

**YHA LTD**

ACN 008 387 791

**A public company limited by guarantee**

**Constitution**

**Norton Gledhill**

COMMERCIAL LAWYERS

Level 23, 459 Collins Street  
Melbourne Vic 3000  
Australia

Tel: +61 3 9614 8933  
Fax: +61 3 9629 1415  
Ref: MJC:10103

# 1 Preliminary

## 1.1 Definitions and interpretation

(a) In this constitution:

**Act** means the *Corporations Act 2001* (Cth).

**Adoption Date** means the date the adoption of this constitution by the Members became effective.

**Affiliated Entity** means a body corporate that the directors consider is affiliated with Hostelling International.

**Business Day** means a day which is not a Saturday, Sunday, bank holiday or public holiday:

(a) for the purpose of sending or receiving a notice – in the city where the notice is intended to be received; and

(b) for all other purposes – in Sydney.

**By-law** means a by-law of the company made under rule 14.1.

**Chair** means the chair of the directors appointed under rule 7.15.

**Financial Year** means, unless the directors determine a different period, a 12 month period from 1 January to 31 December.

**Hostelling International** means the international federation of youth hostel associations, by whatever name known.

**Liability** means a loss, liability, cost, charge or expense.

**Member** means a member of the company.

**Merging Body** means an entity which, with the agreement of the directors, is merging its business and undertaking with that of the company.

**Official** means:

- (1) each person who is or has been a director of the company;
- (2) officers and former officers of the company or of its related bodies corporate; and
- (3) each person who is or has been a Patron, President or Vice-President.

**Patron** means the patron of the company appointed under rule 8.3.

**President** means the president of the company appointed under rule 8.4(a).

**Representative** in relation to:

- (1) a body corporate means a representative of the body corporate authorised under section 250D of the Act; or
- (2) an unincorporated entity means a representative of the entity authorised by the governing organ of the entity in terms equivalent to those under section 250D of the Act.

**Vice-Chair** means the vice-chair of the directors appointed under rule 7.16.

**Vice-President** means a vice-president of the company appointed under rule 8.5(a).

**YHAA** means YHA Australia Incorporated ABN 29 963 350 786 by whatever name it may subsequently be known.

- (b) A Member is to be taken to be present at a general meeting if the Member is present in person or by proxy or Representative.
- (c) A reference in a rule (including rule 1.1(e)(4)) to the term 'legal personal representative' does not include a reference to an attorney.
- (d) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (e) Unless the contrary intention appears, in this constitution:
  - (1) words importing the singular include the plural and vice versa;
  - (2) words importing a gender include every other gender;
  - (3) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (4) a reference to a person includes that person's successors and legal personal representatives;
  - (5) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
  - (6) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (f) In this constitution headings and bold type are for convenience only and do not affect its interpretation.

## 1.2 Application of the Act

- (a) ~~This constitution is to be interpreted subject to the Act. However the rules that apply as replaceable rules to companies under the Act do not apply to the company.~~
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision of the Act.
- (c) Subject to rule 1.2(b), unless the contrary intention appears, an expression in a rule that is defined for the purposes of the Act has the same meaning as in the Act.

### 1.3 Exercise of powers

- (a) Where this constitution provides that a person or body may do a particular act or thing and the word 'may' is used, the act or thing may be done at the discretion of the person or body.
- (b) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power:
  - (1) exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing; and
  - (2) to do the act or thing from time to time.
- (c) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- (d) Where this constitution confers a power to make appointments to any office or position other than director, the power is, unless the contrary intention appears, to be taken to include a power:
  - (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
  - (2) subject to any contract between the company and the relevant person and any applicable industrial law, to remove or suspend any person appointed, with or without cause; and
  - (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (e) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (f) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (g) Where this constitution confers power on a person or body to delegate a function or power:
  - (1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
  - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
  - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
  - (4) the delegation may include the power to delegate;

- (5) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
- (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

---

## 2 Objects

The objects of the company are:

- (a) to provide educational opportunities in Australia for all people, but especially young people, to:
  - (1) achieve personal development;
  - (2) foster friendship; and
  - (3) bring about a better understanding of others and the world around them;
- (b) to facilitate education by providing, operating and assisting others to provide and operate, hostels or similar accommodation;
- (c) to educate, by promoting and encouraging:
  - (1) travel;
  - (2) healthy recreational activities;
  - (3) environmental awareness; and
  - (4) interstate and international friendships and understanding, particularly through the development and provision of facilities and services to assist travellers within and outside Australia; and
- (d) to provide information or advice to any government, company or any other organisation in relation to any of the foregoing.

---

## 3 Powers

- (a) The company may, in any manner permitted by the Act:
  - (1) exercise any power;
  - (2) take any action; or
  - (3) engage in any conduct or procedure, consistent with the direct or indirect pursuit of its objects or matters incidental to its objects, which under the Act a public company limited by guarantee may exercise, take or engage in if authorised by its constitution.
- (b) Without limiting rule 3(a), the company may financially and otherwise support any charity.

- 
- (c) The company may join and remain a member of YHAA and may comply with its obligations from time to time in that capacity.
- 

## **4 Income and property**

- (a) The company's income and property must be applied solely towards promoting the company's objects.
- (b) Subject to rule 4(c), no part of the income or property of the company may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any Member, former Member, director or former director or to any person claiming through such a person.
- (c) Nothing in rule 4(b) prevents the payment in good faith of:
- (1) reasonable and proper remuneration to any employee of the company;
  - (2) subject to this constitution, reasonable and proper amounts to any Member in return for any services actually rendered to the company;
  - (3) the payment of interest at a rate not exceeding interest at the rate for the time being charged by the company's bankers for money lent to the company; or
  - (4) of reasonable and proper rent for premises demised or let by any Member to the company,
- or:
- (5) sums permitted to be paid under rule 7.7;
  - (6) sums paid under rule 9; or
  - (7) the reimbursement in good faith of out-of-pocket expenses incurred on behalf of the company.

---

## **5 Membership**

### **5.1 Categories of membership**

- (a) Subject to this rule 5.1, there are 5 categories of membership:
- (1) adult membership;
  - (2) youth membership;
  - (3) life membership;
  - (4) honorary life membership; and
  - (5) group membership.
- (b) The directors may establish additional categories of Members and prescribe the eligibility qualifications, rights, privileges and obligations of Members of those categories.

- (c) Where the directors have established a category of Members under rule 5.1(b), the company may, by resolution, re-categorise or convert Members from 1 category to another.
- (d) A person may be a Member in only 1 category of membership.
- (e) The company may enter into accommodation and other arrangements on a contract basis with a person who is a member of an organisation affiliated with Hostelling International (including YHAA and its affiliated State or Territory based bodies), sometimes referred to as a 'parallel member'.

## 5.2 Adult membership

- (a) The Members in the adult membership category are those persons who:
  - (1) were Members in this category on the Adoption Date;
  - (2) transition into this category under rule 5.7;
  - (3) become Members in this category under rule 5.2(c); or
  - (4) both:
    - (A) are eligible to be admitted to this category under rule 5.2(b); and
    - (B) are admitted to this category under rule 5.8,
 and who remain Members in this category.
- (b) A person is eligible to be admitted to the adult membership category if he or she:
  - (1) is a natural person;
  - (2) is at least 18 years of age at the time his or her application for admission is received; and
  - (3) has paid any fees that are payable under rule 5.14.
- (c) A Member in the youth membership category who turns 18 years of age automatically becomes a Member in the adult membership category at the start of that Member's next membership year, and his or her youth membership automatically ceases at that time.

## 5.3 Youth membership

- (a) The Members in the youth membership category are those persons who:
  - (1) were Members in this category on the Adoption Date;
  - (2) transition into this category under rule 5.7; or
  - (3) both:
    - (A) are eligible to be admitted to this category under rule 5.3(b); and
    - (B) are admitted to this category under rule 5.8,
 and who remain Members in this category.
- (b) A person is eligible to be admitted to the youth membership category if he or she:
  - (1) is a natural person;

- (2) is less than 18 years of age at the time his or her application for admission is received; and
- (3) has paid any fees that are payable under rule 5.14.

#### 5.4 Life membership

- (a) The Members in the life membership category are those persons who:
  - (1) were Members in this category on the Adoption Date;
  - (2) transition into this category under rule 5.7; or
  - (3) both:
    - (A) are eligible to be admitted to this category under rule 5.4(b); and
    - (B) are admitted to this category under rule 5.8,and who remain Members in this category.
- (b) A person is eligible to be admitted to the life membership category if he or she is:
  - (1) a natural person;
  - (2) at least 18 years of age at the time his or her application for admission is received;
  - (3) has paid any fees that are payable under rule 5.14;
  - (4) has been a Member for at least 2 years prior to the date of the application; and
  - (5) has recorded at least 10 overnight stays in a hostel affiliated with Hostelling International.

#### 5.5 Honorary life membership

- (a) The Members in the honorary life membership category are those persons who:
  - (1) were Members in this category on the Adoption Date;
  - (2) transition into this category under rule 5.7; or
  - (3) both:
    - (A) are eligible to be admitted to this category under rule 5.5(b); and
    - (B) are admitted to this category under rule 5.5(c),and who remain Members in this category.
- (b) A person is eligible to be admitted to the honorary life membership category if he or she:
  - (1) is a natural person;
  - (2) is at least 18 years of age at the time his or her application for admission is received; and
  - (3) has paid any fees that are payable under rule 5.14.

- (c) The process for admitting a person to the honorary life membership category is as follows:
- (1) a nomination (in the form and manner determined by the directors) of the person for honorary life membership, proposed by not less than 5 Members entitled to vote at a general meeting, and signed by the nominee, must be given to the company;
  - (2) the nominee must execute and give to the company any form of undertaking as the directors may reasonably stipulate as a condition of processing the nomination;
  - (3) the nomination must be accompanied by a statement setting out the valuable service provided to the company and/or the hostelling movement by the nominee;
  - (4) the nomination must be considered by the directors at (where practicable) their next meeting or otherwise as soon as practicable, and:
    - (A) if the directors do not approve the nomination – the nomination lapses; or
    - (B) if the directors approve the nomination – the nomination must be included in the business for (where practicable) the next general meeting or otherwise as soon as practicable; and
  - (5) if the admission of the nominee is passed by a special resolution at the general meeting, the nominee's membership in the honorary life membership category must be promptly recorded in the company's register of Members and upon such record being made:
    - (A) the nominee becomes a Member in the honorary life membership category; and
    - (B) his or her membership in any other category automatically ceases.

## 5.6 Group membership

- (a) The Members in the group membership category are those persons who:
- (1) were Members in this category on the Adoption Date;
  - (2) transition into this category under rule 5.7; or
  - (3) both:
    - ~~(A) are eligible to be admitted to this category under rule 5.6(b);~~  
and
    - (B) are admitted to this category under rule 5.8 (in which case its nominated Representative becomes its Representative, but for the avoidance of doubt, its Representative is not a Member),
- and who remain Members in this category.
- (b) A person is eligible to be admitted to the group membership category if it:

- (1) is a body corporate or unincorporated entity with at least 6 members;
  - (2) was established and operates for the purpose of social, cultural, recreational or educational activities;
  - (3) has paid any fees that are payable under rule 5.14; and
  - (4) nominates, conditional upon its admission as a Member, a natural person at least 18 years of age who where possible is an officer or employee of the Member, as its proposed Representative.
- (c) In relation to the Representative of a Member in the group membership category:
- (1) the Member may (whether or not through its Representative) appoint (subject to rule 5.6(c)(8)) and remove, by notice in writing to the company, its Representative, provided any replacement Representative is at least 18 years of age;
  - (2) without limiting the operation of the Act, the Representative is entitled to exercise on behalf of the Member all or any of the rights, powers and privileges possessed by the Member by virtue of its membership, provided:
    - (A) except as provided for in rule 5.6(c)(1) or through a proxy, the Member may act in relation to the company only through its Representative; and
    - (B) where the Representative exercises a right, power or discretion possessed by the Member he or she represents:
      - (i) the Member is bound by the exercise of that right, power or discretion; and
      - (ii) the company is entitled to assume the validity of the exercise of that right, power or discretion and the authority of the Representative to exercise the right, power or discretion;
  - (3) any communication from the company to the Member in its capacity as a Member may be addressed to the Representative;
  - (4) a reference in this constitution to a Member, unless the context otherwise requires, includes a reference to the Representative of that Member;
  - (5) the Representative ceases to be Representative of the Member:
    - (A) ~~upon ceasing to be employed by, or an officer of, the Member if they were initially an officer or employee of the Member;~~
    - (B) if removed by the Member under rule 5.6(c)(1); or
    - (C) in any of the circumstances envisaged by rules 7.6(a), (b), (c) or (g), as if the Representative was a director of the company and a reference in those rules to:
      - (i) the directors was a reference to the directors (or equivalent) of the Member;

- (ii) the office of director was a reference to the office of director (or equivalent) of the Member; and
  - (iii) the company was a reference to the Member;
- (6) a person may only be the Representative for 1 Member at any 1 time;
- (7) a person who is a Member may not also be a Representative of another Member;
- (8) whenever a Representative is appointed under this constitution, the company must immediately be notified of that fact, and of the name, address, contact details and the position or title within the Member occupied by the Representative, together with the written consent of the Representative and an acknowledgment from the Representative (in any form reasonably required by the directors) that he or she agrees to be bound by this constitution; and
- (9) any dispute concerning:
- (A) the interpretation of this rule 5.6(c); or
  - (B) the rights and obligations of a Representative or the Member he or she represents,
- must be referred to the directors whose decision in all respects is final and binding on all affected Members and Representatives.

#### **5.7 Transitioning in of members from a Merging Body**

- (a) The directors may propose and make arrangements with a Merging Body or its members (or classes or categories of them) in relation to the transition of consenting members to become Members in a specified category or a category established under rule 5.1(b) for this purpose.
- (b) The arrangements may include relief from:
  - (1) specified membership eligibility qualifications; and
  - (2) the payment of certain fees.
- (c) Arrangements made will apply notwithstanding any other technical requirements in this constitution relating to membership eligibility qualifications, membership applications, Members generally or specifically, and fees.

#### **5.8 Admission of new Members – general provisions**

- (a) ~~Every applicant for membership (except a person transitioned in under rule 5.7) must:~~
  - (1) apply in the form and manner determined by the directors (which may permit written or oral applications); and
  - (2) pay any applicable fees at the time of making the application.
- (b) The directors may admit as a Member any applicant on such conditions and at such times, as the directors think fit.

- (c) The directors may require a person to execute such form of reasonable undertaking as the directors may stipulate as a condition of admitting that person as a Member.

### **5.9 Power to decline admission of Members**

The directors may, in their absolute discretion, decline to admit any person as a Member.

### **5.10 Power to suspend admission of Members**

The directors may suspend the admission of Members at such times and for such periods as they think fit.

### **5.11 Cessation of membership**

A Member (and for the avoidance of doubt, this rule applies to all categories of membership, including life membership and honorary life membership) ceases to be a Member:

- (a) if the Member resigns by notice in writing to the company;
- (b) if the Member dies;
- (c) if the Member becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) if the Member is expelled under rule 5.12;
- (e) in any other circumstances prescribed in the terms of membership applicable to the Member or in any undertaking given by the Member upon his, her or its admission to membership; or
- (f) if the Member has not paid moneys (including fees) due and payable to the company within 30 days of a request for payment for those moneys being sent to the Member.

### **5.12 Expulsion of Members**

- (a) Subject to this rule 5.12, the directors may by resolution expel a Member who fails to comply with:
  - (1) this constitution;
  - (2) the terms of membership applicable to the Member; or
  - (3) any undertaking given by the Member upon his, her or its admission to membership,by giving notice in writing of that expulsion to the Member.
- (b) If the directors intend to propose a resolution under rule 5.12(a) they must give the Member written notice of that fact:
  - (1) setting out the grounds on which the intended resolution is based; and
  - (2) informing the Member that he, she or it has 1 month from the date of the notice to give written submissions to the directors in relation to the proposed resolution.

- (c) If the Member:
- (1) gives written submissions in relation to the proposed resolution – the directors must consider those submissions and then give the Member written notice:
    - (A) whether or not they still intend to intend to propose the resolution; and
    - (B) if they do so intend, that the Member has 14 days from the date of that notice to require that the matter be referred to mediation under rule 5.12(d); or
  - (2) does not give written submissions in relation to the proposed resolution or does not provide them within time – the directors may pass the proposed resolution as and when they see fit.
- (d) If the matter is referred to mediation under rule 5.12(c)(1)(B), the mediation must be conducted:
- (1) subject to rule 5.12(d)(2) – in such manner as the directors reasonably determine; and
  - (2) in accordance with the rules of natural justice.
- (e) Once the mediation is concluded, the directors may decide whether or not to pass the resolution under rule 5.12(a).

### 5.13 Entries in the register of Members

A:

- (a) person admitted as a Member under rule 5.8 – becomes a Member;
  - (b) person transitioning in as a Member under rule 5.7 – becomes a Member;
  - (c) Member affected by an event under rule 5.11 – ceases to be a Member; and
  - (d) Member expelled under rule 5.12 – ceases to be a Member,
- from the time an entry in the register of Members is made to record that fact.

### 5.14 Membership fees

- (a) Each Member must pay such fees as determined by the directors (consistent with applicable requirements of YHAA) as payable in relation to the relevant category of membership.
- (b) Fees are payable at the times determined by the directors.
- (c) The directors may determine differential fees of any type or amount (including a fee of zero) and differential times for payment, as between categories of membership and as between Members within a category of membership.
- (d) Unless the directors determine otherwise in a general or specific case, where fees are due and payable by a Member to the company but are unpaid – rule 6.7(c) determines when that Member loses eligibility to vote at a general meeting.

### **5.15 Variation of class rights**

Unless otherwise provided by the terms of membership of a class of Members:

- (a) all or any of the rights or privileges attached to the class may be varied, whether or not the company is being wound-up, only with the consent in writing of three-quarters of the Members of that class, or with the sanction of a special resolution passed at a separate meeting of the Members of that class;
- (b) the provisions of this constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the Members of that class; and
- (c) the rights or privileges conferred upon the Members of that class are to be taken as not being varied by:
  - (1) the admission of further Members in that class or any category;
  - (2) the establishment of, and admission of Members in, any new class or category of membership, irrespective of the rights or privileges attached to that new class or category of membership; or
  - (3) the cessation of membership, whether under rule 5.11 or otherwise.
- (d) For all purposes, including those in relation to the Act, a category of membership under this constitution does not necessarily constitute a distinct class of Members.

### **5.16 Membership not transferable**

Membership is personal to the Member and is not transferable.

### **5.17 Equitable and other claims**

Except as otherwise required by law or provided by this constitution, the company is not:

- (a) compelled in any way to recognise a person as holding a membership upon any trust, even if the company has notice of that trust; or
- (b) compelled in any way to recognise, or bound by, any equitable, contingent, future or partial claim to or interest in a membership on the part of any other person except an absolute right of ownership in the registered Member, even if the company has notice of that claim or interest.

---

## **6 General meetings**

### **6.1 Calling general meetings**

- (a) The directors may, whenever they think fit, call and arrange to hold a general meeting.
- (b) A general meeting may be called and arranged to be held only as provided by this rule 6.1 or as provided by the Act.
- (c) The directors may change the venue for, postpone or cancel a general meeting unless the meeting is called and arranged to be held by the Members or the court under the Act. If a general meeting is called and

arranged to be held under section 249D of the Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning Members.

## 6.2 Notice of general meetings

- (a) Subject to this constitution, at least 21 days notice (or such other minimum period as may be prescribed by the Act from time to time) of a general meeting must be given in the manner authorised by rule 13.1 to each person who is at the date of the notice:
- (1) a Member;
  - (2) a director; or
  - (3) an auditor of the company.
- (b) A notice of a general meeting must specify:
- (1) the date, time and place of the meeting;
  - (2) if the meeting is to be held in 2 or more places – the technology that will be used to facilitate this; and
  - (3) except as provided in rule 6.2(d), state the general nature of the business to be transacted at the meeting.
- (c) Except as required by the Act or as provided by rule 6.2(d), no business other than that specified in the notice convening a general meeting may be transacted at that general meeting.
- (d) It is not necessary for a notice of an AGM to state that the business to be transacted at the meeting includes the consideration of the annual financial report, directors' report and auditor's report, the election of directors, the declaration of the results of an election of directors, the appointment of the auditor or the fixing of the auditor's remuneration.
- (e) A person may waive notice of any general meeting by notice in writing to the company.
- (f) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 6.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (1) the non-receipt or failure occurred by accident or error; or
  - (2) before or after the meeting, the person:
    - (A) has waived or waives notice of that meeting under rule 6.2(e); or
    - (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.

- (g) A person's attendance at a general meeting waives any objection that person may have to 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.

### 6.3 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of Members is present during the time the business is dealt with.
- (b) A quorum consists of 20 Members present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (1) where the meeting was convened upon the requisition of Members, the meeting must be dissolved; or
  - (2) in any other case:
    - (A) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
    - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### 6.4 Chair of general meetings

- (a) The Chair must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chair at each general meeting.
- (b) If at a general meeting:
  - (1) there is no Chair;
  - (2) the Chair is not present within 15 minutes after the time appointed for the meeting; or
  - (3) the Chair is present within that time but is not willing to act as chair of the meeting,  
the Vice-Chair must, if present and willing to act, preside as chair, failing which:
    - (4) the directors present must elect as chair of the meeting another director who is present and willing to act; or
    - (5) if no other director willing to act is present at the meeting, the Members eligible to vote may elect as chair of the meeting a Member who is present and willing to act and who is entitled to vote at the meeting.
- (c) Despite anything in rule 6.4(b), if the Chair, Vice-Chair and/or any other director later attends a general meeting, the most senior of them (chosen by election if necessary in the manner described in rule 6.4(b)(4) in the case of 2 or more directors in attendance) from time to time who is willing to act must take over as chair of the general meeting.

## 6.5 Conduct of general meetings

- (a) A Member is entitled to attend, and unless he, she or it became a Member later than the end of the 2<sup>nd</sup> calendar month preceding the month in which the general meeting is held to speak at, general meetings.
- (b) Subject to the provisions of the Act, the chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting.
- (c) The chair of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting (subject to the rights of Members at a general meeting as set out in the Act):
  - (1) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present; and
  - (2) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers.
- (d) Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.
- (e) The chair of a general meeting may take any action he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:
  - (1) in possession of a pictorial recording or sound recording device which in the opinion of the chair may or does cause inconvenience or disruption to the meeting;
  - (2) in possession of a placard or banner;
  - (3) in possession of an article considered by the chair to be dangerous, offensive or liable to cause disruption;
  - (4) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
  - (5) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or
  - (6) who is not entitled to receive notice of the general meeting.

The chair may delegate the powers conferred by this rule 6.5(e) to any person he or she thinks fit.
- (f) The chair of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (g) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (h) Except as provided by rule 6.5(g), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (i) Where a meeting is adjourned, the directors may change the venue of, postpone or cancel the adjourned meeting unless the meeting was called and arranged to be held by the Members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning Members.
- (j) Nothing in rule 6.5 is to be taken to limit the powers conferred on the chair of a meeting by law.
- (k) At any time before a vote on a motion is taken at a general meeting, a summary of the proxy votes received in relation to the motion must be disclosed to the meeting.

## 6.6 Decisions at general meetings

- (a) Except in the case of any resolution which under this constitution or as a matter of law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by the Members present at the meeting and any such decision is for all purposes a decision of the Members.
- (b) In the case of an equality of votes upon any proposed resolution the chair of the meeting, in addition to his or her deliberative vote, has 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 before the vote is taken or before or immediately after the declaration of the result of the show of hands:
  - (1) by the chair of the meeting;
  - (2) by at least 5 Members present and having the right to vote on the resolution; or
  - (3) by a Member or Members present at the meeting and representing at least 5% of the total voting rights of all the Members having the right to vote on the resolution on a poll.
- ~~(d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.~~
- (e) Unless a poll is duly demanded, a declaration by the chair 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 minutes of the proceedings of the company which has been signed by the chair of the relevant general meeting or of the next succeeding general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (f) If a poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.

## 6.7 Voting rights

- (a) A Member is entitled to vote at a general meeting:
  - (1) subject to rule 5.14(d); and
  - (2) unless he or she:
    - (A) is a Member in the youth membership category;
    - (B) is an employee of the company; or
    - (C) became a Member later than the end of the 2nd calendar month preceding the month in which the general meeting is held.
- (b) Subject to this constitution and to any rights or restrictions attached to any category of membership, at a general meeting every Member who is entitled to vote and who is present in person or by proxy or Representative has 1 vote.
- (c) The directors must determine a date on which the assessment of Members' eligibility to vote is to be conducted. That date may be up to 14 days prior to the date of:
  - (1) in relation to voting at a general meeting – a particular vote; or
  - (2) in relation to an election of directors undertaken in accordance with the schedules – the 1<sup>st</sup> day in the 2<sup>nd</sup> month preceding the month in which the relevant AGM is to be held,

however, if no determination is made in relation to a particular vote or election, the date on which the assessment of Members' eligibility to vote is to be conducted is the date 14 days prior to the date of:

  - (3) in relation to voting at a general meeting – that particular vote; or
  - (4) in relation to an election of directors undertaken in accordance with the schedules – the 1<sup>st</sup> day in the 2<sup>nd</sup> month preceding the month in which the relevant AGM is to be held.
- (d) A proxy is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member in his or her own right.
- (e) An objection to the qualification of a person to vote at a general meeting:
  - (1) must be raised before or at the meeting at which the vote objected to is given or tendered; and
  - (2) must be referred to the chair of the meeting, whose decision is final.

- (f) A vote not disallowed by the chair of a meeting under rule 6.7(e) is valid for all purposes.

## 6.8 Representation at general meetings

- (a) Subject to this constitution, each Member entitled to vote at a general meeting may vote:
- (1) in person or, where a Member is a body corporate, by its Representative; or
  - (2) by proxy.
- (b) A proxy or Representative may, but need not, be a Member.
- (c) A proxy or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the instrument, but subject to the Act, an instrument appointing a proxy or Representative will be taken to:
- (1) confer authority to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
  - (2) confer authority to speak to any proposed resolution on which the proxy or Representative may vote;
  - (3) confer authority to demand or join in demanding a poll on any resolution on which the proxy or Representative may vote;
  - (4) appoint the chair of the general meeting as the proxy unless the Member clearly specifies another person as proxy and that person attends the general meeting;
  - (5) even though the instrument may refer to specific resolutions and may direct the proxy or Representative how to vote on those resolutions:
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
    - (B) to vote on any procedural motion, including any motion to elect the chair, to (only in the case of a chair elected under rule 6.4(b)(5)) vacate the chair or to adjourn the meeting; and
    - (C) to act generally at the meeting; and
  - (6) ~~even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.~~
- (e) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- (f) Subject to rule 6.8(h), an instrument appointing a proxy need not be in any particular form provided it is in writing, legally valid and either:

- (1) signed by the appointer or the appointer's attorney; or
  - (2) authenticated in such manner as the directors may determine.
- (g) A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, and the authority under which the instrument is signed or a certified copy of the authority, are received in the places, fax numbers or electronic addresses at least:
- (1) 48 hours (or such other minimum period as may be prescribed by the Act from time to time); or
  - (2) such lesser period specified for this purpose in the notice calling the meeting,
- and for this purpose:
- (3) the place may be the company's registered office or other place specified in the notice and a fax number or electronic address may be the fax number or electronic address at the company's registered office or the fax number or electronic address specified in the notice; and
  - (4) the lesser period may be any time before the time set for holding the meeting or adjourned meeting.
- (h) The directors may waive all or any of the requirements of rules 6.8(f) and 6.8(g) and in particular may, upon the production of such other evidence as the directors require to prove the validity of the appointment of a proxy, accept:
- (1) an oral appointment of a proxy;
  - (2) an appointment of a proxy which is not signed or executed in the manner required by rule 6.8(f); and
  - (3) the deposit, tabling or production of a copy (including a copy sent by facsimile) of an instrument appointing a proxy or of the power of attorney or other authority under which the instrument is signed.
- (i) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of the revocation has been received by the company by the time and at 1 of the places at which the instrument appointing the proxy is required to be received under rule 6.8(g).
- (j) ~~The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.~~
- (k) A proxy and a Representative for the same Member may attend and take part in a general meeting but, if the proxy votes on any resolution, the Representative is not entitled to vote, and must not vote, as the Member's Representative on the resolution.

## **7 Directors**

### **7.1 Number, nature and term of directors**

- (a) There must be:
- (1) not less than 4 directors; and
  - (2) not more than 12 directors.
- (b) A person holding office as a director will hold 1 of the following positions (all of which are positions with identical rights, powers, responsibilities and entitlements, but are differentiated in this constitution for the ease of reference):
- (1) director 1 – filled ordinarily by election under rule 7.4;
  - (2) director 2 – filled ordinarily by election under rule 7.4;
  - (3) director 3 – filled ordinarily by election under rule 7.4;
  - (4) director 4 – filled ordinarily by election under rule 7.4;
  - (5) director 5 – filled ordinarily by election under rule 7.4;
  - (6) director 6 – filled ordinarily by election under rule 7.4;
  - (7) director 7 – filled ordinarily by election under rule 7.4;
  - (8) director 8 – filled ordinarily by election under rule 7.4;
  - (9) from the conclusion of the AGM in 2011 – director 9 – filled ordinarily by election under rule 7.4;
  - (10) director 10 – may be filled by appointment under rule 7.2(a);
  - (11) director 11 – may be filled by appointment under rule 7.2(a); and
  - (12) director 12 – may be filled by appointment under rule 7.2(a).
- (c) Subject to rule 7.3(b), the term for each position referred to in rules 7.1(b)(1) to 7.1(b)(9) inclusive, expires at the end of the 3<sup>rd</sup> AGM after the position was last filled by an election.
- (d) The term for each position referred to in rules 7.1(b)(10) to 7.1(b)(12) inclusive, expires in accordance with the term of the relevant appointment.
- (e) At the expiry of the term of a position referred to in rules 7.1(b)(1) to 7.1(b)(9) inclusive, provided he or she is otherwise eligible, the director may stand for election or re-election at the relevant AGM.
- (f) No person may be elected, re-elected, appointed or re-appointed as a director if he or she has held office as a director continually since the conclusion of the AGM in the year 9 years prior to the relevant year.
- (g) A director who may not be elected, re-elected, appointed or re-appointed as a director by virtue of rule 7.1(f) becomes eligible again for election or appointment once he or she has not been a director for at least 11 continuous months.

### **7.2 Appointed directors**

- (a) The directors may appoint any eligible person to 1 of the positions referred to in rules 7.1(b)(10) to 7.1(b)(12) inclusive as and when they see fit, and

must determine the terms for such appointment, including the term of the position which will be the period to the end of the 2<sup>nd</sup> AGM after the appointment is made.

- (b) So far as is practicable and appropriate in the prevailing circumstances, in the process of appointing directors under rule 7.2(a), the directors must bear in mind and advance the principle that the board of directors should be comprised of persons with a broad range of interests, skills, expertise and experience which will assist the directors in carrying on the activities and furthering the objects of the company.
- (c) At the expiry of the term of a position referred to in rules 7.1(b)(10) to 7.1(b)(12) inclusive, the director:
  - (1) may be reappointed by the directors under rule 7.2(a); or
  - (2) provided he or she is otherwise eligible, may stand for election in relation to the relevant AGM.

### 7.3 Casual vacancies

- (a) In relation to a casual vacancy in a position referred to in rules 7.1(b)(1) to 7.1(b)(9) inclusive, the directors may appoint any eligible person to that position, and such appointee holds office until the end of the next AGM but if otherwise eligible, may stand for election or re-election in relation to the relevant AGM.
- (b) Any person elected to fill a casual vacancy in a position referred to in rules 7.1(b)(1) to 7.1(b)(9) inclusive holds office for the balance of the prevailing term for that position.

### 7.4 Election procedure

Any election to the office of director will be undertaken in accordance with the procedure set out in the schedules 1, 2 and 3 to this constitution, which form part of this constitution.

### 7.5 Eligibility for directors

- (a) A person is only eligible to be elected or re-elected as a director if he or she:
  - (1) is a Member other than a Member in the youth membership category at the relevant time;
  - (2) has been a member of either:
    - (A) the company; or
    - (B) an Affiliated Entity,
 for at least 12 months prior to the relevant time;
  - (3) is eligible to vote at a general meeting at the relevant time;
  - (4) is ordinarily resident in Australia;
  - (5) is not at the relevant time an employee of:
    - (A) the company; or
    - (B) a related body corporate of the company;

- (C) an Affiliated Entity; or
  - (D) a related body corporate of an Affiliated Entity;
  - (6) has not in the 12 months prior to the relevant time been an employee of:
    - (A) the company; or
    - (B) a related body corporate of the company; and
  - (7) has completed a director's familiarisation program as determined by the directors.
- (b) A person is only eligible to be appointed or re-appointed as a director if he or she:
- (1) is a Member other than a Member in the youth membership category at the relevant time;
  - (2) is eligible to vote at a general meeting at the relevant time;
  - (3) is ordinarily resident in Australia;
  - (4) is not an employee of the company or of a related body corporate at the relevant time;
  - (5) has not in the 12 months prior to the relevant time been an employee of:
    - (A) the company; or
    - (B) a related body corporate of the company; and
  - (6) has completed a director's familiarisation program as determined by the directors.

## 7.6 Vacation of office

In addition to the circumstances prescribed by the Act, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the directors do not within 1 month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (d) is absent from 3 consecutive meetings of the directors, with or without the consent of the directors, unless at the next meeting of the directors, the directors decide otherwise;
- (e) ceases to be a Member;
- (f) becomes an employee of:
  - (1) the company;
  - (2) a related body corporate of the company;
  - (3) an Affiliated Entity; or

- (4) a related body corporate of an Affiliated Entity; or
- (g) resigns by notice in writing to the company.

### **7.7 Remuneration of directors**

- (a) Each director is entitled to such remuneration (which must be inclusive of superannuation where applicable) out of the funds of the company as the directors determine, subject to any aggregate limit in respect of a Financial Year that has been fixed by the company in general meeting by a resolution passed by at least  $\frac{3}{4}$  of the Members present and voting. At the Adoption Date, the sum of zero is deemed fixed by the company in general meeting.
- (b) In addition to his or her remuneration under rule 7.7(a), a director is entitled to be paid all travelling and other expenses properly incurred by that director in connection with the affairs of the company.
- (c) If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 7.7(a), but subject to the aggregate limit on directors' remuneration set under rule 7.7(a).
- (d) The office of Chair may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 7.7(c).
- (e) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of rule 7.7(c).
- (f) Acceptance of a delegation under rule 7.20(a) may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 7.7(c).

### **7.8 No alternate directors**

A director is not entitled to appoint an alternate director.

### **7.9 Interested directors**

- (a) Subject to rules 7.5 and 7.6(f), a director may hold any other office (other than auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office upon such terms as to tenure of office and otherwise (provided that the director may not receive remuneration in that other capacity) as the directors think fit.
- (b) Subject to rules 7.5 and 7.6(f), a director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise and is not accountable to the company for any other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.

- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation any of the following:
  - (1) selling any property to, or purchasing any property from, the company;
  - (2) guaranteeing the repayment of any money borrowed by the company for a commission or profit; or
  - (3) acting in any professional capacity (other than auditor) on behalf of the company.
- (e) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (g) Subject to rule 7.9(h), a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
  - (1) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
  - (2) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
  - (3) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement the company may execute.
- (h) Rule 7.9(g) does not apply if, and to the extent that, it would be contrary to the Act (including without limitation provisions of the Act which regulate matters concerning material personal interests of directors).
- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed 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 and any regulations made under this constitution will bind all directors.

### 7.10 Powers and duties of directors

- (a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting the generality of rule 7.10(a), the directors may exercise all the powers of the company to borrow or otherwise raise money, to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- (d) The directors may:
  - (1) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
  - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the company and the relevant officer, agent or attorney and any applicable industrial law, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (e) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

### 7.11 Proceedings of directors

- (a) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The directors should meet at least 6 times in each Financial Year.
- (c) The contemporaneous linking together by telephone or other electronic means ~~(allowing reasonable interaction between them)~~ of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or other electronic means.
- (d) A director participating in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (e) A meeting by telephone or other electronic means is to be taken to be held at the place determined by the chair of the meeting provided that at least

1 of the directors involved was at that place for the duration of the meeting.

### **7.12 Convening of meetings of directors**

- (a) The Chair or any 2 or more directors may, whenever they think fit, convene a meeting of the directors.
- (b) A secretary must, when requested by the Chair or on the requisition of any 2 directors, convene a meeting of the directors.

### **7.13 Notice of meetings of directors**

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, other than a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
  - (1) must specify the time and place of the meeting;
  - (2) should where practicable state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting; and
  - (4) may be given in person or by post, or by telephone, fax or other electronic means.
- (c) In the absence of special circumstances, at least 48 hours notice of a meeting of the directors should be given.
- (d) A director may waive notice of any meeting of directors by notifying the company to that effect in person or by post, or by telephone, fax or other electronic means.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the director:
    - (A) has waived or waives notice of that meeting under rule 7.13(d); or
    - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post or by telephone, fax or other electronic means; or
  - (3) the director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

### **7.14 Quorum at meetings of directors**

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present during the time the business is dealt with.

- (b) A quorum consists of the greater of:
- (1) 3; and
  - (2) the number of directors equal to half the number of directors in office at the relevant time (rounded-down if the number of directors in office at the relevant time is an odd number), plus 1 director, present at the meeting of directors.
- (c) If there is a vacancy in the office of a director then, subject to rule 7.14(d), the remaining director or directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors or is less than the minimum number of directors determined under this constitution, the remaining director or directors must act as soon as possible:
- (1) to increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution; or
  - (2) to convene a general meeting of the company for that purpose, and, until that has happened, must only act if and to the extent that there is an emergency requiring them to act.

#### 7.15 Chair

- (a) The directors:
- (1) must elect 1 of the directors to the office of Chair at least annually and in any event at the 1<sup>st</sup> meeting of the directors following an AGM; and
  - (2) may determine the period for which that director is to be Chair.
- (b) If an election to the office of Chair is tied more than once, the Chair must be determined by lot.
- (c) No person may be elected Chair for more than a cumulative, whether or not consecutive, 5 years.
- (d) The Chair has such powers and duties as set out in this constitution and as determined by the directors.
- (e) The Chair must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chair at each meeting of directors.
- (f) If at a meeting of directors:
- (1) there is no Chair;
  - (2) the Chair is not present within 10 minutes after the time appointed for the holding of the meeting; or
  - (3) the Chair is present within that time but is not willing to act as chair of the meeting,
- the Vice-Chair must, if present and willing to act, preside as chair, failing which the directors present must elect 1 of themselves to chair the meeting.

- (g) Despite anything in rule 7.15(f), if the Chair and/or Vice-Chair later attends a meeting of directors, the more senior of them from time to time who is willing to act must take over as chair of the meeting.

#### **7.16 Vice-Chair**

- (a) The directors:
- (1) must elect 1 of the directors to the office of Vice-Chair at least annually and in any event at the 1<sup>st</sup> meeting of the directors following an AGM; and
  - (2) may determine the period for which that director is to be Vice-Chair.
- (b) The Vice-Chair has such powers and duties as set out in this constitution and as determined by the directors.

#### **7.17 Decisions of directors**

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a determination of the directors.
- (c) Other than in relation to an election of the Chair under rule 7.15(a)(1), in the case of an equality of votes upon any proposed resolution the chair of the meeting, in addition to his or her deliberative vote, has a casting vote.

#### **7.18 Written resolutions**

- (a) If:
- (1) all of the directors have received reasonable notice of a proposed act, matter, thing or resolution; and
  - (2) such number of directors who are eligible to consider the act, matter, thing or resolution and who together are sufficient to constitute a quorum, assent to a document containing a statement to the effect that the act, matter or thing has been done or resolution has been passed,
- then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.
- (b) For the purposes of rule 7.18(a):
- (1) the meeting is to be taken as having been held on the day on which, and at the time at which, the document was last assented to by 1 of those constituting that quorum;
  - (2) 2 or more separate documents in identical terms each of which is assented to by 1 or more of the relevant directors are to be taken as constituting 1 document; and

- (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, or by telephone, fax or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

### 7.19 Committees of directors

- (a) The directors may, by adoption of a charter, establish a committee or committees:
  - (1) consisting of such number of directors (being at least 2) as they think fit (but the Chair may not be a member of any audit or similar committee);
  - (2) consisting of such non-directors and non-Members as they think fit;
  - (3) the chair of which must be a director unless the relevant charter requires or allows otherwise; and
  - (4) with such persons including non-directors and non-Members as observers, as they think fit.
- (b) Any:
  - (1) employee of the company or a related body corporate who is a member of a committee may not vote on that committee; and
  - (2) non-director or non-Member who is a member of a committee may only vote on that committee if the relevant charter permits.
- (c) The directors may, in the relevant charter or by resolution, delegate any of their powers to a committee or committees.
- (d) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (e) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.

### 7.20 Delegation to individual directors

- (a) The directors may delegate any of their powers to 1 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.

### 7.21 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or

- (c) the person not being entitled to vote,  
if that circumstance was not known by the person or the directors or committee  
(as the case may be) when the act was done.

## **8 Executive officers and ceremonial positions**

### **8.1 Secretaries and other officers**

- (a) The directors must appoint at least 1 secretary.  
(b) The directors may employ officers.

### **8.2 Provisions applicable to all executive officers**

- (a) A reference in this rule 8.2 to an executive officer is a reference to a secretary or officer appointed under rule 8.1.
- (b) The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer and any applicable industrial law, any executive officer of the company may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:
- (1) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer is not required to be a Member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:
- (1) a defect in the person's appointment as an executive officer; or
  - (2) the person being disqualified to be an executive officer,
- if that circumstance was not known by the person when the act was done.

### **8.3 Patron**

- (a) A Patron who has been proposed by the directors, may be appointed by resolution at a general meeting, and he or she holds office until death, resignation, ceasing to be a Member or removal from office by resolution at a general meeting.
- (b) A Patron may not be, and is not, a director or other officer of the company.
- (c) A Patron has such rights, entitlements and duties as agreed from time to time with the directors.

## 8.4 President

- (a) A President who has been proposed by the directors and is a Member, may be appointed by resolution at a general meeting, and he or she holds office until death, resignation, retirement under rule 8.4(b), ceasing to be a Member or removal from office by resolution at a general meeting.
- (b) The appointment of a President must specify his or her term of office which cannot be more than 3 years from the date of his or her appointment.
- (c) A President may not be, and is not, a director or other officer of the company.
- (d) A President has such rights, entitlements and duties as agreed from time to time with the directors.

## 8.5 Vice-Presidents

- (a) Up to 10 Vice-Presidents each of whom has been proposed by the directors and is a Member, may be appointed by resolution at a general meeting, and he or she holds office until death, resignation, retirement under rule 8.5(b), ceasing to be a Member or removal from office by resolution at a general meeting.
- (b) The appointment of a Vice-President must specify his or her term of office which cannot be more than 3 years from the date of his or her appointment.
- (c) A Vice-President may not be, and is not, a director or other officer of the company.
- (d) A Vice-President has such rights, entitlements and duties as agreed from time to time with the directors.

---

## 9 Indemnity and insurance

### 9.1 Persons to whom rules 9.2 and 9.5 apply

Rules 9.2 and 9.5 apply to each Official.

### 9.2 Indemnity

Subject to rule 9.3, the company must indemnify each Official on a full indemnity basis and to the full extent permitted by law against all Liabilities incurred by the ~~Official as an Official, including without limitation:~~

- (a) a liability for negligence; and
- (b) a liability for reasonable legal costs.

### 9.3 Limit on indemnity

- (a) The indemnity in rule 9.2 does not operate in relation to any Liability which:
  - (1) is a Liability to the company or any of its related bodies corporate;

- (2) is a Liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
- (3) arises out of conduct of the Official which was not in good faith, or which involves wilful misconduct, gross negligence, reckless misbehaviour or fraud,

provided that this rule 9.3(a) does not apply to a Liability for legal costs.

- (b) The indemnity in rule 9.2 does not operate in relation to legal costs incurred by the Official in defending an action for a Liability if the costs are incurred:
  - (1) in defending or resisting proceedings in which the Official is found to have a Liability referred to in rule 9.3(a);
  - (2) in defending or resisting criminal proceedings in which the Official is found guilty;
  - (3) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established. For the avoidance of doubt, this does not include costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order; or
  - (4) in connection with proceedings for relief to the Official under the Act in which the court denies the relief.
- (c) If there is any appeal in relation to any proceedings referred to in rule 9.3(b), it is the outcome of the final appeal that is relevant for the purposes of rule 9.3(b).
- (d) The indemnity in rule 9.2:
  - (1) does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void, unenforceable or not permitted by law; and
  - (2) does not operate in respect of any Liability of the Official to the extent that Liability is covered by insurance.

#### **9.4 Extent of indemnity**

The indemnity in rule 9.2:

- (a) is enforceable without the Official having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by the Official even though the Official may have ceased to be an officer of the company or its related bodies corporate or to hold the non-officer position the Official originally held; and
- (c) applies to Liabilities incurred both before and after the Adoption Date.

#### **9.5 Insurance**

- (a) The company may, to the extent permitted by law:
  - (1) purchase and maintain insurance; or

(2) pay or agree to pay a premium for insurance,

for each Official against any Liability incurred by the Official as an Official including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

(b) Remuneration for a director under rule 7.7(a) will not include any amount paid by the company or a related body corporate for any insurance premium paid or agreed to be paid for the director under rule 9.5(a).

## 9.6 Savings

Nothing in rule 9.2 or 9.5:

- (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; or
- (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.

## 9.7 Deed

The company may enter into a deed with any Official to give effect to the rights conferred by rules 9.1 to 9.6, or the exercise of a discretion under rules 9.1 to 9.6 on such terms as the directors think fit which are not inconsistent with rules 9.1 to 9.6.

---

## 10 Winding-up

- (a) If, on the winding-up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to a company, fund, institution or authority:
  - (1) which has objects similar to the objects of the company; and
  - (2) whose constitution prohibits distributions or payments to its members or former members to an extent at least as great as is outlined in rule 4.
- (b) The identity of the institution referred to in rule 10(a) must be decided by the directors, or if the directors do not wish to decide or do not decide, it must be decided by the Members by ordinary resolution at or before the time of winding-up or dissolution of the company and, if the Members cannot decide, by the Supreme Court of New South Wales.
- (c) Every Member undertakes to contribute to the property of the company in the event of it being wound-up while he, she or it is a Member, or within 1 year after he, she or it ceases to be a Member, for payment of the debts and liabilities of the company (contracted before he, she or it ceases to be a Member) and of the costs, charges, and expenses of winding-up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding \$1.

## **11 Minutes and records**

### **11.1 Minutes of meetings**

The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of the directors (including committees of the directors) are recorded in books kept for that purpose, within 1 month after the relevant meeting is held.

### **11.2 Minutes of resolutions passed without a meeting**

The directors must ensure that minutes of resolutions passed by directors (and committees of directors) without a meeting are recorded in books kept for the purpose within 1 month after the resolution is passed.

### **11.3 Signing of minutes**

- (a) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or by the chair of the next meeting.
- (b) The minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

### **11.4 Minutes as evidence**

A minute that is recorded and signed under rules 11.1 and 11.2 is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

### **11.5 Inspection of records**

- (a) The directors must ensure the minute books for general meetings are open for inspection by Members free of charge.
- (b) Subject to rule 11.5(a), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, financial records and other documents of the company or any of them will be open to the inspection of Members (other than directors).
- (c) A Member (other than a director) does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.

### **11.6 Document retention and archives**

The directors must establish, maintain and administer policies as they see fit for the retention and archiving of the minute books, financial records and other documents of the company, consistent with:

- (a) legal requirements;
- (b) historical records preservation priorities;
- (c) confidentiality restrictions;
- (d) privacy considerations; and
- (e) other relevant matters.

---

## 12 Accounts and audit

### 12.1 Accounts

The company must prepare and deal with such accounts as required under the Act.

### 12.2 Audit

The company must appoint a properly qualified auditor whose duties will be regulated in accordance with the Act.

---

## 13 Notices

### 13.1 Notices by the company to Members

- (a) A notice may be given by the company to a Member by:
  - (1) serving it personally at, or by sending it by post in a prepaid envelope to, the Member's address as shown in the register of Members, or by sending it to the fax number or electronic address, or such other address the Member has supplied to the company for the giving of notices; or
  - (2) making a copy of it accessible electronically on a website of or relating to the company.
- (b) The fact that a person has supplied a fax number or electronic address for the giving of notices does not:
  - (1) require the company to give any notice to that person by fax or electronic means; or
  - (2) prevent the company from giving any notice to that person in the manner envisaged by rule 13.1(a)(2).
- (c) A signature to any notice given by the company to a Member under this rule 13.1 may be in writing or a facsimile printed or affixed by some mechanical, electronic or other means.
- (d) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

### 13.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or by sending it to the fax number or electronic address, or such other address as the director has supplied to the company for the giving of notices.

### 13.3 Notices by Members or directors to the company

Subject to this constitution, a notice may be given by a Member or director to the company by serving it on the company at, or by sending it by post in a prepaid

envelope to, the registered office of the company or by sending it to the principal fax number or principal electronic address of the company at its registered office.

### **13.4 Time of service**

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (1) in the case of a notice of a general meeting – on the Business Day after the date of its posting; or
  - (2) in any other case – 3 Business Days after it is sent.
- (b) Where a notice is sent by fax or electronic means service of the notice is to be taken to be effected on the Business Day after the date it is sent.
- (c) Where the company gives a notice under rule 13.1(a)(2), service of the notice is to be taken to be effected when the notice was 1<sup>st</sup> so made accessible.

### **13.5 Other communications and documents**

Rules 13.1 to 13.4 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

### **13.6 Notices in writing**

A reference in this constitution to a notice or other communication in writing includes a notice given by fax or electronic means.

---

## **14 By-laws**

### **14.1 By-laws are made by the directors**

The directors may from time to time, in their absolute discretion, make, amend, add to, rescind or replace by-laws concerning any aspect of the membership, governance, management, operation or activities of the company including:

- (a) any matter this constitution envisages may be regulated by By-laws; and
- (b) any other matter relevant to the company that the directors choose to regulate.

### **14.2 Conflict between the constitution and By-laws**

To the extent of any conflict between this constitution and any By-law, this constitution prevails.

### **14.3 Effectiveness and promulgation of By-laws**

Any By-law made, and any amendment, addition, rescission or replacement:

- (a) has effect on and from the date it is made unless otherwise stated in the relevant instrument; and

- (b) must be promulgated to those affected, provided that failure to bring it to the attention of any person does not render it or anything done in accordance with it void, voidable or ineffective.

#### **14.4 Enforceability of By-laws**

Any By-law:

- (a) is as valid and enforceable as if it was repeated in this constitution; and
- (b) can be enforced by legal action.

---

## **15 General**

### **15.1 Submission to jurisdiction**

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

### **15.2 Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

---

## **16 Transitional provisions**

- (a) From the Adoption Date the directors named in rules 16(b)(1) to 16(b)(8), secretary, Patron, President and Vice-Presidents of the company in office at that time hold those positions under this constitution.
- (b) Immediately before the Adoption Date, all of the positions of director of the company are vacated, then on and from the Adoption Date, the directors of the company will be:
  - (1) director 1 – Murray John Bowles;
  - (2) director 2 – John Derry Clancy;
  - (3) director 3 – Genene Nicole Fox;
  - (4) director 4 – Helen Margaret Harms;
  - (5) director 5 – John Edward McCulloch;
  - (6) director 6 – Leonie Isabelle Thijssen;
  - (7) director 7 – Salvator Thomas Vella;
  - (8) director 8 – Toinette Vincent; and
  - (9) director 9, director 10, director 11 and director 12 – unoccupied,

and none of the directors referred to in rules 16(b)(1) to 16(b)(8) need complete any director's familiarisation program under rule 7.5.

- (c) Notwithstanding rule 7.1(c), in relation to the initial terms for the directors referred to in rules 16(b)(1) to 16(b)(8):
  - (1) the term for 2 of those positions expires at the end of the 2011 AGM – at which time further terms for those positions will be determined by rule 7.1(c);
  - (2) the term for 3 of those positions expires at the end of the 2012 AGM – at which time further terms for those positions will be determined by rule 7.1(c);
  - (3) the term for the remaining 3 positions expires at the end of the 2013 AGM – at which time further terms for those positions will be determined by rule 7.1(c);
  - (4) the directors holding the positions referred to in rules 16(b)(1) to 16(b)(8) may decide as between themselves whose positions expire under (1) and (2) – but failing agreement, this will be determined by lot; and
  - (5) a director whose term expires under (1), (2) or (3), if otherwise eligible, may stand for election in relation to the relevant AGM.
- (d) For the purposes of rule 7.1(f), the directors referred to in rules 16(b)(1) to 16(b)(8) are deemed to have first taken office as a director at the conclusion of the 2010 AGM.
- (e) On the 1<sup>st</sup> anniversary of the Adoption Date, this rule 16 (except for rules 16(c), 16(d), 16(f) and 16(g)) ceases to have effect and is removed from this constitution.
- (f) Immediately after the end of the 2013 AGM rules 16(c) and 16(f) cease to have effect and are removed from this constitution.
- (g) Immediately after the end of the 2021 AGM rule 16(d) and 16(g) cease to have effect and are removed from this constitution.

## Schedule 1 – nomination procedure

### Call for nominations

- 1 During the 4<sup>th</sup> month preceding the month in which an AGM is to be held, the company must send to each Member who is entitled to vote at a general meeting at the time of sending (or such earlier time not exceeding 14 days prior to the commencement of sending, as the directors determine), and who has:
- (a) an email or fax address, or a postal address in Australia, in the company's register of Members; and
  - (b) not previously indicated to the company that he, she or it does not wish to receive voting forms,
- a notice of the forthcoming election of directors containing:
- (c) the names of the directors to retire at such meeting;
  - (d) the eligibility criteria for directors under rule 7.5(a) (including the proposed date for any necessary director's familiarisation program); and
  - (e) the deadline for receipt of nominations set under clause 3.

The non-receipt of such notice by any Member does not invalidate the election or any part of it.

- 2 A nomination of a candidate for election as a director must:
- (a) be proposed by not less than 2 Members entitled to vote at a general meeting;
  - (b) contain the consent of the candidate to be a director of:
    - (1) the company; and
    - (2) any subsidiary of the company of which the directors of the company are *ex officio* also directors (or equivalent); and
  - (c) be in or to the effect of any form approved by the directors for this purpose.

### Deadline for receipt of nominations

- 3 A nomination of a candidate for election as a director must be received by the company no later than 4:00pm on the last Business Day of the 3<sup>rd</sup> month preceding the month in which the AGM is to be held.

### Eligibility of candidates

- 4 The directors must ensure that a director's familiarisation program within the meaning of rule 7.5(a), which will be able to be completed before the 15<sup>th</sup> day in the 2<sup>nd</sup> month preceding the month in which the AGM is to be held, is offered to each candidate who has not already completed such a program.
- 5 The secretary must assess each nomination and ineligible nominees are to be disregarded.

**Consequences flowing from the number of candidates nominated**

- 6 If there are less than or no greater number of candidates than vacancies to be filled the Chair of the AGM in relation to which the election is to take place must at that AGM declare all such candidates duly elected.
- 7 If there are less candidates than vacancies to be filled, the unfilled positions are casual vacancies.
- 8 If there are less than or no greater number of candidates than vacancies to be filled, the question of which candidate fills which vacancy under rule 7.1(b) will be:
  - (a) resolved as all the directors agree between themselves; or
  - (b) failing agreement under clause 8(a) within 7 days of the AGM – resolved by lot in such manner as the Chair determines.
- 9 If there are more candidates than vacancies to be filled, an election must be conducted in accordance with schedules 2 and 3.

**Directors' additional powers**

- 10 The directors may:
  - (a) delegate to a person, committee or other entity; and/or
  - (b) engage and delegate to a contractor to assist them or to exercise or discharge,all or any of their powers or functions, or those of the secretary, in this schedule.

## Schedule 2 – voting

### Preparation and dispatch of voting documentation

- 1 After the 15<sup>th</sup> day in the 2<sup>nd</sup> month preceding the month in which the AGM is to be held, the secretary assisted by 2 scrutineers appointed by the directors and who are independent of the company and of each candidate, must determine the order of listing on the voting form of all candidates by 'Robson rotation' where practicable, and otherwise by lot.
- 2 Each candidate may submit a resumé. A resumé must:
  - (a) be no longer than 125 words in length;
  - (b) include details in relation to:
    - (1) the candidate's qualifications and relevant experience;
    - (2) the candidate's contribution to the YHA movement and the company to date; and
    - (3) key issues the candidate sees as facing the company;
  - (c) not endorse, disparage or otherwise refer to any other candidate or any other director;
  - (d) not contain anything defamatory; and
  - (e) comply with any applicable By-laws.

The secretary, in consultation with the scrutineers, may in good faith edit any resumé in such manner as he or she sees fit to ensure compliance with this clause 2.

- 3 After the 15<sup>th</sup> day in the 2<sup>nd</sup> month preceding the month in which the AGM is to be held, the company must send to each Member who under rule 6.7(c) is entitled to vote in relation to the election, and who has:
  - (a) an email or fax address, or a postal address in Australia, in the company's register of Members; and
  - (b) not previously indicated to the company that he, she or it does not wish to receive voting forms,
 voting documentation:
  - (c) containing a statement of the number of vacancies to be filled at the election;
  - (d) including a voting form containing the names of all candidates listed in the order determined under clause 1;
  - (e) including all resumé's submitted, in the same order as the candidates' names appear on the voting form;
  - (f) containing directions on how votes may be cast electronically;
  - (g) containing directions on how votes may be cast other than electronically;
  - (h) containing directions on how to vote anonymously; and

- (i) including any documents required to be sent under clause 5.

### **Casting votes**

- 4 To the extent practicable, a Member entitled to vote must cast a vote by email or any other form of electronic data transmission.
- 5 Where:
- (a) the secretary determines that it is not practicable for a particular Member to cast a vote by email or any other form of electronic data transmission; or
  - (b) a particular Member does not have a postal address in Australia or a fax or email address in the register of Members and by no later than the end of 3<sup>rd</sup> month preceding the month in which the AGM is to be held, requests paper voting documents,
- the company must send that Member a paper voting form and self-addressed pre-paid envelope marked 'ballot' with a place on the rear of the envelope for the Member to write his, her or its name, address, membership number and signature.
- 6 The non-receipt by any Member of any or all voting documentation electronically or in paper form, does not invalidate the election or any part of it.
- 7 To indicate his, her or its votes, a Member entitled to vote must complete the electronic or paper voting form by numbering in his, her or its order of preference for at least as many candidates as there are vacancies to be filled at the election and for as many more candidates as he, she or it pleases, opposite the names of each of the candidates for whom he, she or it votes.
- 8 To submit a voting form validly, a Member entitled to vote must comply with the directions given in the voting documentation sent to the Member under clause 3.

### **Directors' additional powers**

- 9 The directors may:
- (a) delegate to a person, committee or other entity; and/or
  - (b) engage and delegate to a contractor to assist them or to exercise or discharge,
- all or any of their powers or functions, or those of the secretary, in this schedule.

## Schedule 3 – vote counting

### Overview

- 1 To provide an overview of the process for determining the result of an election and to assist in the interpretation of clauses 5 to 33, the following points set out in general terms the stages of the process of counting votes, and the objectives of that process:
  - (a) scrutiny of voters and voting forms to assess eligibility;
  - (b) determination of a quota;
  - (c) initial handling of 1<sup>st</sup> preference votes;
  - (d) determination of candidates elected by having 1<sup>st</sup> preference votes in excess of a quota on the 1<sup>st</sup> count;
  - (e) initial transfer to next-preferred candidates of surplus 1<sup>st</sup> preference votes of candidates elected;
  - (f) exclusion of lowest-scoring candidate in respect of 1<sup>st</sup> preference votes and transfer of those votes to higher-scoring candidates; and
  - (g) continued exclusion of low-scoring candidates and distribution of their preferences until all positions are filled.
- 2 If there is any inconsistency between anything in clause 1 and the detailed procedures in clauses 3 to 33, the detail in those clauses prevails.

### Votes to be included in the count

- 3 All validly submitted voting forms received by the company no later than 15 Business Days prior to the date fixed for the AGM must be counted in the election.

### Determination of the result of the election

- 4 The result of the election must be determined in accordance with the procedure set out in this schedule, by the secretary assisted by the scrutineers.

### Review of voters and voting forms

- 5 After the closing of the ballot the secretary assisted by the scrutineers must:
  - ~~(a) examine each voting form and remove all informal voting forms from the counting process;~~
  - (b) in accordance with clauses 6 to 33, determine the result of the election; and
  - (c) report in writing the result of the election to the Chair.

### 1<sup>st</sup> preference votes

- 6 The secretary and scrutineers must ascertain the total number of 1<sup>st</sup> preference votes recorded for each candidate on all voting forms and the total of all such votes for all candidates.

- 7 The secretary and scrutineers must then determine a quota by dividing the total number of 1<sup>st</sup> preference votes for all candidates by the sum of the number of vacancies plus 1, and then by increasing the quotient obtained (disregarding any remainder) by 1.
- 8 Any candidate who has received a number of 1<sup>st</sup> preference votes equal to or greater than a quota is elected.
- 9 Where the number of 1<sup>st</sup> preference votes received by a candidate is equal to a quota, the voting forms containing those 1<sup>st</sup> preference votes must be set aside as finally dealt with.

#### **Initial transfer of surplus votes**

- 10 If the number of 1<sup>st</sup> preferences received by any candidate is greater than a quota, then unless all vacancies have been filled, and unless clause 25 applies, the surplus votes of each elected candidate are transferred to the continuing candidates as follows:
  - (a) the voting forms allotted to the elected candidate in the last transfer shall be re-examined, and, for each unelected candidate, the number of these voting forms on which he or she is indicated as preferred to any other unelected candidate must be counted and recorded;
  - (b) if the total value of the voting forms recorded according to (a) is greater than the surplus, the surplus must be divided by the number of these voting forms and the result is the transfer value. However, if the total value of these voting forms is less than or equal to the surplus, the transfer value is the value at which the voting papers were allotted to the elected candidate;
  - (c) the number of voting forms recorded for each unelected candidate under (a) is then multiplied by the transfer value and, in each case, the whole number remaining after any fraction in the result is discarded must be credited to the unelected candidate and added to his or her progressive total; and
  - (d) if more than 1 candidate has a surplus, the surpluses must be transferred in order of size, beginning with the larger or largest, provided that no surplus may be transferred before a surplus that arose earlier in the counting whether larger or not, and if 2 or more surpluses arising from the same transfer are equal, the surplus of the candidate whose progressive total was highest when they last had unequal totals must be transferred first, and if their progressive totals were never unequal, the secretary must decide by lot which surplus is transferred first.
- 11 When the surplus votes of all elected candidates have been transferred to the continuing candidates under clause 10, any continuing candidate who has received a number of votes equal to or greater than a quota is elected.
- 12 Unless all the vacancies have been filled, the surplus votes of the elected candidate are to be transferred to the continuing candidates in accordance with clause 10, but, in the application of clause 10, only those voting forms which have been transferred to the elected candidate from a candidate previously elected are to be taken into consideration.

- 13 If as a result of the transfer of the surplus votes of a candidate elected by virtue of clause 12 or elected at a later stage of the count, a continuing candidate receives a number of votes equal to or greater than a quota, he or she is elected.
- 14 Unless all the vacancies have been filled, the surplus votes of the elected candidate are transferred to the continuing candidates in accordance with clause 10 but in the application of that clause only those voting forms which have been transferred to the elected candidate from the candidate or candidates elected at the last preceding count are to be taken into consideration.

#### **Transfer of voting forms and continued counting**

- 15 The voting forms containing the 1<sup>st</sup> preference votes of a candidate who has been elected under clause 11, 12, 13 or 14 together with the voting forms transferred to him or her from a candidate previously elected or excluded which have not been further transferred, must be set aside as finally dealt with.
- 16 If after the transfer of the surplus votes of all the elected candidates, no continuing candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to or greater than a quota, the candidate who has received the least votes is excluded and the whole of his or her voting forms are transferred to the continuing candidate next highest in order of the voters' available preferences behind the most recently elected candidate.
- 17 If as a result of the transfer of voting forms under clause 16 or as the result of the exclusion of a candidate at any subsequent stage of the count a continuing candidate has received a number of votes equal to or greater than a quota, he or she is elected.
- 18 Unless all the vacancies have then been filled, the surplus votes of the elected candidate are transferred to the continuing candidates in accordance with clause 10 but in the application of that clause, only those voting forms which have been transferred to the elected candidate from the candidate last excluded are to be taken into consideration.
- 19 The voting forms containing the 1<sup>st</sup> preference votes of the elected candidate together with the voting forms transferred to him or her from a candidate previously elected or excluded which have not been further transferred must be set aside as finally dealt with.
- 20 If no continuing candidate has then received a number of votes equal to or greater than a quota, ~~the process of excluding the candidate with the least~~ votes and the transferring of voting forms containing those votes to the continuing candidates as described in clause 16 must be repeated until a continuing candidate receives a number of votes equal to or greater than a quota or in respect of the last vacancy a majority of the votes remaining in the count, but the process of excluding candidates must not be repeated after the number of continuing candidates is equal to the number of unfilled vacancies.
- 21 A voting form which pursuant to the exclusion of a candidate is otherwise required to be transferred to a continuing candidate must be set aside as

- finally dealt with if it does not indicate a next available preference for a continuing candidate.
- 22 After all the candidates who have received a number of votes equal to or greater than a quota are elected:
- (a) where there is 1 remaining unfilled vacancy – the candidate who has received a majority of the votes remaining in the count; or
  - (b) where the number of continuing candidates is equal to the number of remaining unfilled vacancies,
- those candidates are elected.
- 23 Where on the count of the 1<sup>st</sup> preference votes or at the same time at any subsequent stage of the count, 2 or more candidates are elected by reason of their having received a number of votes equal to or greater than a quota, any transfer of the surplus votes of those candidates is to be carried out in the order 1<sup>st</sup> of the candidate with the larger or largest surplus, 2<sup>nd</sup> of the candidate with the next largest surplus and so on.
- 24 Notwithstanding any other clause in this schedule, a transfer of the surplus votes of an elected candidate must be deferred (but without affecting the order of that transfer) so long as the total number of those surplus votes and any other surplus votes deferred is less than the difference between the total votes of the 2 continuing candidates with the least votes.
- 25 Where a transfer of surplus votes is deferred under clause 24, unless all vacancies have been filled the candidate with the least votes is then excluded and the voting forms containing his or her votes are transferred to the continuing candidates as described in clause 16.

#### **Dealing with equal numbers of votes**

- 26 If on any account 2 or more candidates have an equal number of votes and 1 of them has to be excluded the candidate whose name is on the slip drawn in accordance with clause 29 is to be excluded.
- 27 If at the time of their election 2 or more candidates have an equal number of votes that is more than a quota the candidate whose name is on the slip drawn in accordance with clause 29 is for the purposes of clause 23 deemed to have had the larger or largest surplus.
- 28 If on the final count for filling the last vacancy 2 candidates have an equal number of votes 1 candidate must be excluded in accordance with clause 26 and the other is elected.
- 29 For the purposes of clauses 26 and 27, where candidates have an equal number of votes:
- (a) the names of those candidates must be written on similar slips of paper;
  - (b) the slips must be folded so as to prevent the name being seen;
  - (c) the slips must be mixed up; and
  - (d) 1 of the slips must be drawn by lot by the secretary,
- or an electronic process for drawing by lot may be implemented.

### **Allocation of elected candidates to vacant positions**

- 30 Vacancies in the positions set out in rule 7.1(b) will be filled by progressively elected candidates in the order of the (or a) vacancy with the longest term to the (or a) vacancy with the shortest term, and in the event of simultaneously elected candidates where vacancies with different terms are available, the determination of which elected candidate fills which vacancy will be determined by lot in such manner as the Chair determines.

### **Declaration of the result of the election**

- 31 The Chair of the AGM in relation to which the election has taken place must at that AGM declare all successful candidates duly elected, and advise the meeting of the number of votes received for each candidate.

### **Formality of voting forms**

- 32 Any paper voting form which is not completed and received in accordance with the relevant directions given under clauses 3 and 7 of schedule 2 is, subject to clause 33, informal and must be dealt with under clause 5(a).
- 33 In any case of a minor irregularity in compliance with relevant directions given under clauses 3 or 7 of schedule 2 or in any other case of doubt as to the formality of any voting form, the matter must be referred to the secretary, whose decision on the matter is conclusive and binding.

### **Directors' additional powers**

- 34 The directors may direct the destruction of electronic and paper voting forms at any time after the expiration of 1 month after the date of the declaration of the election.
- 35 The directors may:
- (a) delegate to a person, committee or other entity; and/or
  - (b) engage and delegate to a contractor to assist them or to exercise or discharge,
- all or any of their powers or functions, or those of the secretary, in this schedule, and provided any such person, entity or contractor is independent of the company and of each candidate, the directors may dispense with the requirement for the 2 scrutineers.
- 36 The directors (or their delegate or contractor) may utilise electronic systems and other technology to carry out all or any part of the counting process set out in clauses 1 to 33. Any such electronic system or other technology must be capable of ensuring, and must be implemented in such a manner, that its counting process is as consistent with the manual counting process outlined in clauses 1 to 33 as is practicable in the circumstances.

---

**Table of contents**

<b>1</b>	<b>Preliminary</b>	<b>1</b>
	1.1 Definitions and interpretation	1
	1.2 Application of the Act	2
	1.3 Exercise of powers	3
<b>2</b>	<b>Objects</b>	<b>4</b>
<b>3</b>	<b>Powers</b>	<b>4</b>
<b>4</b>	<b>Income and property</b>	<b>5</b>
<b>5</b>	<b>Membership</b>	<b>5</b>
	5.1 Categories of membership	5
	5.2 Adult membership	6
	5.3 Youth membership	6
	5.4 Life membership	7
	5.5 Honorary life membership	7
	5.6 Group membership	8
	5.7 Transitioning in of members from a Merging Body	10
	5.8 Admission of new Members – general provisions	10
	5.9 Power to decline admission of Members	11
	5.10 Power to suspend admission of Members	11
	5.11 Cessation of membership	11
	5.12 Expulsion of Members	11
	5.13 Entries in the register of Members	12
	5.14 Membership fees	12
	5.15 Variation of class rights	13
	5.16 Membership not transferable	13
	5.17 Equitable and other claims	13
<b>6</b>	<b>General meetings</b>	<b>13</b>
	6.1 Calling general meetings	13
	6.2 Notice of general meetings	14
	6.3 Quorum at general meetings	15
	6.4 Chair of general meetings	15
	6.5 Conduct of general meetings	16
	6.6 Decisions at general meetings	17
	6.7 Voting rights	18
	6.8 Representation at general meetings	19
<b>7</b>	<b>Directors</b>	<b>21</b>
	7.1 Number, nature and term of directors	21
	7.2 Appointed directors	21
	7.3 Casual vacancies	22
	7.4 Election procedure	22
	7.5 Eligibility for directors	22
	7.6 Vacation of office	23
	7.7 Remuneration of directors	24

7.8	No alternate directors	24
7.9	Interested directors	24
7.10	Powers and duties of directors	26
7.11	Proceedings of directors	26
7.12	Convening of meetings of directors	27
7.13	Notice of meetings of directors	27
7.14	Quorum at meetings of directors	27
7.15	Chair	28
7.16	Vice-Chair	29
7.17	Decisions of directors	29
7.18	Written resolutions	29
7.19	Committees of directors	30
7.20	Delegation to individual directors	30
7.21	Validity of acts	30
<b>8</b>	<b>Executive officers and ceremonial positions</b>	<b>31</b>
8.1	Secretaries and other officers	31
8.2	Provisions applicable to all executive officers	31
8.3	Patron	31
8.4	President	32
8.5	Vice-Presidents	32
<b>9</b>	<b>Indemnity and insurance</b>	<b>32</b>
9.1	Persons to whom rules 9.2 and 9.5 apply	32
9.2	Indemnity	32
9.3	Limit on indemnity	32
9.4	Extent of indemnity	33
9.5	Insurance	33
9.6	Savings	34
9.7	Deed	34
<b>10</b>	<b>Winding-up</b>	<b>34</b>
<b>11</b>	<b>Minutes and records</b>	<b>35</b>
11.1	Minutes of meetings	35
11.2	Minutes of resolutions passed without a meeting	35
11.3	Signing of minutes	35
11.4	Minutes as evidence	35
11.5	Inspection of records	35
11.6	Document retention and archives	35
<b>12</b>	<b>Accounts and audit</b>	<b>36</b>
12.1	Accounts	36
12.2	Audit	36
<b>13</b>	<b>Notices</b>	<b>36</b>
13.1	Notices by the company to Members	36
13.2	Notices by the company to directors	36
13.3	Notices by Members or directors to the company	36
13.4	Time of service	37

---

13.5	Other communications and documents	37
13.6	Notices in writing	37
<b>14</b>	<b>By-laws</b>	<b>37</b>
14.1	By-laws are made by the directors	37
14.2	Conflict between the constitution and By-laws	37
14.3	Effectiveness and promulgation of By-laws	37
14.4	Enforceability of By-laws	38
<b>15</b>	<b>General</b>	<b>38</b>
15.1	Submission to jurisdiction	38
15.2	Prohibition and enforceability	38
<b>16</b>	<b>Transitional provisions</b>	<b>38</b>
	<b>Schedule 1 – nomination procedure</b>	
	<b>Schedule 2 – voting</b>	
	<b>Schedule 3 – vote counting</b>	