

# Constitution

Bridge Housing Limited ABN 55760055094

A company limited by guarantee

**Mallesons Stephen Jaques**

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

[www.mallesons.com](http://www.mallesons.com)

# Contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	2
1.3	Corporations Act	3
1.4	Headings and Parts	4
1.5	Replaceable rules not to apply	4
<b>2</b>	<b>Objects and purposes of Company</b>	<b>4</b>
2.1	Charitable Purpose	4
2.2	Objects	4
<b>3</b>	<b>Income and property of Company</b>	<b>4</b>
3.1	Application of income and property for purposes and objects only	4
3.2	Not for Profit	4
3.3	Payments by Company in good faith	5
3.4	Charitable Fundraising Act	5
<b>4</b>	<b>Gift Fund</b>	<b>5</b>
4.1	Prevailing article	5
4.2	Maintaining a Gift Fund	5
4.3	Use of moneys in Gift Fund	5
4.4	Winding up	6
<b>5</b>	<b>Membership</b>	<b>6</b>
5.1	Becoming a Member	6
5.2	Admission as a Member	6
5.3	Application for Membership	6
5.4	Effect of application	6
5.5	Decision	7
5.6	Register of Members	7
5.7	Application Fee	7
5.8	Member to notify changes	7
5.9	Annual Subscription Fee	7
5.10	Payment of Annual Subscription Fee	7
5.11	Waiver of Annual Subscription Fee	7
5.12	Ceasing to be a Member	8
5.13	Resignation	8
5.14	Non-payment of Annual Subscription Fee	8
5.15	Censuring, suspension or expulsion of Member	9
5.16	Termination/Cancellation	9
5.17	Limited liability	10
<b>6</b>	<b>General meetings</b>	<b>10</b>
6.1	Annual general meeting	10
6.2	Convening a general meeting	10
6.3	Members have power to convene general meeting	10
6.4	Notice of general meeting	10
6.5	Calculation of period of notice	10
6.6	Directors entitled to notice of general meeting	11
6.7	Cancellation or postponement of general meeting	11
6.8	Notice of cancellation, postponement or change of place of general meeting	11
6.9	Contents of notice postponing general meeting	11
6.10	Number of clear days for postponement of general meeting	11
6.11	Business at postponed general meeting	12
6.12	Non-receipt of notice	12
6.13	Proxy, attorney or Representative at postponed general meeting	12

---

<b>7</b>	<b>Proceedings at general meetings</b>	<b>12</b>
7.1	Reference to a Member	12
7.2	Number for a quorum	13
7.3	Requirement for a quorum	13
7.4	If quorum not present	13
7.5	Adjourned meeting	13
7.6	Appointment of chairman of general meeting	13
7.7	Absence of chairman at general meeting	13
7.8	Conduct of general meetings	14
7.9	Adjournment of general meeting	14
7.10	Notice of adjourned meeting	14
7.11	Questions decided by majority	15
7.12	Equality of votes - casting vote for chairman	15
7.13	Voting on show of hands	15
7.14	Demanding a poll	15
7.15	Poll	15
7.16	Entitlement to vote	16
7.17	Objection to voting qualification	16
7.18	Chairman to determine voting dispute	16
7.19	Circulating resolutions of Members	16
7.20	Right to appoint attorney	16
7.21	Suspension or if Annual Subscription Fee not paid	17

---

<b>8</b>	<b>Directors</b>	<b>17</b>
8.1	Number of Directors	17
8.2	Change of number of Directors	17
8.3	Qualifications of directors	17
8.4	Rotation of Directors	17
8.5	Retiring Director hold office until conclusion of meeting	18
8.6	Directors to retire	18
8.7	Directors elected at general meeting	18
8.8	Eligibility for election as Director	18
8.9	Casual vacancy	20
8.10	Remuneration of Directors	21
8.11	Reimbursement of expenses	21
8.12	Payments to Director	21
8.13	Director's interests	21
8.14	Vacation of office	22

---

<b>9</b>	<b>Powers and duties of Directors</b>	<b>22</b>
9.1	Directors to manage Company	22
9.2	Specific powers of Directors	22
9.3	Appointment of attorney	23
9.4	Provisions in power of attorney	23
9.5	Signing of cheques	23
9.6	Committees	23
9.7	Powers delegated to Committees	23
9.8	Appointment of Executive Directors	23
9.9	Termination of appointment of Executive Director	23
9.10	Executive Directors exempt	24
9.11	Remuneration of Executive Directors	24
9.12	Powers of Executive Directors	24
9.13	Powers of delegation	24

<b>10</b>	<b>Proceedings of Directors</b>	<b>24</b>
10.1	Directors' meetings	24
10.2	The chairman or any two Directors may convene a meeting	25
10.3	Notice of meetings of Directors	25
10.4	Questions decided by majority	25
10.5	Alternate Director or proxy and voting	26
10.6	Chairman of Directors' meetings	26
10.7	Absence of chairman at Directors' meeting	26
10.8	Chairman's casting vote at Directors' meetings	26
10.9	Appointment of Alternate Director	26
10.10	Alternate Director and meetings	26
10.11	Alternate Director's powers	26
10.12	Alternate Director responsible for own acts and defaults	27
10.13	Alternate Director and remuneration	27
10.14	Termination of appointment of Alternate Director	27
10.15	Appointment or termination in writing	27
10.16	Alternate Director and number of Directors	27
10.17	Director attending and voting by proxy	27
10.18	Quorum for Directors' meeting	27
10.19	Continuing Directors may act	28
10.20	Chairman of Committee	28
10.21	Meetings of Committee	28
10.22	Determination of questions	28
10.23	Circulating resolutions	28
10.24	Validity of acts of Directors	28
10.25	Meeting by use of technology	29
<b>11</b>	<b>Secretary</b>	<b>29</b>
11.1	Appointment of Secretary	29
11.2	Suspension and removal of Secretary	29
11.3	Powers, duties and authorities of Secretary	29
<b>12</b>	<b>Seals</b>	<b>29</b>
12.1	Safe custody of common seals	29
12.2	Use of common seal	29
<b>13</b>	<b>Inspection of records</b>	<b>30</b>
13.1	Inspection by Members	30
13.2	Right of a Member to inspect	30
<b>14</b>	<b>Service of documents</b>	<b>30</b>
14.1	Document includes notice	30
14.2	Methods of service	30
14.3	Post	30
14.4	Fax or electronic transmission	30
14.5	Evidence of service	31
<b>15</b>	<b>Indemnity and insurance</b>	<b>31</b>
15.1	Indemnity	31
15.2	Insurance	31
15.3	Contract	32
<b>16</b>	<b>Winding up</b>	<b>32</b>
16.1	Contributions on winding up	32
16.2	Application of property on winding up	32
<b>17</b>	<b>Accounts</b>	<b>33</b>

# Constitution

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Active Member** means, in respect of a particular date, a Member who is:

- (a) a person named as 'Tenant' (or other similar title) in any residential tenancy agreement to which the Company is a party who can establish to the satisfaction of the Directors that he or she is interested in and supports the objects of the Company and who in each financial year after the financial year in which he or she became a Member attends at least one general meeting of the Company; or
- (b) a person who is not at the relevant time named as 'Tenant' but who can establish to the satisfaction of the Directors that he or she is interested in and supports the objects of the Company and who in each financial year after the financial year in which he or she became a Member attends at least one general meeting of the Company,

and who has not ceased to be an Active Member under article 5.16(d).

**Alternate Director** means a person appointed as an alternate director under article 10.9.

**Annual Subscription Fee** means the amount fixed from time to time under article 5.7.

**Application Fee** means an amount determined by the Directors to be payable in respect of an application for membership of the Company

**Committee** means a committee of Directors constituted under article 9.6.

**Company** means Bridge Housing Limited.

**Constitution** means this constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

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

**Director** means a person holding office as a director, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Executive Director** means a person appointed as an executive director under article 9.8.

**Member** means a person entered in the Register as a member of the Company.

**Part** means a Part of this Constitution.

**Qualified Person** means an individual Member having, as decided by the Directors, expertise and experience in one (1) or more of the following areas, namely:

- (a) social housing management;
- (b) finance;
- (c) community welfare;
- (d) property development and procurement;
- (e) law;
- (f) social policy development;
- (g) accounting;
- (h) asset management;
- (i) information and technology;
- (j) human resources management; and
- (k) such other areas as are determined necessary, from time to time, by the Directors for the furtherance of the Company's objects.

**Register** means the register of Members.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under Part 11 as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Tax Act** means the Income Tax Assessment Act 1997 (Cth).

## 1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;

- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(meaning not limited)** a reference to the words “include”, “including”, “for example” or “such as”, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (e) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (f) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (g) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (j) **(currency)** a reference to \$ is a reference to the lawful currency of Australia.

### 1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

## **1.4 Headings and Parts**

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into Parts as indicated by its contents.

## **1.5 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

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# **2 Objects and purposes of Company**

## **2.1 Charitable Purpose**

The Company may only pursue charitable purposes, associated with its objects, and must do so predominantly in Australia.

## **2.2 Objects**

The objects of the Company shall be the direct relief of poverty, distress and helplessness by:

- (a) the provision of secure, affordable accommodation for those people who find it difficult to compete in the private rental market or who are experiencing a housing crisis;
- (b) assisting tenants to gain access to other community resources and services;
- (c) increasing the amount and quality of affordable housing stock available for low income earners; and
- (d) doing all other things as may be incidental or ancillary to the attainment of these objects.

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# **3 Income and property of Company**

## **3.1 Application of income and property for purposes and objects only**

The profits (if any), other income and property of the Company, however derived, must be applied solely towards the promotion of the purposes and objects of the Company as set out in Part 2.

## **3.2 Not for Profit**

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise.

### **3.3 Payments by Company in good faith**

Subject to articles 8.10, 8.11 and 8.12, article 3.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner:

- (a) of remuneration for services provided by that officer or Member to the Company;
- (b) of interest at a rate not exceeding the rate fixed for the purposes of this article by the Company in general meeting on money borrowed from an officer of the Company or a Member; or
- (c) of reasonable rent for premises let by an officer of the Company or a Member.

### **3.4 Charitable Fundraising Act**

Funds raised by means of a collection (or corresponding expression) within the meaning of the Charitable Fundraising Act 1991 (NSW), and corresponding legislation in other jurisdictions (as applicable) in which the Company raises money from the public, must be maintained in accordance with those Acts.

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## **4 Gift Fund**

### **4.1 Prevailing article**

All other provisions of this Constitution are subject to this Part 4.

### **4.2 Maintaining a Gift Fund**

The Company must maintain, for the objects of the Company as noted in Part 2, a fund ("**Gift Fund**"):

- (a) to which gifts of money or property for that purpose are to be made; and
- (b) to which any money received because of such gifts is to be credited; and
- (c) that does not receive any other money or property; and
- (d) which complies with any other requirements specified in Subdivision 30-BA of the Tax Act.

### **4.3 Use of moneys in Gift Fund**

The Company must use the following only for the principal purpose of the Company:

- (a) gifts made to the Gift Fund; and
- (b) any money received because of such gifts.

#### **4.4 Winding up**

Notwithstanding any other provision in this Constitution, if the Gift Fund is wound up or if the endorsement (if any) of the Company is revoked, any surplus assets of the Gift Fund remaining after payment of liabilities attributable to it, shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

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## **5 Membership**

### **5.1 Becoming a Member**

Except for a person who was a Member and had agreed in writing to be bound by this Constitution at the time when this Constitution was adopted, a person may only become a Member under article 5.2.

### **5.2 Admission as a Member**

The Directors may admit (in their absolute discretion) as a Member any person who agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time and who is:

- (a) a person named as 'Tenant' (or other similar title) in any residential tenancy agreement to which the Company is a party who states when applying for membership that he or she is interested in the Company and supports the objects of the Company and who in each financial year after the financial year in which he or she became a Member in accordance with the provisions of this paragraph attends at least one general meeting of the Company; or
- (b) a person who is not at the relevant time named as 'Tenant' as set out in 5.2(a) who states when applying for membership that he or she is interested in the Company and supports the objects of the Company and who in each financial year after the financial year in which he or she became a Member in accordance with the provisions of this paragraph attends at least one general meeting of the Company.

### **5.3 Application for Membership**

Applications for membership from persons referred to in article 5.2(a) and (b) shall be made by completing a membership application in the form prescribed by the Directors from time to time and lodging such application at the registered office of the Company. Membership of the Company shall not be joint and each eligible applicant shall prepare and lodge an individual application.

### **5.4 Effect of application**

By completing an application form, the person applying to become a Member agrees to be bound by this Constitution and any other rules,

by-laws, policies or other standards prescribed by the Directors from time to time.

#### **5.5 Decision**

The Directors must consider and resolve whether to accept or reject each application for membership and, within a reasonable time after making a decision, give the applicant a notice which states whether the application was successful or not. The Directors are not required to give reasons for rejection of an application for membership of the Company and may refuse any application for membership at their absolute discretion. Upon refusal of any application for membership, any monies accompanying the application shall be refunded to the unsuccessful applicant, without interest.

#### **5.6 Register of Members**

If the Directors approve the application, the applicant's name together with any other information required by or under the Corporations Act shall be entered in the Register. The applicant shall be notified in writing of the entry in the Register and shall then be entitled to the privileges attaching to membership.

#### **5.7 Application Fee**

The Directors may resolve from time to time that any person applying to become a Member, or a particular class of Member, must pay an Application Fee and, if so, how much it is and when and how it is to be paid. The Directors shall supply details of such Application Fee to any person applying to become a Member with the form of application.

#### **5.8 Member to notify changes**

A Member must promptly notify the Company of any change in the details with respect to that Member which are recorded in the Register.

#### **5.9 Annual Subscription Fee**

The Company in general meeting may determine from time to time the amount of the Annual Subscription Fee (if any) for each year, for each Member or any class of Member.

#### **5.10 Payment of Annual Subscription Fee**

Subject to any contrary notice by the Directors specifying a date and manner of payment, each Member must pay any applicable Annual Subscription Fee in advance by 1 July in each year.

#### **5.11 Waiver of Annual Subscription Fee**

The Directors may waive the payment of all or any part of an Annual Subscription Fee for a Member or any class of Member.

## **5.12 Ceasing to be a Member**

A person ceases to be a Member on:

- (a) resignation;
- (b) ceasing to be an Active Member;
- (c) on ceasing to be a Tenant as set out in article 5.2(a);
- (d) ceasing to be a Director;
- (e) in the case of a natural person:
  - (i) death;
  - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
  - (iii) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health; or
  - (iv) the termination or cancellation of the person's membership by the Directors or by the Company in general meeting in accordance with this Constitution; and
- (f) in the case of a body corporate:
  - (i) being dissolved or otherwise ceasing to exist;
  - (ii) having a liquidator or provisional liquidator appointed to it; or
  - (iii) being insolvent.

## **5.13 Resignation**

A Member may by written notice to the Company resign from membership with immediate effect from the service of the notice. A Member remains liable after resignation for any Annual Subscription Fee due and unpaid at the date of the Member's resignation and for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under article 16.1.

## **5.14 Non-payment of Annual Subscription Fee**

If the Annual Subscription Fee for a Member remains unpaid for a period of 12 calendar months after it becomes due, the membership of the Member automatically terminates, in which case the Member ceases to be a Member. The Directors may, but are not obliged to, reinstate a Member whose membership is terminated under this article if that Member pays all overdue Annual Subscription Fee amounts.

## **5.15 Censuring, suspension or expulsion of Member**

If any Member wilfully refuses or neglects to comply with the provisions of this Constitution, fails to discharge his or her obligation to the Company, whether prescribed by this Constitution or arising out of any contract, is guilty of conduct detrimental to the Company or acts in a manner which in the opinion of the Directors is prejudicial to the interests of the Company, the Directors may by resolution censure, suspend or expel the Member from the Company, provided that the following procedure is observed:

- (a) at least two weeks before the Directors' meeting at which the resolution is passed, the Member must be given notice of the meeting setting out:
  - (i) what is alleged against the Member; and
  - (ii) the intended resolution;
- (b) at the Directors' meeting, and before the passing of the resolution, the Member must be given an opportunity of giving, orally or in writing, any explanation the Member thinks fit;
- (c) the Member may elect to have the question dealt with by the Company in general meeting, by notice in writing lodged with the Secretary at least 24 hours before the time for holding of the Directors' meeting at which the resolution is to be considered by the Directors;
- (d) if the Member gives a notice under this article:
  - (i) no resolution of the Directors on that matter is effective;
  - (ii) a general meeting of the Company must be called for the purpose of considering the resolution set out in the notice originally given to the Member under this article; and
  - (iii) if, at the general meeting, a resolution is passed by a majority of at least two-thirds of those present and voting (the vote is to be taken by ballot), the Member concerned must be dealt with in accordance with the resolution; and
- (e) in the case of a resolution passed by the Directors or in general meeting for the Member's expulsion under this article, the membership of the Member automatically terminates, in which case the Member ceases to be a Member.

## **5.16 Termination/Cancellation**

The Directors may by written notice to the Member terminate the Member's membership with immediate effect or with effect from a specified date occurring not more than 7 days after service of the notice in the event that:

- (a) the whereabouts of the Member are not presently known to Company and have not been known to the Company for a continuous period of at least 12 months;
- (b) a Member who is registered as a Member in accordance with 5.2 fails to demonstrate to the satisfaction of the Directors that the person continues to be interested in and supportive of the objects of the Company within 28 days after service of a notice by the Directors requiring the Member to show cause why he or she should not be removed from the Register; or
- (c) where a person who is liable to pay an Application Fee or Annual Subscription Fee, has failed to pay such fees or such subscription in whole or in part for more than fourteen (14) days after service of a written demand for payment.

#### **5.17 Limited liability**

A Member has no liability as a Member except as set out in this Part 5 and article 16.1.

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## **6 General meetings**

### **6.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **6.2 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act. Subject to the Corporations Act, the Directors must convene and arrange to hold a general meeting of the Company if requested to do so by at least 50 Members who are entitled to vote at a general meeting.

### **6.3 Members have power to convene general meeting**

If there are not sufficient Directors for a quorum, a Director or any two or more Members may convene a general meeting of the Company at the cost of the Company.

### **6.4 Notice of general meeting**

Notice of a general meeting must be given in accordance with Part 15 and the Corporations Act.

### **6.5 Calculation of period of notice**

In computing the period of notice under article 6.4, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

#### **6.6 Directors entitled to notice of general meeting**

A Director is entitled to receive notice of and to attend all general meetings of the Company and is entitled to speak at those meetings.

#### **6.7 Cancellation or postponement of general meeting**

Where a general meeting (including an annual general meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

#### **6.8 Notice of cancellation, postponement or change of place of general meeting**

Notice of cancellation or postponement or change of place of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. The notice must be given at least 3 days before the date for which the meeting is convened and must specify the reason for the cancellation, postponement or change of place. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

#### **6.9 Contents of notice postponing general meeting**

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **6.10 Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

### **6.11 Business at postponed general meeting**

The only business that may be transacted at a general meeting, the holding of which is postponed, is the business specified in the original notice convening the meeting.

### **6.12 Non-receipt of notice**

The non-receipt of, or accidental omission to give, a notice of a general meeting or cancellation, postponement or change of place of a general meeting by, or to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed or changed place meeting or the cancellation or postponement of a meeting.

### **6.13 Proxy, attorney or Representative at postponed general meeting**

Where by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

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## **7 Proceedings at general meetings**

### **7.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Part 8 means a person who is a Member, or:

- (a) a proxy;
- (b) an attorney; or
- (c) a Representative

of that Member.

## **7.2 Number for a quorum**

Subject to article 7.5, ten Members present in person or by proxy, attorney or Representative are a quorum at a general meeting of the Company.

## **7.3 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

## **7.4 If quorum not present**

If within 30 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened at the request of Members is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

## **7.5 Adjourned meeting**

At a meeting adjourned under article 7.4(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum. If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **7.6 Appointment of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting of the Company.

## **7.7 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the deputy chairman (if any);

- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

#### **7.8 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

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

#### **7.9 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising this discretion, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

#### **7.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **7.11 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **7.12 Equality of votes - casting vote for chairman**

If there is an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy, attorney or Representative of a Member.

### **7.13 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **7.14 Demanding a poll**

At a general meeting of the Company, a poll may be demanded by:

- (a) at least 5 Members entitled to vote on the resolution; or
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chairman of the meeting.

### **7.15 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment it must be taken immediately;
- (c) the demand may be withdrawn; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **7.16 Entitlement to vote**

Subject to the rights and any restrictions attached to any class of Members and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as proxy, attorney or Representative of a Member has one vote for each Member that the person represents.

#### **7.17 Objection to voting qualification**

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting or to vote on a poll:

- (a) may not be raised except at that meeting or adjourned meeting or when that poll is taken; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **7.18 Chairman to determine voting dispute**

If there is a dispute as to the admission or rejection of a vote, the chairman of the general meeting must decide it and the chairman's decision made in good faith is final and conclusive.

#### **7.19 Circulating resolutions of Members**

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all of the Members who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The resolution is taken to be passed (and if it is required to be a special resolution to be effective, passed as a special resolution), as if it had been passed unanimously at a duly convened general meeting, at the time the Secretary has evidence that the last Member has signed it.

#### **7.20 Right to appoint attorney**

A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

To be effective, an instrument appointing an attorney under this article, together with any evidence of non-revocation the Directors require,

must be received by the Company at least 48 hours before the meeting.

#### **7.21 Suspension or if Annual Subscription Fee not paid**

In addition to any other rights of the Company, for as long as an Annual Subscription Fee is due and payable by a Member and is not paid, or if a Member is suspended, that Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy, attorney or Representative, at a general meeting of the Company.

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## **8 Directors**

### **8.1 Number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors may not be less than five nor more than:

- (a) nine; or
- (b) any lesser number than nine determined by the Directors (but the number must not be less than the number of Directors in office at the time the determination takes effect).

The seven (7) Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

### **8.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

### **8.3 Qualifications of directors**

In order to be eligible for appointment as a director a person must be a Qualified Person. No person may be a director unless that person is a Member of the Company, is the nominated representative of a corporate ordinary Member or has agreed in writing delivered to the Company to become a Member upon being appointed as a director.

### **8.4 Rotation of Directors**

At each annual general meeting of the Company, one-third of the Directors or, if their number is not three nor a multiple of three, then the number nearest one-third, and any other Director who has held office for four years or more since last being elected, must retire from office.

In determining the number of Directors to retire, account is not to be taken of a Director who only holds office until the conclusion of the meeting in accordance with article 8.9.

### **8.5 Retiring Director hold office until conclusion of meeting**

A Director retiring in accordance with article 9.4 holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

### **8.6 Directors to retire**

The Directors to retire at any annual general meeting in accordance with article 9.4 must be those who have been longest in office since their last election. As between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

### **8.7 Directors elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office. The election of Directors shall be conducted at the meeting in such usual and proper manner as the Directors shall direct providing however that same shall not be inconsistent with the provisions of article 8.8.

### **8.8 Eligibility for election as Director**

Except for:

- (a) a person who is eligible for election or re-election under article 8.5 or 8.9; or
- (b) a person recommended for election by the Directors,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least 30 business days before the general meeting.

The following provisions shall apply in respect of an election for a Director under this article 8.8:

- (a) The Directors shall appoint a returning officer for the purposes of the election.
- (b) Nominations for Directors shall be in writing signed by not less than two Members and consented to in writing by the nominee. The nomination shall be accompanied by the names and contact details of not less than two referees and written evidence of the relevant experience or expertise on which the nominee proposes to rely as evidence of qualifications for election as Director.
- (c) The Directors shall determine whether in their opinion the evidence of expertise or experience presented by the nominee satisfies the qualifications required for election as Director. The Directors shall make the determination in such manner as they

deem appropriate and may for this purpose seek such advice or assistance as they desire. The Directors shall notify the nominee in writing of the said determination. If any nominee is informed that their expertise or experience did not satisfy the qualifications required for election as a Director and if within 5 days of being so informed that nominee makes a written request to the Directors for reasons for the relevant determination then the Directors shall provide written reasons for each relevant determination to the nominee prior to the holding of the relevant general meeting. There shall be no right of appeal against the determination of Directors.

- (d) The references to candidates in the remainder of this article relate to persons who have been nominated for election in accordance with the above provisions and in respect of whom the Directors have determined that the person has suitable expertise or experience.
- (e) If there is only one candidate for election then the chairman shall, subject to the effect of the following paragraphs in relation any Director or candidate who is not an Active Member of the Company, declare that candidate duly elected.
- (f) If there is more than one candidate for election then the returning officer shall mark in an identifying manner separate ballot papers in respect of the election which ballot papers shall be distributed to Members or their proxies or attorneys who are entitled to vote in the election.
- (g) Each Member or the proxy or attorney of each Member may write the name of one candidate on each duly marked ballot paper.
- (h) The returning officer will collect all ballot papers and will supervise the counting of same allocating one vote to each candidate whose name appears on a ballot paper which has been completed in accordance with this Constitution.
- (i) Each candidate may appoint one scrutineer to verify the counting.
- (j) Any objections raised by any scrutineers in respect of the counting will be dealt with by the Directors whose decision shall be final.
- (k) The returning officer shall inform the chairman of the results of the election indicating in writing the number of valid votes cast in respect of each candidate.
- (l) If any candidate's name is written more than once on any ballot paper or if the number of names of candidates written on any ballot paper is greater than the maximum number permitted by this Constitution or if any name on any ballot paper cannot be

determined by the returning officer with reasonable certainty then that ballot paper shall be rejected.

- (m) The chairman shall declare the results of the election which shall be that, subject to the effect of the following paragraphs in relation to any Director or candidate who is not an Member of the Company, the vacancies to be filled shall be filled by the candidate who has received the greatest number of votes.
- (n) If more than one candidate has received the greatest number of votes for any vacant position then the chairman shall have a second or casting vote to determine the successful candidate for that position.
- (o) Notwithstanding the above paragraphs:
  - (i) If there is at the time of any election a Director who is not an Active Member of the Company and whose term of office does not end at the time of the election then no candidate standing for that election shall be elected unless he or she is then an Active Member and was an Active Member at the date of the notice calling the meeting.
  - (ii) If at the commencement of the meeting all Directors were Active Members then no more than one Director who is not an Active Member may be declared elected during the meeting.
    - (A) This means that if the successful candidate was not at the relevant times an Active Member and if all other Directors are Active Members then after the chairman has declared that candidate elected no further candidates who are not Active Members can be declared elected at the meeting.
    - (B) This also means that if at the time of election there is already a Director who is not an Active Member and if there is only one candidate for election and that candidate was not an Active Member at the relevant times then no Director will be elected at the meeting. If there is more than one candidate nominating in accordance with this Constitution then the candidate who is an Active Member and who obtains the highest number of votes validly cast for candidates who are, at each relevant time, Active Members, will be declared the successful candidate.

## **8.9 Casual vacancy**

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing

Directors, provided the total number of Directors does not exceed the maximum number, if any, determined in accordance with article 8.1.

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting. This provision does not apply to an Executive Director nominated by the Directors under article 9.10.

#### **8.10 Remuneration of Directors**

A Director must not be paid any remuneration for services as a Director.

#### **8.11 Reimbursement of expenses**

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

#### **8.12 Payments to Director**

Any payment to a Director which is not prohibited under article 8.10 (including a payment permitted under article 8.11) must be approved by the Directors.

#### **8.13 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor, unless being or becoming a Director would breach any law by reason of holding that office;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and

- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this article is also a reference to each related body corporate of the Company.

#### **8.14 Vacation of office**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or insolvent;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (c) resigns office by notice in writing to the Company; or
- (d) is not present personally or by Alternate Director at 3 consecutive meetings of the Directors without leave of absence from the Directors;
- (e) if the Director ceases to be a Qualified Person;
- (f) ceases to be a Member.

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## **9 Powers and duties of Directors**

### **9.1 Directors to manage Company**

The Directors are to manage the business of the Company and may exercise all the powers of the Company that are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **9.2 Specific powers of Directors**

Without limiting the generality of article 9.1, the Directors may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **9.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

### **9.4 Provisions in power of attorney**

A power of attorney granted under article 9.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **9.5 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

### **9.6 Committees**

The Directors may delegate (and revoke the delegation of) any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

### **9.7 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 9.6 must exercise those powers in accordance with any directions of the Directors.

### **9.8 Appointment of Executive Directors**

The Directors may appoint one or more of themselves as an Executive Director or to any other office (except auditor), or any position of employment with the Company for the period and on the terms they think fit.

### **9.9 Termination of appointment of Executive Director**

Whether or not the appointment of an Executive Director was expressed to be for a specified term, the appointment of an Executive Director terminates if:

- (a) the Executive Director ceases for any reason to be a Director or a Member or

- (b) the Directors remove the Executive Director from the office of Executive Director (which, subject to any contract between the Company and the Executive Director, the Directors have power to do); or
- (c) the Executive Director ceases to be employed by the Company.

#### **9.10 Executive Directors exempt**

An Executive Director is, while holding that office, exempt from retirement by rotation under article 8.4.

#### **9.11 Remuneration of Executive Directors**

The remuneration of an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

#### **9.12 Powers of Executive Directors**

The Directors may:

- (a) confer on an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on an Executive Director.

#### **9.13 Powers of delegation**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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## **10 Proceedings of Directors**

### **10.1 Directors' meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit, provided that the Directors shall meet at least once quarterly.

## **10.2 The chairman or any two Directors may convene a meeting**

The chairman or any two Directors may at any time, and the Secretary must on the written request of the chairman or any two Directors, convene a meeting of the Directors.

## **10.3 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, except a Director on leave of absence approved by the Directors.
- (b) A notice of a meeting of Directors:
  - (i) must specify the time and place of the meeting;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) may be given immediately before the meetings; and
  - (iv) may be given in person or by post, telephone, fax or other electronic means.
- (c) A Director may waive the requirement to give a notice of a meeting of Directors in article 10.3(a) by notifying the Company to that effect in person or by post, telephone, fax or other electronic means.
- (d) 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 thing done or resolution passed at the meeting if:
  - (i) before or after the meeting, the Director:
    - (A) has waived or waives notice of that meeting under article 10.3(c); or
    - (B) has notified or notifies the Company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (ii) the Director attended the meeting.
- (e) Attendance by a person at a meeting of Directors waives any objection which that person may have a failure to give notice of the meeting.

## **10.4 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

#### **10.5 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy. If that person is also a Director, they have one vote as a Director in that capacity.

#### **10.6 Chairman of Directors' meetings**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person remains as chairman.

#### **10.7 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 10.6; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

#### **10.8 Chairman's casting vote at Directors' meetings**

The chairman of a Directors' meeting has a casting vote if necessary in addition to any vote he has in his capacity as a director.

#### **10.9 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period that the Director thinks fit.

#### **10.10 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

#### **10.11 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

#### **10.12 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

#### **10.13 Alternate Director and remuneration**

Articles 3.3, 8.10, 8.11 and 8.12 apply to an Alternate Director as if they were a Director.

#### **10.14 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

#### **10.15 Appointment or termination in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment, and delivered to the Company.

#### **10.16 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

#### **10.17 Director attending and voting by proxy**

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as proxy of another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

#### **10.18 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is as determined by the Directors and, unless so determined, shall be half the number of directors holding office plus one. The quorum must be present at all times during the meeting.

### **10.19 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 8.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

### **10.20 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Members involved may elect one of their number to be chairman of the meeting.

### **10.21 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

### **10.22 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

The chairman of the meeting does not have a casting vote.

### **10.23 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

### **10.24 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

## **10.25 Meeting by use of technology**

A Director may not leave a telephone meeting by disconnecting the telephone without the consent of the chairman of the meeting. A Director is deemed to be present and form part of the quorum throughout the meeting unless the Director obtains the consent of the chairman of the meeting to leave the meeting.

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## **11 Secretary**

### **11.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Directors.

### **11.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **11.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. At all times the exercise of those powers and authorities and the performance of those duties by a Secretary must not be inconsistent with the Corporations Act, despite any direction given by the Directors that may be contrary to the Corporations Act.

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## **12 Seals**

### **12.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **12.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **13 Inspection of records**

### **13.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

### **13.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **14 Service of documents**

### **14.1 Document includes notice**

In this Part 14, a reference to a document includes a notice.

### **14.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by sending it to the Member by other electronic means nominated by the Member.

### **14.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

### **14.4 Fax or electronic transmission**

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

#### **14.5 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

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## **15 Indemnity and insurance**

### **15.1 Indemnity**

To the maximum extent permitted by law, the Company may indemnify any current or former Director or Secretary or executive officer of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity, and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

### **15.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

### **15.3 Contract**

The Company may enter into an agreement with a person referred to in articles 15.1 and 15.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## **16 Winding up**

### **16.1 Contributions on winding up**

Each Member undertakes to contribute to the Company's property if the Company is wound up during, or within one year after the cessation of, the Member's membership on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves,

an amount not to exceed \$1.00.

### **16.2 Application of property on winding up**

If any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to some other institution:

- (a) having objects and/or purposes similar to those of the Company;
- (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members to an extent at least as great as imposed on the Company under this Constitution; and
- (c) being an institution accepted as a deductible gift recipient under Division 30 of the Tax Act by the Commissioner of Taxation or otherwise approved for these purposes by the Commissioner of Taxation.

The institution or institutions are to be determined by the Members at or before the time of dissolution and in default by application to a court of appropriate jurisdiction..

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## **17 Accounts**

The Directors must cause the accounts of the Company to be maintained and audited in accordance with the requirements of the Corporations Act and the Charitable Fundraising Act 1991 (NSW).