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**TOURISM**  
australia

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**ECOTOURISM AUSTRALIA LIMITED ACN 110 755 694**

## **CONSTITUTION**

Adopted xxxxx

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A public company limited by guarantee

Incorporated under the *Corporations Act, 2001* (Cth) in the Commonwealth of Australia.

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**CONSTITUTION FOR  
ECOTOURISM AUSTRALIA LIMITED (ACN 110 755 694)  
PUBLIC COMPANY LIMITED BY GUARANTEE  
PURSUANT TO THE CORPORATIONS ACT 2001**

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## Part A - Preliminary Matters

### 1. General

#### 1.1. Name of Company

The name of the Company is Ecotourism Australia Limited, ACN 110 755 694.

#### 1.2. Replaceable Rules

The replaceable rules under the *Corporations Act, 2001* (Cth) ('the Act') do not apply to the Company.

### 2. Constitution

This Constitution sets out the rules by which the Members agree to conduct the internal management of the Company.

### 3. Inconsistency

The Company is governed by the Act and this Constitution; in the event of inconsistency the Act prevails to the extent of that inconsistency.

### 4. Interpretation

In this Constitution, unless the context requires otherwise:

- a) A word or expression defined in the *Corporations Act 2001* (Cth) has the same meaning in this Constitution.
- b) The singular includes the plural and vice versa.
- c) A reference to any legislation includes any delegated legislation under it and any amendment or replacement of that legislation.
- d) Headings are for convenience only and do not affect interpretation.

### 5. Definitions

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

**Board** means the Board of Directors of the Company.

**Chair** means the person elected or appointed under this Constitution to preside at Board or General Meetings and can include a Deputy Chair acting in the absence of the Chair.

**Committee** means a committee to which powers have been delegated by the Board under this Constitution.

**Company** means Ecotourism Australia Limited ACN 110 755 694.

**Director** means a person appointed or elected to the position of Director of the Company in accordance with this Constitution and the Act.

**Ecotourism** means ecologically sustainable tourism focusing on experiencing natural areas in a way that develops environmental and cultural understanding, appreciation for natural places, conserving them by minimizing environmental impact, supporting local communities and educating visitors about the natural and cultural environment.

**Financial Member** means a member who has paid all membership fees and levies due to the Company in the relevant time.

**Financial Year** means the Australian financial year.

**General Meeting** means a meeting of members convened in accordance with this Constitution and includes an Annual General Meeting and Extraordinary General Meeting.

**Law** means relevant statutory and common law.

**Member** means a person or entity admitted as a member of the Company in accordance with this Constitution.

**Objects** means the objects of the Company as set out in Clause 9.

**Person** means the legal definition of person and includes individuals and body corporates.

**Register** means the register of Members kept in accordance with the Act.

**Registered address** means the address of a member specified in the Register or any other address of which the member notifies the Company as a place at which the member will accept service of notices.

**Replaceable Rules** means the replaceable rules in the Act.

**Seal** means any common seal or duplicate common seal of the Company.

**Secretary** means a person appointed to perform the duties of a secretary of the Company in accordance with the Act.

**Sustainable Tourism** means tourism that takes full account of its current and future economic, social, and environmental impacts, addressing the needs of visitors, the industry, the environment, and host communities.

**Voting Member** is a member who is entitled to vote.

## 6. Nature of the Company and Guarantee

### 6.1. Public Company limited by Guarantee

The Company is a public company limited by guarantee.

### 6.2. Guarantee

- a) The liability of each member is limited.
- b) Every Member undertakes to contribute an amount not exceeding \$10 to the property of the Company in the event of its being wound up while the Member is a Member, or within 1 year after the Member ceases to be a Member, if required, for payment:
  - i. of the debts and liabilities of the Company (contracted before the member ceases to be a Member);
  - ii. of the costs, charges and expenses of winding up; and
  - iii. for the adjustment of the rights of the Members among themselves.

## 7. Non-profit

- a) The assets and income of the organisation shall be applied solely in furtherance of its Objects, and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation.
- b) If upon the winding up or dissolution of the Company, any property remaining after satisfaction of all the Company's debts and liabilities, that property must not be paid to or distributed among the Members but must be given or transferred to some other institution or institutions determined by the Members at or before the time of dissolution, which has similar objects to the Company and (if the Company is approved as a public benevolent institution by the Australian Taxation Office) which is approved by the Commissioner of Taxation as a public benevolent institution for the purposes of any Commonwealth Taxation Act.
- c) If the Members do not make the necessary determination under (b), the Company may apply to have the Supreme Court determine the institute or institutes to receive the distribution of the Company's property.

## 8. Scope Of Powers

Subject to the Act, the Company has the legal capacity and powers applicable to a company limited by guarantee under section 124 of the Act. Those powers must be exercised in the pursuit of the Objects of the Company.

## 9. Objects

The object of the Company is to promote the development of tourism by:

- a) Promoting the development of the ecotourism and sustainable tourism industry.
- b) Promote a wide understanding of the ecotourism and sustainable tourism industry and its operators and destinations as a major contributor to positive economic, social and cultural outcomes.
- c) Provide a united and informed voice for the eco and sustainable tourism industry.
- d) Leading in assisting ecotourism and other tourism operations and destinations to become environmentally sustainable, economically viable and socially and culturally responsible.
- e) Developing and pursuing policies consistent with the promotion of environmentally sustainable, economically viable and socially and culturally responsible tourism.
- f) Providing advocacy and support on key issues related to sustainable tourism and ecotourism.
- g) Developing and adopting practices consistent with sustainable tourism and development.
- h) Pursuing with governments of all levels and their agencies programs, policies and actions that are responsive to the needs of the ecotourism and sustainable tourism industry nationally.
- i) Encouraging and assisting tourism operators and destinations to improve marketing methods and information imparted to stakeholders on ecotourism and sustainable tourism related issues.
- j) Promoting, financing, facilitating, undertaking and disseminating research and information relating to ecotourism and sustainable tourism.
- k) Developing and operating certification programs to encourage tourism operators to participate in such certification programs which will reinforce best Ecotourism and Sustainable Tourism standards, policies and practices.
- l) Promoting respect for and understanding of Indigenous peoples' culture, both traditional and contemporary.
- m) Work in partnership with and facilitate cooperation with other not-for-profit industry organisations and membership bodies representing the tourism industry through reciprocal relations.
- n) Do all such things as are conducive or incidental to the operation of the Company and otherwise for the attainment of all or any of the above objects of the Company.

## Part B - Members and Membership

### 10. Membership

#### 10.1. Members of the Company

- a) A member of the company is any person:
  - i. On the Register on the date of the adoption of this constitution; and
  - ii. Who is admitted as a member of the company by the Directors.
- b) If a person is admitted as a member of the company, the secretary must ensure that:
  - i. The person is given notice of admission as a member of the company; and
  - ii. The name and details of the person are entered in the Register in accordance with Clause 10.6 (register of members).
- c) The secretary must ensure that each person who has applied and is not admitted as a member of the company is informed of this decision. The Company, its Directors and Secretary are not required to give reasons for the decision not to admit a person as a member.

#### 10.2. Members Address

- a) Each Member must provide the Secretary with an address in Australia where the Company can send notices.
- b) If a Member fails to provide an address, the address is deemed to be the Registered Office of the Company.

#### 10.3. Membership Eligibility

To be a member of the company a person must:

- a) Be aged 18 (eighteen) years or over,
- b) Have legal capacity,
- c) Be solvent,
- d) Demonstrate commitment to the Objects of the Company
- e) Complete and lodge a membership application in such form and providing supporting information as required by the Board through its membership application policy and processes.
- f) Pay any joining and annual fees when lodging their membership application.
- g) Not have been convicted of any offence that is indictable, involves dishonesty or fraud, under any environmental or conservation law or involves violence, harassment or abuse, unless the Board determines otherwise in its absolute discretion.
- h) Not act in a manner that causes or could cause harm or damage to the Company's reputation, operations, or purposes or have been removed from membership for acting in such a manner.
- i) Be approved to membership by the Board in its absolute discretion.
- j) Where the member is in a class of certified membership, apply, achieve and maintain certification.
- k) Agree to comply with this Constitution and the payment of the guarantee on winding up of the Company.

#### 10.4. Members Rights

Each member has the right to

- a) Receive notices of and to attend and be heard at any general meeting of the Company.
- b) Vote on any member resolution (including at a general meeting of the company, by written resolution, by show of hands and by poll)
- c) Appoint a proxy.
- d) Access to the Register
- e) Access to the minutes of meetings of members



- f) A copy of this Constitution
- g) A Financial Report and a Board (Directors') report following the end of each financial year.

#### **10.5. Membership not transferable**

Membership of the company and the associated rights cannot be transferred or sold in any manner whatsoever.

#### **10.6. Register of Members**

- a) A register of Members (Register) must be kept in accordance with the law.
- b) Without limiting the requirement in 10.6 (a) above, the following must be entered in the register in respect of each member:
  - i. The name and address of the member
  - ii. The date on which the entry of the member's name in the Register is made,
  - iii. The date on which the admission (if not the same date of entry) and cessation of the membership, and
  - iv. Any other information required by the Directors or the law.
- c) As the Company has more than 50 members, the register must include an up-to-date index of member's names, that is convenient to use and allow a member's entry to be readily found.
- d) A separate index need not be included in the register itself if it is kept in a form that operates effectively as an index.
- e) The Register must also show:
  - i. The name and details of each person who stopped being a member of the Company in the last 7 years; and
  - ii. the date on which the person stopped being a member.
  - iii. These entries can be kept in a separate part from the rest of the Register.

#### **10.7. Membership Classes**

Members may include the following classes of membership:

- a) Certified Operator Member
- b) Certified Destination Member
- c) Protected Area Manager Member
- d) Individual Supporter Member
- e) Business Supporter Member
- f) Corporate Supporter Member
- g) Life Member
- h) Such other class of members as the Board approves to fulfill the Objects of the Company.

#### **10.8. Voting Members**

All classes of Members are Voting Members for the purposes of this Constitution. Each member is entitled to one vote (see also Members rights Clause 10.4).

#### **10.9. Certified Operator Member**

A body corporate who has been Certified as an Ecotourism or Sustainable Tourism Operator by the Company.

#### **10.10. Certified Destination Member**

- a) A body corporate who has been Certified as an Ecotourism Destination by the Company; or
- b) A body corporate who has been Certified as a Sustainable Tourism Destination by the Company.

#### 10.11. Protected Area Manager Member

- a) Any legal entity appointed to oversee the conservation and management of a designated protected area by government.
- b) Such a legal entity nominates one (1) person as their representative.

#### 10.12. Individual Supporter Member

An individual, who joins as an individual member in their own right, not a representative of a business, who supports the Objects of the Company but is ineligible to achieve Certification.

#### 10.13. Business Supporter and Corporate Supporter Member

- a) A body corporate, who supports the Objects of the Company but is ineligible to achieve Certification.
- b) The body corporate nominates one (1) person as their representative.

#### 10.14. Life Member

- a) Life Member means a natural person who has given exceptional service to the Company and/or made a significant contribution to ecotourism and/or sustainable tourism and associated industries, and whom the Board grants lifetime membership in accordance with this Constitution.
- b) Lifetime membership is honorary.
- c) The Board may from time to time adopt further policies regarding Life Membership that are consistent with this provision.

#### 10.15. Variation or Cancellation of Membership Classes

- a) The Board may vary or cancel a class of membership to meet the Objects of the Company.
- b) Subject to the Act, any variation or cancellation in the **rights** of a class of members in the following manner:
  - i. Notifying the members of the relevant class in writing within seven (7) days of the variation and cancellation, and
  - ii. Passing a special resolution at a general meeting of the members of the relevant class, and
  - iii. Obtaining the written consent of the members holding at least 75% of the votes in that class.
- c) In the case, where several classes of members are impacted, the Board must notify members of the relevant classes and follow the procedure outlined in the sub-clauses 10.15 (a) and (b) above.

#### 10.16. Cessation of Membership

##### 10.16.1. General Overview

Membership ceases in the following circumstances, if a member:

- a) Resigns (Clause 10.16.2);
- b) Automatically ceases to be a member (Clause 10.16.3);
- c) Has their membership cancelled by the Board (Clause 10.16.4); or
- d) No longer complies with the membership eligibility criteria set out in Clause 10.3.

##### 10.16.2. Resignation from Membership

- a) A member may resign from membership of the company at any time by providing written notice to the company addressed to the chair or the secretary. Unless the notice provides otherwise, the resignation takes effect from the date the notice is received.
- b) A member that ceases to be a member under this Clause is eligible to reapply for membership of the company and on so doing will be required to follow the membership application process applicable at the time of the reapplication.

##### 10.16.3. Automatic Cessation

A member's membership will automatically cease if the member:

- a) Dies;
- b) Upon transfer of the business to which the membership was approved by the Board (see Clause 10.5); or
- c) Fails to Pay the required membership fees (including renewal fees) or monies due to the Company within ninety (90) days of the date upon which those fees fall due unless the Board exercises its discretion following Board policy to allow a longer period for payment. A member who fails to pay under this Clause, continues to be liable for any membership fees and other monies due to the Company and the Guarantee and may be eligible to reapply for membership of the Company, if the Board so decides.

#### **10.16.4. Cancellation by the Board**

- a) The Board may adopt such policies and procedures relating to the cancellation of membership members as they so determine and make those policies and procedures available to all members, provided they are consistent with this Constitution (see Clause 10.15).
- b) Any review of the Board decision will align with the Act and any existing policies, terms and conditions of the Company.

#### **10.16.5. Failure to meet Membership Eligibility Criteria**

A member who fails to meet the Membership Eligibility Criteria (Clause 10.3) automatically ceases to be a member of the Company at the time the failure occurs.

#### **10.16.6. Effect of Cessation**

A Member who ceases to be a Member continues to be liable for:

- a) any subscription and all arrears due and unpaid at the date of cessation;
- b) all other moneys due by them to the Company; and
- c) the Guarantee.

### **11. Fees**

Joining, annual subscription and all other fees and monies due and payable to the Company will have the amount payable and time for payment determined by the Board.

## Part C – Directors and Secretary

### 12. Qualification for Membership of the Board

Subject to the Act,

a) A Director must be:

- i. a current Member of the Company or a representative of a current Member duly nominated by a valid representative of that Member (**Member Elected**); or
- ii. a person appointed by the Board of Directors (**Board Appointed**).

b) A Director must be a natural person and at least eighteen (18) years old.

c) A Director must consent in writing to holding the position of Director and hold a valid Director Identification Number.

d) A person prohibited from being a Director by the Court and the Australian Securities and Investments Commission is ineligible to be elected for appointment as a Director.

e) The Auditor is ineligible to be elected or appointed as a Director.

f) A Director, whether Member Elected or Board Appointed, must meet the skills and qualifications requirements (Director Eligibility Criteria) determined from time to time by the Board to serve the best interests of the Company and achieve the Objects of the Company.

### 13. Notification and Resolution

a) The Company must notify ASIC of an appointment of a Director whether elected or appointed in the manner provided for in the Act.

b) A Board appointment of a Director must be confirmed by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a Director of the company at the end of the AGM.

### 14. Number of Directors and Composition of the Board

a) The Board must be composed of a maximum of nine (9) Directors, who are required to be elected or appointed in accordance with these Clauses.

b) A maximum of five (5) Directors must be Member Elected, and a maximum of four (4) Directors must be Board Appointed Directors.

c) The Board must approve and review on an annual basis a Board Skills Matrix identifying the requirement for a combination of skills, qualifications, experience and personal attributes to achieve the Objects and strategic goals of the Company.

d) All appointments to the Board must take into consideration the Board Skills Matrix set out in sub-clause 14 (c) above.

e) The Board must retain a minimum of seven (7) Directors at any one time, with a split between Member Elected and Board Appointed Directors of at least three (3) of each type of Director.

### 15. Term of Directors

a) Each Director is to remain as a Director for the full term of appointment until that appointment expires or the Director resigns or is otherwise removed as a Director of the company in accordance with the law and this constitution.

b) All Directors, whether a Member Elect or Board Elect Director, must serve on the Board for an initial term of three (3) years unless, with respect to the Board Elect Director, the Board decides to elect a Board Director for a shorter period.

c) A Director is eligible for reappointment or re-election, on completion of their first term, for a second term of three (3) years.

d) A person who:

- i. has been a Director of the Company under the previous Constitution for a period of six (6) years or more; or
- ii. has been a Director under this Constitution for a period of six (6) consecutive years (two consecutive terms);

- iii. is ineligible for re-election or re-appointment as a Director, for a period of three years from the time that person last held office as a Director of the Company.

## 16. Election of Directors

### 16.1. A Director elected by the Members

- a) Upon completion of a Directors Term (Clause 15), the resignation or removal of a Director, or Directors, elected by the Members, the Board must meet to set the Director Eligibility Criteria requirements in accordance with Clause 12.
- b) The Board must notify the Members of the Director Eligibility Criteria and make a call for expressions of interest (EOI) for appointment as a Director, within such time frames as they see fit or as provided for in policy, before the AGM or any meeting calling for election of Member Elected Directors.
- c) The EOI must be in the form of a written application to the Board and that application must include information on how the applicant meets the Director Eligibility Criteria in Clause 12.
- d) EOIs referred to sub-clause 16.1 (b) and (c) must be submitted to the Board in sufficient time to allow the Board to review the EOIs against the Director Eligibility Criteria in Clause 12. Details on this timeframe can be provided for by the Board in policy, if it so chooses.
- e) The Board may advise any Members submitting an EOI of their compliance or otherwise with the Director Eligibility Criteria in Clause 12.
- f) If a majority of the Board agrees that an EOI complies with the relevant Director Eligibility Criteria in Clause 12, then the Member submitting the EOI forms part of the list of candidates referred to in sub-clause 16.1 (g).
- g) The Secretary must provide all Members with written notice including:
  - i. the list of candidates and the supporting application for each candidate; and
  - ii. a voting paper (or particulars of any electronic online voting procedure permitted by law for the purpose) in the form and by the procedure prescribed by the Board from time to time.
- h) Members must complete and return their voting paper to the Secretary (or have properly cast a permitted electronic vote online) in the timeframe provided for in policy by the Board.
- i) Where voting is required to be affected by voting paper:
  - i. any voting paper not received by the Secretary before the time set out in the notice provided under this Clause will be ineffective; and
  - ii. voting papers must be signed by the Member (or the Member's duly constituted attorney) or by the Nominated Representative of the Member.
- j) the named candidate for election as Director, who obtains the highest number of valid votes of the Members in accordance with this Clause will be appointed as a Director.

### 16.2. A Director elected by the Board

- a) Upon completion of a Directors Term (Clause 15), the resignation or removal of a Director, or Directors, appointed by the Board, the Board must meet to set the Director Eligibility Criteria requirements in accordance with Clause 12.
- b) The Board must publicly advertise for the position of a Director, which must include:
  - i. the Director Eligibility Criteria;
  - ii. a requirement for applicants to meet the Director Eligibility Criteria;
  - iii. sufficient details of where applicants must submit their applications to;
  - iv. sufficient details of when applications must be submitted by; and
  - v. any other details determined by the Board acting reasonably;
- c) the Board must call a meeting of the Directors to consider any applications received by the Board for the appointment as a Director, and at such meeting each Director present and entitled to vote must decide by majority vote:
  - i. a shortlist of candidates of applications who meet the Director Eligibility Criteria; and

- ii. upon determining the shortlist of candidates, determine the candidate to be appointed as a Director.

## **17. Casual vacancies**

- a) To fill a casual vacancy among the Board or as an addition to the existing members:
  - i. the Board has the power at any time to appoint a qualified person as a Director; or
  - ii. the Members in a general meeting may, by ordinary resolution, elect a qualified person as a Director.
- b) Any person appointed under this Clause holds office for the remaining term of the casual vacancy.
- c) The total number of Directors may not at any time exceed the number fixed in accordance with this Constitution.

## **18. Resignation, Removal or Disqualification**

### **18.1. Resignation**

- a) Any Director may resign from membership of the Board by notice in writing delivered to the Secretary.
- b) Resignation takes effect at the time when such notice is received by the Secretary unless some later date is specified in the notice as the effective date.

### **18.2. Removal**

- a) A Director may be removed from office by ordinary resolution of the Members, in accordance with the Act, at a general meeting of the Company convened for that purpose. At any such general meeting the Director must be given the opportunity to fully present their case as to why they should not be removed either orally or in writing or partly by either or both means.
- b) A Director who ceases to be a Director under sub-clause 18.2 (a) retains office until the dissolution or adjournment of the general meeting at which the member is removed.

### **18.3. Disqualification**

- a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Law, the office of a Director becomes vacant if the Director:
  - i. ceases to be a Member of the Company;
  - ii. becomes insolvent under administration or makes any arrangement or composition with the Director's creditors generally;
  - iii. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - iv. in the opinion of the Board, the Director is unfit to be a member by reason of dishonourable or unprofessional conduct or a breach of this Constitution;
  - v. is absent from three consecutive Board meetings without prior verbal or written apology or leave of absence granted prior to absence; or
  - vi. holds any office of profit within the Company.

## **19. Chair And Deputy Chair**

### **19.1. Appointment to office**

- a) The Chair and Deputy Chair are elected by the Board, from the Directors, at the first Board Meeting after any AGM.
- b) The Chair and Deputy Chair continue to hold office until the earlier of:
  - i. Their resignation from that office;
  - ii. Their office as Director becoming vacant in accordance with this Constitution.
- c) The Board has the sole power at any time to appoint any Director as Chair or Deputy Chair and to remove any Director appointed from those positions.
- d) The Board does not have the power to remove the Chair or Deputy Chair from their position as Director.

## **19.2. Resignation**

- a) The Chair or Deputy Chair may resign by notice in writing to the Secretary. b) A resignation from the office of Chair or Deputy Chair does not affect their position as a continuing Director unless the notice specifically indicates that they also resign as a Director.

## **20. Remuneration of Directors**

### **20.1. Discretionary payment**

Subject to Clause 23, The Company may pay:

- a) A Director for services in that Director's capacity as a Director; and
- b) A Director's travel and other expenses, properly incurred in accordance with Company policies and procedures for:
  - i. attending Board meetings or Board Committee meetings
  - ii. attending any General Meetings; and
  - iii. in connection with the company's business

### **20.2. Board determines payment**

- a) Payments to the Chair (whether an Independent Chair or otherwise) may be determined by the Board in its discretion.
- b) Payments for services of the Chair, Deputy Chair or Directors will be determined by the Board on a case-by-case basis.

## **21. Powers of the Board**

- a) The business of the Company is managed by the Directors, who may exercise all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- b) Subject to clause 22, the Directors may, on the terms and conditions and with any restrictions as they determine, delegate any of the powers exercisable by them and may at any time withdraw, suspend or vary any of the powers which have been so delegated.
- c) The Directors may, on the terms and conditions and with any restrictions as they determine, delegate to a Chief Executive Officer any of the powers exercisable by them and may at any time withdraw, suspend or vary any of those powers conferred on the Chief Executive Officer.

## **22. Committees**

- a) The Board may direct the formation or dissolution of a Committee of such Directors, Members or others as it thinks fit.
- b) Committees are to act in an advisory capacity only and the Board may not confer on a committee any of the powers that a Director must exercise, other than those of an advisory nature.
- c) The meetings and proceedings of any Committee consisting of two or more Directors are governed by the provisions in this Constitution regulating the meetings and proceedings of the Board.

## **23. Material Personal Interest**

- a) A Director of the Company who has a material personal interest in a matter that relates to the affairs of the company must give the other Directors notice of the interest unless the Act says otherwise.
- b) The notice required by sub-clause 23 (a) must:
  - i. give details of the nature and extent of the interest;
  - ii. the relation of the interest to the affairs of the Company;
  - iii. be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
  - iv. the details must be recorded in the minutes of the meeting.
- c) Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- i. must not be counted in a quorum;
  - ii. must not vote on the matter; and
  - iii. must not be present while the matter is being considered at the meeting.
- d) The Director may be present and vote if Directors who do not have a material personal interest in the matter have passed a resolution that:
  - i. identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the company; and
  - ii. states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- e) A Director with a material personal interest or a perceived or actual material conflict of interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
  - i. if all of the following conditions are met:
    - a. the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
    - b. if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
    - c. the nature or extent of the interest has not materially increased above that disclosed in the notice; or
  - ii. if the Director has given a standing notice of the nature and extent of the interest in accordance with the Act, and that standing notice is still effective in relation to the interest.

## **24. Interest in a Contract or Other Commercial Arrangement**

- a) No contract or other commercial arrangement made between a Director and the company is voided merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- b) Such contracts or other arrangements must be commercially viable, consistent with the Objects and in the best interest of the Company.

## **25. Board Meetings**

### **25.1. Circulating Resolutions**

- a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolutions (except a Director absent from Australia who has not left an electronic address at which that Director may be given notice) sign a document containing a statement that the Director is in favour of the resolution set out in the document.
- b) Separate identical copies of the document may be used for signing by Directors.
- c) The resolution is passed when the last Director signs.
- d) An email addressed to or received by the Company and purporting to be sent.
- e) The technology neutral provisions of the Act apply.

### **25.2. Convening of meeting of Directors**

- a) Any Director of the Company may call a Board meeting by providing reasonable notice to all Directors.
- b) The Directors may hold meetings (including by any technological means) for the conduct of business and regulate them as they think fit.

### **25.3. Chairing Board Meetings**

- a) The Chair of each Board meeting is the Chair or Deputy Chair of the Board as elected by the Directors under Clause 19.1 of this Constitution.
- b) If the Chair is present at the Board meeting, they must Chair the meeting unless they are unable to due to a material conflict of interest or for other reason decline to Chair in which case the Deputy Chair will



chair the Board meeting.

- c) If the Chair is not present within ten (10) minutes of the meeting start time, or is absent from the meeting for any time, the Deputy Chair must Chair the meeting.
- d) In both the Chair and Deputy Chair are not present within ten (10) minutes of the meeting start time, or both absent from the meeting for any time, the Directors present at the meeting may elect one of their number to chair the meeting, provided the meeting has the required quorum.

#### **25.4. Quorum at a Directors meeting**

- a) The quorum for a Board meeting is at least four (4) Directors of the Company entitled to vote and who are present at the meeting.
- b) The quorum must be present at all times during the meeting.

#### **25.5. Passing of a Directors' resolution**

- a) A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- b) The Chair has a casting vote, if necessary, in addition to any vote the Chair has as a Director.

#### **25.6. Technology Board Meeting**

- a) A Board meeting may be held using telephone, audio-visual or other any instantaneous technological means. For the purposes of this Constitution such a meeting may be referred to as a technology meeting.
- b) If a Board meeting is held using any technology and all the Directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- c) The following provisions apply to a technology meeting:
  - i. each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
  - ii. at the commencement of the meeting each Director must announce that Director's presence to all the other Directors in the meeting.
- d) If the Secretary is not present at a technology meeting one of the Directors present must take minutes of the meeting.
- e) A Director may not leave a technology meeting by disconnecting that Director's link to the meeting unless that Director has previously notified the Chair.
- f) A Director is presumed to have been present and to always have formed part of a quorum during the technology meeting unless that Director has previously obtained the express consent of the Chair to leave the meeting.

### **26. Secretary**

- a) The Directors must appoint a Secretary in accordance with the Act.
- b) The Secretary holds office on such terms and conditions in relation to remuneration and otherwise as the Board determines.

### **27. Validity of acts**

An act done by a director or by a meeting of the directors or a committee attended by a director is not invalidated just because:

- a) of a defect in the appointment of the director;
- b) the person is disqualified from being a director or has vacated office; or
- c) the person is not 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.

## Part D – General Meetings

### 28. Meeting at Director Request

A Director may call a meeting of Members.

### 29. Meeting called by Directors at Member Request

- a) Members, with at least 5% of the votes that may be cast at a General Meeting of the Company, may request the Directors to hold a General Meeting in accordance with section 249D of the Act.
- b) That request must:
  - i. be in writing and
  - ii. state any resolution to be proposed at the meeting; and
  - iii. be signed by the members making the request (separate identical copies may be signed by members to effect signing); and
  - iv. be given to the Company.
- c) The Board must call the meeting within twenty-one (21) days after the request is given to the Company, and the meeting is to be held no later than two (2) months after the request is given to the Company.

#### 29.1. Failure of Directors to call a Member Requested General Meeting

- a) Members with more than 50% of the vote of all of the members, who make a Member Request under Clause 29 may call and arrange a general meeting if the Board fails to do so within twenty-one (21) days after the member request is given to the Company.
- b) The meeting must be called in the same way – so far as is possible—in which general meetings of the company may be called. The meeting must be held not later than three (3) months after the request is given to the company.
- c) To call the meeting the members requesting may ask the Company for a copy of the Register, and the Company must give those members a copy of the Register without charge.
- d) The Company must pay the reasonable expenses the members incurred because the Board failed to call and arrange to hold the meeting.
- e) The Company can recover the amount of the expenses from the Board, however, a Director is not liable for the amount, if they prove they took all reasonable steps to cause the Directors to comply with their obligations to call the general meeting requested by the members, outlined in section 249D of the Act.

### 30. Calling of general meetings by members

- a) Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
- b) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called.

### 31. Court ordered meeting of Members

- a) The Court may call order a meeting of the members if it impracticable to call the meeting in any other way.
- b) The Court may make the order on application by:
  - i. any Director; or
  - ii. any member who would be entitled to vote at the meeting.

### 32. Notice of Meetings

#### 32.1. General Rule

Subject to the Act, at least, twenty-one (21) days' notice must be given of a meeting of the Members of the Company.

### **32.2. Shorter Notice**

Members can agree on shorter notice for:

- a) an AGM if all members entitled to attend and vote at the AGM agree before; and
- b) any other general meeting if members with at least 95% of the votes that may be cast agree beforehand.

### **32.3. Removing or Appointing a Director**

Twenty-one (21) days' notice must be given of a meeting of the Members of the Company in which a resolution moving the removal or appointment of a Director will be tabled.

### **32.4. Removing an Auditor**

Twenty-one (21) days' notice must be given of a meeting of the Members of the Company in which a resolution moving the removal of an auditor will be tabled.

### **32.5. Notice of meetings of members to members and Directors**

Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each Director.

### **32.6. Notice to Joint Members**

Notice need only be given to one joint member and that must be the first joint member named in the register of members.

### **32.7. Method of Notice**

Notice of meeting is taken to be given:

- a) If sent by post – three (3) days after it is posted.
- b) Subject to it being reasonable to expect, at the time the document is sent, that the document would be readily accessible to be usable for subsequent reference;
  - i. Sending the recipient sufficient information in physical form to allow the recipient to access the document electronically -3 days after it is posted,
  - ii. Sending the document in electronic form by means of an electronic communication – on the business day after the information is sent; or
  - iii. If sending the recipient sufficient information in electronic form by means of electronic form to allow the recipient to access electronically - on the business day after the information is sent.

### **32.8. Auditor entitled to Notice and other Communication**

The company must give its auditor:

- a) Notice of the general meeting in the same way as a member is entitled to receive notice
- b) Any other communication relating to the general meeting that a member of the company is entitled to receive.

### **32.9. Contents of Notice of Meeting**

The notice of meeting must conform with the requirements of section 249L of the Act.

### **32.10. Notice of Adjourned Meetings**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

## **33. Members Rights to Resolutions**

- a) The following members may give a company notice of a resolution that they propose to move at a general meeting:
  - i. Members with at least 5% of the votes that may be cast on the resolution; or

- ii. At least 100 members who are entitled to vote at a general meeting
- b) Any such Members resolution must comply with section 249N of the Act.

### **33.1. Company giving notice of Members' Resolutions**

When the Company has been given notice of the members' resolution, the resolution must be considered at the next general meeting that occurs more than two (2) months after the notice is given and the Company and the members requesting the meeting must comply with section 249O of the Act.

## **34. Holding Meetings of Members**

- a) A meeting of Members must be held in compliance with Part 2G.2, Division 5 of the Act and must be held for a proper purpose.
- b) Meetings may be held at one or more physical venues, or both at physical venues and using virtual meeting technology or if the Board determines it is appropriate to do so using virtual technology only.
- c) Members must be given a reasonable opportunity to participate in a meeting of members as required by section 249S of the Act.

### **34.1. Members Meeting Quorum**

- a) The quorum for a meeting of a company's members is two (2) members, and the quorum must always be present during the meeting.
- b) In determining whether a quorum is present count individuals attending as proxies, however if an individual is appointed as a proxy for more than one member they will only count as one (1) for the purposes of a quorum.
- c) Failure to establish a quorum within 30 minutes from the time for the meeting set out in the meeting notice means that the meeting must be adjourned to a later time and becomes a resumed meeting under the Act.
- d) The procedure for resumed meetings is set out in section 249T of the Act and must be followed.
- e) If no quorum is present at the resumed meeting within thirty (30) minutes after the time set for the meeting to start, the meeting is dissolved.

## **35. Chair of General Meetings**

- a) The chair of the Board must preside as chair at each general meeting.
- b) If the chair of the Board is absent or is unwilling to act, then the deputy chair of the Board, if one has been appointed must preside as chair at each general meeting.
- c) If both the chair and deputy chair are absent or both are unwilling to act, then the members present at that meeting may elect a person present to chair the meeting.

### **35.1. Chair's casting Vote**

The Chair has a casting vote, and, if they are a member, any vote they have in their capacity as a member.

## **36. Conduct of General Meetings**

- a) 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 and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for:
  - i. proper and orderly debate or discussion; and
  - ii. the proper and orderly casting or recording of votes.
- b) The Company may hold a meeting of its Members using any technology that gives the Members as a whole a reasonable opportunity to participate.
- c) The chair of a general meeting at which a quorum is present may, with the majority consent of members present at the meeting, adjourn the meeting from time to time and place to place. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- d) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to

all persons who were entitled to receive notice of the meeting the subject of the adjournment.

- e) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

### **37. Decisions at General Meetings**

- a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting (including being present by technological means) and that decision is for all purposes a decision of the members.
- b) In the case of an equality of votes upon any proposed resolution at a meeting of members, the chair has a second or casting vote in addition to any vote the chair may have in his or her capacity as a member.
- c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded.
- d) A member may only cast one vote on a show of hands regardless of whether that member also holds one or more proxies.
- e) A poll may be demanded before a vote being decided by a show of hands is taken or before or immediately after the declaration of the result of the show of hands:
  - i. by the chair of the meeting;
  - ii. by at least five members present and entitled to vote on the relevant resolution; or
  - iii. by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- f) Unless a poll is 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 book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- g) If a poll is demanded at a general meeting, it will be taken when and in the manner that the chair directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- i) The demand for a poll may be withdrawn.

### **38. Voting Rights**

Each member has the right to exercise one vote on a show of hands and on a poll.

### **39. Representation at General Meetings in Person, by Proxy or Attorney.**

- a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - i. in person; or
  - ii. by proxy in a form as the Directors may prescribe or accept; or
  - iii. by attorney in a form as the Directors may prescribe or accept.
- b) A proxy or attorney may be a member of the company but does not need to be.
- c) The chair of a meeting may require any person purporting to act as a proxy or attorney to establish to the satisfaction of the chair that the person has been validly appointed as a proxy or attorney and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- d) If the company receives a proxy form without the name of the proxy filled in, then the proxy is:
  - i. the person specified by the company in the proxy form; or
  - ii. if no person is specified in the proxy form, the chair of the meeting for which that proxy applies.
- e) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney is received:

- i. at the registered office of the company or electronic address specified for that purpose in the notice convening the meeting; and
- ii. at least 48 hours before the time scheduled for the commencement of the meeting as specified in the notice of meeting, or such other period before the meeting determined by the Directors from time to time.
- f) The authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while that member is present at the meeting unless the members present at the meeting resolve otherwise.
- g) The chair may hold as many proxies as are given to the chair. All other proxy holders may hold a maximum of three proxies.

#### **40. Decisions without Meetings**

Members may pass resolutions and otherwise make decisions outside of a members' meeting in any manner (including using technology) so long as such manner complies with:

- a) the law; and
- b) any current Board approved policies and procedures relating to the passing of member resolutions.

#### **41. Annual General Meeting (AGM)**

- a) The Company must hold one Annual General Meeting every calendar year and within five (5) months of the end of its financial year unless it has lodged an application to extend under the Act.
- b) The Annual General Meeting must be held in addition to any other meetings held by the Company in a year.
- c) The Board must place before the AGM each year:
  - i. The Annual Financial Year report for the preceding financial year prior to the AGM ('previous financial year');
  - ii. The Directors (Board) Report;
  - iii. The Auditor's report for the previous financial year; and
  - iv. These reports must be prepared in compliance with the requirements of Part 2M.3 of the Act.
- d) The business of an Annual General Meeting may include consideration of these reports, even if not referred to in the notice of meeting.
- e) All other business transacted at either an annual General Meeting or any other General Meeting is special business.
- f) The business of the AGM also includes any other business which under this Constitution or the Act that ought to be transacted at an annual General Meeting.
- g) The chair of the annual General Meeting must allow a reasonable opportunity for the Members at the meeting to ask questions about, or make comments on, the management of the Company.
- h) If the Company's auditor or the auditor's representative is at the meeting, the Chair must allow a reasonable opportunity for the Members at the meeting to ask the auditor or the auditor's representative, questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

#### **42. Auditor's right to be heard at General Meetings**

- a) A company's Auditor is entitled to attend any general meeting of the company.
- b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- c) The auditor is entitled to be heard even if:
  - i. the auditor retires at the meeting; or
  - ii. the meeting passes a resolution to remove the auditor from office.
- d) The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

## Part E - Administrative Matters

### 43. Minutes

- a) The Company must keep minute books, in which it records within one (1) month the:
  - i. Proceedings and resolutions of Members;
  - ii. Proceedings and resolutions of Board meetings (including the meetings of a Committee of Directors);
  - iii. Resolutions passed by Members without a meeting; and
  - iv. Resolutions passed by Directors without a meeting.
- b) The Board must ensure that minutes of a meeting are signed within a reasonable time by either the chair of the meeting or the chair of the next meetings.

### 44. Rights of Inspection of Records

- a) The Board or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company. See also Members Rights Clause 10.4.
- b) Any Members' rights to inspection of the Company records must be in good faith and not for an improper purpose, such as soliciting donations or gathering personal information.
- c) If Member is denied access to inspect records, a member can apply for a court order under the Act to inspect company books, provided they are acting in good faith and for a proper purpose.

### 45. Annual Financial Reports

- a) The Company must comply with the financial reporting obligations of the Act, relevant to the size of the company, including but not limited to:
  - i. prepare a financial report;
  - ii. prepare a directors' report;
  - iii. have the financial report audited; and
  - iv. must give reports to any member who elects to receive them.

### 46. Accounts and Audit

#### 46.1. Accounts

- a) The Board must cause proper accounting and other records to be kept in accordance with the Act.
- b) The Board must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

#### 46.2. Audit

- a) A registered company auditor must be appointed.
- b) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

### 47. Indemnity and Insurance

- a) To the extent permitted by law, the company indemnifies its officers (both current and past) for all losses or liabilities incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.
- b) This indemnity:
  - i. may only be for losses or liabilities incurred as an officer of the company (either before or after the adoption of this rule); and
  - ii. operates only to the extent that the loss or liability is not paid by insurance.
- c) To the extent permitted by law, the company may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs.

## **48. Execution of Documents**

### **48.1. Execution of Documents**

The Company may execute a document, including a deed, if the document is signed by:

- a) Two (2) Directors; or
- b) One (1) Director and the Secretary.

### **48.2. Execution of Document as a Deed**

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with the above Clause.

### **48.3. Execution - General**

The same person may not sign in the dual capacities of Director and Secretary.

## **49. Notices**

- a) Any notice, document or other communication required or permitted to be given under this Constitution or law may be given in any manner (including using technology) so long as such manner complies with:
  - i. the law; and
  - ii. any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the Directors from time to time.

## **50. Dispute Resolution**

Any disputes arising between Members or Directors may be resolved using processes as determined by the Board from time to time.