

Company constitutions

Role of the board

The constitution of a company sets out certain rights, roles and responsibilities of shareholders and directors and rules which govern various internal management activities such as meetings of shareholders and directors. The constitution is a fundamental component of the governance framework.

The constitution has the effect of a contract between:

- the company and each member;
- the company and each director;
- the company and the company secretary;
- a member and each other member.

Constitutions cover a range of rules including:

- the appointment, removal and power of the directors;
- procedures for conducting director meetings;
- rules regarding transferring shares and paying dividends.

The *Corporations Act 2001* does not specify the contents of a company's constitution.

All new directors need to be aware of their duties in relation to the organisation's constitution.

A company can modify or repeal its constitution, or a provision of its constitution, by passing a special resolution.

Public companies are required to lodge a copy of its constitution with Australian Securities and Investment Commission (ASIC).

Writing a constitution can be a useful tool for clarifying processes and principles, even if an organisation is not yet ready to incorporate.

Sample constitution

This document is the Constitution for a company Limited by Guarantee incorporated under the *Corporations Act 2001* of the Commonwealth of Australia and contains a number of rules which set out how the Company is to be managed. The rules and the requirements of the Corporations Act assist members and directors of the Company to manage the affairs of their Company efficiently.

Directors and members should see the rules contained in this Constitution as merely a guide to how they must conduct the affairs of their Company. Where there is any doubt as to the management of the Company or the powers of directors or members to make a decision or take a particular action reference should be made to the *Corporations Act 2001* and advice sought from the Company's professional advisers.

Corporations Act 2001

Company Limited by Guarantee

[INSERT COMPANY NAME] LIMITED

1. Introduction

1.1 Name of the Company is the name stated in the Schedule (and the end of this template).

1.2 The objects of the Company are to:

1.2.1 take over the funds and other assets and liabilities of the present unincorporated Association stated in the Schedule.

1.2.2 operate and manage the ongoing action (if any) stated in the Schedule.

1.2.3 promote the particular interest or interests stated in the Schedule.

1.2.4 Solely for the purpose of carrying out those powers and not otherwise the Company has power to:

1.2.4.1 hold or arrange competitions and provide or contribute towards the provision of prizes awards and distinctions in connection therewith. Provided that no Member of the Company shall receive any prize award or distinction of monetary value except as a successful competitor at any competition held or promoted by the Company.

1.2.4.2 subscribe to become a Member of and co-operate with or amalgamate with any other association or organisation whether incorporated or not whose objects are similar to those of the Company. Provided that the Company shall not subscribe to or support with its funds or amalgamate with any association or organisation which does not prohibit the distribution of its income and property among its Members to an extent at least as great as that imposed on the Company by Rule 2.

1.2.4.3 buy, sell and deal in all kinds of apparatus and all kinds of provisions liquid and solid required by Members of the Company or persons frequenting the Company's premises.

1.2.4.4 purchase take on lease or in exchange hire and otherwise acquire any lands building easement or property real and personal and any rights and privileges which may be requisite for the purposes of or capable of being conveniently used in connection with any of the objects of the Company.

Provided that in case the Company shall take or hold any property which may be subject to any trusts the Company shall only deal with the same in such manner as is allowed by law having regard to such trusts.

1.2.4.5 enter into any arrangements with any Government or authority Commonwealth, State, Municipal, Local or otherwise that may seem conducive to the Company's objects or any of them and to obtain from any such Government or authority any rights, privileges and concessions which the Company may think it desirable to obtain; AND to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

- 1.2.4.6 appoint, employ, remove or suspend such managers, clerks, secretaries, servants, employees and other persons as may be necessary or convenient for the purpose of the Company.
- 1.2.4.7 establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company or the dependants or connections of any such persons; AND to grant pensions and allowances; AND to make payments towards insurance and superannuation; AND to subscribe or guarantee money for charitable or benevolent objects or for any public general or useful object.
- 1.2.4.8 construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds works or conveniences which may seem calculated directly or indirectly to advance the Company's interests and to contribute, to subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working management, carrying out, alteration or control thereof.
- 1.2.4.9 invest and deal with money of the Company not immediately required in such manner as may be permitted by law for the investment of trust funds.
- 1.2.4.10 borrow or raise or secure the payment of money in such manner as the Company may think fit and to secure the same or repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way in particular by the issue of debentures perpetual or otherwise charged upon all or any of the Company's property (both present and future) and to purchase redeem or pay off such securities.
- 1.2.4.11 make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
- 1.2.4.12 sell, improve, manage, develop, exchange, lease, dispose of, turn to, account or otherwise deal with all or any part of the property and rights of the Company.
- 1.2.4.13 take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price of any part of the Company's property of whatsoever kind sold by the Company or any money due to the Company from purchases and others.
- 1.2.4.14 take any gift of property whether subject to any special trust or not for any one or more of the objects of the Company but subject always to any limitation in these Rules.
- 1.2.4.15 take such steps by personal or written appeals, public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company in the shape of donations, annual subscriptions or otherwise.
- 1.2.4.16 print and publish any newspapers periodicals, books or leaflets that the Company may think desirable for the promotion of its objects.
- 1.2.4.17 purchase and otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- 1.2.4.18 transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which the Company is authorised to amalgamate.
- 1.2.4.19 make donations for patriotic or charitable purposes.
- 1.2.4.20 provide a useful and cost effective range of services, facilities and benefits to Members.
- 1.2.4.21 apply for and hold a Club Licence and any other applicable Licence or permit under any relevant Liquor Control Law.

1.2.4.22 employ and remunerate employees who may be Members and Directors, including (subject to Rule 2) the right to remunerate Directors.

1.2.4.23 exercise any powers that the Company has by having the rights, powers, privileges and legal capacity of a natural person, including performing any act or function which it is authorised or required to do by any law.

PROVIDED that the Company shall not support with its funds any activity or endeavour to impose on or procure to be observed by its Members any requirement or restriction which if a rule of the Company would make it a Trade Union.

1.3 The Company does not have the power to issue shares.

1.4 The Company is a Company Limited by Guarantee.

2. Application of income

2.1 The income and property of the Company from wherever derived must be applied solely towards promoting the Company as provided in these rules.

2.2 The Company must not distribute, pay or transfer to the Members directly or indirectly by way of dividend, bonus or otherwise any of the property or income of the Company:

2.2.1. nothing shall prevent the payment in good faith of remuneration to any officers or servants of the Company or to any Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business nor prevent the payment of interest at reasonable and proper commercial rates on money borrowed from any Members of the Company or reasonable and proper rent for premises demised or let by any Member of the Company.

2.2.2 a board Member may be paid the remuneration determined by the Company in General Meeting for his or her services as a Board Member of the Company together with all travelling and other expenses properly incurred concerning the Company's business.

2.2.3 if the Company pursues a charitable purpose then in addition to the restriction stated above the Company must not pay fees to its Directors.

2.2.4 if the Company pursues a charitable purpose then no payment to a Member (including a Director) for items referred to in Rule 2.2.1 may be made unless the payment is approved by the Directors.

3. Liability of members

3.1 The liability of the Members is limited.

3.2 Every Member of the Company undertakes to contribute to the property of the Company in the event of it being wound up while he or she is a member or within one year after he or she ceases to be a member for payment of the debts and liabilities of the Company (contracted before he or she ceases to be a member) and of the costs charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding one hundred dollars (\$100.00).

4. Accounts

4.1 True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place of the property credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with these Rules for the time being in force shall be open to the inspection of the members.

4.2 Once at least in every year the accounts of the Company shall be examined by one or more properly qualified Auditor or Auditors who shall report to the members in accordance with the provisions of the Corporations Act.

5. Members

The names, addresses and occupations of the members registering the Company are set out in the Schedule to these Rules.

6. Membership

- 6.1 The persons who register the Company and such other persons as the Board shall admit to membership in accordance with these Rules shall be members of the Company.
- 6.2 If the whole of the funds and other assets of an Unincorporated Association become the absolute property of the Company after its registration then every person who at the date of registration of the Company is a member of the Unincorporated Association and who within 60 days of the date of registration agrees in writing to become a member of the Company shall be admitted by the Board to membership of the Company.
- 6.3 Every member of the Company who prior to agreeing to become a member of the Company has paid a subscription due as a member of the Unincorporated Association shall not be liable to pay any further sum by way of annual subscription to the Company for the period prior to the date that subscription would have expired.

7. Application for membership

- 7.1 Every applicant for membership of the Company (other than the persons who obtained registration of the Company and members of the Unincorporated Association which became the Company) shall be proposed by one and seconded by another member of the Company to both of whom the applicant must be personally known.
- 7.2 The application for membership shall be made in writing signed by the applicant and the proposer and seconder and must be in such form as the Board from time to time prescribes.
- 7.3 At the next meeting of the Board after the receipt of any application for membership such application shall be considered by the Board which must thereupon determine upon the admission or rejection of the applicant. In no case shall the Board be required to give any reason for the rejection of an applicant.
- 7.4 When an applicant has been accepted for membership the Secretary must forthwith send to the applicant written advice of acceptance and a request for payment of the entrance fee and first annual subscription. Upon payment of the entrance fee and first annual subscription the applicant shall become a member of the Company provided nevertheless that if such payment is not made within two calendar months after the date of the advice the Board may in its discretion cancel the acceptance.

8. Fees and subscription

- 8.1 The entrance fee and annual subscription payable by members of the Company shall be such as the Company in general meeting shall from time to time prescribe provided that until the Company shall otherwise resolve the entrance fee shall be \$10.00 and the annual subscription shall be \$10.00.
- 8.2 All annual subscriptions shall become due and payable in advance on the 1st day of July in every year.

9. Cessation of membership

- 9.1 If the subscription of a member shall remain unpaid for a period of two calendar months after it becomes due then the member may after notice of the default shall be sent to the member by the Secretary be deemed to have resigned at the expiration of 14 days from the date of service of the notice.
- 9.2 A member who pays all arrears of subscription and such further fee as may be determined by the Board shall upon payment have his or her membership reinstated.
- 9.3 A member may at any time by giving notice in writing to the Secretary resign his or her membership of the Company but shall continue to be liable for any annual subscription and all arrears due and unpaid at the date of resignation and for all other monies due by him or her to the Company and in addition for any sum not exceeding one hundred dollars (\$100) for which he is liable as a member of the Company.

9.4 If any member shall wilfully refuse or neglect to comply with the provisions of these.

Rules or shall be guilty of any conduct which in the opinion of the Board is prejudicial to the interests of the Company the Board shall have power by resolution to censure, fine, suspend or expel the member from the Company.

PROVIDED that at least two weeks before the meeting of the Board at which such a resolution is passed the member shall have had notice of such meeting and of what is alleged against him or her and of the intended resolution and that he or she shall at such meeting and before the passing of such resolution have had an opportunity of giving orally or in writing any explanation he or she may think fit.

AND PROVIDED FURTHER that any such member may by notice in writing lodged with the Secretary at least twenty-four hours before the time for holding the meeting at which the resolution is to be considered by the Board elect to have the question dealt with by the Company in General Meeting. In that event a General Meeting of the Company shall be called for that purpose and if at the meeting such a resolution be passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the member concerned shall be punished accordingly and in the case of a resolution for expulsion the member shall be expelled.

10. General meetings

10.1 An Annual General Meeting of the Company shall be held in accordance with the provisions of the Law.

10.2 Any three Directors may whenever they think fit convene a General Meeting.

10.3 General Meetings shall also be convened by the Secretary upon the requisition of not less than 5% of the members or as provide in the Act.

10.4 The request must:

10.4.1 be in writing;

10.4.2 state any resolution to be proposed at the General Meeting;

10.4.3 be signed by the members making the request; and

10.4.4 be given to the Company.

10.5 Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

10.6 The Secretary must call the General Meeting within 14 days after the request is given to the Company. The General Meeting must be held not later than 2 months after the request is given to the Company.

11. Calling a general meeting

11.1 At least

11.1.1 28 days notice must be given of a General Meeting at which any election of Directors or other officers is to be held; and

11.1.2 21 days notice must be given of any other General Meeting.

11.2 The Company may convene a General Meeting on shorter notice:

11.2.1 in the case of an Annual General Meeting, if all the members entitled to attend and vote at the Annual General Meeting agree beforehand; and

11.2.2 in any other General Meeting, if at least 95% of the members who are entitled to vote on the resolution agree before.

11.3 At least 21 days notice must be given of a General Meeting at which a resolution will be moved to:

- 11.3.1 remove an auditor;
- 11.3.2 remove a Director; or
- 11.3.3 appoint a Director in place of a Director removed.

Notice of every General Meeting must be given to every member except those members who have not supplied to the Company an address for the giving of notices to them.

11.4 All business shall be special that is transacted at a General Meeting and at an Annual General Meeting with the exception of:

- 11.4.1 the consideration of the account balance sheets;
- 11.4.2 the reports of the Directors and Auditors;
- 11.4.3 the election of office bearers and other Directors in the place of those retiring; and
- 11.4.4 the appointment of the Auditor (if necessary).

11.5 The Company must give its Auditor:

- 11.5.1 notice of a General Meeting in the same way that a member is entitled to receive notice; and
- 11.5.2 any other communications relating to the General Meeting that a member is entitled to receive.

11.6 No other person is entitled to receive notices of General Meetings. A notice of a General Meeting must:

- 11.6.1 set out the place, date and time for the General Meeting (and, if the General Meeting is to be held in two or more places, the technology that will be used to facilitate this);
- 11.6.2 state the general nature of the business of the General Meeting;
- 11.6.3 if a special resolution is to be proposed at the General Meeting, set out an intention to propose the special resolution and state the resolution; and
- 11.6.4 if a member is entitled to appoint a proxy, contain a statement setting out the following information –
 - that the member has right to appoint a proxy; and
 - whether or not the proxy needs to be a member.

11.7 The Company may give the notice of a General Meeting to a member in any of the ways provided in these rules for the service of notices.

11.8 The accidental omission to give notice of a General Meeting to, or the non-receipt of notice of the General Meeting by, any person entitled to receive notice shall not invalidate proceedings of that General Meeting

11.9 The following members may give notice of a resolution that they propose to move at a General Meeting:

- 11.9.1 at least 5% of the members who are entitled to vote on the resolution; or
- 11.9.2 at least 5 members who are entitled to vote at a General Meeting.

11.10 The Notice must:

- 11.10.1 be in writing;
- 11.10.2 set out the wording of the proposed resolution; and

- 11.10.3 be signed by the members proposing to move the resolution.
- 11.11 Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
- 11.12 If the Company has been given notice of a resolution, the resolution is to be considered at the next General Meeting that occurs more than 1 month after the notice is given.
- 11.13 The Company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a General Meeting.
- 11.14 The Company is responsible for the cost of giving members notice of the resolution if the Company receives the notice in time to send it out to members with the notice of a General Meeting.
- 11.15 The members requesting the General Meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving members notice of the resolution if the Company does not receive the member's notice in time to send it out with the notice of a General Meeting.
- 11.16 At a General Meeting the Company may resolve to meet the expenses itself.
- 11.17 The Company need not give notice of the resolution:
- 11.17.1 if it is more than 1,000 words long or defamatory; or
 - 11.17.2 if the members making the request are to bear the expenses of sending the notice out, unless the members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.
- 11.18 Members may request the Company to give to all its members a statement provided by the members making the request about:
- 11.18.1 a resolution that is proposed to be moved at a General Meeting; or
 - 11.18.2 any other matter that may be properly considered at a General Meeting.
- 11.19 The request must be made by at least 5 per cent of the members who are entitled to vote on the resolution.
- 11.20 The request must be:
- 11.20.1 in writing;
 - 11.20.2 signed by the members making the request; and
 - 11.20.3 given to the Company.
- 11.21 Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- 11.22 After receiving the request, the Company must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a General Meeting.
- 11.23 The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to members with the notice of a General Meeting.
- 11.24 The members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of a General Meeting.
- 11.25 At a General Meeting the Company may resolve to meet the expenses itself.

11.26 The Company need not comply with the request:

11.26.1 if it is more than 1,000 words long or defamatory; or

11.26.2 if the members making the request are responsible for the expenses of the distribution, unless the members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution

12. Proceedings at general meetings

12.1 No business shall be transacted at any General Meeting unless a quorum of members is present at the time when the meeting proceeds to business.

12.2 Save as herein otherwise provided five members present in person shall be a quorum.

12.3 For the purpose of this rule “member” includes a person attending as a proxy or as representing a corporation which is a member.

12.4 If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the requisition of members shall be dissolved - in any other case it shall stand adjourned to the same day in the next week at the same time and place or such other day and at such other time and place as the Board may determine.

12.5 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present (being not less than three) shall be a quorum.

12.6 The Chairperson of the Board shall preside as Chairperson at every General Meeting of the Company or if there is no Chairperson or if the Chairperson is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act then the members present shall elect one of their members to be Chairperson of the meeting.

12.7 The Chairperson may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

12.8 When a meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting

12.9 At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded.

12.9.1 by the Chairperson; or

12.9.2 by at least three members present in person or by proxy.

12.10 Unless a poll is demanded a declaration by the Chairperson 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 shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

12.11 The demand for a poll may be withdrawn.

12.12 If a poll is demanded it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken forthwith.

- 12.13 In the case of an equality of votes whether on a show of hands or on a poll the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.
- 12.14 Members shall each have one vote in person or by proxy or by attorney.
- 12.15 A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the protective jurisdiction may vote whether on a show of hands or on a poll:
- 12.15.1 by his or her committee; or
 - 12.15.2 by his or her trustee; or
 - 12.15.3 by his or her administrator; or
 - 12.15.4 by such other person as properly has the management of his or her estate (any such committee, trustee or other person may vote by proxy or attorney).
- 12.16 No member shall be entitled to vote at any general meeting if his or her annual subscription shall be more than one months in arrears at the commencement of the meeting.
- 12.17 For the purposes of this rule an adjourned meeting is a continuation of the meeting not a new meeting.

13. Proxies

- 13.1 The instrument appointing a proxy shall be in writing:
- 13.1.1 under the hand of the appointer or of his or her attorney duly authorised in writing;
 - 13.1.2 the instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll;
 - 13.1.3 a member shall be entitled to instruct his or her proxy to vote in favour of or against any proposed resolutions;
 - 13.1.4 unless otherwise instructed the proxy may vote as he or she thinks fit.
- 13.2 The instrument appointing a proxy may be in any form that makes it clear that a Proxy has been appointed provided that it shall be signed by the member making the appointment and contain at least the following information:
- 13.2.1 the member's name and address;
 - 13.2.2 the Company's name;
 - 13.2.3 the proxy's name and address;
 - 13.2.4 the meeting at which the appointment may be used; and
 - 13.2.5 if the member wishes to make a specific direction to the proxy as to how the proxy must vote on a particular matter then the manner in which the vote must be exercised.
- 13.3 A proxy may be a standing proxy and shall continue until the Company receives notification in writing of the termination of the proxy.
- 13.4 A later appointment revokes an earlier appointment if both appointments can only be validly exercised at the particular meeting.
- 13.5 A proxy shall only be valid for a meeting if before the commencement of the meeting the Company has received the proxy's appointment and if the appointment is signed by the appointer's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- 13.6 The appointment of a proxy, authority or certified copy of the authority may be given to the Company by:
- 13.6.1 delivering the same to the Company's registered office; or

- 13.6.2 faxing the same to the facsimile number at the Company's registered office or sending it to the electronic address at the registered office of the Company or at the place, to the facsimile number or to the electronic address specified for the purpose in the notice of meeting.
- 13.7 An appointment of a proxy shall be of no effect if the Company receives either or both the appointment or authority or certified copy authority at a facsimile number or electronic address and any requirement concerning proxies in the notice of meeting that requires the transmission to be varied in a specified way or the proxy to produce the appointment and authority or certified copy of the authority at the meeting is not complied with.
- 13.8 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote as long as the appointment specified the way a person is to vote on the resolution and the proxy votes that way.
- 13.9 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if prior to the proxy voting:
- 13.9.1 the member having appointed the proxy dies; or
 - 13.9.2 the member having appointed the proxy is mentally incapacitated; or
 - 13.9.3 the member having appointed the proxy revokes the proxy's appointment; or
 - 13.9.4 the member having appointed the proxy revokes the authority under which the proxy was appointed by a third party; or
 - 13.9.5 the member having appointed the proxy transfers the share or shares in respect of which the proxy was given.
- 13.10 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
- 13.10.1 at meetings of the Company; or
 - 13.10.2 at meetings of creditors or debenture holders; or
 - 13.10.3 in relation to any resolution to be passed without a meeting.
- 13.11 The appointment may be for particular meeting or for a particular period of time; or may be a standing appointment.
- 13.12 The appointment may set out any restrictions on the representatives power. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 13.13 A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
- 13.14 Unless otherwise specified in the appointment the representative may exercise on the body corporates behalf all of the powers that the body corporate could exercise at a meeting or in voting on a resolution.

14. The board of directors

- 14.1 The Board of Directors (The Board) shall comprise 9 members who shall serve for a term of 3 years but shall be eligible for re-election.
- 14.2 The office bearers of the Company shall consist of a Chairperson, Vice Chairperson, Secretary and Treasurer all of whom shall be appointed by the Board from amongst the 9 Board members.
- 14.3 The persons named in the Schedule to these rules shall constitute the first Board of Directors.
- 14.3.1 the first named 3 Directors must retire at the commencement of the first Annual General Meeting but shall be eligible for re-election;

14.3.2 the second named 3 Directors must retire at the commencement of the second Annual General Meeting but shall be eligible for re-election; and

14.3.3 the third named 3 Directors must retire at the commencement of the third Annual General Meeting but shall be eligible for re-election.

14.4 The election of Directors shall take place in the following manner:

14.4.1 any two members of the Company shall be at liberty to nominate any other member to serve as a Director;

14.4.2 the nomination which shall be in writing and signed by the member and the proposer and seconder and shall be lodged with the Secretary at least fourteen days before the Annual General Meeting at which the election is to take place;

14.4.3 a list of candidates' names in alphabetical order with the proposers' and seconds' names shall be posted in a conspicuous place in the registered office of the Company for at least seven days immediately preceding the Annual General Meeting;

14.4.4 balloting lists shall be prepared (if necessary) containing the names of the candidates only. The names shall be in alphabetical order. Each member present at the Annual General Meeting shall be entitled to vote for any number of such candidates not exceeding the number of vacancies; and

14.4.5 in case there shall not be a sufficient number of candidates nominated the Board may fill up the remaining vacancy or vacancies.

14.5 The Board (or such Directors as shall hold office at the relevant time) shall have the power at any time and from time to time to appoint any member as a Director either to fill a casual vacancy or as an addition to the existing office-bearers or other Directors but so that the total number of office-bearers and other Directors shall not at any time exceed the number fixed in accordance with these rules. Any Director so appointed shall hold office until the commencement of the Annual General Meeting at which the Director whose place the appointee fills become vacant by application of the rotation created by these Rules but shall be eligible for re-election.

14.6 The Company may by Ordinary resolution of which special notice has been given remove any Director before the expiration of his or her term of office and may by an ordinary resolution appoint another person in his or her stead. The person so appointed shall hold office until the Annual General Meeting at which the Director whose place the appointee fills becomes vacant by application of the rotation of Directors created by these rules but shall be eligible for re-election.

14.7 The position of a person as a Director and that person's office as a Director shall cease and become vacant if he or she:

14.7.1 dies; or

14.7.2 resigns by notice in writing; or

14.7.3 is disqualified from acting as Director as a consequence of any provision of the Act; or

14.7.4 becomes mentally ill or his or her affairs comes under the protective jurisdiction; or

14.7.5 becomes bankrupt or makes an assignment to or composition with his or her creditors.

14.8 No proceedings of the Board shall be invalidated by reason of the fact that a Director takes part in a meeting or votes on a resolution of the Board whilst disqualified unless the other Directors at the meeting knew of or could reasonably have known of the disqualification.

15. Powers and duties of the board

15.1 The Company must be managed by or under the direction of and controlled by the Board.

15.2 The Board has and may exercise any of the functions conferred or imposed on it by or under this Constitution.

- 15.3 Without prejudice to and without limiting the powers conferred by this Constitution, the Board shall have the power to do any of the following:-
- 15.3.1 open and maintain a bank account or bank accounts to be operated by such person or persons whether Directors or not as it shall from time to time determine;
 - 15.3.2 appoint any staff as may be necessary;
 - 15.3.3 employ and superannuate officers and employees;
 - 15.3.4 review staff positions at intervals not exceeding 5 years;
 - 15.3.5 publish and distribute information concerning this Constitution and the regulations to members and other interested persons;
 - 15.3.6 do all such other things that are in the opinion of the Board incidental to or conducive to the attainment of the objects of the Company;
 - 15.3.7 do all things necessary to give effect to the powers contained in this Constitution;
 - 15.3.8 do all such things as may be permitted by the Act.
- 15.4 The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors) for such period and subject to such conditions as they think fit.
- 15.5 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think appropriate and may also authorize the attorney to delegate all or any of the powers, authorities and discretions vested in that person.
- 15.6 All acts done by any meeting of the Board or of a committee of the Board or by any person acting as a Director are valid even though it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as a Director, or that a person was so appointed was disqualified.
- 15.7 The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property or any part thereof and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the Company.
- 15.8 All cheques promissory notes drafts bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed drawn accepted endorsed or otherwise executed as the case may be by any two Directors or in such other manner as the Board from time to time determines.
- 15.9 The Board shall cause minutes to be made:
- 15.9.1 of all appointments of officers and employees; and
 - 15.9.2 of the names of the Directors present at all meetings of the Company and of the Board; and
 - 15.9.3 of all proceedings at all meetings of the Company and of the Board. Such minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next succeeding meeting.

16. Proceedings of the board of directors

- 16.1 The Board may meet together for the dispatch of business adjourn and otherwise regulate its meetings as it thinks fit.
- 16.2 A Director may at any time and the person performing the duties of Secretary to the Board shall on the requisition of a Director convene a meeting of the Board.

- 16.3 Subject to these Rules questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Directors present shall for all purposes be deemed a determination of the Board.
- 16.4 In case of an equality of votes the Chairperson of the meeting shall have a second or casting vote.
- 16.5 The quorum necessary for the transaction of the business of the Board shall be a majority of the total number of Directors or such greater number as may be fixed by the Directors.
- 16.6 The continuing Directors may act notwithstanding any vacancy in the Board.
- 16.7 If and so long as their number is reduced below the number fixed as the quorum the continuing Director or Directors may act for the purpose of increasing the number of Directors to that number or of convening a General Meeting of the Company but for no other purpose.
- 16.8 The Chairperson shall preside as Chairperson at every meeting of the Board.
- 16.9 If there is no Chairperson or if at any meeting he or she is not present within fifteen minutes after the time appointed for holding the meeting or if being present is unwilling to preside the Vice Chairperson shall be Chairperson or if the Vice Chairperson is not present at the meeting then the Directors may choose one of their number to be Chairperson of the meeting.
- 16.10 The Board may delegate any of its powers and or functions (not being duties imposed on the Board as the Directors of the Company by the Law) to one or more committees consisting of such member or members of the Company as the Board thinks fit and:
- 16.10.1 any committee so formed must comply with any regulation that may be given by the Board;
- 16.10.2 subject thereto any shall have the power to co-opt any member or members of the Company; and
- 16.10.3 all members of such committees shall have one vote.
- 16.11 The Board may appoint one or more advisory committees consisting of such Member or Members of the Board and such other member or members of the Company as the Board thinks fit and:
- 16.11.1 such advisory committees shall act in an advisory capacity only;
- 16.11.2 must comply with any regulations that may be given by the Board;
- 16.11.3 shall have power to co-opt any other member or members of the Company;
- 16.11.4 all members of such advisory committees shall have one vote.
- 16.12 Every committee or advisory committee may meet and adjourn as it thinks proper.
- 16.12.1 questions arising at any meeting shall be determined by a majority of votes of the members present; and
- 16.12.2 in the case of an equality of votes the Chairperson shall have a second or casting vote.
- 16.13 All acts done by any meeting of the Board or a committee or by any Director shall not withstanding that it is afterwards discovered that there was some defect in the appointment of the committee or Director or that the Directors or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a Director or committee member.
- 16.14 A resolution in writing signed by all Directors for the time being entitled to received notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more Directors.

17. Seal

- 17.1 Unless the Directors make a determination to the contrary, the Company shall not have a common seal.
- 17.2 A document shall be validly executed and shall be binding upon the Company if it is signed by any 2 Directors.
- 17.3 The Directors may at any time determine that the Company shall have a common seal.
- 17.4 The Directors shall provide for the safe custody of the seal and shall only use the seal by the authority of the Directors or of a committee of the Directors authorised by the Directors to authorise the use of the seal.
- 17.5 The affixing of the seal shall be sufficient and shall bind the Company if it shall be affixed in the presence of one Director who shall sign every instrument to which the seal is affixed and every such instrument shall be counter-signed by another Director.
- 17.6 Directors may affix the seal to or sign any instrument on behalf of the Company notwithstanding that the Directors may be in any way interested in the transaction.

18. Accounts

- 18.1 The Board shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditors report as required by the Law to every member.
- 18.2 The Board shall cause to be made out and laid before each Annual General Meeting a balance sheet and profit and loss account made up to the end of the Company's financial year but in no case shall that date be more than five months before the date of the meeting.
- 18.3 The Board shall from time to time determine at what times and places and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of members provided that all members shall have reasonable opportunity to inspect those records

19. Audit

A properly qualified Auditor or Auditors shall be appointed and his her or their duties regulated in accordance with the Law.

20. Notices

A notice may be given by the Company to any member either:

- 20.1 personally; or
- 20.2 by sending it by post to the member at the member's registered office or the address if any supplied by the member to the Company for giving of notices to the member; or
- 20.3 to any address given by the member to the Company for the delivery of facsimile messages or messages transmitted by electronic or like means.
- 20.4 where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice and to have been effected (except in the case of a notice of a meeting) at the time at which the letter would be delivered in the ordinary course of post.
- 20.5 in the case of a facsimile notice or an electronic notice (except in the case of a notice of meeting) to be effected by properly addressing the facsimile or notice to the electronic address and dispatching the same by the appropriate electronic means and to have been effected four hours after the time of transmission.
- 20.6 any notice by a court of law or otherwise required or allowed to be given by the Company to members or any of them by advertisement shall be sufficiently advertised if advertised once in one daily newspaper circulating in the State or Territory capital city and metropolitan area of the State or Territory in which a majority of the members have a registered address and in case of joint holders shall be the address of the joint holder who is first named on the Register of members.

21. Indemnity

- 21.1 Subject to the provisions of the Act every Director Secretary Manager or officer of the Company or any person employed by the Company as Auditor shall be indemnified out of the funds of the Company against all liability incurred by such person as a Director Manager Officer or Auditor in defending any proceedings whether civil or criminal in which judgement is given in the persons favour or in which the person is acquitted or in connection with any application under the Act in which relief is granted to the person by a court.
- 21.2 Subject to the Act no Director or Auditor of the Company shall be liable for the acts receipts neglect or defaults of any other Director or for joining in any receipt or other act for conformity or for any loss or expense happening to the Company through the inefficiency or deficiency of title to any property acquired by order of the Directors or on behalf of the Company or for the insufficiency or deficiency of any security in or upon which any of the monies of the Company shall be invested or for any loss or damage arising from the bankruptcy insolvency or tortious act of any person with whom any monies securities or effects shall be deposited or for any loss occasioned by any error of judgement omission default or oversight on the persons part or for any other loss damage or misfortune whatsoever which shall happen in relation to those things unless the same shall happen through the
- 21.3 To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company against liability incurred by the person in his or her capacity as an officer of the Company provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of the Act.

22. Mediation

In the event that a dispute shall arise between the Directors or between the Directors and a member or between the members or between the Company and a member concerning the affairs of the Company, the parties must attempt to resolve the dispute by mediation as follows:

- 22.1 Either party may start mediation by serving a mediation notice on the other.
- 22.2 The notice must state that a dispute has arisen and identify what is in dispute.
- 22.3 The parties must jointly appoint a Mediator. If the parties fail to agree on the appointment within 7 days of service of the notice, a Mediator will be appointed by the Secretary for the time being of the Law Institute or Law Society (as the case requires) of the State or Territory in which the Company has its registered office upon the application of either party.
- 22.4 The parties must observe the instructions of the Mediator about the conduct of the mediation execute any written agreements that the Mediator may reasonably ask them to execute and make a genuine and determined effort to resolve the dispute.
- 22.5 If the dispute is not resolved within 14 days after the Mediator is appointed or any other time that the parties are agreed to in writing, the mediation ceases.
- 22.6 The Directors and the members must as far as reasonably practicable and provided to do so is not in breach of the Law maintain the status quo concerning the affairs of the Company whilst the mediation process is taking place.
- 22.7 No request for arbitration may be made nor any application made to a court of law except in the case that the status quo concerning the affairs of the Company is not maintained until such time as the parties have attending a mediation meeting.
- 22.8 Each party must pay an equal share of the cost of mediation to the Mediator.
- 22.9 If the dispute is resolved, each party must sign the terms of the agreement and the terms are binding on the parties.

22.10 The mediation procedure is confidential and written statements prepared for the Mediator or for a party and any discussions between the parties and between the parties and the Mediator before or during the mediation procedure cannot be used in any legal proceedings. The Mediator shall destroy any notes made during the mediation at the end of the mediation.

23. Chief executive officer

23.1 A Chief Executive Officer may be employed by the Board for such term and upon such conditions as the Board may from time to time determine.

23.2 The Chief Executive Officer has and may exercise such functions as are conferred or imposed on the Chief Executive Officer by the Board

23.3 The Board may, from time to time, appoint a person to act as Chief Executive Officer during the illness or absence of the Chief Executive Officer and the person, while so acting, has and may exercise all of the functions of the Chief Executive Officer and is taken to be Chief Executive Officer.

23.4 The Chief Executive Officer may delegate to a person the exercise of:

23.4.1 any of the functions of the Chief Executive Officer under this Constitution other than this power of delegation; or

23.4.2 any functions delegated to the Chief Executive Officer by the Board, unless the Board otherwise provides in its instrument of delegation .

23.5 The Chief Executive Officer shall have power to enter into Contracts binding the Company up to a value that shall from time to time be determined by the Board. In the absence of a determination the value shall be unlimited.

24. By-laws and regulations

24.1 The Company may at a General Meeting pass a resolution (not being a Special Resolution) making, altering or revoking a by-law or regulation dealing with:

24.1.1 the rights or obligations of members; or

24.1.2 other matters –which are not specified in this Constitution or the Act.

24.2 A by-law or regulation which, directly or indirectly, is inconsistent with a provision of this Constitution or the Act is invalid.

24.3 A copy of every alteration or addition made to the by-laws or regulations is to be sent to every member at their last known address.

24.4 The omission, unless wilfully made, to send a copy or the non-receipt of it does not invalidate the alteration or addition.

24.5 The Board is the sole authority for interpreting the by-laws and regulations.

25. Dissolution and winding up

25.1 If upon the dissolution or winding-up of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatever, the same shall not be paid to or distributed amongst the members but shall be given or transferred to some other fund, authority or institution:

25.1.1 having objects similar to the objects of the Company;

25.1.2 which prohibits the distribution of its income and property to a similar extent to that imposed on the Company by this Constitution; and

25.1.3 which is approved by the Commissioner of Taxation as a fund, authority or institution contemplated above.

25.2 If just before the winding-up of the Company, the Company is an entity to which income tax deductible gifts can be made or a prior winding-up of the Separate Gift Fund or upon the Company ceasing to be endorsed as a deductible gift recipient pursuant to the Income Tax Assessment Act 1997 (if it has been) whichever event shall occur first in time any surplus assets of the Company or the separate Gift Fund as the case may require, remaining after the payment of the Company's liabilities shall be transferred to another fund, authority or institution in Australia which have similar objects to the Company and which is body that may receive tax deductible gifts under the Income Tax Assessment Act 1997. Where gifts to the Company are deductible only if among other things the conditions set out in the relevant table item of the Income Tax Assessment Act 1997 are satisfied a transfer under this rule must be made

26. Separate gift fund

26.1 If the purposes of the Company include a charitable purpose permitting the Company to be an entity to which tax deductible gifts can be made then the Company must set up, establish and maintain for that purpose a Separate Gift Fund into which all gifts of money or property gifted for the charitable purpose are to be made and into which any money received by the Company by reason of such gifts is to be credited.

26.2 No money or property other than the property or money gifted to the Company for the charitable purpose and in particular (charitable gifts) may be paid into the Separate Gift Fund.

27. Inconsistency with corporations act

27.1 In the event that any of these Rules shall be inconsistent with or in breach of any of the provisions of the Act then these Rules shall be read down to the extent that they shall comply with the Law and any Rule that is inconsistent with or in breach of the provisions of the Law shall be deemed to be struck out and shall not form part of these Rules.

27.2 In the event that the provisions of the Act permits an act to be done, a decision to be made or a meeting to be held in a way that is more convenient for the Company or the Directors or is more favourable to the members or the Directors than as required or permitted by these Rules then the Directors may but shall not be obliged so to do (unless the Law so requires) to make the decision, take the action, give the notice or hold the meeting or do the particular thing as is permitted and in the time and in the manner permitted by the Law.

28. Liquor control laws

28.1 So long as the Company holds a club or similar licence under any relevant Liquor Control Law the Secretary must within 14 days from an alteration of this Constitution forward to the Chief Executive Officer of the Liquor Licensing Authority or other proper person a certified copy of the alteration and any other material as may be required by any relevant regulation. Any alteration to these rules is not effective until 28 days after the certified copy is given to the Chief Executive Officer (or other proper person).

28.2 No payment of any amount may be made to the Secretary, or any officer, manager or employee of the Company as commission or allowance from the receipts of the Company for the sale or disposal of liquor.

28.3 A member may admit visitors to the licensed premises on the terms and subject to any relevant regulation and to the restrictions the Board from time to time determines.

28.4 No visitor to the licensed premises may be supplied with liquor unless the visitor is a guest in the Company of a member.

28.5 A member admitting a visitor to the licensed premises must immediately enter the visitor's name and address in a book to be kept for that purpose at the principal entrance to the licensed premises.

29. Interpretation

29.1 In this Constitution unless there be something in the subject or context inconsistent then the following words and expressions shall have the following meanings:-© 2011 Australian Institute of Company Directorscompanydirectors.com.au

“The Act” shall mean the Corporations Act in force from time to time and any reference to a section of the Act or a section of the law shall mean a reference to the Corporations Act and the particular section of the Corporations Act.

“The Company” shall mean the Company named in the Schedule.

“Directors” and “Board” shall mean all or any number of the Directors for the time being of the Company acting in accordance of these Rules.

“Member” shall mean any person for the time being registered as a member of the Company.

“Office ” or “Registered Office” shall mean the registered office for the time being of the Company.

“Paid” shall mean paid or credited as paid.

“The Register” shall mean the register of members charges and other information required by the Act.

“Registered Holder” shall mean any person for the time being registered in the register as the holder of any share of the Company.

“These Rules” and “Rules” shall mean the Rules forming part of the Company’s Constitution as originally adopted or as from time to time added to or amended.

“The Seal” or “The Common Seal” shall mean the common seal of the Company (if any).

“The Secretary” shall mean and include the Secretary and any assistant or acting Secretary and any other person for the time being appointed to perform whether alone or in addition to any other person or persons the duties of a Secretary of the Company.

“Signature” shall mean the impression of a mark by hand facsimile mechanical electronic or other means which is properly authorised by the person purported to have signed the document, signed shall mean the result of a signature produced by any means defined above.

“Special Resolution” shall have the meaning assigned to that expression by the Act.

“In Writing” and “Written” shall include printing and lithography and other modes of reproducing or representing words in a visible form and shall include electronic means provided the same can be recorded in a permanent form.

“Words” or “Expressions” contained in these Rules shall be interpreted in accordance with the provisions of the law as in force at the date of which such interpretation is required.

29.2 In these Rules unless a different intention appears:

29.2.1 words importing a singular number only shall include plural number and vice versa;

29.2.2 words importing one gender only shall include the other gender;

29.2.3 words importing persons shall include companies and corporations.

29.3 Any heading or marginal note inserted in these Rules is included for convenience only and shall not affect the construction of these Rules.

30. Adoption and amendments of constitution

30.1 The members may amend or repeal this Constitution, or a provision of this Constitution, by special resolution passed at either an Annual General Meeting or at an Extraordinary General Meeting.

30.2 A notice of the proposed alterations must be provided by properly addressing, prepaying and posting a letter to every member at least 30 days prior to the date of the meeting.

30.3 A special resolution amending, adopting or repealing this Constitution takes effect:

30.3.1 if no later date is specified in the resolution, then on the date on which the resolution is passed; or

30.3.2 on a later date specified in, or determined in accordance with, the resolution.

30.4 The Company must send a copy of this Constitution (as amended from time to time) to a member within 7 days if the member:

30.4.1 asks the Company, in writing for the copy; and

30.4.2 pays any fee (up to the prescribed amount) required by the Company.

Schedule 1

Part 1

1. The Name of the Company is:
2. The Unincorporated Association is:
3. The ongoing action (if any) is:
4. The Particular interests that the Company proposes to promote are:

Part 2

5. Names and addresses of the members registering the Company are:

Disclaimer

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