

**Constitution  
Hume  
Community  
Housing Association  
Company Limited**

ACN 003 223 434

# Table of Contents

<b>1</b>	<b>Preliminary</b> .....	<b>1</b>
	1.1 Definitions .....	1
<b>2</b>	<b>Interpretation</b> .....	<b>2</b>
<b>3</b>	<b>Application of Corporations Act</b> .....	<b>2</b>
<b>4</b>	<b>Enforcement</b> .....	<b>2</b>
<b>5</b>	<b>Objects</b> .....	<b>3</b>
<b>6</b>	<b>Powers</b> .....	<b>3</b>
<b>7</b>	<b>Not for profit status</b> .....	<b>3</b>
	7.1 Application of income and property.....	3
<b>8</b>	<b>Liability of Members</b> .....	<b>4</b>
	8.1 Guarantee by Member .....	4
	8.2 Liability of Member.....	5
<b>9</b>	<b>Winding up or revocation of endorsement</b> .....	<b>5</b>
	9.1 Winding up.....	5
<b>10</b>	<b>Establishment and operation of Gift fund</b> .....	<b>6</b>
	10.1 Gift Fund .....	6
<b>11</b>	<b>Membership</b> .....	<b>6</b>
	11.1 Applications .....	6
	11.2 Active Membership Requirements and Cancellation of Membership .....	7
	11.3 Life Members .....	7
	11.4 No transfers.....	7
<b>12</b>	<b>Cessation of membership</b> .....	<b>7</b>
	12.1 Resignation of a Member.....	7
	12.2 Expulsion of a Member .....	8
	12.3 Other cessation events.....	8
	12.4 Effect of cessation .....	8
	12.5 Register of Members .....	8
<b>13</b>	<b>Resolution of Disputes Between Members</b> .....	<b>9</b>
<b>14</b>	<b>Proceedings of Members</b> .....	<b>9</b>
	14.1 Written resolutions of Members .....	9
	14.2 Calling meetings of Members .....	9
	14.3 Notice of meetings of Members .....	9
	14.4 Business of meetings.....	10
	14.5 Quorum for Members meeting.....	10
	14.6 Chairperson of meetings of Members.....	11
	14.7 Conduct of meetings of Members .....	11
	14.8 Adjournment .....	12
	14.9 Decision on questions.....	12
	14.10 Taking a Poll .....	12
	14.11 Casting vote of Chairperson .....	13
	14.12 Votes of Members.....	13
	14.13 Objections.....	13
	14.14 Votes by proxy .....	13
	14.15 Document appointing Proxy.....	13

	14.16	Lodgement of Proxy .....	14
	14.17	Validity .....	14
<b>15</b>		<b>Directors .....</b>	<b>15</b>
	15.1	Appointment of Directors .....	15
	15.2	Board from Adoption of this Constitution .....	15
	15.3	Termination of office .....	15
	15.4	Nomination of Directors .....	16
	15.5	Interests of Directors.....	16
<b>16</b>		<b>Officer .....</b>	<b>17</b>
	16.1	Chairperson of the Board.....	17
	16.2	Secretary .....	17
	16.3	Other officers .....	18
	16.4	Indemnity and insurance.....	18
<b>17</b>		<b>Powers of the Board.....</b>	<b>18</b>
	17.1	General powers .....	18
	17.2	Execution of documents .....	19
	17.3	Committees and delegates .....	19
	17.4	Attorney or agent .....	19
<b>18</b>		<b>Proceedings of Directors .....</b>	<b>19</b>
	18.1	Written resolutions of Directors.....	19
	18.2	Board Meetings.....	20
	18.3	Board resolutions.....	20
	18.4	Valid proceedings .....	21
	18.5	Audit and accounts .....	21
<b>19</b>		<b>Notices.....</b>	<b>21</b>
	19.1	Notices to Members .....	21
	19.2	Notice to Directors .....	22
	19.3	Notice to the Company .....	22
	19.4	Time of service .....	22
	19.5	Notice requirements.....	23
	19.6	Notices in writing.....	23

# 1 Preliminary

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## 1.1 Definitions

In this Constitution:

- (a) **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).
- (b) **Attending Member** means in relation to a meeting of Members, the Member present at the place of the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by Corporate Representative.
- (c) **Board** means the Directors of the Company from time to time.
- (d) **Business Day** means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.
- (e) **Company** means Hume Community Housing Association Company Limited ACN 003 223 434.
- (f) **Corporate Representative** means a person authorised in accordance with the Corporations Act (or a corresponding previous law) by a Member which is a body corporate to act as its representative at a meeting of Members.
- (g) **Corporations Act** means the *Corporations Act 2001* (Commonwealth).
- (h) **Director** means a person who is, for the time being, a director of the Company.
- (i) **Eligible Tenant** means a person who is a tenant under the *National Rental Affordability Scheme Act 2008* (Cth), as amended from time to time and under the *National Rental Affordability Scheme Regulations 2008* (Cth).
- (j) **Housing Act** means *the Housing Act 2001* (NSW).
- (k) **Legal Costs** of a person means legal costs incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.
- (l) **Liability** means of a person means any liability (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or as a director, officer or employee of another body corporate.
- (m) **Member** means a person whose name is entered in the Register as a member of the Company.
- (n) **Notice** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.
- (o) **Register** means the register of Members kept under the Corporations Act and, where appropriate, includes any branch register.
- (p) **Registrar** has the meaning given to that term in the Housing Act.
- (q) **Relevant Officer** means a person who is, or has been, a Director or Secretary.

- (r) **Secretary** means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

## **2 Interpretation**

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Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) the word 'includes' in any form is not a word of limitation;
- (e) a reference to something being 'written' or 'in writing' includes that thing being represented or reproduced in any mode in a visible form;
- (f) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law;
- (g) references to notices include formal notices of meeting, all documents and other communications from the company to its members; and
- (h) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation.

## **3 Application of Corporations Act**

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- (a) Unless the context indicates a contrary intention, in this Constitution:
  - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
  - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution; and
- (b) This Constitution displaces the replaceable rules in the Corporations Act to the extent that it is inconsistent with any replaceable rules.

## **4 Enforcement**

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- (a) Each Member submits to the non-exclusive jurisdiction of the courts of the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.

- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that does not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

## **5 Objects**

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The Company is a charitable institution whose object is to provide relief of poverty, sickness, destitution, helplessness and distress to people, including Eligible Tenants by, without limitation:

- (a) striving to make a significant and substantial contribution to the provision of affordable, appropriate and well-managed rental housing to meet the needs of households in receipt of low incomes or who are otherwise in need of assistance;
- (b) striving to work collaboratively with government and non-government organisations to create and build socially inclusive communities that provide for improved economic, educational and social opportunities and outcomes for people in receipt of low incomes;
- (c) providing and managing accommodation for persons with disabilities;
- (d) developing and managing social housing to find solutions to homelessness, including by creating, providing and managing affordable and appropriate rental housing to meet the needs of households in receipt of low incomes or who are otherwise in need of assistance; and
- (e) doing anything ancillary to the objects in clauses 5(a) to 5(d).

## **6 Powers**

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

- (a) carry out the objects; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 6(a).

## **7 Not for profit status**

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### **7.1 Application of income and property**

- (a) Subject to clauses 7.1(b) and 7.1(c), the Company must apply the profits (if any) or other income and property of the Company solely towards the promotion of the objects of the Company set out in clause 5 and no portion of it may be paid or transferred, directly or indirectly, to any Member whether by way of dividend, bonus or otherwise.
- (b) Nothing in clause 7.1(a) prevents the Company making any payment in good faith of:

- (i) reasonable and proper remuneration to any Member for any services actually rendered or goods supplied to the Company in the ordinary and usual course of business of the Company;
  - (ii) the payment or reimbursement of out-of-pocket expenses incurred by a Member on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board;
  - (iii) reasonable and proper rent or fees to a Member for premises leased or licensed by any Member to the Company;
  - (iv) money to any Member, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (v) interest to a Member at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member; or
  - (vi) an amount under clause 9.
- (c) The Company may make payments to a Director or Secretary in good faith for:
- (i) remuneration of services to the Board where that remuneration has been approved by the Board;
  - (ii) the payment or reimbursement of out-of-pocket expenses reasonably incurred by a Director or Secretary in the performance of any duty as a director or secretary of the Company where that payment or reimbursement has been approved by the Board;
  - (iii) money to any Director or Secretary, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - (iv) any salary or wage due to the Director or Secretary as an employee of the Company where the terms of employment have been approved by the Board;
  - (v) an insurance premium in respect of a contract insuring a Director or Secretary for a liability incurred as an officer of the Company where the Board has approved the payment of the premium; or
  - (vi) any payment under clause 16.4(a), 16.4(c) or 16.4(d) or a payment under any agreement or deed referred to in clause 16.4(e).

## **8 Liability of Members**

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### **8.1 Guarantee by Member**

Each Member (excluding Life Members) undertakes to contribute an amount not exceeding \$20.00 to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that person ceased to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before that person ceased to be a Member;

- (b) payment of the costs, charges and expenses of winding up the Company; and
- (c) adjustment of the rights of the contributories among themselves.

## **8.2 Liability of Member**

The liability of Members is limited to the amount of the guarantee given in clause 8.1.

# **9 Winding up or revocation of endorsement**

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## **9.1 Winding up**

- (a) Subject to clause 9.1(d), on a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts shall be given to the Member(s), so long as the Member(s) has:
  - (i) objects similar to the objects of the Company and is charitable;
  - (ii) a constitution which requires it to apply their profits (if any) or other income in promoting their objects and not for the purposes of profit or gain to its members;
  - (iii) a constitution which prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company under clause 7.1; and
  - (iv) deductible gift recipient endorsement.
- (b) Subject to clause 9.1(d), if clause 9.1(a) does not apply, then any surplus which remains following the winding up of the Company will be given or transferred to another institution(s) or corporation(s) which has:
  - (i) objects similar to the objects of the Company and is charitable;
  - (ii) a constitution which requires it to apply their profits (if any) or other income in promoting their objects and not for the purposes of profit or gain to its members;
  - (iii) a constitution which prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company under clause 7.1; and
  - (iv) deductible gift recipient endorsement.
- (c) The identity of the Member(s) or institution(s) or corporation(s) referred to in clause 9.1(a) or 9.1(b) is to be determined:
  - (i) by the Board; or
  - (ii) if the Board does not decide or does not wish to decide, then by the Members,in writing at or before the time of dissolution and failing such determination being made by application to the Supreme Court of New South Wales for determination.
- (d) All remaining community housing assets in a participating jurisdiction on winding up will be transferred to another registered community housing provider or to a Housing Agency in the jurisdiction in which the asset is located.
- (e) In the event that the Company ever has its endorsement as a deductible gift recipient revoked, the Company must transfer all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions to another deductible gift recipient which is charitable at law, such deductible gift

recipient to be determined by the Board, or failing the Board, the Members, and failing such determination being made by either the Board or the Members, by application to the Supreme Court of New South Wales for determination.

## **10 Establishment and operation of Gift fund**

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### **10.1 Gift Fund**

- (a) The Company may invite members of the public from time to time to make donations of money or property to the Company for the purpose of promoting and supporting the objects of the Company.
- (b) The Company must establish a Gift Fund for the purpose defined in clause 10.1(a) and must ensure the donations to the Gift Fund of the Company are kept in a separate bank account from any other funds of the Company and that all accounts and records in respect of the Fund are sufficient to explain the transactions and financial position of the Fund and to enable them to be conveniently audited.
- (c) Upon winding up of the Gift Fund, the Company must ensure that any surplus money or other assets of the Fund are transferred to another gift deductible fund maintained by a deductible recipient as defined in the Income Tax Assessment Act 1997 (Cth).

## **11 Membership**

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### **11.1 Applications**

- (a) The Members of the Company are the members under the existing constitution at the date of the adoption of this constitution and any other persons whom the Board shall admit to membership from time to time in accordance with this Constitution.
- (b) A person cannot become a member of the Company unless they are proposed for Membership by an existing Member and such proposals seconded by one existing Member.
- (c) Employees of the Company cannot become Members, unless that employee is also a tenant and therefore may apply as a tenant to become a Member.
- (d) Each applicant to become a Member must sign and deliver to the Company an application in the form which the Board determines.
- (e) The Board determines in their absolute discretion whether an applicant may become a Member. The Board is not required to give any reason for the rejection of any application to become a Member.
- (f) If an application to become a Member is accepted by the Board, the Company must give written notice of the acceptance to the applicant and enter the applicant's name in the Register.
- (g) If an application to become a Member is rejected by the Board, the Company must give written notice of the rejection to the applicant.
- (h) Failure by the Company to comply with any notice requirement in this clause 11.1(f) or 11.1(g) does not invalidate the decision regarding an application.

## **11.2 Active Membership Requirements and Cancellation of Membership**

- (a) In order to establish active membership of the Company, every year after admission, a Member must resubmit an application in accordance with 11.1(d).
- (b) The Board will, after giving notice, declare the membership of a member cancelled if the member is not presently an active member in accordance with 11.2(a) and has not been an active member for 2 years and shall remove the name of the member from the Register.
- (c) The Board is not required to give notice if the Member's whereabouts are unknown to the Company.
- (d) The Company will keep a register of memberships cancelled pursuant to 11.2(b) which will specify the following the name of the Member, the date of the Board's resolution cancelling membership and if the whereabouts of the Member are known:
  - (i) The date of the Member's last active dealing with the Company; and
  - (ii) The date the required notice was given to the Member in accordance with 11.2(b).

## **11.3 Life Members**

- (a) Subject to 11.3(e), the Board may nominate any Active Member, and any person eligible to be an Active Member, to be appointed as a Life Member, where that person has demonstrated long and valued support and/or service to the Company and the achievement of its Objects.
- (b) Nominations for appointment of a Life Member are to be determined by a resolution of Members at the following Annual General Meeting of the Company.
- (c) Life Members will retain all rights and privileges of Active Members, excluding voting rights, and are not required to provide the Members' guarantee pursuant to clause 8.1.
- (d) If a Life Member is an Active Member at the time of nomination, the member's Active Membership ceases on the date they become a Life Member.
- (e) There may be no more than 20 Life Members at any one time.

## **11.4 No transfers**

The rights of being a Member are not transferable whether by operation of law or otherwise.

## **12 Cessation of membership**

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### **12.1 Resignation of a Member**

- (a) Subject to clause 12.1(b), a Member may at any time resign as a member of the Company by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the receipt of that notice by the Company.
- (b) If there is only one Member and the Member gives proper notice of resignation or on the same day all of the Members give proper notice of resignation, the notice or notices will be ineffective and the Member or Members cannot resign until either another person is appointed as a Member or the Company is wound up.
- (c) If a Member resigns, the Company must remove the Member's name from the Register.

## **12.2 Expulsion of a Member**

- (a) Subject to clause 12.2(b), if:
  - (i) a Member is in breach of a provision of this Constitution; or
  - (ii) the Board, in its absolute discretion determines that it is prejudicial to the interests or reputation of the Company for the person to remain a member;
  - (iii) a Member is, or any step is taken for that Member to become, either an insolvent under administration or an externally administered body corporate;
  - (iv) the whereabouts of the Member are not presently known to the Company and have not been known to the Company for a continuous period of at least 6 months before that date, the Company may expel the Member by a resolution of the Board and remove the Member's name from the Register.
- (b) The Company must not expel a Member under clause 12.2(a) unless:
  - (i) at least 5 Business Days notice has been given to the Member stating the date, time and place at which the question of expulsion of that Member is to be considered by the Board, and the nature of alleged event giving rise to the expulsion; and
  - (ii) the affected Member is given the opportunity of explaining to the Board, orally or in writing, why the Member should not be expelled.

## **12.3 Other cessation events**

If a Member:

- (a) being an individual, dies or becomes bankrupt, becomes of unsound mind or a person whose estate is liable to be dealt with under a law about mental health; or
- (b) being a body corporate, is deregistered under the laws of the jurisdiction in which the Member is incorporated,

the Member ceases to be a member of the Company and the Company may remove the Member's name from the Register.

## **12.4 Effect of cessation**

- (a) A person who ceases to be a Member:
  - (i) remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the person to the Company as a Member; and
  - (ii) must pay to the Company interest at the rate the Board resolves on those amounts from the date of cessation until and including the date of payment of those amounts.
- (b) The Company may by resolution of the Board waive any or all of its rights under this clause 12.4.

## **12.5 Register of Members**

The Secretary must maintain at the Company's head office a Register of Members containing the following details of each Member:

- (a) Full name;
- (b) Occupation;
- (c) Residential and business address; and
- (d) Date on which the entry of the Member's name in the Register is made.

## **13 Resolution of Disputes Between Members**

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- (a) Disputes between Members (in their capacity as Members) shall be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within 30 days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) Failing agreement by the parties to the appointment of a mediator within 14 days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the Law Society of New South Wales.
- (d) The costs of the mediator appointed pursuant to clause 13(b) or clause 13(c) (as the case may be) shall be shared equally between the Members party to the dispute.
- (e) At least 7 days before a mediation session established by a mediator appointed pursuant to clause 13(b) or clause 13(c) (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

## **14 Proceedings of Members**

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### **14.1 Written resolutions of Members**

While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.

### **14.2 Calling meetings of Members**

- (a) The Company may by resolution of the Board call a meeting of Members to be held at the time and place (including using one or more methods of secure technology which gives Attending Members as a whole a reasonable opportunity to participate) and in the manner the Board resolves.
- (b) No Member may call or arrange to hold a meeting of Members except where permitted by the Corporations Act (notwithstanding section 111L of the Corporations Act).

### **14.3 Notice of meetings of Members**

- (a) Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice (notwithstanding section 111L of the Corporations Act), at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- (b) A notice calling a general meeting:

- (i) Must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (ii) Must state the general nature of the business to be transacted at the meeting; and
  - (iii) May specify a place and electronic address for the purposes of proxy appointment.
- (c) A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (i) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (ii) the election of directors; or
  - (iii) the appointment of the auditor.
- (d) The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as a result of a request under clause 14.2(b)).
- (e) The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 14.3(a) entitled to receive notices from the Company.
- (f) The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

#### **14.4 Business of meetings**

Except with the approval of the Board, with the permission of the chairperson of the meeting or under the Corporations Act, no person may move at any meeting of Members:

- (a) any resolution (except in the form set out in the notice of meeting given under clause 14.3(a)); or
- (b) any amendment of any resolution.

#### **14.5 Quorum for Members meeting**

- (a) No business may be transacted at a meeting of Members, except the election of the chairperson of the meeting, unless there is a quorum of Attending Member(s) present at all times during the meeting.
- (b) A quorum for a meeting of Members consists of:
  - (i) if there is only one Member entitled to vote and present at the meeting, that Member as an Attending Member; and
  - (ii) in any other case, 51% of the total number of Members, rounded up to the nearest integer as Attending Members. Each individual present may only be counted once towards a quorum. If a Member has appointed more than one proxy or attorney or Corporate Representative, only one of them may be counted towards a quorum.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Members, the meeting is dissolved unless the chairperson of the meeting or the Board adjourns the meeting to a date, time and place determined by that chairperson or the Board.

- (d) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned meeting of Members, the meeting is dissolved.

#### **14.6 Chairperson of meetings of Members**

- (a) Subject to clauses 14.6(b) and 14.6(c), the chairperson of the Board must chair each meeting of Members.
- (b) If at a meeting of Members:
  - (i) there is no chairperson of the Board; or
  - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of a meeting of Members or is not willing to chair all or part of the meeting,the Directors present may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Members may elect one of their number, to chair that meeting.
- (c) A chairperson of a meeting of Members may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of the deputy chairperson or another person nominated by him or her.

#### **14.7 Conduct of meetings of Members**

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson of a meeting of Members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chairperson of a meeting of Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Members may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The chairperson of a meeting of Members may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted under the Corporations Act without being referred to in the notice of meeting.
- (g) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
  - (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
  - (ii) has any audio or visual recording or broadcasting device;
  - (iii) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - (iv) behaves or threatens to behave in a dangerous, offensive or disruptive manner;

- (v) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession: or
- (vi) is not entitled under the Corporations Act or this Constitution to attend the meeting.
- (h) If the chairperson of a meeting of Members considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the chairperson may nominate a separate meeting place using any technology that gives Attending Members as a whole a reasonable opportunity to participate.
- (i) The chairperson of a meeting of Members may delegate any power conferred by this clause 14.7 to any person.
- (j) Nothing contained in this clause 14.7 limits the powers conferred by law on the chairperson of a meeting of Members.

#### **14.8 Adjournment**

The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the consent of the meeting; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

#### **14.9 Decision on questions**

- (a) Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- (c) Unless a poll is demanded:
  - (i) A declaration by the chairperson that a resolution has been carried, carried by a specified majority or lost; and
  - (ii) An entry to that effect in the minutes of the meeting,
 are conclusive evidence of the fact without proof of the number or proportions of the votes in favour of or against the resolution.
- (d) The demand for a poll may be withdrawn.
- (e) A decision if a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

#### **14.10 Taking a Poll**

- (a) A poll will be taken when and in the manner that the chairperson directs.
- (b) The result of the poll will be the resolution of the meeting at which the poll was demanded.
- (c) The chairperson may determine any dispute about the admission or rejection of a vote.
- (d) The chairperson's determination, if made in good faith, will be final and conclusive.
- (e) A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

- (f) After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

#### **14.11 Casting vote of Chairperson**

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

#### **14.12 Votes of Members**

A Member is entitled to vote as one vote.

#### **14.13 Objections**

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

#### **14.14 Votes by proxy**

- (a) If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may vote on a show of hands.
- (b) A proxy must be from a person appointed by the Member.
- (c) A proxy may demand or join in demanding for a poll.
- (d) A proxy may vote or abstain as he or she chooses where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

#### **14.15 Document appointing Proxy**

- (a) Notwithstanding section 111L of the Corporations Act, an appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Members may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act (notwithstanding the application of section 111L of the Corporations Act).
- (b) For the purposes of clause 14.15(a) an appointment received at an electronic address will be taken to be signed by the Member if the appointment has been verified in another manner approved by the Board.
- (c) A proxy's appointment is valid at an adjourned general meeting.
- (d) A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.

- (e) 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:
  - (i) 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 vacate the chair or to adjourn the general meeting.
  - (ii) Even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (iii) To vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- (f) If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more directors or the Secretary.

#### **14.16 Lodgement of Proxy**

- (a) 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:
  - (i) The time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - (ii) The taking of a poll of which the appointee proposes to vote.
- (b) The Company received an appointment of a proxy and any power of attorney or other authority under which it was executed when that are received at:
  - (i) The Company's registered office; or
  - (ii) A place or electronic address specified for that purpose in the notice of a meeting.

#### **14.17 Validity**

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

- (a) Died;
- (b) Became of unsound mind; or
- (c) Revoked by proxy or power,

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

## **15 Directors**

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### **15.1 Appointment of Directors**

- (a) The minimum number of Directors is 3. The maximum number of Directors must not be more than 10.
- (b) Subject to section 201P of the Corporations Act, the Board may by resolution vary the number of Directors holding office from that referred to in clause 15.1(a).
- (c) Each Director:
  - (i) must not be an employee of the Company;
  - (ii) should have an understanding of and commitment to the objects of the Company;
  - (iii) should have a knowledge and understanding of the obligations of directors under the Corporations Act and other relevant legislation; and
  - (iv) should possess tertiary or professional qualifications, expertise and/or experience as the Board from time to time determines is necessary or desirable.
- (d)
  - (i) Subject to clauses 15.1(a) and 15.1(c), the Board may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
  - (ii) A Director appointed under clause 15.1(d)(i) will hold office until the next general meeting of the Company when the Director may be re-elected.
- (e) Subject to clauses 15.1(a) and 15.1(c), the Company may at a meeting of Members at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.
- (f) The Board will determine in its absolute discretion whether a person satisfies the criteria contained in clause 15.1(c).
- (g) A Director need not be a Member.
- (h) Subject to clause 15.2, a Director will be elected for a period of 3 years, at the conclusion of which time they are eligible for re-election.

### **15.2 Board from Adoption of this Constitution**

- (a) No later than the first Board meeting after the adoption of this Constitution, the Directors shall nominate from among their number who shall hold office for an initial term of 1 year, 2 years and 3 years, so long as at least two of the Directors serve an initial term of 1 year, at least two Directors serve an initial term of 2 years and at least two Directors serve an initial term of 3 years. The terms will be deemed to have commenced as at the date of adoption of this Constitution.
- (b) In the event that the Directors do not nominate from among their number who shall hold office for a term of 1 year, 2 years or who shall hold office for a term of 3 years, the terms shall be determined by lot.
- (c) The initial Directors shall be eligible for re-election for further terms of 3 years each.

### **15.3 Termination of office**

A person ceases to be a Director if the person:

- (a) dies;
- (b) becomes an employee of the Company;
- (c) fails to attend 3 Board meetings during the calendar year without the consent of the Board;
- (d) resigns by notice in writing to the Company;
- (e) is removed from office under the Corporations Act;
- (f) becomes an insolvent under administration;
- (g) becomes of unsound mind or a person whose property is liable to be dealt with under a law about mental health;
- (h) has been disqualified by the Australian Charities and Not-for-Profits Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation. For the avoidance of doubt, the person ceases to be a Director on the disqualification date noted by the Australian Charities and Not-for-Profits Commissioner; or
- (i) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.

#### **15.4 Nomination of Directors**

- (a) Any two Members of the Company are to be at liberty to nominate any person to serve as a Director of the Board.
- (b) All nominations must be in writing, note the consent of the candidate, bear the signature of the candidate, their proposer and seconder and be lodged with the Secretary not less than 28 days before the general meeting at which the election is to take place.
- (c) The Board will assess the suitability of all candidates whose nominations have been received by the Secretary pursuant to clause 15.4(b) above. Not less than 3 days before the general meeting at which the election is to take place, the Board will list the candidates it deems as suitable people to serve on the Board, together with the names of those candidates' respective proposers and seconds. A candidate may not be elected to the Board unless they have first been approved by the Board in accordance with this sub-clause 15.4(c).
- (d) If insufficient nominations are received to fill all positions on the Board which are to be filled at the election, the candidate or candidates nominated shall be deemed to be elected and further nominations shall be received at the meeting at which the election is to take place.
- (e) If insufficient further nominations are received, any unfilled positions remaining on the Board shall be deemed to be casual vacancies.
- (f) If the number of nominations received is equal to the number of positions to be filled, the persons nominated shall be taken to be elected.
- (g) If the number of nominations received exceeds the number of positions to be filled, a ballot shall be held. The Board shall determine how the ballot is to be held.

#### **15.5 Interests of Directors**

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:

- (i) holding an office (except auditor) or place of profit in the Company or a related body corporate of the Company, unless being or becoming a Director would breach any law by reason of holding that office;
  - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
  - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
  - (iv) entering into any agreement or arrangement with the Company; or
  - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with the Corporations Act and the ACNC Regulation in relation to the disclosure of the Director's interests.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must be counted in determining whether or not a quorum is present at any meeting of Directors considering the matter and must:
- (i) not be present while the matter is being considered at the meeting; and
  - (ii) not vote on the matter,
- except where permitted by the Corporations Act.

## **16 Officer**

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### **16.1 Chairperson of the Board**

- (a) The Board must elect a Director as chairperson of the Board for any period they resolve, or if no period is specified, until that person ceases to be a Director. The Board may remove the chairperson of the Board at any time.
- (b) Subject to clause 16.1(c), the chairperson of the Board must chair each Board meeting.
- (c) If at a Board meeting:
  - (i) a chairperson has not been elected under clause 16.1(a); or
  - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the Directors present must elect one of their number to, chair that meeting or part of the meeting.

### **16.2 Secretary**

The Board must appoint a Secretary, for any period and on any terms (including, subject to clause 7.1, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

### **16.3 Other officers**

The Directors may elect from among their number such other officers as determined by the Directors from time to time and may determine the period for which each is to hold office.

### **16.4 Indemnity and insurance**

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity under clause 16.4(a):
  - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
  - (iii) applies to Liabilities and Legal Costs incurred both before and after this clause 16.4 became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
  - (i) enter into, or agree to enter into; or
  - (ii) pay, or agree to pay, a premium for,a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, under which the Company must do all of the following:
  - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - (ii) indemnify that person against any Liability and Legal Costs of that person;
  - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
  - (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## **17 Powers of the Board**

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### **17.1 General powers**

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.

- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with clause 18.2, a resolution passed by signing a document in accordance with clause 18.1, or in accordance with a delegation of the power under clause 17.3 or 17.4. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power under clause 17.3 or 17.4.

## **17.2 Execution of documents**

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
  - (i) two (2) Directors signing the same; or
  - (ii) one (1) Director and one (1) Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

## **17.3 Committees and delegates**

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, clause 18.2 applies with the necessary changes to meetings of a committee of the Board.

## **17.4 Attorney or agent**

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

# **18 Proceedings of Directors**

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## **18.1 Written resolutions of Directors**

- (a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.

- (b) A resolution under clause 18.1(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority. A document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of clause 18.1(a) and is taken to be signed when received by the Company in legible form.

## **18.2 Board Meetings**

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate their meetings as it thinks fit.
- (b) The Chairperson may call a Board meeting at any time. On request of any 3 Directors, a Secretary of the Company must call a meeting of the Directors.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by telephone, or other electronic means.
- (d) A Director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, or other electronic means. A person who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.
- (e) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (f) For the purposes of section 248D of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
  - (i) telephone;
  - (ii) video;
  - (iii) any other technology which permits each Director to communicate with every other participating Director; or
  - (iv) any combination of these technologies.
- (g) A Director may withdraw the consent given under this clause 18.2 in accordance with section 248D of the Corporations Act.
- (h) If a Board meeting is held in 2 or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing her or her participation in the meeting; and
  - (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (i) Until otherwise determined by the Board, a quorum for a Board meeting is 3 Directors. A quorum for a Board meeting must be present at all times during the meeting. Each individual present may only be counted once towards a quorum.

## **18.3 Board resolutions**

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority

of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.

- (b) Subject to clause 15.5 and this clause 18.3, each Director present in person has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two Directors are present and entitled to vote on the resolution.

#### **18.4 Valid proceedings**

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
  - (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
  - (ii) a person so appointing being disqualified or not being entitled to vote, if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Members.

#### **18.5 Audit and accounts**

- (a) The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- (b) The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

## **19 Notices**

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### **19.1 Notices to Members**

- (a) The Company may give notice to a Member by any of the following means in the Board's discretion:
  - (i) delivering it to that Member or person;
  - (ii) leaving it at, or sending it by post to, the address of the Member in the Register or the alternative address (if any) nominated by that Member or person for that purpose;
  - (iii) sending it to the electronic address (if any) nominated by that Member or person for that purpose;
  - (iv) if permitted by the Corporations Act, notifying that Member of the notice's availability by an electronic means nominated by the Member for that purpose; or
  - (v) any other means permitted by the Corporations Act.

- (b) Where a Member does not have an address in the Register or where the Board believes that a Member is not at the address in the Register, the Company may give notice to that Member by exhibiting the notice at the registered office of the Company for a period of 48 hours, unless and until the Member gives the Company written notice of an address for the giving of notices.
- (c) The Company must send all documents to a Member whose address for notices is not within Australia by air-mail, air courier, or electronic transmission.
- (d) Any notice given or document delivered by the Company to a Joint Member whose name appears first in the Register in respect of a joint membership of the Company is notice or delivery to all Joint Members of that joint membership.
- (e) Any notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

## **19.2 Notice to Directors**

The Company may give notice to a Director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

## **19.3 Notice to the Company**

A person may give notice to the Company by:

- (a) leaving it at, or by sending by post to, the registered office of the Company;
- (b) leaving it at, or by sending it by post to, a place nominated by the Company for that purpose;
- (c) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (d) any other means permitted by the Corporations Act.

## **19.4 Time of service**

- (a) A notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A notice sent by electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A notice given in accordance with clause 19.1(a)(iv) is taken to be given on the day after the date on which the Member is notified that the notice is available.
- (d) A notice given in accordance with clause 19.1(b) is taken to be given at the commencement of the 48 hour period referred to in that clause.

- (e) A certificate by a Director or Secretary to the effect that a notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

#### **19.5 Notice requirements**

The Board may specify, generally or in a particular case, requirements in relation to notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the notice is taken to be given.

#### **19.6 Notices in writing**

A reference in this constitution to a written notice includes a notice given by electronic transmission or any other form of written communication.