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# Constitution

**Australian Plantation Products & Paper Industry Council Limited**

**ACN 005 904 898**

## **Constitution of Australian Plantation Products & Paper Industry Council Limited**

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## Preliminary

The name of the Company is Australian Plantation Products & Paper Industry Council Limited.

The Company is a company limited by guarantee.

The replaceable rules in the Act do not apply to the Company.

## 1. Interpretation

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### 1.1 Definitions

In this Constitution unless it is inconsistent with the subject or context in which it is used:

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

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

**Associate Member** means an Associate Member under Rule 8.3(b).

**Auditor** means the Company's auditor.

**Board** means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

**Chair** means, for the purposes of general meetings of the Company, the person determined or appointed in accordance with Rule 18 and, for all other purposes, the person appointed in accordance with Rule 45.

**Chief Executive Officer** means an employee of the Company who is appointed to the office of Chief Executive Officer pursuant to Rule 37.

**Committee** means a committee to which powers have been delegated by the Board under Rule 47.

**Constitution** means this constitution as amended from time to time.

**Company** means Australian Plantation Products and Paper Industry Council Limited (ACN 005 904 898).

**Director** means a person appointed or elected from time to time to the office of director of the Company in accordance with this Constitution and, where appropriate, includes an Alternate Director when acting in that capacity.

**Expulsion Notice Period** has the meaning given to it in Rule 12.3.

**Financial Year** means a year commencing on 1 July and concluding on 30 June of the following year;

**Full Member** means a member under Rule 8.3(a).

**Member** means a member under Rule 8 and includes an Associate Member and an Other Member unless the context otherwise requires.

**Members present** means Members present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney.

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

**Other Member** means a member under Rule 8.3(c).

**Register** means the register of Members of the Company.

**Registered Address** means the address at which a Member notifies the Company that the Member will accept service of notices pursuant to Rule 10.

**Secretary** means a person appointed as, or to perform the duties of, a secretary of the Company.

## 1.2 Interpretation

- (a) A word or phrase which is given a special meaning by the Act has the same meaning in this Constitution.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include each other gender.
- (d) A reference to the Act or any other statute or regulations or provisions of any of them is to be read as though the words "*as modified or substituted*" were added to the reference.
- (e) The headings do not affect the construction of this Constitution.
- (f) A reference to a Rule is a reference to a rule of this Constitution.
- (g) Writing and written includes printing, typing, lithography, facsimile and other modes of reproducing words in a visible form.
- (h) Person and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by ordinance, Act of Parliament or registration as well as individuals.

## 2. Previous Constitution Superseded

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This Constitution supersedes the Company's constitution in force immediately before the adoption of this Constitution.

## 3. Transitional

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Everything done under any previous constitution or Memorandum and Articles of Association of the Company continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution. In particular:

- (a) every Director, Executive Director, Alternate Director, Secretary and officer in office immediately before adoption of this Constitution is taken to have been appointed and shall continue in office under this Constitution; and
- (b) any seal adopted by the Company before the adoption of this Constitution is taken to be a seal properly adopted under this Constitution.

#### **4. Objects**

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The objects for which the Company is established are to:

- (a) facilitate the operation and development of an Australian paper and plantation timber industry that is internationally competitive, socially responsible and economically and ecologically sustainable; and
- (b) represent the collective national interests of the Members and the Company to Government and other stakeholders as required.

#### **5. Members' Liability on Winding Up**

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The liability of Members is limited.

While a Member, or within one year after ceasing to be a Member, each Member undertakes to contribute such amounts as may be required, not exceeding twenty dollars, to the property of the Company in the event of the Company being wound up:

- (a) for payment of the debts and liabilities of the Company contracted before ceasing to be a Member; and
- (b) for payment of the costs, charges and expenses of winding up; and
- (c) for the adjustment of the rights of the contributories amongst themselves.

#### **6. Application of Income and Property**

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The Company is not to be carried on for the profit or gain of its individual Members.

The income and property of the Company is to be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no part of it is to be paid or transferred directly or indirectly to the Members of the Company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

#### **7. Distribution on Winding Up**

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If, on the winding up or dissolution of the Company, there remains, after satisfaction of all debts and liabilities, any property whatever, this property must be given or transferred to one or more institutions selected by the Directors at or before the winding up or dissolution of the Company:

- (a) having objects similar to the objects of the Company; and
- (b) whose constitution prohibits the distribution of its or their income and property to an extent at least as great as that imposed on the Company under Rule 6.

## Membership

### 8. Admission to Membership

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- 8.1 The number of Members is unlimited.
- 8.2 The Members of the Company will be any persons, corporations or organisations whom or which the Directors admit to membership in accordance with this Constitution.
- 8.3 To be eligible for membership a prospective Member must fall into one of the following categories:
- (a) Full Members:
    - (i) bona fide processors of plantation timber; or
    - (ii) bona fide growers of plantation timber and/or plantation log exporters; or
    - (iii) bona fide manufacturers of pulp and/or paper.
  - (b) Associate Members:
    - (i) persons who are engaged in the bona fide provision of goods or services associated with the growing, processing or use of plantation timber, paper or pulp (as the case may be);
    - (ii) persons who deal with, trade in, export or use plantation timber, paper or pulp but do not grow or process it (as the case may be); or
    - (iii) bona fide manufacturers of any commodity or commodities associated with the growing, processing or use of plantation timber, paper or pulp (as the case may be).
  - (c) Other Members: persons who are not eligible for membership as Full Members or Associate Members but who are engaged in activities relevant to the objects of the Company, and who are approved by the Directors.
- 8.4 Applications for membership of the Company must be in writing, signed by the applicant, in a form approved by the Directors in their absolute discretion.
- 8.5 The Directors will consider each application for membership and, in their absolute discretion:
- (a) determine the admission or rejection of the applicant; or
  - (b) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- 8.6 If the Directors:
- (a) require further evidence under Rule 8.5, determination of the application will be deferred until this evidence has been supplied;

- (b) reject an application for membership, they will not be required to give reasons for the rejection.
- 8.7 As soon as practicable following acceptance of an application, the Secretary will send the applicant written notice of the acceptance and request payment of the applicant's first annual subscription.
- 8.8 Subject to Rule 8.9, an applicant will become a Member of the Company after the latter to occur of:
  - (a) payment of the amount due under Rule 8.7; and
  - (b) the applicant undertaking in writing to be bound by the Constitution.
- 8.9 If:
  - (a) an amount due under Rule 8.7 is not paid; or
  - (b) the applicant does not agree in writing to be bound by the Constitution;within 30 days after the date the applicant is notified of acceptance, the Directors may cancel their acceptance of the application for membership of the Company.
- 8.10 The rights and privileges of every Member will be personal to each Member and will not be transferable by the Member's own act or by operation of law.

## **9. Subscription Fee**

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- 9.1 Notwithstanding Rules 9.3 and 9.4, the Board may, in its absolute discretion, determine subscription fees.
- 9.2 Each Member must pay the subscription fee in each Financial Year in which they are registered as Members on the Register or at such other time or times, including by instalments, as the Board may determine.
- 9.3 If a Full Member is eligible for membership in more than one sub-category of membership in Rule 8.3(a), the subscription fee for that Full Member will be the sum of the subscription fees in respect of each sub-category for which it is eligible.
- 9.4 If a related body corporate (as defined in the Act) of a Full Member is eligible for membership in one or more sub-categories of membership in Rule 8.3(a), but is not in fact a Full Member, the subscription fee for that Full Member will, unless the Board determines otherwise in a particular case or generally, include the sum of the subscription fees in respect of each sub-category for which each related body corporate is eligible, having regard only to its operations within Australia.
- 9.5 Members admitted after 31 December in any Financial Year shall not pay more than one half of the annual subscription which would otherwise have been payable for the then current Financial Year.

## 10. Registered Address

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- 10.1 Each Member must notify the Secretary of an address within Australia to which notices may be served on or delivered to such Member. The Secretary must enter that address in the Register.
- 10.2 Each Member must notify the Secretary within seven days of any change in the Member's Registered Address. The Secretary must enter any change in the Register.
- 10.3 If a Member does not have a Registered Address within Australia, the Registered Address of that Member is taken to be at the Office.

## Cessation of Membership

### 11. Resignation of a Member

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A Member may at any time, by giving notice in writing to the Secretary, resign as a Member. The resignation will be effective six months from the date of receipt of the notice by the Secretary. When the resignation of a Member becomes effective, that Member's name must be removed from the Register.

### 12. Misconduct of a Member

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- 12.1 If any Member:
- (a) is in breach of the provisions of this Constitution; or
  - (b) is guilty of any act or omission which, in the opinion of the Board is unbecoming of a Member, or prejudicial to the interest of the Company,
- the Board may censure, suspend, or expel the Member from the Company and may remove the Member's name from the Register.
- 12.2 The Board must not expel a Member under Rule 12.1 unless:
- (a) at least seven days notice has been given to the Member stating the date, time and place at which the resolution of expulsion of that Member is to be considered by the Board, and the nature of the alleged misconduct; and
  - (b) the Member is given the opportunity of giving to the Board, orally or in writing, any explanation concerning the alleged misconduct as the Member thinks fit.
- 12.3 If the Board resolves to expel a Member, the Secretary must immediately notify the Member. The Member then has the right, exercisable by notifying the Secretary within seven days after receipt of the notice (the *Expulsion Notice Period*), to have the issue dealt with by the Company in general meeting. In that event, a general meeting of the Company must be called for that purpose, having the same powers as the Board has under Rule 12.1. The Member has a right to address the general meeting in writing or orally prior to the resolution being put to a vote at the general meeting. If a resolution to expel the

Member is passed at the general meeting by a majority of two-thirds of the Members present, that Member will immediately cease to be a Member and that Member's name must be removed from the Register.

- 12.4 If the Board resolves to expel a Member and the Member does not notify the Secretary on or before the expiration of the Expulsion Notice Period that the Member wishes to have the issue dealt with by the Company in general meeting, the Member ceases to be a Member on the expiration of the Expulsion Notice Period and, upon expiration, the Member's name must be removed from the Register.

### **13. Consequences of Cessation**

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Any Member ceasing to be a Member is to remain liable for all money (if any) owing to the Company at the time of such cessation of membership. Unless the Board in special circumstances otherwise determines, Members ceasing to be Members will not be entitled to have any claim on any portion of the property or assets of the Company arising from membership and will not be entitled to the return of any money paid to the Company in connection with membership.

## **General Meetings**

### **14. General Meetings**

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- 14.1 Any five Directors may convene a general meeting of the Company whenever the Directors think fit.
- 14.2 The Members may meet either in person or by telephone or by using any other technology as resolved by all the Directors. A meeting conducted by telephone or other means of communication is taken to be held at the place nominated by the Directors, provided that at least one of the Members present at the meeting was at that place for the duration of the meeting.

### **15. Notice of General Meeting**

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- 15.1 Subject to the provisions of the Act allowing general meetings to be held with shorter notice, at least 21 days written notice must be given to Members of any general meeting.
- 15.2 A notice of a general meeting must specify the place and time of the general meeting, the general nature of the business to be transacted at the general meeting and any other matters required by the Act.
- 15.3 The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that general meeting.

## **16. Quorum**

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- 16.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 16.2 Members present who hold or are capable of exercising 25% of the votes of all Members of the Company will constitute a quorum at a general meeting of the Company.

## **17. Adjournment in Absence of Quorum**

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If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of general meeting, the general meeting is dissolved, unless the Board adjourns the general meeting to a date, time and place determined by it. If no quorum is present at any adjourned general meeting within 30 minutes after the time for the general meeting, the general meeting is dissolved.

## **18. Chair**

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- 18.1 The Chair is entitled to chair every general meeting.
- 18.2 For any general meeting, if:
- (a) a Chair has not been elected as provided by Rule 45;
  - (b) the Chair is not present within 30 minutes after the appointed time for the holding of the general meeting; or
  - (c) the Chair is present but is unwilling to chair the general meeting,
- a Member chosen by the Members present may chair the general meeting.

## **19. General Conduct of General Meetings**

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- 19.1 The general conduct of each general meeting of the Company and the procedures to be adopted at the general meeting are as determined at, during or prior to the general meeting by the Chair.
- 19.2 If at any time the Chair considers it necessary or desirable for the proper and orderly conduct of the general meeting, the Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the general meeting and require the business, question, motion or resolution to be put to a vote of the Members present.
- 19.3 The Chair may require the adoption of any procedures which are in the Chair's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

- 19.4 Any determination by the Chair in relation to matters of procedure or any other matter arising directly or indirectly from the business is final. Any challenge to a right to vote (whether on a show of hands or on a poll) may only be made at the general meeting and may be determined by the Chair whose decision is final.

## **20. Members Resolution in Writing**

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A resolution in writing signed by all the Members entitled to vote on the resolution (not being less than the number required for a quorum at a general meeting of the Members) is a valid resolution of the Members. All Members must have the opportunity to consider the resolution. The resolution may consist of several documents in the same form, each signed by one or more of the Members. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Member with the Member's authority is considered to be a document in writing signed by the Member.

## **21. Adjournment**

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During the course of a general meeting the Chair may adjourn the general meeting or any business, motion, question or resolution being considered or remaining to be considered by the general meeting or any debate or discussion either to a later time at the same general meeting or to an adjourned general meeting. If the Chair exercises a right of adjournment of a general meeting under this Rule, the Chair has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Members present in respect of the adjournment. No business may be transacted at any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.

## **22. Voting**

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Each proposed resolution submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote, unless a poll is demanded. In the case of an equality of votes, the Chair has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chair may be entitled as a Member or as a proxy, attorney or duly appointed representative of a Member. Unless a poll is demanded, a declaration by the Chair that a resolution has been passed or lost is conclusive.

## **23. When a Poll may be Demanded**

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A poll may be demanded by a Member in accordance with the Act (and not otherwise) or by the Chair. No poll may be demanded on the election of the Chair of a meeting or, unless the Chair otherwise determines, the adjournment of a meeting. The demand for a poll may be withdrawn.

## **24. Taking a Poll**

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- 24.1 If a poll is demanded as provided in Rule 23, it is to be taken in the manner and at the time and place as the Chair directs, and the result of the poll is the meeting's resolution on which the poll was demanded. Any challenge to the admission or rejection of a vote may only be made at the meeting and may be determined by the Chair, whose decision is final.
- 24.2 A demand for a poll does not prevent the continuation of a meeting for the transaction of any business other than the resolution on which a poll has been demanded. A poll demanded on any resolution of adjournment, and allowed by the Chair, is to be taken at the meeting and without adjournment.

## **Votes of Members**

## **25. Voting Rights**

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- 25.1 Subject to Rules 27, 30 and 31:
- (a) on a show of hands, each Full Member present has one vote, except:
    - (i) where a Full Member has appointed more than one person as its representative, proxy or attorney, then none of the representatives, proxies or attorneys are entitled to vote; and
    - (ii) where a person is entitled to vote by virtue of Rule 26 in more than one capacity, then that person is only entitled to one vote on a show of hands;
  - (b) when a poll is taken, each Full Member present has one additional vote for each Full Member for whom the Full Member present is a representative, proxy or attorney.
- 25.2 Associate Members may attend a general meeting but have no right to vote.
- 25.3 Other Members may attend a general meeting but have no right to vote unless otherwise determined by the Board in its absolute discretion.

## **26. Proxies**

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- 26.1 A Member who is entitled to attend and cast a vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Member in accordance with the Act. A proxy appointed to attend and vote in accordance with the Act may exercise the rights of the Member on the basis of and subject to the restrictions provided in the Act.
- 26.2 A form of appointment of a proxy is valid if it is in accordance with the Act or in any form which the Board may prescribe or accept.

- 26.3 Any appointment of a proxy under Rule 26.2 which is incomplete may be completed by the Chair who may insert the name of any Director as the person in whose favour the proxy is given.
- 26.4 For the purposes of Rule 26.2, 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.
- 26.5 A proxy need not be a Member.
- 26.6 A proxy may vote or abstain as he or she chooses except where an appointment of the proxy directs the way the proxy is to vote on a particular resolution. Unless otherwise indicated when voting, if a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.
- 26.7 A proxy's appointment is valid at an adjourned meeting.
- 26.8 A proxy or attorney may be appointed for all meetings or for any number of meetings or for a particular purpose.
- 26.9 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 to vote on:
- (a) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
  - (b) any procedural motion, including any motion to elect or remove the Chair, or to adjourn the meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (c) to vote on any motion before the meeting whether or not the motion is referred to in the appointment.
- 26.10 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 meeting or adjourned meeting at which the appointee proposes to vote; or
  - (b) the taking of a poll on which the appointee proposes to vote.
- 26.11 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 Office;
  - (b) a facsimile number at the Office; or

- (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **27. Validity of Vote**

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- 27.1 The validity of any resolution is not affected by the failure of any proxy or attorney to vote in accordance with instructions (if any) of the appointing Member.
- 27.2 A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the death or mental incapacity of the appointing Member or revocation of the instrument of proxy or power of attorney, provided no notice in writing of the death, mental incapacity or revocation has been received at the Office before the meeting or adjourned meeting at which the vote is cast.
- 27.3 A proxy is not revoked by the appointing Member attending and taking part in the meeting, unless the appointing Member actually votes at the meeting on the resolution for which the proxy is proposed to be used.

## **28. Board to Issue Forms of Proxy**

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The Board may issue with any notice of general meeting of Members forms of proxy for use by Full Members. Each form may include the names of any of the Directors or of any other persons willing to act as proxies. Where the form does not contain the name of a proxy and is not completed by the Chair in accordance with Rule 26.3, the form is not for that reason to be invalid and is to be taken to be given in favour of the Chair of the general meeting. The forms may be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

## **29. Attorneys of Members**

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Any Full Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

## **30. Rights of Member Indebted to Company**

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Unless all sums presently payable by any Member to the Company have been paid such Member may not, unless the Board otherwise determines, be entitled to vote at a general meeting either personally or by representative, proxy or attorney or as representative, proxy or attorney for another Member or to exercise any privilege as a Member.

## Directors

### 31. Number and Appointment of Directors

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- 31.1 The number of Directors (not including Alternate Directors) will be fixed by the Board and must be not less than five and not more than nine unless otherwise determined by general meeting. Each Director must be a natural person.
- 31.2 Each Full Member may nominate one director for appointment at a general meeting.
- 31.3 The Company may by resolution at a general meeting (in accordance with Rules 31.4 to 31.6):
- (a) appoint a person from the nominated persons as a Director either to fill a casual vacancy or as an addition to the Board of Directors.
  - (b) increase or reduce the number of Directors;
  - (c) remove any Director before the end of the Director's period of office and appoint another person in a Director's place, provided that a Director representing a particular membership sub-category can only be removed or replaced by a resolution of Members present in that sub-category.
- 31.4 The composition of the Board will be as follows.
- (a) If there are 9 Directors:
    - (i) two Directors must represent Members in the membership sub-category set out in Rule 8.3(a)(i);
    - (ii) two Directors must represent Members in the membership sub-category set out in Rule 8.3(a)(ii);
    - (iii) three Directors must represent Members in the membership sub-category set out in Rule 8.3(a)(iii), provided that subscriptions from this sub-category represent at least a third of total subscriptions; and
    - (iv) two additional Directors.
  - (b) If there are 6, 7 or 8 Directors:
    - (i) two Directors must represent Members in the membership sub-category set out in Rule 8.3(a)(i);
    - (ii) two Directors must represent Members in the membership sub-category set out in Rule 8.3(a)(ii);
    - (iii) two Directors must represent Members in the membership sub-category set out in Rule 8.3(a)(iii), provided that subscriptions from this sub-category represent at least a third of total subscriptions; and
    - (iv) the additional Directors (if any).
  - (c) If there are 5 Directors:

- (i) one Director must represent Members in the membership sub-category set out in Rule 8.3(a)(i);
  - (ii) one Director must represent Members in the membership sub-category set out in Rule 8.3(a)(ii);
  - (iii) one Director must represent Members in the membership sub-category set out in Rule 8.3(a)(iii), provided that subscriptions from this sub-category represent at least a third of total subscriptions; and
  - (iv) two additional Directors.
- (d) In any event, it is the intention that there be fair and equitable representation across all three membership categories in Rule 8.3(a).
- 31.5 Directors representing Members in a membership sub-category pursuant to Rule 31.4 will be appointed by resolution of a majority of Members present who are fully paid-up in that sub-category.
- 31.6 The Directors referred to in Rules 31.4(a)(iv), (b)(iv) and (c)(iv) will be appointed by resolution of all Members present who are eligible to vote.
- 31.7 Subject to Rule 31.1, the Directors may, by unanimous decision, appoint additional Directors who have consented to be so appointed. Any such additional Director shall hold the office until the next annual general meeting of the Company or until their directorship is terminated pursuant to Rule 35.

## **32. Material Personal Interests**

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- 32.1 A Director is not disqualified from office by contracting with the Company, or any related body corporate of the Company, in any capacity by reason of holding the office of Director.
- 32.2 In relation to a contract or arrangement in which a Director has a material personal interest:
- (a) the fact that the Director signed the document on behalf of the Company evidencing the contract or arrangement will not in any way affect its validity;
  - (b) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (c) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- 32.3 Subject to Rule 32.4, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest.
- 32.4 A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:

- (a) if all of the following conditions are met:
  - (i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company;
  - (ii) 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
  - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (b) 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; or
- (c) as otherwise permitted under the Act.

32.5 Notices of material personal interest given by Directors must:

- (a) give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company;
- (b) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter; and
- (c) be recorded in the minutes of the Directors' meeting at which the notice is given.

32.6 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except in the following circumstances:

- (a) if the material personal interest is a matter that is not required to be disclosed under this Rule or under the Act; or
- (b) if the Directors who do not have a material personal interest in the matter have passed a resolution that:
  - (i) identified the Director, the nature and the 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; or
- (c) as otherwise permitted under the Act.

32.7 Nothing in this Rule affects the duty of a Director:

- (a) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict; or
- (b) to comply with the Act.

### **33. Disclosure of Interests**

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- 33.1 A Director is not disqualified by the Director's office from contracting with the Company in any capacity.
- 33.2 A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested may not be avoided merely because the Director is a party to or interested in it.
- 33.3 A Director is not liable to account to the Company for any profit derived in respect of a matter in which the Director has a material interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director:
- (a) declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge; and
  - (b) not contravened this Constitution or the Act in relation to the matter.
- 33.4 A general notice stating:
- (a) that the Director is an officer or member of a specified body corporate or firm; and
  - (b) the nature and extent of the Director's interest in that body corporate or firm in a matter involving the Company and that body corporate or firm, is, in relation to a matter involving the Company and that body corporate or firm, a sufficient declaration of the Director's interest, provided the extent of that interest is at the time of first consideration of the matter by the Directors no greater than was stated in the notice.
- 33.5 Subject to the Act, a Director may vote in respect of a matter in which that Director has a material interest.
- 33.6 If the provisions of this Rule and the Act have been observed by any Director with regard to any contract or arrangement in which the Director is in any way interested, the fact that the Director signed the document evidencing the contract or arrangement does not in any way affect its validity.
- 33.7 A Director may hold any office of employment or profit in the Company (other than Auditor) in addition to holding office as a Director.

### **34. Directors may Lend to the Company**

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Any Director may lend money to the Company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company or underwrite or guarantee the subscription of shares or securities of any corporation in which the Company may be interested without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

### **35. Termination of Office of Director**

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The office of a Director is terminated on the:

- (a) conclusion of the second annual general meeting of the Company following the appointment of the Director (subject to Rule 31.7). The Director is then eligible for reappointment;
- (b) Director being absent from three consecutive meetings of the Board without the Board resolving to grant leave of absence (which may be granted retrospectively), effective 14 days after having been served by the Secretary with a notice giving particulars of the absence;
- (c) Director resigning office by notice in writing to the Company;
- (d) Director being removed from office under the Act;
- (e) Director being removed from office by resolution passed in general meeting of the Company at any time subject to the Act;
- (f) Director being prohibited from being a Director by reason of the operation of the Act;
- (g) Director no longer being employed by the Member which nominated the Director, if the Director was an employee of the Member on appointment; or
- (h) Member which nominated the Director ceasing to be a Member.

### **Alternate Directors**

### **36. Director may Appoint Alternate Director**

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Subject to this Constitution, each Director may appoint any person to act as an Alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the Secretary at the Office or to a Directors' meeting. The appointment takes effect at any future time specified in the instrument of appointment. The following provisions apply to any Alternate Director:

- (a) subject to the Act, the appointment of the Alternate Director is terminated or suspended on receipt by the Secretary at the Office of notice in writing from the Director that appointed the Alternate Director;
- (b) the Alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director that appointed the Alternate Director is not present;
- (c) the Alternate Director is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director, to the extent the Director that appointed the Alternate Director has not exercised or performed

them or they have not been limited by the instrument appointing the Alternate Director;

- (d) the Alternate Director is not, unless the Board otherwise determines, (without affecting the right to reimbursement for expenses under Rule 6) entitled to receive any remuneration as a Director from the Company, and any remuneration (not including remuneration authorised by the Board or reimbursement for expenses) paid to the Alternate Director by the Company is to be deducted from the remuneration of the Director that appointed the Alternate Director;
- (e) the office of the Alternate Director is terminated on the death of, or termination of office by, the Director that appointed the Alternate Director;
- (f) the Alternate Director is not to be taken into account in determining the number of Directors for the purpose of Rule 31.1; and
- (g) the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults and is not to be considered the agent of the Director that appointed the Alternate Director.

## **Chief Executive Officer**

### **37. Power to Appoint Chief Executive Officer**

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- 37.1 The Board may appoint a person to the office of Chief Executive Officer for such period and on the terms as it thinks fit. Subject to the terms of any agreement entered into in a particular case, the Board may at any time revoke any such appointment.
- 37.2 The Chief Executive Officer need not be a Director.

### **38. Remuneration**

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The Chief Executive Officer may, subject to the Act and the terms of any agreement between the Chief Executive Officer and the Company, receive remuneration (whether by way of salary or other forms of remuneration, or partly in one way and partly in another) as the Board decides.

### **39. Delegation of Powers to Chief Executive Officer**

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- 39.1 The Board may, on the terms and conditions and with any restrictions as it thinks fit, confer on the Chief Executive Officer any of the powers exercisable by it.
- 39.2 Any powers so conferred may be concurrent with the powers of the Board.
- 39.3 The Board may at any time withdraw or vary any of the powers conferred on the Chief Executive Officer.

## **Secretary and Other Officers**

### **40. Secretary**

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- 40.1 The Secretary holds office on the terms and conditions, as to remuneration and otherwise, as the Board decides (but subject to this Constitution).
- 40.2 The Secretary may be the same person as the Chief Executive Officer.
- 40.3 The Board may at any time terminate the appointment of a Secretary.

### **41. Other Officers**

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- 41.1 The Chief Executive Officer may from time to time:
- (a) create any other position or positions in the Company with the powers and responsibilities that the Chief Executive Officer may from time to time confer; and
  - (b) appoint any person to any position or positions created under paragraph (a), on the terms and conditions, as to remuneration and otherwise, as the Chief Executive Officer decides (but subject to this Constitution).
- 41.2 The Board or the Chief Executive Officer may at any time terminate the appointment of a person holding a position created under Rule 41.1 and may abolish the position.

## **Proceedings of Meetings of Directors**

### **42. Procedures Relating to Directors' Meetings**

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- 42.1 The Board may meet together, adjourn and otherwise regulate its meetings as it thinks fit.
- 42.2 Until otherwise determined by the Board, a quorum will be five Directors, provided that each of the sub-categories of membership in Rule 8.3(a) is represented by at least one Director present.
- 42.3 The Board may at any time, and the Secretary must, on the request of any two Directors, convene a Directors' meeting.
- 42.4 Notice of a Directors' meeting may be given by mail (electronic or otherwise), personal delivery, facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by the Board.

#### **43. Meetings by Telephone or Other Means of Communication**

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The Board may meet either in person or by telephone or by using any other technology consented to by all the Directors. Consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting. A meeting conducted by telephone or other means of communication is taken to be held at the place agreed on by the Directors attending the meeting if at least one of the Directors present at the meeting was at that place for the duration of the meeting.

#### **44. Votes at Meetings**

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- 44.1 Proposed resolutions arising at any Directors' meeting are decided by a majority of votes. In the case of an equality of votes, the Chair has a second or casting vote.
- 44.2 A Director with a material personal interest in a matter that is being considered at a Directors' meeting may be counted in a quorum and, subject to the Act, may vote on the matter.

#### **45. Chair of Directors**

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- 45.1 The Board must elect one of their number as the Chair, to chair their meetings.
- 45.2 If at any meeting the Chair is not present at the time specified for holding the meeting, the Directors present may choose one of their number to chair that meeting.
- 45.3 The Chair is appointed for a two year term and, subject to Rule 45.1, is eligible for reappointment.
- 45.4 No person shall be eligible for reappointment to the position of Chair if they have been elected as Chair on the three preceding occasions.

#### **46. Powers of Meetings**

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A Directors' meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

### **Committees**

#### **47. Other Committees**

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- 47.1 The Board may delegate any of its powers to a Committee consisting of a Director or Directors or any other person or persons as the Board thinks fit. Any Committee formed, or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board.

A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

- 47.2 The meetings and proceedings of any Committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under Rule 47.1.

## **48. Validity of Acts**

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- 48.1 All actions at any Directors' meeting or by a Committee or any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee.
- 48.2 If the number of Directors is reduced below the number fixed under this Constitution the continuing Directors may act only for the purpose of increasing the number of Directors to the minimum number fixed under this Constitution in Rule 31.1.

## **49. Resolution in Writing**

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A resolution in writing signed by all the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a Directors' meeting) is a valid resolution of the Board. The resolution may consist of several documents in the same form, each signed by one or more of the Directors. For the purposes of this Rule the references to Directors include any Alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia, but do not include any other Alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered to be a document in writing signed by the Director.

## **Powers of the Board**

### **50. General Powers of the Board**

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The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on it by this Constitution) may exercise all powers and do all things as are within the power of the Company and are not by this Constitution or by law required to be exercised or done by the Company in general meeting.

## **51. Power to Borrow and Guarantee**

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Without limiting the generality of Rule 50, but subject to Rule 6 and the remainder of this Constitution, the Board may exercise all the powers of the Company to raise or borrow money, may guarantee the debts or obligations of any person and may enter into any other financing arrangement, in each case in the manner and on the terms it thinks fit.

## **52. Power to Give Security**

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Without limiting the generality of Rule 50, but subject to Rule 6 and the remainder of this Constitution, the Board may charge any property or business of the Company and may issue debentures for a debt, liability or obligation of the Company or of any other person, in each case in the manner and on the terms it thinks fit.

## **53. Personal Liability of Officer**

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If any Director or any officer of the Company is or may become personally liable for the payment of any sum which is or may become primarily due from the Company, the Board may charge the whole or any part of the assets of the Company by way of indemnity to secure the Director or officer from any loss in respect of the liability.

## **54. Seal**

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The Company may have a common seal and a duplicate common seal, which are to be used by the Company as determined by the Board.

## **55. Location of Records**

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The financial records of the Company are to be kept at the Office or at such other place or places as the Board thinks fit, and must always be open to the inspection of the Board.

## **Notices**

### **56. Service of Notices**

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- 56.1 A notice may be given by the Company to any Member personally:
- (a) by leaving it at the Registered Address;
  - (b) by sending it by prepaid post to the Registered Address or an alternative address nominated by the Member;
  - (c) by sending it to the fax number or electronic address nominated by the Member; or
  - (d) by other electronic means determined by the Board.
- 56.2 If the notice is signed, the signature may be original or printed.

## **57. When Notice Taken to be Served**

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Any notice sent by post is taken to have been served at the expiration of 72 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's Registered Address is taken to have been served when delivered. Any notice served on a Member by facsimile transmission is taken to have been served when the transmission is sent.

## **58. Member Not Known at Registered Address**

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Where a Member does not have a Registered Address or where the Company has a reason in good faith to believe that a Member is not known at the Member's Registered Address, all future notices are taken to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is taken to be duly served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

## **59. Calculation of Period of Notice**

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Where a given number of days' notice or notice extending over any other period is required to be given the day of service, and the day for which service is given, is not to be counted in the number of days or other period.

## **60. Nature of Interests**

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- 60.1 No Member may transfer any interest in the Company, without the approval of the Board.
- 60.2 Member's interests will terminate if the Company:
- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
  - (b) is insolvent within the meaning of section 95A of the Act;
  - (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Act;
  - (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Act);
  - (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
  - (f) has a controller within the meaning of section 9 of the Act or similar officer appointed to all or any of its assets or undertaking; or
  - (g) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications,

proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

## Indemnity

### 61. Indemnity of Officers

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- 61.1 The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the lawful discharge of the duties of the officer.
- 61.2 Where the Board considers it appropriate, the Board may execute a documentary indemnity in any form in favour of any officer of the Company.
- 61.3 Where the Board considers it appropriate, the Company may:
- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
  - (b) bind itself in any contract or deed with any officer of the Company to make the payments referred to in Rule 61.3(a).
- 61.4 In this Rule:
- (a) **officer** means:
    - (i) a Director, Secretary, Chief Executive Officer or employee; and
    - (ii) a person appointed as a trustee by, or acting as a trustee at the request of the Company,and includes a former officer.
  - (b) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment or nomination of an officer by the Company to any other corporation.
  - (c) **to the relevant extent** means:
    - (i) to the extent the Company is not precluded by law from so doing;
    - (ii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, in particular, an insurer under any insurance policy); and
    - (iii) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the

officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

- (d)** **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.