
Constitution of Civil Contractors Federation Australia Ltd

A public company limited by guarantee

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1 Preliminary

1.1 Definitions

In this constitution:

Term	Definition
AGM	means an annual general meeting of the company that the Corporations Act requires to be held.
Approved Body	means a peak body (representing individuals and organisations operating in the civil construction industry in a State or Territory), which is accepted as eligible for membership in the Company.
Business Day	means a day that is not a Saturday, Sunday or public holiday in the place where an act is to be performed, notice received or a payment is to be made.
Corporations Act	means <i>Corporations Act 2001</i> (Cth).
ITAA	the <i>Income Tax Assessment Act 1997</i> (Cth).
Members Agreement	means an agreement between each of the members of the Company setting out their relationships in relation to this Company.
National Board	means the board of this company.
State Member	means a State or Territory body corporate which is admitted as a Member of this Company.
State Member Representative	means a person authorised by the board of the State Member to represent it in this company.

1.2 Interpretation

In this constitution:

- (a) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or Representative;
- (b) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (c) unless the contrary intention appears:
 - (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
 - (ii) a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns;
 - (iii) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (iv) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (v) a reference to a rule is a reference to a rule of this constitution;
 - (vi) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
 - (vii) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day; and
- (d) headings are for convenience only and do not affect interpretation.

1.3 Application of the Corporations Act

- (a) The replaceable rules in the Corporations Act do not apply to the company.
- (b) Where an expression is used in a manner consistent with a provision of the Corporations Act, the expression has the same meaning as in that provision.

1.4 Exercising powers

- (a) The company may exercise any power, take any action or engage in any conduct which the Corporations Act permits a company limited by guarantee to exercise, take or engage in.
- (b) A power conferred on a person to do a particular act or thing under this constitution includes, unless the contrary intention appears, a power (exercisable in the same way and subject to the same conditions) to repeal, rescind, revoke, amend or vary that act or thing.
- (c) A power conferred under this constitution to do a particular act or thing:
 - (i) may be exercised from time to time and subject to conditions; and
 - (ii) may, where the power concerns particular matters, be exercised for only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (d) Where a power to appoint a person to an office or position is conferred under this constitution (except the power to appoint a director under rule 8) the power includes, unless the contrary intention appears, a power to:
 - (i) appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and
 - (iii) appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.

- (e) Where this constitution gives power to a person to delegate a function or power:
 - (i) the delegation may be concurrent with, or (except in the case of a delegation by the directors) to the exclusion of, the performance or exercise of that function or power by the person;
 - (ii) the delegation may be either general or limited in any way provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
 - (iv) the delegation may include the power to delegate; and
 - (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

2 Objects

2.1 Objects of company

- (a) The company is established for the charitable purposes of promoting, protecting and advancing the civil construction industry in Australia for the public benefit including by being the peak body representing the civil construction industry in Australia.
- (b) To achieve these objects, the company may, without limitation:
 - (i) undertake facilitation and coordination functions in relation to the civil construction industry in Australia;
 - (ii) provide education and training;
 - (iii) lead discussion and implement policy for best practice and safety in the construction industry;
 - (iv) harness the resources of the community in support of the objects in rule 2.1(a);
 - (v) establish and maintain affiliations and information exchange with other organisations having similar objects to those in rule 2.1(a);
 - (vi) act as trustee of any trust the purpose of which relates to the objects in rule 2.1(a);
 - (vii) promote the objects in rule 2.1(a); and
 - (viii) do all other things incidental or conducive to the attainment of the objects in rule 2.1(a).

2.2 Exercise of powers to achieve objects

Nothing restricts the company from exercising a power which in itself is not charitable, for any purpose which is incidental to the charitable objects of the company or which is intended to generate revenue for, or otherwise further, those objects.

3 Not for profit

3.1 Promotion of the objects

The income and property of the company must only be applied towards promoting the company's objects set out in this constitution.

3.2 No income or property to a member

No income or property of the company may be paid or transferred, directly or indirectly, to a Member except for payments:

- (a) in return for services rendered by, or goods supplied, by the member to the company in the ordinary and usual course of business;
- (b) for reasonable and proper rent for premises leased by a member to the company;
- (c) as principal payments on money lent by the member, and interest payments if the interest is at a commercial rate; or
- (d) if the member is a not-for-profit entity and the payment or transfer is in furtherance of the company's objects in rule 2.1(a) of this Constitution.

4 State Membership

4.1 Members

- (a) The members of the company (in this Constitution called State Members) are:
 - (i) the body corporates named as members with their consent in the application for registration of the company; and
 - (ii) any other body corporate admitted to membership under this constitution or the Members Agreement.
- (b) The number of State Members is limited to eight.

4.2 Classes

Until otherwise decided by the State Members in general meeting, the only class of membership in this company is ordinary membership.

4.3 Application

- (a) Any not-for-profit public company limited by guarantee which:
 - (i) is an Approved Body;
 - (ii) has been nominated by two State Members,may apply to be a member of this company (a State Member).

- (b) An application for State Membership must be in a form approved by the board of this company (National Board) together with any other documents or evidence as to qualification for State Membership as the National Board requires.
- (c) Each State Member must appoint an individual (**State Member Representative**) to attend members meetings and vote on behalf of the State Member.
- (d) An individual person is not eligible to be a member of this company.

4.4 Admission to membership

- (a) An application for State Membership must be referred to the State Members for consideration using such process as the National Board determines.
- (b) The Company may in its absolute discretion accept or reject an application for State Membership.
- (c) The Company need not give a reason for rejecting an application for State Membership.
- (d) If an application for membership is rejected, the secretary must:
 - (i) give written notice of the rejection to the applicant; and
 - (ii) refund any fee paid by the applicant, as soon as reasonably possible.
- (e) If an application for membership is accepted, the secretary must:
 - (i) give written notice of the acceptance to the applicant; and
 - (ii) enter the State Member's name and details in the register of members.

4.5 Cessation of State Membership

A State Member ceases to be a member of the company if the State Member:

- (a) resigns as a member in accordance with the requirements set out in the Members Agreement; or
- (b) is terminated as a State Member by a process set out in the Members Agreement.

5 Winding up

5.1 Limited liability on winding up

- (a) If the company is wound up while a body corporate is a State Member, or within one year after the body corporate ceases to be a State Member, the body corporate must contribute the guarantee amount to the assets of the company for the:
 - (i) payment of the debts and liabilities of the company contracted before the body corporate ceased to be a State Member; and
 - (ii) costs of winding up.

- (b) Each State Member agrees the guarantee amount under rule 5.1(a) is \$10.00.

5.2 No distribution of profits to State Members on a winding up

- (a) Where property remains after the winding up or dissolution of the company and satisfaction of all its debts and liabilities, it must not be distributed among State Members.
- (b) If the company is wound up, any surplus assets must be given to another charitable fund, authority or institution:
 - (i) with objects similar to the objects of the company; and
 - (ii) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the company under this constitution.
- (c) The fund, authority or institution to receive property under rule 5.2(b) must be decided by the directors at or before the time of the winding-up or dissolution. If the directors do not wish to decide, or do not decide, the State Members by ordinary resolution must decide. If the State Members do not decide, the decision must be referred to the Supreme Court of the state or territory in which the company's registered office is located.

6 Annual General Meeting

6.1 Annual general meeting

A general meeting, to be called the annual general meeting, must be held at least once in every calendar year (within five months after the end of the first financial year).

6.2 Business at annual general meetings

- (a) The business of an annual general meeting is:
 - (i) if required by the Corporations Act, to receive and consider the financial and other reports required by the Corporations Act to be laid before each annual general meeting;
 - (ii) if required by the Corporations Act, to appoint an auditor or reviewer; and
 - (iii) to transact any other business which, under this document or the Members Agreement, is required to be transacted at an annual general meeting.
- (b) All other business transacted at an annual general meeting and all business transacted at other general meetings is special business.
- (c) The auditor or reviewer, if any, and its representative may attend and be heard on any part of the business of a meeting concerning the auditor or reviewer. The auditor or reviewer, if any, or its representative, if present at the meeting, may be questioned by the State Members, as a whole, about the audit or review, if undertaken.

6.3 Provisions about general meetings apply to annual general meeting

The provisions of this constitution about general meetings apply, with necessary changes, to annual general meetings.

7 General meetings

7.1 Calling general meetings

A general meeting may only be called:

- (a) by a directors' resolution; or
- (b) as otherwise provided in the Corporations Act.

7.2 Postponing or cancelling a meeting

(a) The directors may:

- (i) postpone a meeting of State Members;
- (ii) cancel a meeting of State Members; or
- (iii) change the place for a general meeting,

if they consider that the meeting has become unnecessary, or the venue would be unreasonable or impractical or a change is necessary in the interests of conducting the meeting efficiently.

(b) A meeting which is not called by a directors' resolution and is called under a State Members' requisition under the Corporations Act may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

7.3 Notice of general meetings

- (a) Notice of a general meeting must be given to each person who at the time of giving the notice is a State Member, director or auditor of the company.
- (b) The directors may decide the content of a notice of a general meeting, but the notice must include the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act.
- (c) Unless the Corporations Act provides otherwise:
 - (i) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
 - (ii) except with the approval of the directors or the chairman, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to that resolution and a copy of which has been made available to State Members to inspect or obtain.
- (d) A person may waive notice of any general meeting by written notice to the company.

- (e) Subject to rule 7.3(f), at least 21 days' notice must be given of a meeting of State Members.
- (f) The company may call a meeting on shorter notice:
 - (i) if an AGM, when all the State Members entitled to attend and vote at the AGM agree beforehand; and
 - (ii) if any other general meeting: when State Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (g) A company cannot call an AGM or other general meeting on shorter notice if it is a meeting at which a resolution will be moved to:
 - (i) remove a director under section 203D of the Corporations Act or appoint a director in place of a director removed under that section; or
 - (ii) remove an auditor under section 329 of the Corporations Act.

7.4 Non-receipt of notice

- (a) Subject to the Corporations Act, the:
 - (i) non-receipt of a notice of any general meeting by; or
 - (ii) accidental omission to give notice to,

any person entitled to notice does not invalidate anything done (including the passing of a resolution) at that meeting.
- (b) A person's attendance at a general meeting waives any objection that person may have to:
 - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

7.5 Admission to general meetings

- (a) The chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (i) in possession of a pictorial-recording or sound-recording device;
 - (ii) in possession of a placard or banner;
 - (iii) in possession of an article considered by the chairman to be dangerous, offensive or liable to cause disruption;
 - (iv) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;

- (v) who behaves or threatens to behave in a dangerous, offensive or disruptive way;
or
- (vi) who is not entitled to receive notice of the meeting.
- (b) The chairman may delegate the powers conferred by rule 7.5(a) to any person.
- (c) A person, whether a State Member or not, requested by the directors or the chairman to attend a general meeting is entitled to be present and, at the request of the chairman, to speak at the meeting.

7.6 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chairman and the adjournment of the meeting, unless a quorum of State Members is present when the meeting proceeds to business.
- (b) A quorum for general meetings of State Members is as fixed by the Members Agreement from time to time.

7.7 Chairman

- (a) The Chairman of this company is entitled to take the chair at every general meeting.
- (b) If at any general meeting:
 - (i) the Chairman is not present at the specified time for holding the meeting; or
 - (ii) the Chairman is present but is unwilling to act as chairman of the meeting,

the directors present may choose another director as chairman of the meeting and if no director is present or if each of the directors present is unwilling to act as chairman of the meeting, a State Member chosen by the State Members present is entitled to take the chair at the meeting.

7.8 Acting Chairman

- (a) A chairman of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chairman**).
- (b) Where an instrument of proxy appoints the chairman as proxy for part of the proceedings for which an Acting Chairman has been nominated, the instrument of proxy is taken to be in favour of the Acting Chairman for the relevant part of the proceedings.

7.9 Conduct at general meetings

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this rule is final.

7.10 Adjournment and postponement by the chairman

- (a) Despite rules 7.2(a) and 7.2(b), where the chairman considers that:
 - (i) there is not enough room for the number of State Members who wish to attend the meeting; or
 - (ii) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out,the chairman may postpone the meeting before it has started, whether or not a quorum is present.
- (b) A postponement under rule 7.10(a) is to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place is taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (c) The chairman may at any time during the course of the meeting:
 - (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and
 - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for any period or periods he or she decides without effecting an adjournment – no business may be transacted and no discussion may take place during any suspension of proceedings unless the chairman otherwise allows.
- (d) The chairman's rights under rules 7.10(a) and 7.10(c) are exclusive and, unless the chairman requires otherwise, no vote may be taken or demanded by the State Members present about any postponement, adjournment or suspension of proceedings.
- (e) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (f) Where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting.

7.11 Decisions at general meetings

- (a) Questions arising at a general meeting must be decided in accordance with the requirements of the Members Agreement. A decision made in this way is for all purposes, a decision of the State Members.
- (b) The chairman of the meeting does not have a casting vote.

- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:
 - (i) before the show of hands is taken; and
 - (ii) before the result of the show of hands is declared.
- (d) Unless a poll is duly demanded, a declaration by the chairman of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the company's minute book is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

7.12 When poll may be demanded

- (a) A poll may be demanded by:
 - (i) the chairman;
 - (ii) at least two State Members entitled to vote on the resolution; or
 - (iii) by State Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (c) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the chairman of the meeting directs. The result of the poll as declared by the chairman is the resolution of the meeting at which the poll was demanded.

7.13 Voting rights

- (a) The State Members voting rights are as set out in the Members Agreement from time to time.
- (b) Where any of a State Member's fees or other amount payable to the company has not been duly paid that State Member is not entitled to vote.
- (c) A State Member is not entitled to vote on a resolution if, under the Corporations Act the notice which called the meeting specified that:
 - (i) the State Member must not vote or must abstain from voting on the resolution; or
 - (ii) a vote on the resolution by the State Member must be disregarded for any purposes.
- (d) If the State Member referred to in rule 7.13(c) or a person acting as proxy, attorney or Representative of that State Member does tender a vote on that resolution, their vote must not be counted.
- (e) An objection to the validity of a vote tendered at a general meeting must be:
 - (i) raised before or immediately after the result of the vote is declared; and

- (ii) referred to the chairman of the meeting, whose decision is final.
- (f) A vote tendered, but not disallowed by the chairman of a meeting under rule 7.13(e), is valid for all purposes, even if it would not otherwise have been valid.
- (g) The chairman may decide any difficulty or dispute which arises as to the number of votes which may be cast by or on behalf of any State Member and the decision of the chairman is final.

7.14 Representation at general meetings

Subject to this constitution, each State Member entitled to vote at a general meeting may vote:

- (a) by its Representative;
- (b) by not more than one proxy; or
- (c) by not more than one attorney.

7.15 Appointment of proxies

- (a) Any State Member entitled to vote at a general meeting may appoint one proxy.
- (b) The document appointing a proxy must:
 - (i) be in the form approved by the National Board;
 - (ii) be signed by the appointor or his attorney;
 - (iii) set out the name of the person to be appointed as proxy;
 - (iv) allow the State Member to direct the proxy to vote for or against (or abstain from voting on) any proposed resolution;
 - (v) set out the period of appointment including whether it is valid only for stipulated meetings; and
 - (vi) be received by the Company at least 48 hours (or a lesser period as the board may decide and stipulate in the notice of meeting) before the time for holding the meeting or poll at which the person named in the document proposes to vote.
- (c) Unless otherwise specified or revoked a proxy appointment is valid:
 - (i) for 12 months after the date of its execution; and
 - (ii) for any adjournment of the meeting, as well as for the meeting to which it relates.
- (d) The proxy document is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.

8 Directors

8.1 Directors

- (a) There must be at least three directors on the National Board.
- (b) Each State Member is entitled to have one director on the National Board, who must be an existing director of the State Members' board. The State Member may appoint and replace that person at such times and upon such terms as it determines.
- (c) The National Board may appoint up to three independent persons as directors on the board for the term determined by the board, for their particular skills and experience.
- (d) In this rule and rule 8.3(a) 'independent' means a person who is not a member of any State Member of Civil Contractors Federation Australia, and who has, in the opinion of the National Board, no other interest or relationship which could be perceived to materially interfere with the person's ability to act in the best interests of the company.

8.2 Qualification of a director

- (a) The National Board must have a policy setting out the skills, knowledge and experience desirable for a director.
- (b) A director does not have to be a State Member Representative but must be an existing director of a State Member.

8.3 Chairman

- (a) The National Board must appoint, for any period it decides, a director to the office of Chairman, who may be an independent director.
- (b) The Chairman is entitled (if present within ten minutes after the time appointed for the meeting and willing to act) to preside as chairman at a meeting of directors.
- (c) The chairman of directors as outlined of this Company may be referred to as the 'President'.
- (d) If at a meeting of directors:
 - (i) there is no Chairman;
 - (ii) the Chairman is not present within ten minutes after the time appointed for the holding of the meeting; or
 - (iii) the Chairman is present within that time but is not willing or declines to act as chairman of the meeting,

the directors present must elect one of themselves to chair the meeting.

8.4 Resignation

- (a) A director may resign from the board by written notice to the secretary.
- (b) The resignation takes effect when the notice is received by the secretary, or on a later date specified in the notice.

8.5 Vacating office

In addition to the circumstances prescribed by the Corporations Act, this constitution and the Members Agreement, the office of a director becomes vacant if the director:

- (a) becomes an insolvent under administration, suspends payment generally to creditors or compounds with or assigns the director's estate for the benefit of creditors;
- (b) becomes 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 about mental health;
- (c) is absent from meetings of the directors during a period of three consecutive calendar months without leave of absence from the directors where the directors have not, within 14 days of having been served by the secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (d) was appointed by a State Member and that State Member ceases to be a State Member;
- (e) is removed from office under the Corporations Act or any other relevant legislation;
- (f) is prohibited from being a director by reason of the operation of the Corporations Act or any other relevant legislation; or
- (g) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director.

8.6 Directors who are unable to fulfil their duties due to illness or incapacity

- (a) A director may be removed from office by the National Board if the board resolves under its policy that the director is unable to fulfil their duties due to physical or mental illness or other incapacity.
- (b) The National Board will implement a policy about directors who are unable to fulfil their duties due to physical or mental illness or other incapacity for the purpose of making a determination under rule 8.6(a).

8.7 Directors interests

- (a) A director is not disqualified by reason only of being a director (or the fiduciary obligations arising from that office) from:
 - (i) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the company or in which it has interest;
 - (ii) being a member, creditor or otherwise being interested in any body corporate (including the company), partnership or entity, except as auditor of the company;
 - (iii) entering into any agreement or arrangement with the company; or
 - (iv) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the company, except as auditor of the company.
- (b) Each director must comply with the Corporations Act on the disclosure of the director's interests.

- (c) The directors may make regulations requiring the disclosure of interests that a director, and any person taken by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.
- (d) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under rule 8.7(c).
- (e) A director who has a material personal interest in a matter that is being considered by the directors must not be present at a meeting while the matter is being considered nor vote on the matter, except where permitted by the Corporations Act.
- (f) If a director has an interest in a matter, then subject to rules 8.7(c), 8.7(g) and the constitution:
 - (i) that director may not be counted in a quorum at the board meeting that considers the matter that relates to the interest;
 - (ii) that director may not participate in and vote on matters that relate to the interest;
 - (iii) the company can proceed with any transaction that relates to the interest and the director may participate in the execution of any relevant document by or on behalf of the company;
 - (iv) the director may retain the benefits under the transaction that relates to the interest even though the director has the interest; and
 - (v) the company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (g) If an interest of a director is required to be disclosed under rule 8.7(b), rule 8.7(f)(iv) applies only if the interest is disclosed before the transaction is entered into.
- (h) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (i) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, if the director complies with the disclosure requirements applicable to the director under rule 8.7(a) and under the Corporations Act about that interest.
- (j) A director who is interested in any contract or arrangement may, despite that interest, witness the fixing of the company seal to any document evidencing or otherwise connected with that contract or arrangement.

8.8 Remuneration of directors

- (a) The directors may be remunerated for their services as directors as determined by the National Board from time to time.
- (b) The directors are entitled to be reimbursed for expenses incurred in performing their role as directors as determined by the National Board from time to time.

- (c) All payments to directors must be approved by the directors.

9 Powers and duties of directors

9.1 General powers

- (a) The directors are responsible for managing the business of the company and may exercise all powers and do all things that are within the company's power and are not expressly required by the Corporations Act, this constitution or the Members Agreement to be exercised by the members of the company.
- (b) The National Board may make regulations, by-laws and policies consistent with the constitution, which in the opinion of the board are necessary or desirable for the proper control, administration and management of the company's finances, affairs and property, or are necessary for the convenience, comfort and well-being of the State Members and amend or rescind any regulations and by-laws.
- (c) A regulation, policy or by-law of the company made by the board may be disallowed by the company in a later general meeting. A resolution or regulation made by the company in general meeting cannot invalidate prior acts of the board which would have been valid if that resolution or regulation had not been passed or made.

9.2 Reserved powers

Certain powers otherwise exercisable by the directors may be reserved to the State Members in the Members Agreement.

9.3 Power to borrow and give security

- (a) Subject to this rule 9, the directors may exercise all the powers of the company to:
 - (i) borrow or raise money in any other way;
 - (ii) charge mortgage or otherwise encumber any of the company's property or business or any of its property; and
 - (iii) issue debentures or give any security for a debt, liability or obligation of the company or of any other person.
- (b) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the company.

9.4 Powers of appointment

The directors may:

- (a) appoint or employ any person as an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for any period and on any other conditions they decide;
- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and

- (c) remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

10 Proceedings of directors meetings

10.1 Meetings of directors

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum, constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A meeting by telephone or other electronic means is to be taken to be held at the place where the chairman of the meeting is or at any other place the chairman of the meeting decides on, if at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the chairman may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

10.2 Calling meetings of directors

- (a) A director may, whenever the director thinks fit, call a meeting of the directors.
- (b) A secretary must, if requested by a director, call a meeting of the directors.

10.3 Notice of meetings of directors

- (a) Notice of a meeting of directors must be given to each person who is, at the time the notice is given a director, except a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may, if necessary, be given immediately before the meeting; and
 - (iv) may be given in person or by post or by telephone, or electronic means.
- (c) A director may waive notice of a meeting of directors by giving notice to that effect in person or by post or by telephone, or electronic means.

- (d) Failure to give a director notice of a meeting of directors does not invalidate anything done or any resolution passed at the meeting if:
 - (i) the failure occurred by accident or inadvertent error; or
 - (ii) the director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

10.4 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) Unless the directors decide otherwise, a simple majority of the directors including the Chairman constitute a quorum.
- (c) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

10.5 Decisions of directors

- (a) The directors, at a meeting at which a quorum is present, may exercise any authorities, powers and discretions vested in or exercisable by the directors.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present and entitled to vote on the matter.
- (c) Subject to rule 10.5(d), if the votes are equal on a proposed resolution, the chairman of the meeting has a casting vote, in addition to his or her deliberative vote.
- (d) Where only two directors are present or entitled to vote at a meeting of directors and the votes are equal on a proposed resolution:
 - (i) the chairman of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is taken as lost.

10.6 Written resolutions

- (a) A resolution in writing of which notice has been given to all directors and which is signed or consented to by all of the directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted and may consist of several documents in the same form, each signed or consented to by one or more of the directors.
- (b) A director may consent to a resolution by:
 - (i) signing the document containing the resolution (or a copy of that document);
 - (ii) giving to the company a written notice (including by or electronic means) addressed to the secretary or to the chairman of directors signifying assent to the

resolution and either setting out its terms or otherwise clearly identifying them;
or

- (iii) telephoning the secretary or the chairman of directors and signifying assent to the resolution and clearly identifying its terms.

10.7 Committees of directors

- (a) The directors may delegate their powers to a committee of directors.
- (b) The committee must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under rule 10.7(b).

10.8 Appointment of advisory group

- (a) The directors may establish an advisory group. The directors may appoint and remove members of the advisory group and terminate an advisory group at any time.
- (b) The functions of the advisory group will be decided by the directors.
- (c) The directors may specify:
 - (i) the manner in which proceedings of an advisory group are conducted;
 - (ii) the matters which the advisory group must consider in carrying out its functions; and
 - (iii) any other matters concerning the advisory group or its functions that the directors decide.
- (d) For the avoidance of doubt, an advisory group established under rule 10.8(a) will not be delegated with any power of the board.

10.9 Delegation to a director

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

10.10 Validity of acts

All acts done at any meeting of the directors or by a committee or by any person acting as a director are, notwithstanding that it is afterwards discovered:

- (a) that there was some defect in the appointment of any of the directors; or
- (b) the committee or the person acting as a director 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 the committee (as the case may be).

11 Secretary and Executive officer

11.1 Secretary

- (a) The company must have at least one secretary appointed by the directors.
- (b) The directors may suspend or remove a secretary from that office.

11.2 Executive officers

- (a) The directors may appoint an executive officer for a period, at the remuneration and on the conditions the directors decide.
- (b) The remuneration payable by the company to an executive officer must not include a commission on, or percentage of, operating revenue.
- (c) The directors may:
 - (i) delegate to an executive officer any powers, discretions and duties they decide;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and
 - (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.
- (d) An act done by a person acting as an executive officer is not invalidated by:
 - (i) a defect in the person's appointment as an executive officer;
 - (ii) the person being disqualified to be an executive officer; or
 - (iii) the person having vacated office,if the person did not know that circumstance when the act was done.

12 Indemnity and insurance

12.1 Officer's right of indemnity

Rules 12.2 and 12.4 apply:

- (a) to each person who is or has been a director, secretary or executive officer of the company;
- (b) to any other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate,

each an **Officer** for the purposes of this rule.

12.2 Indemnity

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company or of a related body corporate.

12.3 Scope of indemnity

The indemnity in rule 12.2:

- (a) does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance;
- (b) is enforceable without the Officer having to first incur any expense or make any payment; and
- (c) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer or auditor of the company or its related bodies corporate.

12.4 Insurance

The company may, to the extent the law permits:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each Officer against any Liability incurred by the Officer as an officer or auditor of the company or of a related body corporate including, but not limited to:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (c) a Liability arising from negligence or other conduct.

12.5 Savings

Nothing in rule 12.2 or 12.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into before the adoption of this constitution.

12.6 Contract

The company may enter into an agreement with any Officer to give effect to the rights conferred by this rule or the exercise of a discretion under this rule on any terms as the directors think fit which are not inconsistent with this rule.

13 Financial records and auditor

13.1 Keeping of financial records

- (a) The financial year of the Company begins on 1 July and ends at 30 June in the following calendar year.
- (b) Proper books and financial records must be kept recording the financial affairs of the Company. The Company must comply with the relevant accounting, financial reporting, review and audit requirements of the Corporations Act.
- (c) If required by the Corporations Act, the National Board must:
 - (i) notify all State Members at the end of each financial year of their entitlement to receive copies of the financial report prepared by the Company including a copy of the auditor's report, if any, and any other documentation as required by the Corporations Act; and
 - (ii) lay before the State Members at each annual general meeting the financial statements required under rule 13.1(b).

13.2 Appointment of auditor or reviewer

If required by the Corporations Act, the Company must appoint a qualified auditor or reviewer. A person who is a member of a State Member may not act as auditor or reviewer of the Company.

14 Minutes

14.1 Contents of minutes

The board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the directors present at each meeting of the company, the board and of committees; and
- (b) details of all resolutions and proceedings of general meetings of the company and of meetings of the board and committees.

14.2 Signing of minutes

The minutes of a meeting of the board or of a committee or of the company, if signed by the chairman of the meeting or by the chairman of the next meeting, are prima facie evidence of the matters stated in the minutes.

15 Notices

15.1 Method of service

- (a) The company may give a notice to a State Member by:
 - (i) delivering it personally;

- (ii) sending it by prepaid post to the State Member's address in the company register or any other address the State Member gives the company for notices; or
 - (iii) sending it by electronic means to the electronic address the State Member gives the company for notices.
- (b) Where a State Member does not have a registered address or where the company believes that State Member is not known at the State Member's registered address, all notices are taken to be:
- (i) given to the State Member if the notice is exhibited in the company's registered office for a period of 48 hours; and
 - (ii) served at the commencement of that period,
- unless and until the State Member informs the company of the State Member's address.

15.2 Time of service

- (a) A notice from the company properly addressed and posted is taken to be given and received on the day after the day of its posting.
- (b) A notice sent or given by electronic transmission:
 - (i) is taken to be effected by properly addressing and transmitting the electronic transmission; and
 - (ii) is taken to have been given and received on the day of its transmission.
- (c) Where a given number of days notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

15.3 Evidence of service

A certificate signed by a director or secretary stating that a notice has been given under this constitution is conclusive evidence of that fact.

15.4 Other communications and documents

Rules 15.1 to 15.3 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

16 General

16.1 Submission to jurisdiction

Each member of this company submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered for the purposes of the Corporations Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

16.2 Prohibition and enforceability

Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.

