

# Constitution

Dated **23 November 2022**

Private Healthcare Australia Limited ACN 008 621 994 ("**Company**")

A company limited by guarantee.

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# Constitution

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# Constitution

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## 1 Definitions and interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Annual Levy** means the amount payable by Members for each Financial Year or such longer period, in each case as determined by the Board in accordance with clause 4.12.

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

**Audit Committee** means the audit committee referred to in clause 8.8.

**Board** means the Board of the Company referred to in clause 7.

**Chair** means a person appointed as a chair of the Board under clause 7.9.

**Chief Executive Officer** means a person appointed as chief executive officer of the Company under clause 10.

**Committee** means a committee of Directors constituted under clause 8.6.

**Company** means Private Healthcare Australia Limited ACN 008 621 994.

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

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

**Deputy Chair** means a person appointed as a deputy chair of the Board under clause 7.12.

**Director** means a person holding office as a director.

**Directors** means all or some of the Directors acting as the Board.

**Eligible Candidate** has the meaning given in clause 7.2.

**Eligible Organisation** means a health insurance business that is registered under Division 3 of Part 2 of the *Private Health Insurance (Prudential Supervision) Act 2015* (Cth).

**Financial Year** means the period starting on 1 July in one calendar year and ending at the end of 30 June of the next calendar year or such other period of 12 months as the Board determines from time to time.

**Health benefits fund** has the meaning given in section 131-10 of the PHI Act.

**Market Share** means in relation to a Member, the PHI Market Share of the Member and each of its Related Funds.

**Meeting means:**

- (a) a meeting assembled in person on the same day at the same time and place; or
- (b) a virtual meeting whereby participants communicate with each other by any technological means in which they are able to simultaneously hear each other and participate in discussion even if they are not physically present in the same place.

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**Member** means an Eligible Organisation entered in the register of members as a member of the Company pursuant to clause 4.

**Misconduct** means circumstances in which a Member:

- (a) wilfully refuses or neglects to comply with the provisions of this Constitution or any by-laws made under it; or
- (b) fails to comply with any code of ethics adopted by the Company.

**PHI Act** means the *Private Health Insurance Act 2007* (Cth).

**PHI Market Share** means in relation to a Member, the number of persons covered by Policies issued by that Member expressed as a percentage of the total persons covered by all Policies issued by all Eligible Organisations.

**Policy**, in respect of a health benefits fund, means “private health insurance policy” as that term is defined in the PHI Act.

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

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act and includes an economic entity (as defined in any approved accounting standard) which contains the first.

**Related Fund** means in respect of a Member, an Eligible Organisation which is:

- (c) a Related Body Corporate of;
- (d) controlled by; or
- (e) managed by

that Member or any employee or officer of that Member.

An entity (**First Entity**) is **managed** by another (**Second Entity**) if any person exercising any management responsibilities in the First Entity is an officer of, or is employed by, the Second Entity.

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

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

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

## 1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;

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

## 1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in the Constitution in a similar context; and
- (b) “section” means a section of the Corporations Act.

## 1.4 Replaceable rules not to apply

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

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## 2 Objects of Company

### 2.1 Objects

The objects of the Company are:

- (a) to foster and promote the principles, practice, development and philosophy of private health insurance;
- (b) to make representations and submissions where deemed necessary or desirable to the appropriate persons or authorities in respect of any matter affecting the interests of Members;
- (c) to provide a medium through which opinions of Members may be ascertained or expressed;
- (d) to consult and liaise with relevant national, international and institutional authorities and agencies in Australia and overseas;

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- (e) to maintain close cooperation and working relationships with Australian Government departments and agencies in order to be fully informed on Government policies relating to private health insurance; and
- (f) to encourage, by such means as the Board deems appropriate, the interest and participation of the Australian public in the activities of the Company and its Members, as appropriate.
- (g) to engage in commercial ventures where the Board deems appropriate to further the interests of the Members;
- (h) to ensure that Members are provided with timely and accurate information on developments that will impact the business environment for private health insurance;
- (i) to otherwise advance the interests of its Members and their Policy holders at every opportunity in relations with governments, the media, and other organisations involved in the health care field; and
- (j) to do all other things as may be incidental or ancillary to the attainment of these objects.

These objects do not limit the powers of the Company under the Act.

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## 3 Income and property of Company

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

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

### 3.2 No dividend, bonus or profit paid to Members

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

### 3.3 Payments by Company in good faith

Subject to clauses 7.18 and 7.19, clause 3.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a firm of which an officer of the Company or a Member is a partner:

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

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## 4 Membership

### 4.1 Becoming a Member

Except for a person who was a Member at the time when this Constitution was adopted, a person may only become a Member under clause 4.2.

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## 4.2 Admission as a Member

The Board may admit as a Member any Eligible Organisation that agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Board from time to time. The number of Eligible Organisations that may be admitted as Members of the Company is not limited by this Constitution.

## 4.3 Application for membership

An Eligible Organisation may apply to become a Member by submitting to the Secretary a properly completed application in the form prescribed by the Board. An application for membership must be accompanied by:

- (a) such evidence as the Board requires to determine that the applicant is an Eligible Organisation; and
- (b) the Application Fee (if any, pursuant to clause 4.6) payable by the applicant.

## 4.4 Application for membership by a former Member

Where an Eligible Organisation has previously been a Member but has resigned or ceased to be a Member, the Board need not consider an application for Membership from that Eligible Organisation unless a period of at least 12 months has passed since the date of resignation or cessation of that organisation's membership. This period may only be shortened if the Company in general meeting resolves that a shorter period should apply. Nothing in this clause requires the Board or any other person to convene a general meeting to consider such a resolution.

## 4.5 Effect of application

By completing an application form, the Eligible Organisation applying to become a Member agrees to assist the Company to further the objects of the Company set out in clause 2.1 and to be bound by this Constitution and any other rules, by-laws, policies, code of ethics or other standards adopted by the Company from time to time.

## 4.6 Fees on application

The Board may resolve from time to time that any person or class of person applying to become a Member must pay an Application Fee (which is payable in accordance with clause 4.3) and, if so, how much it is and how it is to be paid.

## 4.7 Decision

- (a) After receipt of an application for membership in accordance with clause 4.3 and subject to clause 4.7(b), the Board must at its next meeting, consider and resolve whether to approve or reject each application for membership.
- (b) The Board need not consider or resolve whether to approve or reject an application received not less than three weeks before a meeting of the Board. That application must be considered at the subsequent meeting.
- (c) Within one month after making a decision, the Board must give the applicant a notice which states whether the application was successful or not. The Board is not required to give reasons for rejection of an application for membership of the Company. The decision of the Board may be made in its sole and absolute discretion.

## 4.8 Fees on admission

Within 30 days after receipt of a notice issued by the Board under clause 4.7, advising that its membership application was successful, the Eligible Organisation must pay the Annual Levy and any other fee determined by the Board pursuant to clause 4.12.

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## 4.9 Admission to membership

- (a) Except for an Eligible Organisation who was a Member at the time when this Constitution was adopted, an Eligible Organisation is admitted as a Member when the applicant pays the Annual Levy and any other fee determined by the Board pursuant to clause 4.12.
- (b) If payment of the Annual Levy, any other fee determined by the Board pursuant to clause 4.12 or the Application Fee is not made as required or a cheque is dishonoured, the Directors may, in their discretion, cancel their acceptance of the application for membership of the Company.

## 4.10 Rejection of application

In the event that an application for membership is rejected, the Application Fee (if any) referred to in clause 4.6 and all other moneys paid to the Company by the applicant in relation to the application for membership shall be deemed to have been forfeited to the Company and is non-refundable in any circumstances to the applicant.

## 4.11 Member to notify changes

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

## 4.12 Annual Levy and other fees

- (a) In relation to any Financial Year commencing on or after 1 July 2021 and subject to clause 4.12(b), the Directors may determine from time to time:
  - (i) the Annual Levy payable by a Member which will apply for each year until the Directors determine that another Annual Levy will apply in accordance with this clause; and
  - (ii) any other fee payable by a Member for a particular period, including any date for payment of such fee.
- (b) Where the Directors determine to vary the Annual Levy or any other fee payable by a Member:
  - (i) at least 75% of the Members of the relevant class must give their written consent to the variation; or
  - (ii) the Members of the relevant class must pass a special resolution to that effect at a separate meeting of those Members.
- (c) In determining the Annual Levy or any other fee payable by a Member, the Directors may determine that different amounts apply to different Members, based on such factors as the type, nature, size and business of the relevant Member or group of Members or other factors which, in the view of the Directors, reasonably justify the imposition of differential amounts.

## 4.13 Payment of Annual Levy and other fees

Subject to any contrary notice by the Directors specifying a date and manner of payment, each Member must pay:

- (a) the applicable Annual Levy (if any) by 1st May; and
- (b) any other fees (if any) by such time as is determined in accordance with clause 4.12(a)(ii).

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Time is of the essence with respect to the obligations contained in this clause 4.13.

## 4.14 Waiver of Annual Levy, Application Fee and other fees

The Board may waive or suspend the payment of all or any part of an Annual Levy, Application Fee or any other amount determined by the Board pursuant to clause 4.12 for a Member.

## 4.15 Directors may create and vary classes and class rights

The Directors may, subject to this Constitution and the Corporations Act:

- (a) establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
- (b) vary or cancel the rights, restrictions and obligations of Members in any new or existing class, if:
  - (i) at least 75% of the Members of that class give their written consent; or
  - (ii) a special resolution to that effect is passed at a separate meeting of those Members.

The clauses on general meetings apply to meetings of a class of Members so far as they are capable of application and with the necessary changes to every separate meeting.

## 4.16 Ceasing to be a Member

A person ceases to be a Member upon:

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

## 4.17 Resignation

A Member may resign from membership:

- (a) by giving 6 months' notice in writing to the Secretary; and

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- (b) paying to the Company all moneys that the Member owes to the Company.

## 4.18 Liability for unpaid fees

Resignation becomes effective when the 6 month period after the service of the notice has expired. A Member remains liable after resignation or otherwise ceasing to be a Member for the full Annual Levy payable for the Financial Year in which the Member resigns (whether or not it has become due for payment at the time of resignation) and for all money due by the Member to the Company, in addition to any sum for which the Member is liable as a Member under clause 16.1.

## 4.19 Non-payment of Annual Levy

If the Annual Levy or any other moneys owing to the Company for a Member remains unpaid for a period of one calendar month after it becomes due, the Board may issue the Member with a reminder notice. If the moneys owing remain unpaid for a period of one calendar month after the date of the reminder notice, the membership of the Member automatically terminates, in which case the Member ceases to be a Member. The Board may, but is not obliged to, reinstate a Member whose membership is terminated under this clause if that Member pays all overdue Annual Levy amounts and any other moneys owing to the Company, as applicable.

## 4.20 Censuring, suspension or expulsion of Member

If any Member commits an act of Misconduct, the Company may by resolution censure, suspend or expel the Member from the Company, provided that the following procedure is observed:

- (a) at least 21 days before the general meeting at which the resolution is passed, the Member must be given notice of the meeting setting out:
  - (i) what is alleged against the Member; and
  - (ii) the intended resolution;
- (b) at the general meeting, and before the passing of the resolution, the Member must be given an opportunity of giving, orally or in writing, any explanation the Member thinks fit; and
- (c) if, at the general meeting, a resolution is passed to the effect that the Member is guilty of misconduct, by a majority of at least 75% of those present and voting (the vote is to be taken by ballot),

the membership of the Member automatically terminates, in which case the Member ceases to be a Member.

## 4.21 Termination if no longer an Eligible Organisation

If the Board determines that a Member has ceased to be an Eligible Organisation, the Board may by written notice to the Member terminate the membership of that Member with immediate effect.

## 4.22 Related Funds

Each Member must procure that each Related Fund applies for membership, pays the Annual Levy and any other moneys required by this Constitution and provides the Board with any information it requests in order to assess that application, within 60 days of that fund becoming a Related Fund.

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## 4.23 Representative Members

Each Member may appoint one person to represent it at a particular meeting or at all general meetings.

If a person is admitted as a Member as a representative of an unincorporated association or body, the name of the Member, the name of the unincorporated association or body and the fact that the member is its representative must be entered in the register of Members. Subject to the Board's right to decline to accept any person as a Member, the unincorporated association or body may replace the Member who is its representative with another person by notice in writing to the Company signed by any officer of the association or body concerned and setting out the details of the new representative, without it being necessary for the outgoing Member to resign or the incoming Member to apply to become a Member.

## 4.24 Limited liability

A Member has no liability as a Member except as set out in clause 16.1.

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## 5 General meetings

### 5.1 Annual general meeting

General meetings of the Company are to be held in accordance with the Corporations Act and at least once every calendar year (that general meeting being the annual general meeting) and at such times and places as are determined by the Board.

### 5.2 Meaning of general meeting

For the purposes of this Constitution, a meeting of the Members of Private Healthcare Australia Limited means:

- (a) the Members of Private Healthcare Australia assembled in person on the same day at the same time and place; or
- (b) the Members of Private Healthcare Australia communicating with each other by any technological means whereby they are able simultaneously to hear each other and participate in discussion notwithstanding they are not physically present in the same place.

### 5.3 Convening a general meeting

The Board may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.

### 5.4 Notice of general meeting

- (a) Subject to the Corporations Act, notice of every general meeting must be given in any manner authorised by clauses 14.2 to 14.5 to every Member, to each member of the Board and to the Auditor for the time being of the Company.
- (b) No other person will be entitled to receive a notice of a general meeting unless so required by law.
- (c) The business of an AGM may include any of the following, even if not referred to in the notice of meeting:
  - (i) the consideration of the annual financial report, Directors' report and Auditor's report;

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- (ii) the election of Directors; or
- (iii) the appointment and fixing of the remuneration of the Auditor.

## 5.5 Directors entitled to notice of general meeting

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

## 5.6 Cancellation or postponement of general meeting

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

This clause 5.6 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Board on the request of Members, or to a meeting convened by a court.

## 5.7 Notice of cancellation, postponement or change of place of general meeting

Written notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation, postponement or change of place and be given:

- (a) to each Member; and
- (b) to each other person entitled to be given notice of a general meeting.

## 5.8 Contents of notice postponing or changing place of general meeting

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

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

A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

## 5.9 Number of clear days for postponement of general meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than 7 clear days or the number of clear days required to be given by the Corporations Act.

## 5.10 Business at postponed general meeting

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

## 5.11 Non-receipt of notice

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

# Constitution

## 5.12 Proxy, attorney or Representative at postponed general meeting

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

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

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

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## 6 Proceedings at general meetings

### 6.1 Reference to a Member

Unless the contrary intention appears, a reference to a Member in this clause 6 means a person who is a Member, or:

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

of that Member.

### 6.2 Number for a quorum

- (a) One half in number of the Members of the Company for the time being or the closest whole number above that fraction, present in person or by proxy, attorney or Representative are a quorum at a general meeting of the Company.
- (b) In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted.

### 6.3 Requirement for a quorum

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

### 6.4 If quorum not present

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

- (a) if convened at the request of Members, is dissolved; and

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- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Board may determine by notice to the Members and others entitled to notice of the meeting.

## 6.5 Adjourned meeting

At a meeting adjourned under clause 6.4(b), if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## 6.6 Appointment of Chair of general meeting

The Chair is entitled to preside as chair at a general meeting of the Company. If the Chair is unable or unwilling to preside as chair at a general meeting of the Company, the Deputy Chair may preside as chair at that general meeting.

## 6.7 Absence of Chair or Deputy Chair at general meeting

If a general meeting is held and:

- (a) a Chair or Deputy Chair has not been elected by the Directors; or
- (b) the Chair or the Deputy Chair (as applicable) is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative may preside as chair of the meeting.

## 6.8 Conduct of general meetings

The chair of a general meeting:

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

and a decision by the chair under this clause is final.

## 6.9 Adjournment of general meeting

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

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

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

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## 6.10 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 10 days or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting except in that case, it will not be necessary to give any notice of adjournment or of the business to be transacted at an adjourned meeting.

## 6.11 Questions decided by majority

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

## 6.12 Voting on show of hands

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

## 6.13 Demanding a poll

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

- (a) at least three Members present in person or by proxy entitled to vote on the resolution; or
- (b) the chair of the meeting.

## 6.14 Poll

If a poll is effectively demanded:

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

## 6.15 Entitlement to vote

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

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

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## 6.16 Objection to voting qualification

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

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

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

## 6.17 Chair to determine voting dispute

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

## 6.18 Circulating resolutions of Members

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

## 6.19 Right to appoint attorney

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

To be effective, an instrument appointing an attorney under this clause, together with any evidence of non-revocation the Board requires, must be received by the Secretary at least 48 hours before the meeting.

## 6.20 Validity

Subject to the Corporations Act, a vote given in accordance with the terms of an instrument of proxy or attorney will be valid notwithstanding the previous winding up of the principal or revocation of the instrument or of the authority under which the instrument was executed if no indication in writing of such winding up or revocation has been received by the Secretary before the commencement of the general meeting or adjourned general meeting at which the instrument is used.

## 6.21 Suspension or if moneys due are not paid

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

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## 7 The Board

### 7.1 The Board

There will be a Board of Directors of the Company (referred to as the "Board" in this Constitution).

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## 7.2 Eligibility to be a Board member

No person (other than the Chair) is eligible or entitled to be elected or appointed as a member of the Board or to continue or remain as a member of the Board unless that person is:

- (a) a Chief Executive Officer or Managing Director of a Member; or
- (b) a person who reports directly to a Chief Executive Officer or Managing Director of a Member,

(Eligible Candidate).

## 7.3 Composition of the Board

Subject to clause 7.14(b), the Board is to consist of nine Directors comprising:

- (a) one independent Director appointed by the Board to hold the office of Chair;
- (b) two Directors in accordance with clause 7.8, with one appointed by each of the two Members with the largest Market Share;
- (c) six Directors elected in accordance with clauses 7.6 and 7.7 (as applicable) comprising:
  - (i) two Directors drawn from Members (other than Members referred to in clause 7.3(b)) with at least 5% Market Share as at the date of election;
  - (ii) two Directors drawn from Members with at least 1% and not more than 5% Market Share as at the date of election; and
  - (iii) two Directors drawn from Members with not more than 1% Market Share as at the date of election.

## 7.4 Number of Directors drawn from Members

No more than one Eligible Candidate from each Member may serve as a Director at any one time.

## 7.5 Two or more Directors from same Member

- (a) Where for any reason, including change of employment or merger, two or more Directors are employed by or are officers of the same Member, that Member must within 14 days nominate the Directors to be removed from office such that only one Eligible Candidate drawn from that Member continues to serve as a Director;
- (b) Where within 14 days the nominations under clause 7.5(a) have not been made all Directors that are employed by or officers of that Member are removed from office as a Director with immediate effect.

## 7.6 Election of Directors

- (a) For the purposes of clause 7.3(c) and subject to clause 7.6(b), the Company shall hold a postal ballot in accordance with clause 7.7 to determine the successful nominees and elect those persons as Directors to office in respect of the open positions to be filled at an upcoming general meeting.
- (b) If the Company receives nominations to be elected as a Director under clause 7.7 which are equal or less than the number of open positions to be filled at an upcoming general meeting as determined in accordance with clause 7.6(c), the Company may, at that general meeting elect those Eligible Candidates for which it has received a nomination to that office without undertaking a postal ballot.

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- (c) The number of open positions to be filled in the election is the maximum number of Directors under clause 7.3(c) less the number of Directors elected in accordance with clause 7.3(c) who are not due to retire at the annual general meeting.

## 7.7 Procedure for election of Directors by postal ballot

- (a) Unless determined otherwise by the Board, an election of Directors is to be conducted in accordance with the procedure in this clause 7.7.
- (b) Every ballot must be conducted by a person appointed as returning officer by the Board or if no such appointment is made, the Secretary.
- (c) The returning officer or Secretary (as the case may be) must give Members a notice calling for nominations to be a Director (**Nomination**) at least 45 days before the annual general meeting of the Company in any given calendar year.
- (d) Nominations to be a Director close at least 30 days before the annual general meeting. For the avoidance of doubt, the Company may only be given and accept a Nomination with respect to an Eligible Candidate who meets the requirements specified in clause 7.3(c).
- (e) After Nominations have closed, the returning officer or Secretary (as the case may be) must prepare ballot papers for the election. The returning officer or Secretary (as the case may be) must list the Eligible Candidates in alphabetical order on the ballot paper.
- (f) The returning officer or Secretary (as the case may be) must provide the ballot papers for the election to Members at least 21 days before the annual general meeting. The ballot papers may, at the absolute discretion of the Directors:
  - (i) include any information considered relevant to the election of Directors;
  - (ii) require the person completing the ballot paper to sign a declaration including that the person is the Member signing the ballot paper; and
  - (iii) be provided with the notice of a general meeting given in accordance with clause 14.
- (g) A Member exercising a right to vote must complete the ballot paper in accordance with any instructions determined by the Directors in their absolute discretion and with this Constitution.
- (h) A Member must ensure that the returning officer or Secretary (as the case may be) receives the Member's ballot paper by 5.00pm on the date fixed by the Directors at their absolute discretion for the closing of the ballot, which date must be at least 2 business days before the annual general meeting. Any ballot paper that the returning officer or Secretary (as the case may be) receives after the ballot closes is excluded from the ballot.
- (i) Should the postal ballot result in a tie, a further ballot will be conducted prior to the AGM (The form of which is to be determined by the Company Secretary and can include electronic means).
- (j) Should the further ballot result in a tie or be inconclusive, the tie will be broken by the process of simple random sample. (The process of which is to be determined by the Company Secretary and can include electronic means).
- (k) The Secretary must announce the results of the ballot at the next annual general meeting.

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- (l) To the extent that this clause 7.7 does not provide for any matter relevant to the procedure for the election of Directors, the Board may create by-laws in relation to that procedure from time to time

## 7.8 Appointment of Directors by the two largest Members

The two Members with the largest Market Share as at 31 March unless the Board determines a different date for this purpose for a particular year (**Relevant Date**) may each at any time appoint one Eligible Candidate to be a Director.

## 7.9 Appointment of Chair of the Board

The Board may at any time appoint a person to be a Director and to hold the office of Chair of the Board, provided:

- (a) the total number of Directors does not exceed the maximum number specified in clause 7.3; and
- (b) the person does not hold an executive or non-executive position with a Member.

Unless otherwise determined by the Board at the time of appointment, the Chair will vacate their office on the second anniversary of their appointment.

## 7.10 Renewal of appointment of Chair

The Board may reappoint a Director holding the office of Chair for a maximum of two further two year terms of office.

## 7.11 Removal of Chair

The Board may at any time remove the Chair, at which point the Chair will cease to hold the offices of Chair and Director.

## 7.12 Appointment of Deputy Chair of the Board

- (a) Subject to clause 7.12(c), the Board may at any time appoint an existing Director to hold the office of Deputy Chair of the Board.
- (b) The Deputy Chair may exercise the full powers of the Chair at any time at which the office of Chair is vacated or the Chair is unable or unwilling to act.
- (c) At the first meeting of the Board following each annual general meeting of the Company, the office of Deputy Chair shall be automatically vacated and the Board may appoint or re-appoint an existing Director to hold the office of Deputy Chair.

## 7.13 Removal of Deputy Chair

The Board may, at any time remove a Director from the office of Deputy Chair. A Director removed from the office of Deputy Chair will remain a Director subject to clause 7.14.

## 7.14 Removal of a Director from office

- (a) Any Director is removed from office as a director with immediate effect if:
  - (i) the Director (other than the Chair) ceases to be an Eligible Candidate;

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- (ii) the Director has been appointed under clause 7.7 and on a Relevant Date, the Member who appointed that Director is no longer eligible to appoint a Director under clause 7.7;
  - (iii) the general meeting by ordinary resolution (of which special notice must have been given) resolves to remove that director;
  - (iv) that Director is an officer of or employed by a Member who has been in arrears in payment of any moneys owing to the Company for a period of one month or longer.
- (b) If at any time the number of elected Directors in office is less than the number in clause 7.3(c), the Board may appoint to the Board an Eligible Candidate drawn from a Member within the same Market Share bracket as set out in clause 7.3(c) as the vacant position, to fill the casual vacancy. Unless otherwise determined by the Board, that person will hold office until the closure of the next annual general meeting of the Company at which an election of Directors is conducted and announced in accordance with clauses 7.6 and 7.7.

## **7.15 Board members may attend general meetings and be heard**

Any member of the Board may attend all general meetings of the Company and be heard on any matter.

## **7.16 Retirement and election of Directors**

A Director other than a Director appointed to fill a casual vacancy under clause 7.14(b) will vacate their office on the second anniversary of their election or appointment.

## **7.17 Office held until conclusion of meeting**

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

## **7.18 Remuneration of Directors**

The remuneration of the Chair may be fixed by the Board but may not be by a commission on, or percentage of, operating revenue.

A Director other than the Chair must not be paid any remuneration for services as a Director.

## **7.19 Reimbursement of expenses**

A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travelling, accommodation and other expenses incurred when travelling on the business of the Company as authorised by the Chair.

## **7.20 Director's interests**

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

- (a) hold any office or place of profit in the Company, except that of auditor, unless being or becoming a Director would breach any law by reason of holding that office;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;

# Constitution

- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

## 7.21 Vacation of office

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

- (a) becomes an insolvent under administration;
- (b) becomes prohibited from being a member of the Board by reason of any order made under the Corporations Act;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) resigns from office by notice in writing to the Board;
- (e) is not present personally at meetings of the Directors for two consecutive meetings without leave of absence from the Directors or an apology being noted by the Board;
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his interest in the manner required by the Act; or
- (g) ceases to be eligible or entitled to remain or continue as a member of the Board as provided in clause 7.2.

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## 8 Powers and duties of the Board

### 8.1 Board to manage Company

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

### 8.2 Specific powers of the Board

Without limiting the generality of clause 8.1, the Board may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

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## 8.3 Appointment of attorney

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

## 8.4 Provisions in power of attorney

A power of attorney granted under clause 8.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Board thinks fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

## 8.5 Signing of instruments and operation of bank accounts

The Board may determine the manner in which and persons by whom payments from the Company and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

The Board may also determine any by-law in respect of the Company's operation of its bank accounts, including the number of required signatories to effect bank transfers.

## 8.6 Committees

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

## 8.7 Powers delegated to Committees

A Committee to which any powers have been delegated under clause 8.6 must exercise those powers in accordance with any directions of the Board.

The Powers and duties delegated to such a Committee will be upon such terms and conditions as the Board may determine, including the fixing of a quorum for a meeting thereof. The Chair and the Chief Executive Officer will be, ex-officio, members of any such Committee.

## 8.8 Audit Committee

The Board has established the Audit Committee as a Committee of the Board in accordance with clause 8.6. The Board may appoint an Audit Committee chair who will preside as chair of the Audit Committee.

## 8.9 Delegation of Directors' powers

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

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

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## 9 Proceedings of the Board

### 9.1 Board meetings

The Board may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

### 9.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Board.

### 9.3 Notice of Board meeting

Not less than 7 days notice must be given to every member of the Board of any meeting thereof specifying the time, place and general nature of the business of such meeting, but where the Chair considers an emergency exists he or she may take such steps as he or she considers necessary to notify members of the Board of the proposed meeting notwithstanding that 7 days notice may not have been given.

### 9.4 No notice required if absent from Australia

A member of the Board who is absent from Australia will not be entitled to receive notices pursuant to this clause 9 nor need the Chair nor the Deputy Chair to give them any notification pursuant to clause 9.3.

### 9.5 Questions decided by majority

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

### 9.6 Quorum of Board meetings

A quorum for a meeting of the Board will be a majority in number of the members thereof for the time being.

### 9.7 Board members may act notwithstanding vacancy

The members of the Board may act, notwithstanding any vacancy in their number.

### 9.8 Chair of Board meetings

At every meeting of the Board the Chair will preside as chair.

### 9.9 Absence of Chair at Board meeting

If a Directors' meeting is held and:

- (a) a Chair has not been appointed under clause 7.9; or
- (b) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Deputy Chair will preside.

In the event of there being no Deputy Chair or if he or she is not present within 15 minutes of the time appointed for the holding of the meeting or is unable or unwilling to act, the members of the Board present, provided they constitute a quorum, may elect one of their number to be a chair of the meeting.

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## 9.10 Chair's casting vote at Board meetings

In the event of there being an equality of votes, the Chair or the Deputy Chair presiding at the meeting in accordance with clause 9.9 (as the case may be) has a casting vote.

## 9.11 Validity of acts of the Board

All acts done at a meeting of the Board or of a Committee, or by a person acting as a Director are as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote, even if it is afterwards discovered that:

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

## 9.12 Meaning of Board meeting

For the purposes of this Constitution, a meeting of the members of the Board means:

- (a) a meeting of the members of the Board assembled in person on the same day at the same time and place; or
- (b) the members of the Board communicating with each other by any technological means whereby they are able simultaneously to hear each other and participate in discussion notwithstanding they are not physically present in the same place.

## 9.13 Chair of Committee

Subject to clause 8.8, the members of a Committee may elect one of their number as chair of their meetings. If a meeting of a Committee is held and:

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

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

## 9.14 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

## 9.15 Determination of questions

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

In the event of an equality of votes the chair of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote at the meeting on the question.

## 9.16 Circulating resolutions

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

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## 10 Chief Executive Officer

### 10.1 The Board may appoint a Chief Executive Officer

The Board may at any time appoint a person to be the Chief Executive Officer for such term, at such remuneration and upon such conditions as the Board may think fit.

### 10.2 Board has power to suspend or remove

The Board has power to suspend or remove the Chief Executive Officer.

### 10.3 Board may vest powers in Chief Executive Officer

The Board may vest in the Chief Executive Officer such powers and authorities as it may from time to time determine and the Chief Executive Officer will exercise all such powers and authorities subject at all times to the control of the Board.

### 10.4 Chief Executive Officer may attend meetings

The Chief Executive Officer will not be a member of the Board but will be entitled with the leave of the Board to attend meetings thereof.

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## 11 Secretary

### 11.1 Appointment of Secretary

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

### 11.2 Suspension and removal of Secretary

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

### 11.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

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## 12 By-laws

### 12.1 Board has power to make by-laws

The Board has power to make by-laws for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal such by-laws from time to time.

### 12.2 Company may amend or appeal

The Company may amend or repeal any by-law made by the Board in general meeting.

### 12.3 Nature of by-laws

A by-law:

- (a) will be subject to this Constitution;

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- (b) must not be inconsistent with any provision contained in this Constitution; and
- (c) when in force, will be binding on all members of the Board and all Members.

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## 13 Inspection of records

### 13.1 Inspection by Members

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

### 13.2 Right of a Member to inspect

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

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## 14 Service of documents

### 14.1 Document includes notice

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

### 14.2 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
  - (i) the notice of meeting is available; and
  - (ii) how the Member may use the nominated access means to access the document.

### 14.3 Post

A document sent by post:

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

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

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## 14.4 Fax or electronic transmission

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

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

## 14.5 Electronic Means

A document made available by electronic means is taken to have been given and received on the day after the date of transmission of the notification specifying that the document is available and how it can be accessed.

## 14.6 Evidence of service

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

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## 15 Indemnity and insurance

### 15.1 Indemnity

To the maximum extent permitted by law, the Company may indemnify and under this Constitution agrees to indemnify, any current or former Director or Secretary or executive officer or senior manager of the Company out of the property of the Company against:

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

except to the extent that:

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

### 15.2 Insurance

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

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

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## 15.3 Contract

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

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## 16 Winding up

### 16.1 Contributions on winding up

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

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

an amount not to exceed \$10.

### 16.2 Application of property on winding up

Notwithstanding any other provision of this Constitution, if any property remains on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, that property is, unless the Board determines otherwise under clause 16.3, to be paid to or distributed pro rata among the Members as at the date on which a resolution or order for winding up or dissolution is passed or made ("**Winding Up Date**").

The amount payable to each Member is to be calculated as the proportion the Annual Levy payable or paid by the Member in the 12 months prior to the Winding Up Date bears to the total Annual Levies payable or paid by all persons who are Members at the Winding Up Date in that 12 month period.

### 16.3 Board may determine to transfer to another institution

The Board may determine that the property remaining on the winding-up or dissolution of the Company after satisfaction of all its debts and liabilities, should not be distributed to Members in accordance with clause 16.2 but should instead be given or transferred to some other institution having objects and/or purposes similar to those of the Company.

The institution is to be determined by the Members at or before the time of dissolution and in default by application to the Supreme Court of New South Wales.

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## 17 Accounts and audits

### 17.1 Accounts to be maintained and audited

The Board must cause the accounts of the Company to be maintained and audited in accordance with the requirements of the Corporations Act.

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## **17.2 Accounts to be kept at registered office and open to inspection**

Accounts referred to in clause 17.1 will be kept at the registered office of the Company or, subject to the Corporations Act, at such other place as the Board thinks fit, and will always be open to inspection by Members.

## **17.3 Appointment of auditor**

In accordance with the provisions of the Corporations Act one or more auditors of the Company will be appointed.