



Constitution

Australia and New Zealand Recycling Platform Limited

ACN 154 190 691

(As amended by the 2022 AGM on 22 November 2022)

Constitution of Australia and New Zealand Recycling Platform Limited

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Preliminary

1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

ACNC Legislation means the Australian Charities and Not-for-profits Commission Act 2012 (Cth) and the Australian Charities and Not-for-profits Commission Regulation 2013 (Cth) to the extent they apply to the Company at the relevant time;

Act means the Recycling and Waste Reduction Act 2020 (Cth);

Alternate Director means a person appointed as an alternate director under clause 36.

ANZRP Arrangement means the Approved Co-Regulatory Arrangement given effect to by the Membership Deed.

Approved Co-regulatory Arrangement has the same meaning as set out in the Act.

Auditor means the Company's auditor.

Board means the board of Directors of the Company.

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

- (a) for the purpose of sending or receiving a notice in the city where the notice is received; and
- (b) for all other purposes in Melbourne.

Company means Australia and New Zealand Recycling Platform Limited ABN 29 154 190 691.

Constitution means the constitution of the Company as amended or replaced from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director means any director of the Company and, where appropriate, includes an Alternate Director.

Financial Year means the 12 month period from 1 July to 30 June unless prescribed otherwise in the Rules.

Liable Party has the same meaning as set out in the Act.

Member means a Liable Party who has been admitted as a member of the Company.

Membership Deed means the membership deed dated on or about 5 April 2012 (as amended) and entered into by the Company and adhered to by each Member.

Product Stewardship Scheme means any scheme aimed at reducing the environmental and other impacts of products by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for those products.

Product Stewardship Services means services relating to recycling, handling, treating, collecting, storing and transporting goods in an environmentally responsible manner including participating in Product Stewardship Schemes, and any promotional, communication and consulting services relating to current or proposed Product Stewardship Schemes or product stewardship services.

PS Scheme means the National Television and Computer Recycling Scheme regulated under the Act and the Rules.

Register means the register of Members of the Company.

Regulated Products means in relation to the PS Scheme, any televisions, computers, printers and computer parts and peripheral products defined in the Rules or which become subject to the Rules, and in relation to any other Product Stewardship Scheme means products the subject of regulation under that Product Stewardship Scheme.

Representative means a person appointed as such under clause 10.

Rules means the Recycling and Waste Reduction (Product Stewardship- Televisions and Computers) Rules 2021;

Seal means the Company's common seal (if any).

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

Transferred Obligation Member has the meaning set out in the Membership Deed.

- 1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a term which refers to a person includes a person in any capacity, a body corporate, an unincorporated body (for example a society or association), a trust, a partnership, a sovereign state, a government or a government department or agency;
- (g) a reference to a statute or regulation or a provision of a statute or regulation is a reference to that statute, regulation or provision as amended or a statute, regulation or provision replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws made or issued under that statute;
- (h) a reference to an entity in this Constitution which ceases to exist or whose powers or functions are transferred to another entity, is a reference to the entity which replaces it or which substantially succeeds to its powers or functions;

- (i) the term ‘including’, ‘e.g.’, ‘such as’, ‘particularly’ or any similar expression is not used as, nor is intended to be interpreted as, a term of limitation; and
- (j) a word or term defined in the Act, Rules or Corporations Act has the same meaning in this Constitution.

3. Replaceable rules, ACNC Legislation and Membership Deed

- 3.1 This Constitution is subject to the Corporations Act and the ACNC Legislation.
- 3.2 The replaceable rules for a company under the Corporations Act do not apply to the Company.
- 3.3 If there is any conflict between the provisions of this constitution and the Membership Deed:
 - (a) the provisions of the Membership Deed will prevail to the extent of the conflict; and
 - (b) each Member and the Company must exercise all voting and other rights and powers which are available to that Member or the Company (as the case may be) to give effect to the provisions of the Membership Deed and exercise all voting and other rights and powers which are available to that Member or the Company (as the case may be) to amend this constitution in the terms which are provided in that notice, so that the conflict ceases.

Objects

4. Objects

- 4.1 The Company is established as a charitable not-for-profit entity for the objects of advancing the natural environment, promoting and facilitating the safe and responsible collection and recycling of waste, creating and managing complete, sustainable waste solutions to meet the needs of industry, government and consumers, and without limiting the foregoing:
 - (a) establishing and implementing a cost-effective national Approved Co Regulatory Arrangement consistent with community and industry objectives that discharges its Members’ obligations under the PS Scheme to ensure the safe, scientific and environmentally sound collection and recycling of Regulated Products, and establishing and implementing any equivalent co-regulatory arrangement under any other Product Stewardship Schemes;
 - (b) encouraging new members to join the ANZRP Arrangement or any other Product Stewardship Scheme administered by the Company where that new member will further the mutual interests of the Members;
 - (c) undertaking effective engagement and communication with stakeholders under the PS Scheme or any other Product Stewardship Scheme to further the interests of Members and of the ANZRP Arrangement;
 - (d) pursuing the outcomes or objects of the Act, the Rules and any other regulations under the Act;
 - (e) participating in Product Stewardship Schemes in any capacity;
 - (f) acting as an administrator in relation to the ANZRP Arrangement;
 - (g) providing the community with a free service for the recycling of Regulated Products;

- (h) establishing and operating collection services across Australia for the collection of Regulated Products;
- (i) ensuring Regulated Products are recycled in a safe manner that minimises any impact to human health and the environment;
- (j) promoting the recycling of Regulated Products;
- (k) educating the community on the benefits of recycling Regulated Products;
- (l) providing Product Stewardship Services;
- (m) providing services and advice in relation to regulatory compliance, sustainability and environmental management, including in relation to Product Stewardship Schemes; and
- (n) doing all things incidental and necessary or reasonable to achieve the above objects.

4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

4A Purpose statement

The purpose of the Company is to meet the objectives detailed in clause 4 whilst having an overall positive impact on society and the environment.

Income and property of Company

5. Income and property of Company

5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.

5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

5.3 The Company must not pay a dividend to its Members.

Membership

6. Admission and qualification of Members

6.1 The number of Members with which the Company proposes to be registered is unlimited.

6.2 The Members of the Company are:

- (a) the persons who consented to become Members in the application for registration of the Company; and
 - (b) any other persons, corporations or organisations whom or which the Directors admit to membership in accordance with the Membership Deed and this Constitution.
- 6.3 To be eligible to become a Member of the Company after the Company is registered a person must:
 - (a) be a body corporate;
 - (b) be either a Liable Party, have reasonable grounds to become a Liable Party or is, in the case of a Transferred Obligation Member, a member of another Approved Co-Regulatory Arrangement acceptable to the Company; and
 - (c) agree to adhere to the terms of the Membership Deed.
- 6.4 The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
 - (a) accept or reject the application; or
 - (b) ask the applicant to give more evidence of eligibility for membership and the applicant's ability to meet the obligations of being a Member under the Membership Deed.
- 6.5 The Directors do not have to give any reason for rejecting an application for membership.
- 6.6 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

7. Fees payable by Members

- 7.1 The Directors may determine the fees payable by each Member in accordance with the Membership Deed.
- 7.2 The Directors may determine the terms on which such fees are payable having regard to the Membership Deed and any relevant policies approved by the Board.

8. Ceasing to be a Member

- 8.1 A Member's membership of the Company will cease in the circumstances set out in the Membership Deed.

9. Powers of attorney

- 9.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership of the Company, that Member must deliver the instrument appointing the Attorney to the Company for notation.
- 9.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 9.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

10. Representatives

- 10.1 Any corporation or organisation which is a Member may by written notice to the Secretary:
- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
 - (b) remove a Representative and appoint a replacement.
- 10.2 A Representative is entitled to:
- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
 - (b) stand for election as an office bearer or Director; and
 - (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.
- 10.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.
- 10.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.
- 10.5 The appointment of a Representative may set out restrictions on the Representative's powers.

General meetings

11. Calling a general meeting

- 11.1 Any Director may, at any time, call a general meeting.
- 11.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act or the Membership Deed; and
 - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act or the Membership Deed.

12. Notice of general meeting

- 12.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice and any provision of the Membership Deed, at least 21 days' written notice (inclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 12.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) must state the general nature of the business to be transacted at the meeting; and

- (c) may specify a place, facsimile number and/or electronic address for the purposes of proxy appointment.
- 12.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
 - (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 12.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 11.2).
- 12.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 50.1 entitled to receive notices from the Company.
- 12.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

13. Member

In clauses 14, 15, 17 and 21, **Member** includes a Member present in person or by proxy, attorney or Representative.

14. Quorum

- 14.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 14.2 A quorum of Members is, unless otherwise specified in the Membership Deed, at least 5 Members.
- 14.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place 5 Business Days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, those Members present shall constitute a quorum.

15. Chairperson

- 15.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.

- 15.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no chairperson or deputy chairperson; or
 - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 15.3 If no election is made under clause 15.2, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 15.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

16. Adjournment

- 16.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 16.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 16.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 16.4 Notice of an adjourned general meeting must only be given in accordance with clause 12.1 if a general meeting has been adjourned for more than 21 days.

17. Decision on questions

- 17.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 17.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act by either:
- (a) at least 5 Members entitled to vote on the resolution;
 - (b) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (c) the chairperson.
- 17.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

- 17.4 The demand for a poll may be withdrawn.
- 17.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

18. Taking a poll

- 18.1 A poll will be taken when and in the manner that the chairperson directs.
- 18.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 18.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 18.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 18.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 18.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

19. No casting vote of chairperson

The chairperson of a general meeting does not have a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

20. Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

Votes of Members

21. Entitlement to vote

- 21.1 A Member is not entitled to vote at a general meeting in the circumstances set out in the Membership Deed or if the Member's membership or service fees are in arrears at the date of the meeting by more than the prescribed period determined by the Board.
- 21.2 Each Member (other than a Transferred Obligation Member) is entitled to one vote, unless otherwise provided for in the Membership Deed.

22. Objections

- 22.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 22.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 22.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

23. Votes by proxy

- 23.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 23.2 A proxy need not be a Member.
- 23.3 A proxy may demand or join in demanding a poll.
- 23.4 A proxy or attorney may vote on a poll.
- 23.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

24. Document appointing proxy

- 24.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 24.2 For the purposes of clause 24.1, an appointment received at an electronic address will be taken to be signed by the Member if:
 - (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 24.3 A proxy's appointment is valid at an adjourned general meeting.
- 24.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 24.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
 - (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

- 24.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more directors or the Secretary.

25. Lodgment of proxy

- 25.1 The written appointment of a proxy or attorney must be received by the Company at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 25.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

26. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

Appointment and removal of Directors

27. Number of Directors

- 27.1 The number of Directors will be a minimum of 3 and such maximum number of Directors as is determined in accordance with the Membership Deed.
- 27.2 The Directors of the Company hold office subject to the Constitution and the Membership Deed.

28. Appointment and removal of Directors

- 28.1 The Directors of the Company will be appointed and removed in accordance with the Membership Deed and clause 37.

29. Nomination of Director

- 29.1 A person is not eligible for appointment as a Director unless the person, or a Member who intends to nominate the person, has left at the Company's registered office or provided (including by email) the Secretary or the chairperson with a written notice signed by him or her:
- (a) giving the person's consent to the nomination; and
 - (b) stating either that the person is a candidate for the office of Director or that the Member intends to propose the person for election.
- 29.2 A notice given in accordance with clause 29.1 must be served on the Company in accordance with clause 29.1 at least 7 days before the relevant meeting at which an election of a Director will take place.
- 29.3 A written notice referring to all Director vacancies and each candidate for election, must be sent to all Members entitled to vote on the election of a Director at least seven days before an election of a Director will take place.

30. Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed in accordance with the Membership Deed;
- (e) is absent from Directors' meetings for three consecutive months without leave of absence from the Directors.

Powers and duties of Directors

31. Powers and duties of Directors

- 31.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution, the Corporations Act, or the ACNC Legislation do not require to be exercised by the Company in general meeting.
- 31.2 Without limiting the generality of clause 31.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person;
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person;

- (e) enter contracts and undertake obligations on behalf of the Company; and
- (f) incorporate, wind up or deregister any subsidiary or related body corporate of the Company.

31.3 Each Director must ensure that he or she is aware of, and complies with, his or her duties as a Director under relevant legislation and the common law, including in particular, the duties set out in governance standard 5 of the Australian Charities and Not-for-profits Commission Regulation 2013 (Cth) which are:

- (a) to exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable individual would exercise if he or she was a Director;
- (b) to act in good faith in the Company's best interests and to further the charitable objects of the Company set out in this Constitution;
- (c) not to misuse his or her position as a Director;
- (d) not to misuse information he or she gains in the performance of his or her duties as a Director;
- (e) to disclose any perceived or actual material conflicts of interest experienced by him or her;
- (f) to ensure that the financial affairs of the Company are managed in a responsible manner; and
- (g) not to allow the Company to operate while insolvent.

31.4 Each Director must use all reasonable endeavours to assist the Company to comply with the ACNC Legislation.

31A. Stakeholder clause

In discharging their duties under this Constitution, the Corporations Act, the ACNC legislation and the general law, the Directors or other officers of the Company:

- (a) will include in their consideration the following factors:
 - (i) the likely consequences of any decision or act of the Company in the long term;
 - (ii) the interests of the Company's employees;
 - (iii) the need to foster the Company's business relationships with suppliers, customers and others;
 - (iv) the impact of the Company's operations on the community and the environment;
 - (v) the desirability of the Company maintaining a reputation for high standards of business conduct;
 - (vi) the interests of the Members of the Company; and
 - (vii) the ability of the Company to create an overall positive impact on society and the environment;
- (b) need not give priority to a particular factor referred to in paragraph (a) over any other factor (included in paragraph (a) or otherwise).

Proceedings of Directors

32. Directors' meetings

- 32.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 32.2 A Directors' meeting must be called on at least 2 Business Days written notice (or on such other notice as the Directors agree) of a meeting to each Director and each Director's alternate.
- 32.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia and will not be able to be present for the relevant meeting.
- 32.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 32.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 32.6 Subject to clause 35, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 32.7 Clauses 32.4 to 32.5 apply to meetings of Directors' committees as if all committee members were Directors.
- 32.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 32.9 A quorum of Directors for a meeting is as set out in the Membership Deed.
- 32.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 32.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

33. Decision on questions

- 33.1 Subject to this Constitution and the Membership Deed, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 35, each Director has one vote.
- 33.2 The chairperson of a meeting of Directors does not have a casting vote in addition to his or her deliberative vote.
- 33.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.
- 33.4 If the Alternate Director is a Director, he or she also has a vote as a Director.

Payments to Directors

34. Payments to Directors

Subject to the Membership Deed, no payment will be made to any Director of the Company other than payment:

- (a) of reasonable out of pocket expenses incurred by the Director in attending Board meetings of, or other meetings for, the Company;
- (b) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company;
- (c) relating to an indemnity in favour of the Director and permitted by law; and
- (d) solely in the case of an independent Director, of a director's fee if so determined by the Directors.

35. Directors' interests

35.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

35.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.

35.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.

35.4 Subject to clause 34, a Director or a body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any agreement or arrangement with the Company;
- (b) hold any office or place of profit other than as auditor in the Company; and
- (c) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

35.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted by the Corporations Act or the Membership Deed to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- 35.6 A Director may, unless otherwise prohibited by the Membership Deed, be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

36. Alternate Directors

- 36.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate for a period determined by that Director.
- 36.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 36.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 36.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 36.5 The appointment of an Alternate Director:
- (a) may be revoked at any time by the appointor or by the other Directors; and
 - (b) ends automatically when the appointor ceases to be a Director.
- 36.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

37. Remaining Directors and filling vacancies

- 37.1 The Directors may act even if there are vacancies on the Board.
- 37.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to either appoint additional eligible Directors necessary to constitute a quorum or call a general meeting.
- 37.3 If there is a vacancy on the Board and the Directors then in office resolve to appoint an additional Director to fill that vacancy, then the Directors may act to appoint that person as an additional Director.
- 37.4 Any Director appointed to the Board under clause 37.3 may serve as a Director until the time of the next election of Directors held at or just prior to the next annual general meeting where the Director appointed to the Board under clause 37.3 must resign but is eligible to offer himself or herself for re-election to the Board, and if then elected will serve as a Director for the same term as any other newly elected Director.

38. Chairperson and Chief Executive Officer

- 38.1 The chairperson will be appointed in accordance with the Membership Deed.
- 38.2 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 38.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

- 38.4 The chief executive officer (**CEO**) will be appointed by and will report to the Board. The terms of the CEO's appointment and any material variation to those terms must be approved by the Board or a remuneration committee of the Board.
- 38.5 The CEO may be removed or replaced by a resolution of the Board.
- 38.6 The CEO will have such duties and delegated authority as determined by the Board, or as is set out in the Membership Deed.

39. Delegation

- 39.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a Board, to a committee or committees.
- 39.2 The Directors may at any time revoke any delegation of power to a committee.
- 39.3 At least one member of each committee must be a Director.
- 39.4 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 39.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 39.6 Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

40. Written resolutions

- 40.1 The Directors may pass a resolution without a Directors' meeting being held if the requisite majority of the Directors entitled to vote on and pass the resolution either:
- (a) sign a document containing a statement that they are in favour of the resolution set out in the document; or
 - (b) provide by email (where it reasonably appears to be an email sent by the Director) a confirmation of their agreement to the terms of the resolution set out in the document, and

the resolution is passed when the last Director required for the requisite majority signs or provides such email confirmation.

- 40.2 For the purposes of clause 40.1(a), separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy and for the purposes of clause 40.1(b) the Company is entitled to rely on the email confirmation if it has come from the Director's usual email address nominated or used by the Director for correspondence with the Company.
- 40.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 40.4 The minutes of Directors' meetings must include a copy of written resolutions passed in accordance with this clause.
- 40.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

41. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

42. Minutes and Registers

42.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 40;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 35.

42.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

42.3 The Company must keep all registers required by this Constitution and the Corporations Act.

Local management

43. Local management

43.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.

43.2 Without limiting clause 43.1 the Directors may:

- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
- (b) delegate to any person appointed under clause 43.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.

43.3 The Directors may at any time revoke or vary any delegation under this clause.

44. Appointment of attorneys and agents

- 44.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,
- determined by the Directors.
- 44.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
 - (b) any company;
 - (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 44.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 44.4 The Directors may appoint attorneys or agents by an instrument in writing to act for and on behalf of the Company.
- 44.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

45. Secretary

- 45.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 45.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 45.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Seals

46. Common Seal

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

47. Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face;
- (b) must not be used except with the authority of the Directors.

Inspection of records

48. Inspection of records

- 48.1 Except as otherwise required by the Corporations Act and subject to the Membership Deed, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 48.2 Except as otherwise required by the Corporations Act and the Membership Deed, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Notices

49. Service of notices

- 49.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
 - (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 49.2 A notice sent by post is taken to be served:
 - (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 49.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
 - (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and

- (b) on the day of its despatch if it is sent prior to 5pm on that day or the next day if it is sent after 5pm.

- 49.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 49.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's address for the purposes of this clause 49.
- 49.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 49.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 49.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

50. Persons entitled to notice

- 50.1 Notice of every general meeting must be given to:
 - (a) every Member;
 - (b) every Director and Alternate Director; and
 - (c) any Auditor.
- 50.2 No other person is entitled to receive notice of a general meeting.

Audit and accounts

51. Audit and accounts

- 51.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the ACNC Legislation, the Corporations Act, the Act, the Rules and any other regulations under the Act.
- 51.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the ACNC Legislation, Corporations Act, the Act, the Rules and any other regulations under the Act.

Winding up

52. Winding up

- 52.1 If the Company is wound up:
 - (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year,undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to clause 52.1(b) , contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,

such amount as may be required, not exceeding \$10.

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

- (a) required to pursue either similar purposes to the Company, or if no such similar entity exists, a charity (if at the time of winding up the Company is a registered charity under the ACNC Legislation) or corporation which is not carried on for the profit or gain of its individual members;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members,

such corporation to be determined by the Board at or before the winding up and in default, by application to the Supreme Court of Victoria for determination.

Indemnity

53. Indemnity

53.1 To the extent permitted by law the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); or
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

53.2 The amount of any indemnity payable under clause 53.1(a) or 53.1(b) will include an additional amount (**GST Amount**) equal to any goods and services or like tax (**GST**) payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

53.3 For the purposes of this clause, **officer** means:

- (a) a director or secretary of the Company; or
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or
 - (ii) who has the capacity to affect significantly the Company 's financial standing; or

- (iii) in accordance with whose instructions or wishes the directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation).