

**CONSTITUTION  
OF  
THE AIR AND MINE EQUIPMENT INSTITUTE  
OF  
AUSTRALASIA**

**ABN 33 068 107 586**

**(A Company Limited by Guarantee)**

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**As adopted by Special Resolution**

**On and from 17 November 2015**

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**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Constitution unless the context otherwise requires:

**Act** means the Corporations Act 2001 (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it or any other relevant legislation including the Australian Charities and Not-for-profits Commission Act 2012 and the Privacy Act 1988 (Cth);

**Board** means the Board of Directors of the Company for the time being or such number of Directors as has authority to act for the Company;

**Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;

**CEO** means the Chief Executive Officer of the Company;

**Committee** or Committees means a Board advisory or delegated committee or committees, Board, group or other body as authorised by the Board;

**Company** means the Air and Mine Equipment Institute of Australasia (ABN 33 068 107 586), a company limited by guarantee, (which may also be known or referred to as the "Compressed Air Association of Australasia" (**CAAA**));

**Director** means a formally appointed member of the Board and Officer of the Company;

**Financial Year** means a 12 month period ending on 30 June;

**Member** means the members as defined in rule 7;

**Office** means the registered office of the Company;

**Office Bearer** means the Chair, Vice-Chair or Treasurer of the Company;

**Organisation** means a body corporate, company, corporation or incorporated association, club or other incorporated body whether incorporated in a state or territory of Australia or elsewhere;

**Register** means the register of Members of the Company kept in accordance with rule 7.10;

**Representative** means a person appointed as such under rule 7;

**Secretary** means the person appointed to serve as secretary of the Company;

**Special Majority** means a majority of at least 75% of the votes cast by Members or Directors as relevant.

In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
- (d) headings are for ease of reference only and do not affect the construction of this Constitution.

- 1.2 This Constitution replaces the Memorandum and Articles of Association dated 21 December 1994. As of the date of the adoption of this Constitution, all persons who are Members of the Air And Mine Equipment Institute of Australasia (which may also be known or referred to as the CAAA) will be deemed to have agreed to continue to be bound by this Constitution, and the rules, by-laws, codes and policies (**Regulations**) as adopted by the Company from time to time.

## 2. REPLACEABLE RULES EXCLUDED

Subject to Part 2B.4 of the Act, the replaceable rules do not apply to the Company.

## 3. OBJECTS AND POWERS

### 3.1 THE COMPANY

The Company:

- (a) is a company limited by guarantee;
- (b) will operate predominately for the promotion, development and attainment of its objects;
- (c) will apply any profits or income in promoting its objects; and
- (d) is not carried on for the purpose of profit or gain to its individual Members.

### 3.2 OBJECTS

The objects for which the Company is established are:

- (a) to promote and further the public interest in relation to the industry dealing with air and gas compressors, pneumatic, hydraulic or diesel machinery, load haul

dumpers, drilling and mining equipment and consumables and other related or similar products or services (“**the Sector**”);

- (b) to advance education and advance the safety and security of the public in relation to the Sector, including through the following:
  - (i) to develop and publish standards and engineering information relating to the machinery, equipment and consumables offered for sale or otherwise dealt with by the Sector;
  - (ii) to disseminate and promote the dissemination of the science and knowledge of the Sector;
  - (iii) to establish and promote standards of professional education, training and knowledge qualifications in the Sector;
  - (iv) to seek improvements (including safety improvements) in the goods and services the Sector offers to the public;
  - (v) to represent Members before government and other bodies in matters relating to the Sector and to make representations to government, industry, educators and the media with regard to matters of relevance to the Sector;
  - (vi) to hold and participate in events (including conferences, meetings, discussions, exhibitions and other functions of a professional nature, relevant to the knowledge, practice and advancement of the Sector), for Members and non-Members of the Company, and for the benefit of Members, non-Members and the public at large;
  - (vii) to hold and participate in national and international exchange of knowledge and thought in the Sector with any persons and organisations;
  - (viii) to subscribe to, become a Member of or co-operate with any other company, society or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company;
  - (ix) To engage in educational and research activities relating to the Sector; and
  - (x) To collect and disseminate information of value to its Members and to the public.
- (c) to 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.

### 3.3 **POWERS**

The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.

#### **4. APPLICATION OF INCOME AND PROPERTY**

4.1 The income and property of the Company, from wherever it is derived, will be applied solely towards the promotion of the objects of the Company set out in rule 3.

4.2 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise, to the Members.

4.3 Rule 4.1 does not prevent:

- (a) the payment in good faith of an honorarium or remuneration to any officer, employee or Member in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
- (b) the payment of reasonable and proper rent by the Company to a Member for premises leased by the Member to the Company; or
- (c) the reimbursement of approved expenses incurred by any Member on behalf of the Company.

#### **5. LIMITED LIABILITY**

The liability of the Members is limited.

#### **6. GUARANTEE**

6.1 Every Member undertakes to contribute an amount not exceeding \$100.00 to the property of the Company in the event of its being wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:

- (a) of the debts and liabilities of the Company (contracted before the Member ceases to be a Member);
- (b) of the costs, charges and expenses of winding up; and
- (c) for the adjustment of the rights of the contributories among themselves.

#### **7. MEMBERSHIP**

##### **7.1 NUMBER OF MEMBERS**

The number of Members is unlimited.

##### **7.2 MEMBERSHIP**

The Members of the Company are:

- (a) the Members of the Air And Mine Equipment Institute of Australasia (which may also be known or referred to by Members as the CAAA) at the date of the adoption of this Constitution; and
- (b) the subscribers to the Company; and
- (c) such other persons the Board admits to Membership in accordance with this Constitution.

### 7.3 **CLASSES OF MEMBERSHIP**

As from the date of adoption of this Constitution, the Company has, as determined by the Board from time to time, the following classes of Members:

(a) **Full Member**

A business, company or other entity which is actively engaged in the sale, manufacture or import of goods in the Sector.

(b) **Associate Member**

A person, business, company or other entity allied with the Sector.

### **MEMBERSHIP RIGHTS**

7.4 Subject to this Constitution, Membership of the Company confers on a Member all rights and privileges of Membership.

7.5 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

7.6 The rights and privileges of each class of Membership are as determined by the Members from time to time.

7.7 Members are entitled to be a member of a Committee, special interest group or sub-Committee of the Board or be appointed as a delegate of the Company as approved by the Board from time to time in its discretion.

### 7.8 **APPLICATION FOR MEMBERSHIP**

(a) An application for Membership will be made in accordance with the rules of membership as agreed by the Board from time to time.

(b) By lodging of an application for Membership, the applicant agrees to be bound by the Constitution of the Company and any other Regulations of the Company.

(c) Admission to membership is at the absolute discretion of the Board.

### 7.9 **REPRESENTATIVES**

#### **Corporation as a Member**

(a) Any corporation which is a Member of the Company may authorise, in writing, any person it considers fit to act as its Representative at any General Meeting of the Company.

(b) Any person so authorised will be entitled to exercise the same powers on behalf of the corporation he / she represents as that corporation could exercise if the corporation was an individual member of the Company.

- (c) A certificate executed in accordance with section 127 of the Act is rebuttable evidence of the appointment or removal of the appointment (as appropriate) of the Representative.

**Representative entitlements:**

- (a) A Representative will be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Representative.
- (b) The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by, and to the satisfaction of, the chairperson.
- (c) The appointment of a Representative may set out restrictions on the Representative's powers.
- (d) A Representative may be appointed to the Board in accordance with rule 14.

**7.10 REGISTER OF MEMBERS**

- (a) A register of Members of the Company will be kept in accordance with the Act.
- (b) The Secretary may also enter in the Register such other information as the Board determines from time to time.
- (c) Each Member will notify the Secretary in writing of any change in that person's name or contact details, within 1 month after the change.

**8. FEES & UNPAID SUBSCRIPTIONS**

**8.1 FEES**

The annual subscription payable by a Member of the Company as prescribed under the Regulations is the sum recommended from time to time by the Board.

**8.2 UNPAID SUBSCRIPTIONS**

If the annual subscription of a Member remains unpaid for 3 months after it becomes payable, the Member ceases to be a Member.

**9. CEASING TO BE A MEMBER**

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

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if a liquidator is appointed in connection with the winding-up of the Member; or
- (c) if an order is made by a Court for the winding-up or deregistration of the Member.

9.2 Any member ceasing to be a member will remain liable for and will pay to the Company any moneys which were due to the Company at the date of ceasing to be a Member.

## **10. POWERS OF ATTORNEY**

10.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company.

10.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

10.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## **11. MEETINGS OF THE COMPANY**

### **11.1 ANNUAL GENERAL MEETING**

(a) An Annual General Meeting of the Members must be held before the end of November in each year.

(b) The Board will determine the time and the place of the Annual General Meeting.

### **11.2 CALLING MEETINGS OF MEMBERS**

(a) The Board must call a General Meeting as required under the Act or if the Company receives a written request from the lesser of:

(i) at least five percent (5%) of Members who are entitled to vote at a General Meeting;

and the written request must:

(ii) state the resolution to be proposed at the General Meeting; and

(iii) be signed by all the Members making the request.

(b) If Members requisition a General Meeting in accordance with rule 11.2(a),

(i) the Board must call the General Meeting within 21 days after the request is given to the Company; and

(ii) the meeting must be held within 2 months after the request is given to the Board.

(c) If the Board does not call a General Meeting that was requisitioned by Members in accordance with rule 11.2(c), then Members with more than 50% of the votes of all the Members who made the request may call and arrange to hold a General Meeting.



## **12. NOTICE REQUIREMENTS**

12.1 At least 21 days' notice must be given of a meeting of Members unless the Act permits shorter notice.

12.2 Subject to rule 12.1, a notice of a meeting of Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places), and the technology that will be used to facilitate the meeting; and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out that the Member has a right to appoint a proxy.

## **13. PROCEDURES AT MEETINGS**

### **13.1 ANNUAL GENERAL MEETING BUSINESS**

The business of the Annual General Meeting will be to:

- (a) receive and consider the report of the Board;
- (b) consider the annual financial report and auditor's report;
- (c) consider any proposed alteration to the Constitution;
- (d) in accordance with the Constitution, declare the result of the election of Members of the Board in place of those retiring; and
- (e) transact any other business which ought to be transacted at an Annual General Meeting.

### **13.2 QUORUM AT A GENERAL MEETING**

- (a) Business may not be transacted at a General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business and while business is being conducted.
- (b) If there are 3 or more Members, two-thirds of the Members present in person and entitled to vote at a General Meeting is a quorum.
- (c) If a quorum is not present within 15 minutes of the time appointed for a General Meeting, or a longer period allowed by the Chairperson, the meeting will stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Chairperson.

- (d) At an adjourned meeting, if a quorum is not present within 15 minutes of the time appointed for the meeting, the Members present and entitled to vote will be a quorum and may transact the business for which the meeting was called.

### 13.3 CHAIRPERSON

- (a) A General Meeting will be chaired by:
  - (i) the Chairperson of the Board; or
  - (ii) if the Chairperson is absent or unable or unwilling to act, the Deputy Chairperson of the Board; or
  - (iii) if both the Chairperson and the Deputy Chairperson are absent or unable or unwilling to act, a Director elected by the Members present.
- (b) Subject to this Constitution, the Chairperson's ruling on all matters relating to the order of business and the procedure and conduct of a General Meeting (including any poll or ballot) is final and no motion of dissent from a ruling of the Chairperson may be moved.

### 13.4 ADJOURNMENT OF MEETINGS

- (a) The Chairperson may, with the consent of any meeting at which a quorum is present, and must, if directed by the meeting, adjourn the meeting to another time and to another place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

### 13.5 VOTING

- (a) At a General Meeting, a resolution put to the vote of the meeting is decided on a show of hands unless a ballot is (before or on the declaration of the result of the show of hands) demanded.
- (b) Subject to this Constitution, every Member present in person has one vote on a show of hands and every member present in person or by proxy has one vote on a ballot.
- (c) If there is an equality of votes, whether on a show of hands or on a ballot, the Chairperson has a casting vote in addition to the Chairperson's deliberative vote.
- (d) An objection to the qualification of a voter must be referred to the Chairperson who must rule on the objection before a vote is taken.

- (e) If a ballot is not duly demanded, a declaration by the Chairperson that, on a show of hands, a resolution has been carried (either unanimously or by a particular majority) or lost and an entry to that effect in the book containing the minutes of the General Meetings of Members is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### 13.6 CONDUCT OF BALLOT

- (a) A ballot may not be taken on the election of a Chairperson or on a question of adjournment.
- (b) A ballot may be demanded by:
  - (i) the Chairperson; or
  - (ii) the number of Members who constitute a quorum present in person or by proxy entitled to vote. The demand for a ballot may be withdrawn.
- (c) The demand for a ballot does not prevent the continuance of a meeting for the transaction of business other than the question on which the ballot is demanded.
- (d) If a ballot is duly demanded, it must be taken in the manner and at such time as the Chairperson directs. The result of the ballot is the resolution of the meeting on the question concerned.

### 13.7 PROXIES

- (a) A document appointing a proxy (which for the purposes of this Constitution includes a power of attorney of a member appointing another Member to vote on the Member's behalf) may be in the form issued with the notice of the meeting or in a common or usual form approved by the Board.
- (b) A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution other than as specified in the document (if any).
- (c) The document appointing a proxy and any power of attorney or other authority (if any) under which the proxy is signed must be given (and may be given by electronic transmission) to the Company at the Office, or at another place specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting.
- (d) A vote given in accordance with the terms of a document appointing a proxy is valid despite the occurrence of any one or more of the following events if no notice in writing of any of those events has been received by the Secretary at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- (i) the previous death or unsoundness of mind of the principal; or
- (ii) the revocation of the instrument or of the authority under which the instrument was executed; or
- (iii) the termination of membership of the Member.

### **13.8 ELECTRONIC BALLOT**

- (a) In respect of any business which validly may be considered at a General Meeting (including an Annual General Meeting) pursuant to this Constitution, the Board may (in lieu of a meeting) conduct an Electronic Ballot of Members ('Electronic Ballot').
- (b) At least 30 days prior to the closing date of an Electronic Ballot, the Secretary will send by any means determined by the Board, to each Member entitled to vote:
  - (i) ballot papers giving particulars of the business in relation to which the Electronic Ballot is being conducted;
  - (ii) an explanation of the method of voting and a voting form (all in a form and with such content as the Board may approve); and
  - (iii) provide a notice of the closing date of the ballot.
- (c) The Secretary will receive all voting forms received from Members in respect of an Electronic Ballot and will promptly advise the Board of the result of the Electronic Ballot. Any voting form received at the Office after 5:00pm on the closing date of an Electronic Ballot will be deemed invalid and will not be counted.
- (d) In the event of an equal number of votes in respect of any business for which an Electronic Ballot is conducted, the Chairperson will have a second or casting vote.
- (e) In all other respects, subject to this Constitution, the Board will determine any other procedures in relation to the conduct of any Electronic Ballot and will have power to make Regulations for that purpose.
- (f) In the event of any dispute by any member in relation to the validity or conduct of any Electronic Ballot the Member will, within 30 days of the closing date of the Electronic Ballot, give notice in writing to the Board stating the grounds of his or her complaint. The Board itself may investigate the complaint or may appoint a Committee for that purpose. After hearing the complaint, the Board will determine the matter and its decision will be final.

## **14. THE BOARD OF DIRECTORS**

### **14.1 MANAGE GENERAL BUSINESS OF THE COMPANY**

- (a) The business of the Company will be managed by the Board of Directors, which may exercise all powers of the Company as are not required by the Law or by this Constitution, required to be exercised by the Company in General Meeting.
- (b) No Regulation made by the Company in General Meeting will invalidate any prior act of the Board, which would have been valid if that resolution or Regulation had not been passed or made.
- (c) The Board will invest the funds of the Company not immediately required for the purposes of the Company, in any one or more of the modes of investment from time to time authorised by law for the investment of trust funds.
- (d) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company will be signed, drawn, accepted, endorsed or otherwise executed as the Board from time to time determines.

#### **14.2 POWER TO DELEGATE**

- (a) The Company may delegate any of its powers (other than that of delegation) to Committees comprising persons appointed by the Board.
- (b) The Board may revoke any delegation of its powers by ordinary resolution.
- (c) Any Committee exercising the delegated power of the Board will comply with any conditions or limitations imposed by the Board.

#### **14.3 REGULATIONS**

- (a) The Board will have power from time to time to make, amend and repeal all such Regulations as it deems necessary or desirable for the proper conduct and management of the Company, the regulation of its affairs and the furtherance of its Objects.
- (b) Without in any way limiting the power of the Board, the Board may make, amend and repeal Regulations in relation to:
  - (i) procedural matters in relation to application for membership of the Company;
  - (ii) fees and annual subscriptions payable by Members of the Company;
  - (iii) rights and privileges to be accorded to Members of the Company;
  - (iv) the conduct of electronic ballots of Members of the Company;
  - (v) the nomination and election procedures of Directors and the Office bearers of the Company; and
  - (vi) the membership, purpose and proceedings of Committees of the

Company.

- (c) No Regulation will be inconsistent with, nor will it affect the repeal or modification of, anything contained in this Constitution.
- (d) Any Regulation made by the Board may be set aside by an ordinary resolution of a General Meeting of the Company.
- (e) Subject to rule 14.3(d), all Regulations will be binding upon all Members. A record of all Regulations will be kept in such place as the Company determines.

#### **14.4 ELIGIBILITY**

Only the nominated Representative of a Full Member may be appointed to the Board.

#### **14.5 NUMBER OF DIRECTORS**

The number of Directors will be up to seven (7).

#### **14.6 ELECTION OF DIRECTORS**

- (a) All Directors will be appointed by the Members by election at an Annual General Meeting.
- (b) The CEO (if any) will be an ex-officio member of the Board for the period of appointment as CEO.
- (c) An election must be conducted at each Annual General Meeting at which a Director is scheduled to retire.
- (d) The election result must be declared by the Company at the Annual General Meeting and the appointment will take effect at the end of the meeting.
- (e) Each election will be decided by majority vote of Members present and entitled to vote.

#### **14.7 TERM OF OFFICE OF DIRECTORS**

- (a) The elected term of office of Directors will be twelve (12) months, commencing at the Annual General Meeting in the year of their election.
- (b) A Director will be eligible for re-election provided that no Director will serve more than four (4) consecutive terms as a Director.

#### **14.8 REMUNERATION OF DIRECTORS**

- (a) Each Director must act on a voluntary basis and is not entitled to be paid a fee for his or her service as a Director.

- (b) A Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as has been approved by the Directors.

#### **14.9 REMOVAL OF DIRECTORS**

- (a) A Director may be removed from office by ordinary resolution of a general meeting of the Company.
- (b) If a Director is removed in accordance with rule 14.9(a), the Company may appoint another qualified person to fill the vacancy created for the remaining term of the Director who was removed from office.

#### **14.10 CASUAL VACANCIES**

- (a) A casual vacancy will mean any vacancy in the membership of the Board.
- (b) The Board may appoint a Director to fill a casual vacancy providing the appointment complies with rule 14.4.
- (c) Directors appointed to fill casual vacancies will hold office until the next Annual General Meeting.

#### **14.11 CONDITIONS OF VACATION OF OFFICE**

The office of a Director is vacated:

- (a) upon the Director resigning office by notice in writing to the Company;
- (b) upon the Director becoming an insolvent under administration, suspending payment generally to creditors or compounding with or assigning the Director's estate for the benefit of creditors;
- (c) upon the Director becoming a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws relating to mental health;
- (d) upon the Director being absent from meetings of the Board for three (3) consecutive meetings without leave of absence from the Board where the Board has not, within fourteen (14) days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (e) upon the Director being removed from office pursuant to the Act; or
- (f) upon the Director being prohibited from being a Director by reason of the operation of the Act.

#### **14.12 CHAIRPERSON, VICE-CHAIR AND TREASURER**

- (a) At each Annual General Meeting, the Directors will elect from their number a Chairperson, a Vice-Chair, and a Treasurer.

- (b) The Chairperson will chair all meetings of the Board.
- (c) The Chairperson will be entitled to stand for re-election for not more than three (3) further consecutive terms as Chairperson.
- (d) If the Chairperson is not present at any meeting of the Board within fifteen minutes after the time appointed for holding the meeting, the Vice-Chair will take the chair. In the absence of both the Chairperson and the Vice-Chair, the Directors present will elect another Director to be Chairperson of the meeting.

#### **14.13 DEFECTS IN APPOINTMENT OR QUALIFICATION OF DIRECTOR**

All acts done in good faith by a meeting of the Board, a Committee of the Board, or by any person acting as a Director or Committee member of the Company will be valid and effective notwithstanding that it is afterwards discovered that there was some defect in the appointment of that person or that the person was disqualified from acting for any reason.

#### **14.14 DIRECTOR'S INTERESTS**

- (a) This rule 14.14(a) applies if:
  - (i) a Director has an interest or duty in relation to a matter that is not a material personal interest; or
  - (ii) a Director with a material personal interest in relation to the Company's affairs:
    - (A) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs before acting in a matter that relates to the interest; or
    - (B) does not have to disclose his or her material personal interest to the other Directors under the Act.
- (b) Subject to rule 14.14(a), a Director is not in breach of his or her duties to the Company merely because he or she acts in matters that relate to the Director's interest.
- (c) In relation to any transactions that relate to the Director's interest:
  - (i) the transactions may proceed;
  - (ii) the Company cannot avoid the transactions merely because of the Director's interest; and
  - (iii) the Director may retain benefits under the transactions despite the Director's interest.

#### **14.15 PARTICIPATING BY INTERESTED DIRECTOR**



- (a) This rule applies to a Director who has a material personal interest in a matter that is being considered at a Board meeting.
- (b) Subject to rule 14.15(e), the Director must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote on the matter.
- (c) The Director is not in breach of duty to the Company merely because he or she does not act in relation to the matter.
- (d) The Board may vote on matters that relate to the Director's interest in the Director's absence.
- (e) The prohibition in rule 14.15(b) does not apply if:
  - (i) the Director does not have to disclose his or her material personal interest to the other Directors under the Act; or
  - (ii) Directors who do not have a material personal interest in the matter have passed a resolution that:
    - (A) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
    - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.

## **15. GENERAL BUSINESS MANAGEMENT**

- 15.1 The business of the Company is managed by the Board who may exercise all powers of the Company that this Constitution and the Act do not require to be exercised by the Company in general meeting.
- 15.2 No rule made or resolution passed by the Company in general meeting can invalidate any prior act of the Board which would have been valid if that rule or resolution had not been made or passed.
- 15.3 Every Director and other agent or officer of the Company must act at all times, in good faith, in a bona fide manner and in the interests of the Company. Failure to do so may result in removal of the Director from the Board.
- 15.4 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;

- (iii) when requested by the Directors to disclose information, to the auditors of the Company or a general meeting of the Company; 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.

## **16. PROCEEDINGS OF THE BOARD**

### **16.1 GENERAL**

- (a) The Board may meet for the transaction of business and adjourn or otherwise regulate its meetings as it sees fit.
- (b) Notice is deemed to have been given to a Director if sent by mail, email, facsimile or personal delivery to the usual place of business of the Director or at any other address given to the Secretary by the Director.

### **16.2 MEETINGS**

- (a) The Board will meet no less than three (3) times each Financial Year.
- (b) A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.
- (c) The Board will regulate its own proceedings (including mode of operation, use of circulating resolutions, frequency of meetings, minutes) and will meet (whether in person, by telephone or audio visual or electronic link-up and the like) at times it deems necessary for it to discharge its obligations as set out in this Constitution.

### **16.3 QUORUM**

- (a) No question will be decided by the Board without a quorum. A quorum of the Board will be one half of the Directors plus one present at the meeting.
- (b) The Chairperson will take the chair at all meetings of the Board and if at any meeting the Chairperson or the Deputy Chairperson is not present within thirty (30) minutes after the time appointed for holding the same the Directors present will choose one of their number to be Chairperson of that meeting.

### **16.4 ATTENDANCE VIA TECHNOLOGY**

- (a) For the purpose of this Constitution, the contemporaneous linking together by technological means ("electronic meeting") of a number of Directors being not less than the quorum will be deemed to constitute a meeting of the Board and all the provisions of this Constitution as to meetings of the Board will apply to any such meeting held by technology so long as the following conditions are met:
  - (i) all the Directors for the time being entitled to receive notice of a meeting of the Board are entitled to notice of a meeting conducted by technology;

- (ii) notice of the meeting may be given by any technological means determined and agreed to by the Board including but not limited to telephone, email or by any other electronic means or manner permitted by the Board;
  - (iii) each of the Directors taking part in the meeting will be able to hear and be heard by each of the other Directors taking part at the commencement of the meeting and each Director so taking part is deemed for the purposes of this Constitution to be present at the meeting;
  - (iv) at the commencement of the meeting each Director will announce his or her presence to all the other Directors taking part in the meeting; and
  - (v) consent for Directors to participate via technology may be a standing consent.
- (b) A Director may not leave a meeting conducted via technology by disconnecting his or her telephone, audio-visual, electronic or other technological device unless that Director has previously notified the chairperson of the meeting.
  - (c) A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a meeting via technology unless that Director has previously obtained the express consent of the chairperson to leave the meeting.
  - (d) A minute of the proceedings of meeting via technology is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chairperson.

## 16.5 VOTING

- (a) Each Director will have one (1) vote.
- (b) The Chairperson will have a casting vote, in addition to his or her deliberative vote, in the event of a deadlock.
- (c) All questions before the Board will be dealt with by a simple majority of votes unless otherwise specified in this Constitution.
- (d) The Board will convene an Annual General Meeting of Members of the Company in accordance with the provisions of the Act.

## 16.6 CIRCULATING RESOLUTIONS

- (a) The Directors may pass a resolution without a Directors' meeting being held if 75% of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the

document. The resolution is passed when 75% of the Directors have signed and submitted the resolution to the Secretary.

- (b) For the purposes of rule 16.6(a), 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) A facsimile, email or technological means of communication by any technological means addressed to or received by the Company and purporting to be signed by a Director for the purpose of this Constitution is deemed to be a document in writing signed by that Director.

## **16.7 CONSTITUTION AND DELEGATION OF POWERS TO COMMITTEE**

- (a) The Board may create and appoint or remove members to such Committees and may delegate any of its powers to a Committee consisting of Directors and any other person or persons as the Board thinks fit.
- (b) Any Committee formed will conform to any Regulations that may be made by the Board.
- (c) The Board will appoint the Chairperson of each Committee.
- (d) Every Committee may meet and adjourn as it thinks proper.

## **16.8 VALIDITY OF ACTS**

- (a) All acts done at any meeting of the Board, by any Committee, or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in appointment or that any of them were disqualified, valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of a Committee (as the case may be).
- (b) If the number of Directors is not sufficient to constitute a quorum at a Board meeting, the Directors may act only to:
  - (i) appoint a Director; or
  - (ii) call a General Meeting.

## **17. POWERS OF THE BOARD**

### **17.1 POWER TO SELECT BANKERS**

Such person or persons as may be nominated by the Board will have the power to sign, draw, accept, endorse or otherwise execute a negotiable instrument. The Company banking account will be kept with such banker or bankers as the Board will from time to time determine.

### **17.2 POWER TO APPOINT OTHERS TO ASSIST COMPANY**

The Board may from time to time by power of attorney appoint any corporation, firm, person or body of persons, to be the attorney or attorneys of the Company for such purposes and with powers, authorities and discretions and for term and subject to such conditions as the Board thinks fit.

## **18. APPOINTMENT OF OFFICERS**

### **18.1 CHIEF EXECUTIVE OFFICER**

The Board may appoint a Chief Executive Officer (CEO) on such terms as the Board decides and who will be responsible for:

- (a) the day-to-day management of the Company;
- (b) liaising between the Members and the Board;
- (c) delivering to the Board no later than three (3) months after the end of each Financial Year, the annual reports of the Company describing the level of activity, achievements and such other information as required in sufficient detail and containing the audited financial statements for that Financial Year as necessary to meet the financial and other reporting requirements of the Company under the Act; and
- (d) carrying out such other activities for the Company;

in accordance with the directions of the Board.

### **18.2 SECRETARY**

The Board will appoint a Secretary for the purposes of the Act.

### **18.3 OTHER EXECUTIVES**

The Board may appoint such other executives as it sees fit.

## **19. ACCOUNTS**

### **19.1 PROPER ACCOUNTS**

The Board must cause proper accounting and other records to be kept in accordance with the Act.

### **19.2 HOLDING AND INSPECTION OF RECORDS**

The books of account and records must be kept at the Office or at such other place or places as the Board thinks fit and must at all times be open to inspection by the Directors.

### **19.3 ANNUAL ACCOUNTS**

- (a) In accordance with the Act, the Board must prepare and distribute to Members copies of annual accounts accompanied by a copy of the Auditor's report.

- (b) The Board must provide at each Annual General Meeting, a balance sheet and profit and loss account made up to date not more than six (6) months before each such meeting.

#### **19.4 INSPECTION BY MEMBERS**

Subject to the Act, the Board may from time to time determine at what times and places and under what conditions the accounts and books of the Company or any of them may be open for inspection by Members.

### **20. AUDIT**

#### **20.1 AUDITOR**

A properly qualified auditor must be appointed by the Board and his or her duties, removal and remuneration will be in accordance with the Act.

### **21. MINUTES**

The Board must cause minutes of all meetings of the Board and committees of the Company are prepared. Such minutes will be signed by the Chairperson of the meeting at the next meeting and upon being signed; the minutes will be received as prima facie evidence of the matters stated in such minutes.

### **22. NOTICES**

#### **22.1 MEANS OF GIVING NOTICES**

- (a) A notice pursuant to this Constitution must be given in writing and may be sent by:

- (i) mail;
- (ii) electronic mail; or
- (iii) facsimile,

to the appropriate address for the addressee.

- (b) A certificate signed by a Director or the Secretary that a notice was delivered or posted at a particular time is conclusive evidence that the notice was delivered or posted at that time.
- (c) A certificate signed by a Director or the Secretary that a notice was sent by electronic mail at a particular time and that an “undeliverable mail” message has not been received in relation to it is conclusive evidence that the notice was sent and received at that time.

#### **22.2 TIME NOTICES ARE EFFECTIVE**

A notice is to be regarded as given, served, received and as having come to the attention of the addressee:

- (a) if delivered to the home or postal address of the addressee, at the time of the delivery;
- (b) if sent by post to the home address or postal address of the address on the third business day after sending; or
- (c) if sent by electronic mail or facsimile at the time of transmission is completed.

## **23. INDEMNITY & LIABILITY INSURANCE**

### **23.1 INDEMNITY**

- (a) Every officer and past officer of the Company will be indemnified by the Company to the fullest extent permitted by law against a liability incurred by that person as an officer of the Company including legal costs and expenses incurred in participating, being involved in or defending any legal proceedings. This indemnity does not extend to any liability incurred by the officer arising from any claim made by that officer against the Company (whether that claim is made solely by the officer or otherwise).
- (b) For the purposes of rule 23.1(a), 'legal proceedings' means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigations, whether civil or criminal, which relates to or arises in connection with the officer or agent being an officer or agent of the Company.

### **23.2 LIABILITY INSURANCE**

To the extent permitted by the Act, the Company may enter into (and pay premiums on) a contract of insurance in relation to a person who is or has been an officer or agent of the Company or any other person.

## **24. WINDING UP**

### **24.1 TRANSFER OF PROPERTY ON WINDING UP**

If any surplus remains following the winding up of the Company, the surplus must not be paid to or distributed amongst Members, but will be given or transferred to another organisation which, by its constitution is:

- (a) a not-for-profit organisation;
- (b) required to apply its profits (if any) or other income in promoting its objects similar to those of the Company;

such organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Victoria.

## **25. AMENDMENT TO CONSTITUTION**

This Constitution must not be amended other than in accordance with the Act.