - (A) Be in writing
 - (B) State any resolution to be proposed at the General Meeting
 - (C) Be signed by the members making the request; and
 - (D) Be given to the Company
- (iv) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy
- (v) The Secretary must call the General Meeting within 14 days after the request is given to the Company. The General Meeting must be held not later than 2 months after the request is given to the Company.

9.3 Notice of general meetings

(a) Amount of notice of general meetings

Subject to the Act, at least 21 days' notice must be given of a general meeting.

(b) Calculation of period of notice

In computing the period of notice under clause 9.3(a), both the day on which the notice is given or taken to be given and the day of the general meeting called by it are to be disregarded.

(c) Right to notice of general meeting

Written notice of the general meeting must be given under clause 9 and must be given to any person entitled to receive notice under the Act including:

- (i) each Member entitled to vote at the meeting;
- (ii) each Director; and
- (iii) the Auditor (if any) of the Company.

(d) Content of notice

A notice calling a general meeting must comply with the Act and must:

- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (ii) state the general nature of the business to be considered at the general meeting;
- (iii) if a Special Resolution is to be proposed at the general meeting, set out an intention to propose a Special Resolution and state the resolution;
- (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (A) that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
- (v) be accompanied by an instrument of proxy in any form as the Directors may from time to time prescribe or accept; and
- (vi) contain information that is worded and presented in a clear, concise and effective manner.

9.4 Conducting general meetings

(a) Time and place for general meetings

A general meeting must be held at a reasonable time and place.

(b) Technology

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.

(c) Quorum for a general meeting

The quorum for a general meeting is 20 Members present in person or by proxy and the quorum must be present at all times during the meeting.

(d) Determination of quorum at general meeting

In determining whether a quorum is present at a general meeting:

- (i) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
- (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted.

(e) Absence of quorum at a general meeting

- (i) If within 30 minutes after the time for the general meeting set out in the notice of general meeting a quorum is not present, the general meeting:
 - (A) if called under the Act by a Director at the request of Members or by Members, is dissolved; and
 - (B) in any other case, is to be adjourned to a date, time and place as specified by the Directors or continued in accordance with 8.5(f).
- (ii) If the Directors do not specify one or more of the requirements in clause 9.4(e)(i)(B), the general meeting is adjourned to:
 - (A) if the date is not specified, the same day of the following week;
 - (B) if the time is not specified, the same time; and
 - (C) if the place is not specified, the same place.

(f) **Adjourned meeting (quorum)**

If no quorum is present at the general meeting under clause 9.4(e) within 30 minutes after the time for the general meeting, the Directors may, in their absolute discretion, declare the meeting dissolved or deem that those Members present in person or by proxy form a quorum and may transact the business for which the meeting was called.

(g) **Appointment and powers of Chair of general meeting**

The Chair (National President) will be entitled to take the chair at general meetings.

(h) **Absence of Chair at general meeting**

- (i) If there is no Chair, or if the Chair is unable or unwilling to chair a general meeting, the Directors may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.
- (ii) If a general meeting is held and the Chair, or the person elected under clause 9.4(h)(i), is not present within 30 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may take the chair of the meeting (in order of precedence):
 - (A) the deputy chair (if any);
 - (B) a Director chosen by a majority of the Directors present;
 - (C) the only Director present;
 - (D) a person (whether a Member or not) chosen by a majority of the Directors present; or
 - (E) a Member chosen by a majority of the Members present in person or by proxy or Representative who are entitled to vote at the meeting.
- (iii) If an acting chair becomes unwilling or unable to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.
- (iv) Any person taking the chair of the general meeting under this clause will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this Constitution.

(i) **Powers of the Chair and conduct of general meetings**

- (i) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.

- (ii) Any decision of the Chair is final.
- (iii) The Chair may delegate any power conferred by this clause to any person.

9.5 Adjournment of general meetings

(a) Adjournment of general meeting by Chair

- (i) The Chair may, during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (ii) The Chair must adjourn a general meeting if the Members present in person or by proxy or Representative with a majority of votes at the meeting agree or direct that the Chair must do so.
- (iii) If any general meeting is adjourned for more than one month, a notice of the adjournment must be given to the Members in the same manner as notice was or ought to have been given of the original meeting.

(b) Resumption of adjourned general meeting

- (i) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 9.5(a).
- (ii) The resumed meeting may only be adjourned by the Chair.

9.6 Resolutions, voting and polls at general meetings

(a) Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

(b) Resolution determined by majority

At a general meeting, all resolutions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this Constitution or the Act.

(c) Voting by Chair at general meetings

In case of an equality of votes on a resolution at a general meeting the Chair of that meeting does not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

(d) **How voting is carried out**

- (i) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under clause 9.6(f), or by the Act, either before, on or immediately after the declaration of the result of the vote on a show of hands.
- (ii) On a show of hands, a declaration by the Chair that a resolution has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes is conclusive evidence of the result.
- (iii) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

(e) **Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

- (i) the election of the Chair; or
- (ii) the adjournment of the general meeting.

(f) **Demand for poll**

Subject to clause 9.6(e), a poll may be demanded on any resolution by:

- (i) the Chair;
- (ii) at least five Members present in person or by proxy or by representative; or
- (iii) Members holding not less than five percent of the total voting rights of all Members having the right to vote on the resolution.

(g) **Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken.

(h) **Right to vote at general meetings**

Subject to this Constitution, the Act, and any rights or restrictions attached to any class of Members, at a general meeting each Member present in person or by proxy or Representative has one vote.

(i) **Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (i) may only be made at the meeting or adjourned meeting; and

- (ii) must be determined by the Chair whose decision if made in good faith is final.

9.7 Proxies and Representatives

(a) Appointment of proxies and Representatives

- (i) A Member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Member is a body corporate, a Representative to attend and cast a vote at that meeting.
- (ii) If a proxy appointed to attend and cast a vote at a general meeting under clause 9.7(a)(i) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (iii) Neither the proxy nor the Representative need be a Member.
- (iv) Any proxy or Representative appointed under this clause must be appointed under Division 6 of Part 2G.2 of the Act, and will have the rights set out in that Division.

(b) Appointment received at electronic address

For the purposes of clause 9.7(a), an appointment received at an electronic address will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated under the Act.

10 Directors' and Members' minutes

10.1 Minutes

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors.

10.2 Minutes to be signed by chair

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the chair of the meeting or

by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

10.3 Members' access to minutes

- (a) The Directors must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Directors must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Directors determine that payment should be made for the copies, within 14 days after the Company receives the payment.

11 Secretary

11.1 Appointment of Secretary

The Board must appoint one or more persons to the office of secretary to the Company.

11.2 Notification to ASIC

- (a) Once a Secretary is appointed, the Secretary must notify ASIC of the appointment.
- (b) The Directors may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

11.3 Terms and conditions of appointment

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Board determines.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

12 Auditor

12.1 Appointment of Auditor

The Board must appoint one or more persons to the office of Auditor to the Company unless the Members at general meeting have appointed an Auditor.

12.2 Auditor and meetings of Members

- (a) The Auditor is ineligible to be elected or appointed as a Director.
- (b) The Auditor is entitled to receive notice of, attend, and be heard at general meetings.

13 Company books

13.1 Registers

In accordance with the Act, the Board must cause the Company to keep:

- (a) a register of the holders of any debentures issued by the Company; and
- (b) a register of charges.

13.2 Financial records and statements

(a) Financial records

- (i) The Board must cause financial and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair statements of financial performance and financial position to be prepared to permit preparation of any other documents required by the Act or this Constitution.
- (ii) The records must be kept:
 - (A) in a manner which will enable them to be conveniently and properly audited;
 - (B) for seven years after the completion of the transactions or operations to which they relate; and
 - (C) at the Registered Office or at any other place as the Board thinks fit and at all times be open to inspection by the Board.

(b) Financial, Directors' and Auditor's reports

At each annual general meeting, the Board must lay before the Company a financial report, a Directors' report and an Auditor's report for the last financial year of the Company that ended before that annual general meeting which comply with all applicable provisions of the Act.

(c) Financial statements and reports

The Company must cause copies of the Company's financial statements and other reports to be lodged with ASIC and sent to holders of its securities as required by the Act.

13.3 Inspection

(a) Inspection of financial records

- (i) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
- (ii) Subject to the Act, a majority of the Directors may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the financial records and other books of the Company.
- (iii) This clause does not limit the rights of a Director or former Director to inspect the books of the Company under the law.

(b) Copying financial records

- (i) After inspecting the financial records a Member may request permission to copy them.
- (ii) The request under clause 13.3(b)(i) must be in writing, must specify the records the Member wishes to copy and must be delivered to the Company at its Registered Office.
- (iii) Subject to the Act, the Board must consider the request at their next meeting and may (but need not) consent to the request or any part of the request on any terms as they think fit.

13.4 Audit

(a) Financial statements to be audited

The financial statements of the Company for each financial year must be audited by the Auditors under the Act.

(b) Approval of financial statements

- (i) The financial statements of the Company once put before an annual general meeting will be conclusive except as regards any error identified within three months after the date of that meeting.
- (ii) If any error is identified within the period referred to in clause 13.4(b)(i), the financial statements must then be corrected and are then conclusive.

14 Notices

14.1 A notice may be given by the Company to any member either:

- 14.1 personally; or

- 14.2 by sending by post to the member at the member's registered office or the address supplied by the member to the Company for giving of notices to the member; or
- 14.3 to any address given by the member to the Company for the delivery of facsimile messages or messages transmitted by electronic or like means.
- 14.4 where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice and to have been effected (except in the case of a notice of a meeting) at the time at which the letter would be delivered in the ordinary course of post
- 14.5 in the case of a facsimile notice or an electronic notice (except in the case of a notice of meeting) to be effected by properly addressing the facsimile or notice to the electronic address and dispatching the same by the appropriate electronic means and to have been effected four hours after the time of transmission.
- 14.6 any notice by a court of law or otherwise required or allowed to be given by the Company to members or any of them by advertisement shall be sufficiently advertised if advertised once in one daily newspaper circulating in the State or Territory capital city and metropolitan area of the State or Territory in which the majority of the members have a registered address and in case of joint holders shall be the address of the joint holder who is first named on the register of members.

14.2 Signatures

Where, by a provision of this Constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Directors.

15 Chief Executive Officer

- 15.1 A Chief Executive Officer may be employed by the Board for such term and upon such conditions as the Board may from time to time determine
 - (a) The Chief Executive Officer has and may exercise such functions as are conferred or imposed on them by the Board and contained in the Charter
 - (b) The Board may, from time to time, appoint a person to act as Chief Executive Officer during the illness or absence of the Chief Executive Officer and the person, while so acting, has and may exercise all of the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer.

16 Proceedings involving officers

16.1 Indemnity

(a) Company to indemnify officers and other persons

- (i) Subject to clause 16.1(a)(ii), the Company must indemnify any current or former Director, Secretary, chief executive officer of the Company or of a related body corporate of the Company or any person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company, out of the property of the Company against:
 - (A) every liability incurred by the person in that capacity (except a liability for legal costs); and
 - (B) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity.
- (ii) Clause 16.1(a)(i) does not apply to the extent that:
 - (A) the Company is forbidden by the Act or other statute to indemnify the person against the liability or legal costs; or
 - (B) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by the Act or other statute.

(b) Company may indemnify employee

The Company may indemnify any employee of the Company at the discretion of Directors.

16.2 Payments and advances to officer

(a) Payment of costs, losses and expenses

Subject to this Constitution, the Act, or other statute, the Company may pay all costs, losses and expenses which a person referred to in clause 16.1(a)(i) might incur or become liable to pay by reason of any contract entered into or act or thing done by them as such a person or in any way in discharge of their duties.

(b) Advances on account of costs, losses and expenses

- (i) Subject to the Act or other statute, the Company may make an advance, on account of anticipated costs, losses and expenses, to a person referred to in clause 16.1(a)(i) to assist the person in defending any proceeding brought against the person in that capacity.

- (ii) If the Company makes an advance to a person under clause 16.2(b)(i) the person must repay that advance if:
 - (A) judgment is not given in the person's favour;
 - (B) the person is not acquitted; or
 - (C) a court subsequently determines that the indemnification is not permitted.

16.3 Insurance

(a) Company may pay premium

Subject to clause 16.3(b), the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a related body corporate of the Company, or any person who takes or has taken part in, or is or has been concerned with, management of the Company or a related body corporate of the Company, against liability incurred by the person in that capacity, including a liability for legal costs.

(b) Payment of premium prohibited in certain circumstances

Clause 16.3(a) does not apply to the extent that:

- (i) the Company is forbidden by the Act or other statute to pay or agree to pay the premium; or
- (ii) the contract would, if the Company paid the premium, be made void by the Act or other statute.

17 Winding up

17.1 Rights of Members on winding up

If the Company is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of the Company.

17.2 Distribution of assets

- (a) If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities shall, at the direction of the Members, be given or transferred to some other institution or institutions:
 - (i) which has objects similar to the objects of the Company; and

- (ii) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 2.2(b)(ii).
- (b) For the purposes of clause 17.2(a), the Board shall identify the institution or institutions at the time of dissolution.
- (c) If the Board fails to identify the institution or institutions under clause 17.2(a), the Supreme Court of Victoria shall make that determination.