

**Corporations Act 2001 (Cth)**  
**Public Company Limited by Guarantee**

# Constitution of New South Wales State Emergency Service Volunteers Association ACN 163 753 535

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## Constitution

### Preliminary

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#### 1. Definitions

In this Constitution:

**Advisory Committee** means an advisory committee established by the Board under Clause 59.

**Attending Member** means in relation to a meeting of Voting Members, the Voting Members present at the place of the meeting, whether represented in person or by a proxy.

**Board** means the Directors of the Company from time to time.

**Business Day** means a day except a Saturday, Sunday or public holiday in New South Wales.

**Commissioner of Taxation** means the Commissioner of Taxation as defined in the Income Tax Act.

**Company** means New South Wales State Emergency Service Volunteers Association (ACN 163 753 535).

**Concurrent Voting Model** means a voting system for the appointment to the position of an Officer under which:

- (a) Each Director may cast a vote in favour of not more than one nominee;
- (b) Each Director may cast a vote against any number of nominees; and
- (c) The nominee to be appointed must have more votes in favour than against, and if there more than one such nominee, the nominee appointed will be the person with the most votes in favour.

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

**Director** means a person who is, for the time being, a director of the Company including, where appropriate, an alternate director of the Company.

**DGR** means a deductible gift recipient within the meaning of section 30-227 of ITAA 97.

**Elected Director** means a Director elected in accordance with Clause 41.

**Eligible President** means a person who satisfies each of the following requirements:

- (a) Who is familiar with NSW SES arrangements (for example, through being or having been an NSW SES Volunteer) and ideally has previously served as a Director or a director of a predecessor entity to the Company;
- (b) Who does not hold an Inconsistent Office;
- (c) Who may have previous chairperson experience or knowledge of the requirements of a chairperson; and
- (d) Whose nomination as proposed President is approved by the Board.

**Fee** means a fee or levy referred to in Clause 15(a).

**Fund Account** has the meaning in Clause 73(d).

**Gift Fund** means a fund that is maintained in accordance with section 30-130 of ITAA 97.

**Honorary Life Member** means an individual who has been granted Honorary Life Membership status.

**Honorary Life Membership** means membership of the Company granted by the Board in accordance with Clause 66.

**Income Tax Act** means, as the context requires, the Income Tax Assessment Act 1936 (Cth), the ITAA 97 and the Taxation Administration Act 1953 (Cth) as amended.

**Inconsistent Office** means a directorship or senior management position in, or consultancy or similar arrangement with, a company or other legal entity that represents or is a supplier to the Company whereby appointment would be seen as being a conflict of interest by way of receiving fees or benefits from such an association.

**Initial Directors** means those individuals proposed and named as Directors in the application to register the Company.

**ITAA 97** means the Income Tax Assessment Act 1997 (Cth).

**Legal Costs** of a person means legal costs calculated on a solicitor-and-client basis 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.

**Liability** of a person means any liability including negligence (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 a result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

**Managing Director** means the Director appointed under Clause 50.

**Manuals, Policies and Procedures** means all manuals, policies, bulletins, directives, guidelines or similar documents in any form, or made available electronically or by any other medium, by the Company in any way relating to the performance, obligations, operation or management of the Company as advised, updated and replaced from time to time and whether issued before or after the commencement of this Constitution.

**Member** means:

- (a) A NSW SES Volunteer or Honorary Life Member who is accepted by the Board as a member in accordance with the Member Regulations; or
- (b) Any other person as appointed by the Board in its sole discretion.

**Member Regulations** means the NSW State Emergency Service Volunteers Association Regulations relating to the application for and acceptance of Members (or equivalent document, by whatever name called).

**Notice** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**NSW SES** means the NSW State Emergency Service.

**NSW SES VA Welfare Fund** means the Gift Fund and public fund established and maintained under Clause 72.

**NSW SES VA Welfare Fund Committee** means the committee established in accordance with Clause 75.

**NSW SES Volunteer** means a volunteer member of the NSW SES.

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

**Officer** means those persons appointed under Clauses 47, 48 and 49.

**Personal Representative** means the legal personal representative, executor or administrator of the estate of a deceased person.

**Preferential Voting System** means a voting system under which:

- (a) Voters are required to place the number "1" against the candidate of their choice, known as their "first preference";
- (b) Voters are then required to place subsequent numbers ("2", "3", etc.) against the other candidates listed on the ballot paper in order of preference;
- (c) The counting of first preference votes, also known as the "primary vote", takes place first. If no candidate secures an absolute majority of primary votes, then the candidate with the least number of votes is "eliminated" from the count;
- (d) The ballot papers of the eliminated candidate are examined and re-allocated amongst the remaining candidates according to the "second preference" votes (those with the number "2");
- (e) If no candidate has then secured an absolute majority of the received vote after the allocation of preferences, then the next candidate with the least number of primary votes is eliminated from the count. This preference allocation continues until there is a candidate with an absolute majority of the received votes. Where a second preference is expressed for a candidate who has already been eliminated, the voter's third or subsequent preferences are used.

**President** means the Director appointed under Clause 47 to preside at Board meetings for the time being.

**Principal Purpose** means the principal purpose of the NSW SES VA Welfare Fund as set out in Clause 72(b).

**Register** means the register of Voting Members kept by the Company pursuant to the Corporations Act and, where appropriate, includes any branch register.

**Regulation** means a regulation that is made in accordance with Clause 54(d) from time to time.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Officer** means a person who is, or has been, a Director or Officer.

**Scholarship Fund** means the Gift Fund and public fund established and maintained under Clause 76.

**Scholarship Fund Account** has the meaning in Clause 77(d).

**Scholarship Fund Committee** means the committee established in accordance with Clause 79.

**Scholarship Fund Principal Purpose** has the meaning in Clause 76(b).

**Scholarship Fund Terms of Reference** means the terms of reference for the NSW SES VA President's Scholarship Fund Committee as approved by Board from time to time.

**Seal** means, if the Company has one, the common seal of the Company.

**SES Unit** has the meaning given in section 3 of the State Emergency Service Act 1989 (NSW).

**Termination Event** means the deregistration or other dissolution of the Voting Member.

**Terms of Reference** means the terms of reference for the NSW SES Welfare Fund Committee as approved by Board from time to time.

**Voting Member** means a person whose name is entered in the Register as a voting member of the Company.

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## 2. Interpretation

Unless the context indicates a contrary intention, in this Constitution:

- (a) Headings are for convenience only and do not affect interpretation;
- (b) A word importing the singular includes the plural (and vice versa);
- (c) A word indicating a gender includes every other gender;
- (d) 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;
- (e) The words "includes" or "excludes" in any form is not a word of limitation;
- (f) A reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (g) 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;
- (h) A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this Constitution;
- (i) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (j) A reference to a Clause, part, schedule or attachment is a reference to a Clause, part, schedule or attachment of or to this Constitution;
- (k) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority;
- (l) A reference to 'dollars' or '\$' means Australian dollars;



- (m) A reference to a time of day means that time of day in the place where the Office is located;
- (n) Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day;
- (o) A term of this Constitution which has the effect of requiring anything to be done on or by a date which is not a Business day must be interpreted as if it required it to be done on or by the next Business day.

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### **3. Application of Corporations Act**

- (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;
  - (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.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.

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### **4. Enforcement and Constitutional Changes**

- (a) Each Director and Voting Member is bound by the terms of this Constitution.
- (b) Each Director and Voting Member submits to the non-exclusive jurisdiction of the courts of New South Wales, 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.
- (c) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to 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;
  - (ii) The legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.
- (d) Resolutions for amendment(s) to this Constitution are special resolutions and can only be passed by at least 75% of the votes cast by Voting Members entitled to vote on the special resolution, at a meeting of Voting Members following not less than 21 days' notice, albeit that such changes can be effective immediately from the date of that meeting, or as directed by the Board.

### **Nature of Company and Objects**

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#### **5. Nature of Company**

The Company is a public company limited by guarantee.

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## 6. Objects of the Company

- (a) The objects of the Company are:
  - (i) Provide a means for the consolidation and representation of the views and concerns of NSW SES Volunteers via such mechanisms as may be appropriate;
  - (ii) Provide tangible benefits to NSW SES Volunteers, plus other beneficiaries as directed by the Board, from time to time;
  - (iii) Provide Public Education.
- (b) In order to pursue the above objects, the Company will:
  - (i) Co-ordinate and administer matters referred to it by its Members, Voting Members, the NSW SES or other appropriate authorities.
  - (ii) Facilitate and ensure improved communications between Members, Voting Members, the NSW SES and other appropriate authorities.
  - (iii) Consider and as thought appropriate facilitate and co-ordinate the continued education of Members and Voting Members in relation to all Company matters.
  - (iv) Seek to raise money to further the aims of the Company and secure sufficient funds for the purposes of the Company.
  - (v) Receive any funds and distribute these funds in a manner that best attains the objects of the Company.
  - (vi) Establish and maintain a Gift Fund for the Principal Purpose of the NSW SES VA Welfare Fund.
  - (vii) Establish and maintain a Gift Fund for the Scholarship Fund Principal Purpose of the NSW SES VA Scholarship Fund.
  - (viii) Do all such things as are incidental, convenient or conducive to the attainment of all or any of the above.

## Income and Property

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## 7. Application of Income and Property

- (a) Subject to Clauses 7(b), 7(c), 74 and 78, 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 6 and no portion of it may be paid or transferred, directly or indirectly, to any Voting Member whether by way of dividend, bonus or otherwise.
- (b) Subject to Clauses 73 and 77, nothing in Clause 7(a) prevents the Company making any payment in good faith of:
  - (i) Reasonable and proper remuneration to any Voting 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 Voting 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 Voting Member for premises leased or licensed by any Voting Member to the Company;
  - (iv) Money to any Voting 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 Voting Member at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Voting Member;
  - (vi) The provision of scholarships or grants to a NSW SES Volunteer for educational or training purposes relative to the NSW SES or Company activities;
  - (vii) The provision of development grants to SES Units;
  - (viii) The employment of persons for the purpose of pursuing the Objects of this Constitution;
  - (ix) An amount pursuant to Clause 84.
- (c) The Company must not pay fees to or on behalf of Officers but, subject to Clauses 73 and 77, the Company may make payments to an Officer, in good faith for:
- (i) The payment or reimbursement of out-of-pocket expenses reasonably incurred by an Officer in the performance of any duty as an Officer of the Company where that payment or reimbursement has been approved by the Board;
  - (ii) Money to any Officer, 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;
  - (iii) Any salary or wage due to the Officer as an employee of the Company where the terms of employment have been approved by the Board;
  - (iv) An insurance premium in respect of a contract insuring an Officer for a liability incurred as an Officer of the Company where the Board has approved the payment of the premium;
  - (v) Any payment pursuant to Clause 53(a), 53(c) or 53(d) or a payment pursuant to any agreement or deed referred to in Clause 53(e).

## Liability of Voting Members and Guarantee on Winding Up

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### 8. Extent of Liability

- (a) The liability of the Voting Members is limited. Each Voting Member undertakes to contribute an amount not exceeding \$2.00 to the assets of the Company if the Company is wound up at a time when that person is a Voting Member, or within one year of the time that person ceased to be a Voting Member, for:
  - (i) Payment of the Company's debts and liabilities contracted before that person ceased to be a Voting Member;
  - (ii) Payment of the costs, charges and expenses of winding up the Company;
  - (iii) Adjustment of the rights of the contributories among themselves.

### Voting Members

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### 9. Voting Members

- (a) The Voting Members are the persons who were specified in the application to register the Company with their consent as a proposed voting member of the Company and such other persons as the Company admits to voting membership in accordance with this Constitution.
- (b) To be eligible for voting membership an individual must be:
  - (i) An Area Representative within the meaning of Clause 85;
  - (ii) a member of an SES Unit; or
  - (iii) A Director.
- (c) Each applicant to become a Voting Member must sign and deliver to the Company an application in the form which the Board determines, and pay any initial fee which the Board determines.
- (d) The Board determines in their absolute discretion whether an applicant may become a Voting Member. The Board is not required to give any reason for the rejection of any application to become a Voting Member.
- (e) Without limiting the Board's discretion in Clause 9(d), the Company may appoint a minimum number of Voting Members equal to 20% of the number of SES Units from time to time.

### 10. Rights and Obligations

- (a) Unless this Constitution provides otherwise, all Voting Members have the same rights.
- (b) Subject to this Constitution, each Voting Member has the right to receive notices of and to attend and be heard at any meeting of Voting Members.
- (c) Each Voting Member must pay any annual subscription fee in accordance with Clause 15 in the manner, at the time and at the place specified in the notice of the fee.

- (d) Each Voting Member must otherwise comply with the provisions of this Constitution.
- (e) The rights, privileges and benefits of being a Voting Member are personal and not transferable whether by operation of law or otherwise.

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## **11. Register**

- (a) A register of Voting Members must be kept in accordance with the Corporations Act.
- (b) The following details must be entered in the Register in respect of each Voting Member:
  - (i) The full name of the Voting Member;
  - (ii) The residential address of the Voting Member;
  - (iii) The date on which the entry of the Voting Member's name in the Register is made.
- (c) The Register must also show the following information, which may be kept separately from the rest of the Register:
  - (i) The name and details of each person who stopped being a Voting Member within the last 7 years;
  - (ii) The date on which each such person stopped being a Voting Member.
- (d) The Company may also keep further registers recording other information about Voting Members that is not required to be kept under the Corporations Act.
- (e) The following details may be entered in a register referred to in Clause 11(d):
  - (i) The telephone number, facsimile number and email address (as applicable) of the Voting Member;
  - (ii) The SES Unit applicable to the Voting Member;
  - (iii) The date of last payment of the Voting Member's annual subscription (if applicable);
  - (iv) Such other information as the Board may require.
- (f) Each Voting Member must notify the Company in writing of any change in that person's name, address, telephone or facsimile number or email address within one month after the change.

### **Cessation of Voting Membership**

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## **12. Resignation or Cessation of a Voting Member**

- (a) Subject to Clause 12(b), a Voting Member may at any time resign as a voting member of the Company by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Voting Member takes effect immediately on the giving of that notice to the Company.
- (b) If there is only one Voting Member and the Voting Member gives proper notice of resignation or on the same day all of the Voting Members give proper notice of resignation, the notice or notices will be ineffective and the Voting Member or

Voting Members cannot resign until either another person is appointed as a Voting Member or the Company is wound up.

- (c) A Voting Member ceases to be a Voting Member of the Company and the Company must remove the Voting Member's name from the Register, if the Voting Member:
- (i) Resigns in accordance with Clause 12(a);
  - (ii) Ceases to meet the criteria for eligibility as a Voting Member set out in Clause 9(b);
  - (iii) Dies;
  - (iv) Becomes bankrupt;
  - (v) Becomes of unsound mind;
  - (vi) Has property liable to be dealt with pursuant to a law about mental health.
- (d) The resignation of a Voting Member does not limit the Voting Member's liability under this Constitution.

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### **13. Expulsion of a Voting Member**

- (a) Subject to Clause 13(b), if:
- (i) A Voting Member is in breach of a provision of this Constitution; or
  - (ii) Any act or omission of a Voting Member is, in the opinion of the Board, unbecoming of a Voting Member, or prejudicial to the interests or reputation of the Company,
- the Company may expel, terminate or suspend the Voting Member by a resolution of the Board and remove the Voting Member's name from the Register.
- (b) The Company must not expel a Voting Member pursuant to Clause 13(a) unless:
- (i) At least 5 Business Days written notice has been given to the Voting Member stating the date, time and place at which the question of expulsion, termination or suspension of that Voting Member is to be considered by the Board, and the nature of alleged event giving rise to the expulsion, termination or suspension; and
  - (ii) The affected Voting Member is given the opportunity of explaining to the Board, orally or in writing, why the Voting Member should not be expelled, terminated or suspended.

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### **14. Effect of Cessation**

- (a) A person who ceases to be a Voting 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 Voting 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 pursuant to this Clause 14.

## **Fees and Other Payments**

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### **15. Annual Subscription**

- (a) The Company may by resolution of the Board require the payment of an annual subscription fee payable by a Voting Member, on any terms and at any times as the Board resolves in respect of each individual Voting Member. For the avoidance of doubt, the annual subscription fee payable by a Voting Member:
  - (i) Will not in the ordinary course be disclosed to other Voting Members;
  - (ii) May vary from year to year;
  - (iii) May be different to the annual subscription fee payable by another Voting Member and may be payable at different times; or
  - (iv) May be nil.
- (b) The Company must give notice of annual subscription fees to the applicable Voting Member who are required to pay the fees at least 10 Business Days before the due date for payment. The notice must specify the amount of the fee, the time or times and any place of payment and any other information as the Board resolves.
- (c) The non-receipt of a notice of a fee by, or the accidental omission to give notice of a fee to, any Voting Member does not invalidate the fee.

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### **16. Failure to Pay Annual Subscription and/or Other Amounts**

- (a) A Voting Member ceases to be entitled to any of the rights or privileges of voting membership if any annual subscription payable by the Voting Member in accordance with Clause 15 remains unpaid for two months after it becomes payable and a notice of default is given to the Voting Member pursuant to a resolution of the Board. However, the rights or privileges of voting membership may be reinstated on payment of all arrears if the Board (in its absolute discretion) so resolves.
- (b) If a Voting Member has not paid all arrears of annual subscriptions or other arrears payable by the Voting Member in accordance with Clause 16(a) or, if paid, the Voting Member's rights and privileges are not reinstated by the Board in accordance with Clause 16(a), each of the following applies in respect of that Voting Member:
  - (i) The Voting Member remains liable for all the obligations and liabilities of voting membership for six months after the date of notification under Clause 16(a);
  - (ii) The Voting Member ceases to be a Voting Member and the Voting Member's name must be removed from the Register at the end of the six month period. Despite that cessation of voting membership, the former Voting Member will remain liable for all amounts it owes to the Company that remain unpaid as at the date of cessation of membership.

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### **17. Company Payments**

- (a) A Voting Member or the Personal Representative of a deceased Voting Member must pay to the Company on written demand an amount equal to all payments that

the Company makes to a government or taxation authority in respect of the Voting Member or the death of the Voting Member, where the Company is either:

- (i) Obligated by law to make the relevant payment; or
  - (ii) Advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxation authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to notify a Voting Member in advance of its intention to make a payment pursuant to Clause 17(a).
  - (c) An amount payable by a Voting Member to the Company pursuant to Clause 17(a) is treated for the purposes of this Constitution as if it is a Fee properly made by the Board of which notice has been given on the date on which the written demand is given by the Company to the Voting Member or the Personal Representative of a deceased Member.
  - (d) Nothing in this Clause 17 affects any right or remedy which any law confers on the Company.

## **Volunteer Association Representatives**

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### **18. Appointment of Volunteer Association Representatives**

- (a) The Board may, from time to time, appoint a member of an SES Unit as a Volunteer Association Representative.
- (b) If the Board makes an appointment under Clause 18(a), the number of Volunteer Association Representative from time to time must be not less than 5.
- (c) A Voting Member appointed as a Volunteer Association Representative may resign from that role by giving notice in writing to the Board.

### **19. Role of Volunteer Association Representatives**

- (a) The Board may, from time to time, determine the role of a Volunteer Association Representative, including the activities in which a Volunteer Association Representative may participate.
- (b) A determination of the role of a Volunteer Association Representative may be made for any period and on any terms (including the power to delegate) as the Board resolves.
- (c) The Board may revoke or vary the terms of the role of a Volunteer Association Representative.

## **Proceedings of Meetings of Voting Members (Including AGM)**

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### **20. Written Resolutions of Voting Members**

- (a) While the Company has only one Voting Member, the Company may pass a resolution by that Voting Member signing a record in writing of that resolution.
- (b) A resolution in writing signed by all Voting Members entitled to vote on the resolution is to be treated as a determination of the Voting Members passed at a meeting of the Voting Members duly convened and held.



- (c) A resolution in writing may consist of several documents in like form, each signed by one or more Voting Members and if so signed it takes effect on the latest date on which a Voting Member signs one of the documents.
- (d) If a resolution in writing is signed by a proxy of a Voting Member, it must not also be signed by the appointing Voting Member and vice versa.
- (e) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Voting Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

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## **21. Calling Meetings of Voting Members**

- (a) The Company may by resolution of the Board call a meeting of Voting Members to be held at the time and place (including 2 or more venues using technology which gives Attending Members as a whole a reasonable opportunity to participate) and in the manner that the Board resolves.
- (b) No Voting Member may call or arrange to hold a meeting of Voting Members except where permitted by the Corporations Act.

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## **22. Notice of Meetings of Voting Members**

- (a) Where the Company has called a meeting of Voting Members, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- (b) The notice of a meeting of Voting Members must specify the place, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.
- (c) A person may waive notice of any meeting of Voting Members by written notice to the Company.
- (d) A person who has not duly received notice of a meeting of Voting Members may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- (e) A person's attendance at a meeting of Voting Members waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- (f) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Voting Members is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.

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## **23. Cancellation of Meeting of Voting Members**

- (a) The Board may cancel a meeting of Voting Members, other than a meeting of Voting Members which the Board is required to convene and hold under the Corporations Act.

- (b) The Board may cancel a meeting of Voting Members if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in notice of meeting.

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## **24. Business of Meetings of Voting Members**

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

- (a) Any resolution (except in the form set out in the notice of meeting given pursuant to Clause 22(a)); or
- (b) Any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Voting Members to inspect or obtain.

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## **25. Quorum of Meetings of Voting Members**

- (a) No business may be transacted at a meeting of Voting Members except, subject to Clause 26, the election of the chairperson of the meeting unless a quorum for a meeting of Members is present at the time when the meeting commences.
- (b) Except as otherwise set out in this Constitution a quorum for a meeting of Voting Members shall be equal to 10% of Voting Members entitled to vote at the meeting. A proxy of a Voting Member will be counted towards the numbers required to determine a quorum for a meeting of Voting Members if that Voting Member does not attend the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Voting Members, the meeting is dissolved unless the chairperson of the meeting or the Board adjourn the meeting to a date, time and place determined by that chairperson of the meeting 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 Voting Members, the meeting is dissolved.

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## **26. Chairperson of Meetings of Voting Members**

- (a) Subject to Clauses 26(b), 26(c) and 26(d) the President of the Board must chair each meeting of Voting Members.
- (b) If at a meeting of Voting Members:
  - (i) There is no President; or
  - (ii) The President is not present within 15 minutes after the time appointed for the commencement of a meeting of Voting Members or is not willing to chair all or part of the meeting,the Vice President shall assume the position of Chairperson for the term of the meeting.
- (c) Subject to Clause 26(b), if at a meeting of Voting Members:
  - (i) There is no Vice President; or

- (ii) The Vice President is not present within 15 minutes after the time appointed for the commencement of a meeting of Voting Members or is not willing to chair all or part of the meeting,

the Directors who are or will be present at the meeting 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.

- (d) The President (or in accordance with Clause 26(b) the Vice President) may, for any item of business at a meeting of Voting Members or for any part of that meeting, vacate the chair in favour of another person nominated by him or her (Acting Chair). Where an instrument of proxy appoints the President as proxy for part of proceedings for which an Acting Chair has been nominated, the instrument of proxy is taken to be in favour of the Acting Chair for the relevant part of the proceedings.

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## **27. Conduct of Meetings of Voting Members**

- (a) Subject to the Corporations Act, the chairperson of a meeting of Voting 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 Voting 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 Voting 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 Voting Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Voting 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) Subject to the terms of this Constitution regarding adjournment of meetings, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of a meeting of Voting Members is final and no motion of dissent from a ruling of the chairperson may be accepted.
- (g) The chairperson of a meeting of Voting 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 pursuant to the Corporations Act without being referred to in the notice of meeting.
- (h) The chairperson of a meeting of Voting Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
  - (i) Attends the meeting while under the influence of any kind of drug, or using or consuming any drug at the meeting, including any alcoholic substance;
  - (ii) Uses offensive or abusive language which is directed to any person, object or thing;
  - (iii) In the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;

- (iv) Has any audio or visual recording or broadcasting device;
  - (v) Has a placard or banner;
  - (vi) Has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - (vii) Behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - (viii) Refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
  - (ix) Is not entitled pursuant to the Corporations Act or this Constitution to attend the meeting;
  - (x) Conducts themselves in an inappropriate manner, as determined at the sole discretion of the chairperson, and not limited to the actions and behaviours stated within this Clause 27.
- (i) If the chairperson of a meeting of Voting 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.
  - (j) The chairperson of a meeting of Voting Members may delegate any power conferred by this Clause 27 to any person.
  - (k) Nothing contained in this Clause 27 limits the powers conferred by law on the chairperson of a meeting of Voting Members.

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## **28. Attendance at Meeting of Voting Members**

- (a) Subject to this Constitution, a Voting Member who is entitled to attend and cast a vote at a meeting of Voting Members, may attend and vote in person or by written proxy given to another Voting Member or Director.
- (b) The chairperson of a meeting of Voting Members may require a person acting as a proxy, at that meeting to establish to the chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.
- (c) A Director is entitled to receive notice of and to attend all meetings of Voting Members and is entitled to speak at those meetings.
- (d) A person requested by the Board to attend a meeting of Voting Members, regardless of whether that person is a Voting Member or not, is entitled to attend that meeting and, at the request of the chairperson of the meeting, is entitled to speak at that meeting.
- (e) In the event that a Voting Member is unable to attend a meeting of Voting Members, they may appoint a proxy to attend and vote in substitution for the Voting Member in accordance with Clause 34(a). Such a proxy would be counted towards the numbers required to determine a quorum for the meeting of Voting Members to which the appointment relates and is, subject to this Constitution, eligible to vote at that meeting.

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## 29. Multiple Appointments

An appointment of a proxy of a Voting Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Voting Members) if the Company receives a further appointment of a proxy from that Voting Member which would result in there being more than one proxy of that Voting Member entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Clause 29.

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## 30. Voting at Meetings of Voting Members

- (a) A resolution put to the vote at a meeting of Voting Members must be decided on a show of hands, unless a poll is demanded in accordance with Clause 33 and that demand is not withdrawn.
- (b) The Board may determine that Voting Members entitled to attend and vote at a meeting of Voting Members may vote at that meeting without an Attending Member in respect of that person being present at that meeting (and voting in this manner is referred to in this Clause 30(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Voting Member casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Voting Members, a direct vote cast by an eligible Voting Member is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.
- (c) Subject to this Constitution, on a show of hands at a meeting of Voting Members, each Attending Member having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- (d) Subject to this Constitution, on a poll at a meeting of Voting Members, each Attending Member having the right to vote on the resolution has one vote for each Voting Member that the Attending Member represents.
- (e) Subject to this Constitution, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Voting Members on any resolution to be put at a meeting of Members, each Member having a right to vote on the resolution has one vote.
- (f) An objection to a right to vote at a meeting of Voting Members or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Clause 30(f) must be decided by the chairperson of the meeting of Voting Members, whose decision, made in good faith, is final and conclusive.
- (g) Except where a resolution at a meeting of Voting Members requires a special majority pursuant to the law, the resolution is passed if more votes are cast by Voting Members entitled to vote in favour on the resolution than against it.
- (h) In the case of an equality of votes on a resolution at a meeting of Voting Members, the chairperson of that meeting is entitled to a second or casting vote (in addition to any vote he or she may have as a proxy) on that resolution.
- (i) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Voting Members following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

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## **31. Voting by Proxy**

- (a) The validity of any resolution passed at a meeting of Voting Members is not affected by the failure of any proxy to vote in accordance with directions (if any) of the appointing Voting Member.
- (b) If a proxy of a Voting Member purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Voting Member to cast in a given way must be treated as cast in that way.
- (c) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Voting Members by a person appointed by a Voting Member as a proxy is valid despite the revocation of the appointment (or the authority pursuant to which the appointment was executed), if no notice in writing of that matter has been received by the Company before the time appointed for the commencement of that meeting.

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## **32. Restrictions on Voting Rights**

- (a) The authority of a proxy for a Voting Member to speak or vote at a meeting of Voting Members to which the authority relates is suspended while the Voting Member is present in person at that meeting.
- (b) An Attending Member is not entitled to vote on any resolution on which any Fee or other amount due and payable to the Company in respect of that Voting Member's membership of the Company has not been paid.
- (c) An Attending Member is not entitled to vote on a resolution at a meeting of Voting Members where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (d) The Company must disregard any vote on a resolution at a meeting of Voting Members purported to be cast by an Attending Member where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Clause 32(d) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

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## **33. Polls**

- (a) A poll on a resolution at a meeting of Voting Members may be demanded by a Voting Member only in accordance with the Corporations Act or by the chairperson of that meeting.
- (b) No poll may be demanded at a meeting of Voting Members on the election of a chairperson of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Voting Members for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Voting Members must be taken in the manner and at the time and place the chairperson of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Voting Members is a resolution of that meeting. A demand for a poll on a resolution of a meeting of

Voting Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

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## **34. Proxies**

- (a) A Voting Member who is entitled to attend and vote at a meeting of Voting Members may appoint a person as proxy to attend and vote for the Voting Member in accordance with the Corporations Act but not otherwise.
- (b) A person is eligible to be proxy only if he or she is:
  - (i) A Director; or
  - (ii) in the case of an appointment by a Voting Member referred to in Clause 9(b)(i), a representative from the same Area (within the meaning of Clause 85) of that Voting Member; or
  - (iii) in the case of an appointment by a Voting Member referred to in Clause 9(b)(ii), another Voting Member.
- (c) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Voting Member on the basis and subject to the restrictions provided in the Corporations Act.
- (d) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.
- (e) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Voting Member is not filled in, the proxy of that Voting Member is:
  - (i) The person specified by the Company in the form of proxy in the case that Voting Member does not choose; or
  - (ii) If no person is so specified, the chairperson of that meeting.

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## **35. Receipt of Appointments**

- (a) An appointment of proxy for a meeting of Voting Members is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Voting Member may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Voting Member and received by the Company if the requirements set out in the notice of meeting are complied with.

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## **36. Adjournments**

- (a) The chairperson of a meeting of Voting Members may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.

- (b) If the chairperson of a meeting of Voting Members exercises the right to adjourn that meeting pursuant to Clause 36(a), the chairperson may (but is not obliged to) obtain the approval of Attending Members to the adjournment.
- (c) No person other than the chairperson of a meeting of Voting Members may adjourn that meeting.
- (d) The Company may give such notice of a meeting of Voting Members resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Voting Members or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a meeting of Voting Members which is resumed after an adjournment.

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## **37. Cancellations and Postponements**

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Voting Members or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Clause 37(a) does not apply to a meeting called in accordance with the Corporations Act by Voting Members or by the Board on the request of Voting Members, unless those Voting Members consent to the cancellation or postponement of the meeting.
- (c) The Company may give notice of a cancellation or postponement or change of place of a meeting of Voting Members as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Voting Members or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (d) The only business that may be transacted at a meeting of Voting Members the holding of which is postponed is the business specified in the original notice calling the meeting.

## **Directors**

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## **38. Number and Appointment of Directors**

- (a) The Board composition consists of:
  - (i) Elected Directors;
  - (ii) Any Directors appointed in accordance with Clause 38(f);
  - (iii) Any Officers appointed in accordance with Clauses 47, 48 or 49; and
  - (iv) Any Managing Director appointed in accordance with Clause 50.
- (b) A Director may hold up to two official positions other than:
  - (i) President and Vice President;
  - (ii) President and Managing Director; or



- (iii) Vice President and Managing Director.
- (c) A Director cannot be a Volunteer Association Representative.
- (d) If a Managing Director has been appointed in accordance with Clause 50, the maximum number of employees of the Company who may be a Director is 2, one of which is that Managing Director. If no Managing Director has been appointed in accordance with Clause 50, no employee of the Company may be a Director.
- (e) The number of Directors (excluding alternate directors of the Company) must not be less than 3 nor more than 10 or such other number as may have been determined by the Board.
- (f) Subject to Clauses 38(c), 38(d), 38(h), 41 and 85(c), the Voting Members may, by ordinary resolution, appoint any person as a Director in accordance with the terms of this Constitution.
- (g) A Director need not be a Voting Member.
- (h) A Director must not hold an Inconsistent Office.

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### 39. Directors Categories

- (a) Each Director (other than the Managing Director and Officers), upon election or appointment (as the case may be), must be assigned a 'Director category', being either 'Term A', 'Term B' or 'Term C', for the purposes of determining the Director's indicative term of office (subject to the other provisions of this Clause 39) and the manner in which Directors will retire from office, as follows:

Director category	Initial term of office	Subsequent term of office
Term A	Until the close of the Company's first annual general meeting	Until the close of the Company's fourth annual general meeting or each successive third annual general meeting thereafter (as applicable)  <b>Example: If the first AGM is held in 2013, a 'Term A' Director's term of office will end at the close of the AGM held in 2013, 2016, 2019 and so on (as applicable).</b>
Term B	Until the close of the Company's second annual general meeting	Until the close of the Company's fifth annual general meeting or each successive third annual general meeting thereafter (as applicable)  <b>Example: If the first AGM is held in 2013, a 'Term B' Director's term of office will end at the close of the AGM held in 2014, 2017, 2020 and so on (as applicable).</b>
Term C	Until the close of the Company's third annual general meeting	Until the close of the Company's sixth annual general meeting or each successive third annual general meeting thereafter (as applicable)  <b>Example: If the first AGM is held in 2013, a 'Term C' Director's term of office will end at the close of the AGM held in 2015,</b>

Director category	Initial term of office	Subsequent term of office
		2018, 2021 and so on (as applicable).
	<p><b>Note: The above terms of office:</b></p> <ul style="list-style-type: none"> <li>• apply only with respect to the initial Directors of the Company; and</li> <li>• are indicative only and are subject to the other provisions of this Clause 39.</li> </ul>	<p><b>Note: The above terms of office:</b></p> <ul style="list-style-type: none"> <li>• apply with respect to subsequent term of office (if any) of the initial Directors of the Company;</li> <li>• apply with respect to any term of office of any subsequent Directors; and</li> <li>• are indicative only and are subject to the other provisions of this Clause 39.</li> </ul>

- (b) The initial Directors of the Company will be assigned Director categories as they may agree amongst themselves, or if they cannot agree the Director categories must be assigned to them by lot. Subject to Clause 39(c), each subsequent Director who is elected or appointed (as the case may be) will be assigned the Director category applicable to the Director whom he or she is replacing, if applicable. Otherwise, the Director category to be assigned to the Director will be determined by the Board with reference to the following principles:
- (i) Wherever possible there should be an identical number of Directors assigned to each Director category holding office;
- (ii) Where this cannot be achieved (because the number of Directors for the time being is not evenly divisible by three) the Director category must be assigned as follows:
- A. Where one Director category has fewer Directors assigned to it than the other Director categories, that Director category;
- B. Otherwise, the Director category must be determined randomly from among the least-represented Director categories for the time being.
- (c) A Director who is re-elected or re-appointed (as the case may be) will retain his or her existing Director category.

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## 40. Initial Directors

- (a) The initial Directors of the Company are those individuals named in the application to register the Company with their consent as a proposed directors of the Company.
- (b) Subject to the other terms of this Constitution, an initial Director of the Company will hold office for a maximum period ending at the close of the relevant annual general meeting of the Company determined in accordance with Clause 39 for that Director category.

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## 41. Election of Directors

- (a) Nominations for election to the position of a vacant Elected Director will be called by the Board from Members and Voting Members. The Board may determine in its absolute discretion whether a nominee is suitably qualified for appointment as an

Elected Director. If the Board determines that no suitably qualified nominee was nominated, the Board may accept nominations from persons who are not Members or Voting Members who the Board determines in its absolute discretion are suitably qualified for appointment as an Elected Director. A nominee must meet any requirements for, or restrictions on being, a Director in Clause 38. The Board is not required to give any reasons for the basis of a determination regarding the suitability of the qualifications of a nominee.

- (b) In the event that the Board has determined that there is no suitably qualified nominee for the vacant Elected Director, the Board may appoint an Acting Elected Director until such time as the receipt by the Board of a nomination of a nominee which the Board has determined is suitably qualified for appointment as an Elected Director and the holding of an election to fill the vacant position.
- (c) Upon the determination by the Board that the nomination(s) of nominee(s) in Clause 41(a) or 41(b) are suitably qualified for appointment as an Elected Director, the Company will hold an election at which the Voting Members may elect an Elected Director in accordance with the terms of this Constitution using a Preferential Voting System.
- (d) In the event of a tied vote in Clause 41(c), the Board will have the casting vote to determine the election of an Elected Director.
- (e) Subject to the other terms of this Constitution, a Director who is appointed in accordance with Clause 38(f) or this Clause 41 will hold office for a maximum period ending at the close of the annual general meeting of the Company determined in accordance with Clause 39 for that Director category.

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## **42. Retirement of Directors**

A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.

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## **43. Term of Office of Elected Directors**

- (a) Subject to the other provisions of this Constitution, it is intended that:
  - (i) Elected Directors will not retire by rotation;
  - (ii) Elected Directors having the same Director category will retire from office at the close of each third annual general meeting, with only a single Director category falling due for retirement in any calendar year;
  - (iii) At every annual general meeting of the Company, the Elected Directors who must retire from office are all of the Elected Directors for the time being that are assigned the applicable Director category (namely, 'Term A', 'Term B' or 'Term C'), as determined in accordance with Clause 39.
- (b) An Elected Director retiring at an annual general meeting may act as a Director until the conclusion of that meeting and is eligible for re-appointment to the extent permitted by law, and this Constitution.

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## **44. Termination of Office**

A person ceases to be a Director if:

- (a) The person is absent (either personally or by an alternate director) from at least three consecutive Board meetings without the written consent of the Board.
- (b) The person resigns by notice in writing to the Company.
- (c) The person is removed from office pursuant to the Corporations Act.
- (d) The person is an employee (whether full-time or part-time) of the Company or of any related body corporate of the Company and ceases to be an employee of the Company or of a related body corporate of the Company.
- (e) The person becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health.
- (f) The person is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.
- (g) The person's office as a Director is vacated in accordance with Clause 45.

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## **45. Alternate Directors**

- (a) A Director may, appoint an alternate director for that Director for any period. Such an appointment can be:
  - (i) Without the need for approval of other Directors, appoint another Director; or
  - (ii) With the approval of a majority of the other Directors, appoint a person who is not a Director and who need not be a Voting Member but must be able to fulfil the role of the appointing Director.
- (b) The appointing Director may terminate the appointment of his or her alternate director at any time.
- (c) A notice of appointment, or termination of appointment, of an alternate director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company.
- (d) An alternate director is entitled to receive notice of Board meetings and, subject to this Constitution and the Corporations Act, to attend and speak at, count in the quorum of, and vote at a Board meeting at which his or her appointing Director is not present.
- (e) Subject to this Constitution, the Corporations Act, and the instrument of appointment of an alternate director, an alternate director may exercise all the powers (except the power pursuant to Clause 45(a)) of a Director, to the extent that his or her appointing Director has not exercised them.
- (f) The office of an alternate director is terminated if the appointing Director ceases to be a Director.
- (g) Subject to Clause 7, the Company is not required to pay any remuneration or benefit to an alternate director.
- (h) An alternate director is an officer of the Company and not an agent of his or her appointing Director.

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## 46. 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 or employment in the Company or a related body corporate of the Company;
  - (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;
  - (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 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 not be present while the matter is being considered at the meeting, nor vote on the matter, except where permitted by the Corporations Act.
- (d) If a Director has an interest in a matter, then subject to Clause 46(c), Clause 46(e) and this Constitution:
  - (i) That Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
  - (ii) That Director may participate in and vote on matters that relate to the interest;
  - (iii) The Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
  - (iv) The Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest;
  - (v) The Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) Nothing in Clause 46(d) affects the duties of a Director:
  - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of Directors the fact and the nature, character and extent of the conflict; or
  - (ii) to comply with Clause 46(b).

## Officers and Paid Staff

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### 47. President

- (a) Nominations for the appointment of an Eligible President will be called from the Directors.
- (b) The Board may appoint the President by a resolution of the Board. If there is only one nomination of an Eligible President, the person will be appointed if there is more votes in favour of the nominee's appointment than against that appointment. If there is more than one nomination of an Eligible President, the appointment by the Board will be conducted using a Concurrent Voting Model.
- (c) Subject to Clause 47(d), each appointment of a person as President will be for a term of 3 years. A person may be appointed as President for no more than 2 consecutive terms. A person appointed as President for 2 consecutive terms will be eligible for further appointment as President after the expiry of 3 years from the end of his or her last appointment.
- (d) A person ceases to be the President if the person ceases to be a Director.
- (e) Subject to Clause 46(c), the President must chair each Board meeting.
- (f) If at a Board meeting:
  - (i) A President has not been elected pursuant to this Clause 47, or
  - (ii) The President 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 Vice President shall assume the position of chairperson for the term of the meeting.

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### 48. Vice President

If required, the Board may elect a Vice President, in which case the following will occur:

- (a) Nominations for the election of a Vice President will be called from the Directors.
- (b) The Board may appoint the Vice President by a resolution of the Board. If there is only one nomination of an Vice President, the person will be appointed if there is more votes in favour of the nominee's appointment than against that appointment. If there is more than one nomination of an Vice President, the appointment by the Board will be conducted using a Concurrent Voting Model. The Vice President will be appointed at the first Board of Directors meeting after the AGM.
- (c) Subject to Clause 48(e), each appointment of a person as Vice President will be for a term of 1 year. A person may be appointed as Vice President for no more than 2 consecutive terms. A person appointed as Vice President for 2 consecutive terms will be eligible for further appointment as Vice President after the expiry of 1 year from the end of his or her last appointment.
- (d) In the event of a tied vote in Clause 48(b), the President will have the casting vote to determine the election of the Vice President of the Company.
- (e) A person ceases to be the Vice President if the person ceases to be a Director.
- (f) Subject to the terms of this Constitution the Vice President shall perform all roles of the President in their absence.

- (g) If at a Board meeting:
  - (i) A Vice President has not been elected pursuant to this Clause 48, or
  - (ii) The Vice President 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 who are or will be present at the meeting may (by majority vote) elect one of their number to chair that meeting.

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## **49. Company Secretary**

- (a) Nominations for the election of a Company Secretary will be called from within the Directors.
- (b) The Board may appoint the Company Secretary by a resolution of the Board. If there is only one nomination of a Company Secretary, the person will be appointed if there is more votes in favour of the nominee's appointment than against that appointment. If there is more than one nomination of a Company Secretary, the appointment by the Board will be conducted using a Concurrent Voting Model. The Company Secretary will be appointed at the first Board meeting after the AGM.
- (c) Subject to Clause 49(e), each appointment of a person as Company Secretary will be for a term of 1 year. A person may be appointed as Company Secretary for no more than 2 consecutive terms.
- (d) In the event of a tied vote in Clause 49(b), the President will have the casting vote to determine the election of the Company Secretary.
- (e) A person ceases to be the Company Secretary if the person ceases to be a Director.

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## **50. Managing Director**

- (a) The Board may appoint a person as the Managing Director, for any period and on any terms (subject to this Constitution) as the Board resolves. Subject to this Constitution and any agreement between the Company and the Managing Director, the Board may vary or terminate the appointment of an Managing Director at any time, with or without cause.
- (b) The role of the Managing Director is to perform the role of Chief Executive Officer of the Company. The Board may delegate other powers to the Managing Director 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 delegated to an Managing Director.
- (c) An Managing Director must exercise his or her powers, including the powers delegated to him or her, in accordance with any directions of the Board.

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## **51. Not used**

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## **52. Directors' Remuneration**

The Company will not pay or give any remuneration or other benefit in money or money's worth to any Director except, with the prior approval of the Board:

- (a) Reimbursement of out-of-pocket expenses reasonably and properly incurred by the Director in connection with Company business (including travel and accommodation expenses, or any amounts expended on or in connection with the establishment and promotion of the Company), or payment of such amounts by the Company on the Director's behalf.
- (b) Payment of or towards insurance premiums for any director to the extent permitted by law and this Constitution.
- (c) A fee in return for any extra services actually rendered to the Company in a professional or technical capacity (other than within his or her ordinary duties as a Director) where the amount payable does not exceed a commercially reasonable amount. The fee may be paid either by fixed sum or salary determined by the Board.
- (d) This Clause does not apply to the role of Managing Directors while it is a paid position and an Managing Director has been appointed by the Board of Directors

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### **53. 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 pursuant to Clause 53(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;
  - (iii) Applies to Liabilities and Legal Costs incurred both before and after this Clause 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, pursuant to which the Company must do all or any 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;



- (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).

## **Powers of the Board**

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### **54. 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 meetings of Voting Members all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in meetings of Voting Members.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Clause 58, a resolution passed by signing a document in accordance with Clause 62, or in accordance with a delegation of the power pursuant to Clause 56 or 57. 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 pursuant to Clause 56 or 57.
- (c) If the Company is a wholly-owned subsidiary, a Director is authorised to act in the best interests of its holding company provided that the Director acts in good faith in the best interests of that holding company and the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.
- (d) The Board may (without the approval of the Voting Members), from time to time, make, amend or repeal regulations as it considers necessary or convenient in relation to the affairs of the Company, but no such regulation or amendment will be of any force or effect unless it is consistent with the Corporations Act and this Constitution.
- (e) All Regulations for the time being in force are binding on the Voting Members, Directors and Members.
- (f) The Board may (without the approval of the Voting Members) from time to time make, amend or repeal Manuals, Policies and Procedures.
- (g) All Manuals, Policies and Procedures so made and for the time being in force will be binding on the Company and upon each Director, Voting Member and Member.
- (h) In the event of inconsistency between the Constitution and the Regulations or the Manuals, Policies and Procedures, the provisions of the Constitution will prevail to the extent of the inconsistency.

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### **55. Execution of Documents**

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts

for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

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## **56. 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 58 applies with the necessary changes to meetings and resolutions of a committee of the Board.

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## **57. 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.

## **Proceedings of Directors**

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## **58. Board Meetings**

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) The President may call a Board meeting at any time. On request of the President, the Secretary of the Company must call a meeting of the Directors.
- (c) A majority of Directors may call a Board meeting at any time. On request of such majority, the Secretary of the Company must call a meeting of the Directors.
- (d) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and an alternate director appointed by 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, fax or other electronic means.
- (e) The person convening a Board meeting must ensure that notice of the Board meeting is given to each Director at least 24 hours before the meeting or at another time determined by Board resolution.
- (f) A Director or alternate 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, fax or other electronic means.
- (g) A person who attends a Board meeting waives any objection that person and:

- (i) If the person is a Director, any alternate director appointed by that person; or
  - (ii) If the person is an alternate director, the Director who appointed that person as alternate director, may have to a failure to give notice of the meeting.
- (h) 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.
- (i) For the purposes 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.
- (j) A Director may withdraw the consent given pursuant to Clause 58(i) in accordance with the Corporations Act.
- (k) 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 his 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.
- (l) Until otherwise determined by the Board, a quorum for a Board meeting is the number equal to 60% of the number of Directors holding office at the time (rounding up to the nearest whole number), entitled to vote on a resolution that may be proposed at that meeting. A quorum for a Board meeting must be present at all times during the meeting. Each individual present is counted towards a quorum in respect of each appointment as an alternate director of another Director in addition (if applicable) to being counted as a Director.
- (m) If the number of Directors is reduced below the number necessary for a quorum of Directors, the continuing Director or Directors may act only to:
  - (i) Defer the meeting to another time and place; or
  - (ii) Convene a meeting of Voting Members.
- (n) In the event that a Director is unable to attend a Board meeting they can, in writing send a proxy to another Director or the President however such proxy does not count in the determination of a quorum.

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## **59. Advisory Committees**

- (a) The Board may establish one or more advisory committees to provide advice and recommendations to the Board on specified matters (among any other functions determined by the Board).
- (b) The Board may, with respect to an Advisory Committee:
  - (i) Specify in writing from time to time the terms of reference and functions of the Advisory Committee;
  - (ii) Appoint such persons as the Board considers appropriate to the Advisory Committee (including, if thought fit, one or more Directors), and remove any such person from the Advisory Committee at any time by written notice;
  - (iii) Specify the period and conditions (including as to remuneration, if any) of any such appointment to the Advisory Committee;
  - (iv) Terminate the Advisory Committee at any time.
- (c) The Board must not delegate any of its powers to an Advisory Committee, and an Advisory Committee must not exercise any powers of a Director or the Board.

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## **60. Proceedings of Committees**

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Directors or an Advisory Committee must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee or Advisory Committee are meetings and proceedings of the Board.

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## **61. Minutes**

- (a) The Board must cause minutes of all proceedings of meetings of Voting Members, of Board meetings and of committees formed by the Board to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

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## **62. Resolution in Writing**

A resolution in writing signed by all Directors entitled to vote on the resolution (excluding Directors who have requested and been given leave of absence by the Board) is to be treated as a determination of the Board passed at a Board meeting duly convened and held.

- (a) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- (b) In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

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## **63. Board Resolutions**

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Clauses 45 and 46, and this Clause 63, each Director present in person or by his or her alternate director 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.

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## **64. 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 appointed 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.

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## **65. Not Used**

### **Honorary Life Membership**

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## **66. Honorary Life Members**

- (a) The Board may, from time to time, award Honorary Life Membership to persons who have made a meritorious contribution to the Company.
- (b) Any Member, Voting Member, Volunteers Association Representative or Director may submit a person for nomination for Honorary Life Membership to the Board.
- (c) Persons awarded Honorary Life Membership become Honorary Life Members of the Company and have all the rights and obligations as Members.

### **Notices**

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## **67. Notices to Voting Members**

- (a) The Company may give Notice to a Voting Member by any of the following means :
  - (i) Delivering it to that Voting Member or person;

- (ii) Delivering it or sending it by post to the address of the Voting Member in the Register or the alternative address (if any) nominated by that Voting Member for that purpose;
  - (iii) Sending it to the fax number or electronic address (if any) nominated by that Voting Member or person for that purpose;
  - (iv) If permitted by the Corporations Act, notifying that Voting Member of the notice's availability by an electronic means nominated by the Voting Member for that purpose; or
  - (v) Any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Voting Member whose address for Notices is not within Australia by air-mail, air courier, fax or electronic transmission.
- (c) Any Notice required or allowed to be given by the Company to one or more Voting Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

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## **68. Notice to Directors**

The Company may give Notice to a Director or alternate 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 fax number or electronic address (if any) nominated by that person for that purpose; or
- (d) Any other means agreed between the Company and that person.

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## **69. Notice to the Company**

A person may give Notice to the Company by:

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

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## **70. 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 fax or other 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

or an alternate 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 67(a)(iv) is taken to be given on the day after the date on which the Voting Member is notified that the Notice is available.
- (d) 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.

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## 71. 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.

## Gift Fund Requirements

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## 72. Company to Maintain a Gift Fund

- (a) For so long as the Company has endorsement as a DGR for the operation of a fund described (but not by name) in Item 1 of the table in section 30-15 of ITAA 97, the Company must maintain a Gift Fund (**NSW SES VA Welfare Fund**), in conformity with applicable requirements of the Income Tax Act, including the requirements that the NSW SES VA Welfare Fund be maintained as a fund:
  - (i) To which gifts or deductible contributions of money or property for the Principal Purpose of the NSW SES VA Welfare Fund are to be made;
  - (ii) To which any money or property received by the Company in respect of those gifts or deductible contributions is to be credited; and
  - (iii) That does not receive any other money or property.
- (b) The NSW SES VA Welfare Fund is to be established and maintained, for the principal purpose (**Principal Purpose**) of providing financial support to NSW SES Volunteers and/or their dependents who must be located in Australia and are in necessitous circumstances including, but not limited to:
  - (i) NSW SES Volunteers who are injured or become ill;
  - (ii) The dependents of NSW SES Volunteers who die; and
  - (iii) NSW SES Volunteers and/or their dependents during times of prolonged illness and/or financial hardship.

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## 73. Additional Rules Applying to the Gift Fund

The following rules apply to the NSW SES VA Welfare Fund established and maintained by the Company:

- (a) The NSW SES VA Welfare Fund must be a public fund.

- (b) It is the intention of the Company that the public will contribute to the NSW SES VA Welfare Fund. As such, the public must be invited to contribute to the NSW SES VA Welfare Fund.
- (c) The Company must maintain sufficient documents to provide evidence of the NSW SES VA Welfare Fund's purpose and operations.
- (d) The Company must maintain a separate bank account for the NSW SES VA Welfare Fund (**Fund Account**) and:
  - (i) Shall ensure that all gifts and deductible contributions for the Principal Purpose of the NSW SES VA Welfare Fund, and any earnings thereon, are kept in the Fund Account and separate from any other money; and
  - (ii) The authority to commit expenditure of the Fund Account shall be NSW SES VA Welfare Fund Committee members who are permanently located in Australia.
- (e) The Company must use the following only for the Principal Purpose of the NSW SES VA Welfare Fund:
  - (i) All gifts and deductible contributions made to the NSW SES VA Welfare Fund; and
  - (ii) Any money or property received by the Company in connection with those gifts and deductible contributions.
- (f) No payments from, or distributions of, the NSW SES VA Welfare Fund may be made directly or indirectly by the Company at any time otherwise than in accordance with Clauses 72 and 73.
- (g) The Company must issue or arrange for the issue of receipts in the name of the NSW SES VA Welfare Fund to those members of the public who make gifts or deductible contributions to the NSW SES VA Welfare Fund.
- (h) The NSW SES VA Welfare Fund shall be administered and managed at all times by the NSW SES VA Welfare Fund Committee in accordance with Clause 75 and the Terms of Reference and the NSW SES VA Welfare Fund Committee must ensure that the NSW SES VA Welfare Fund is only used for the Principal Purpose of the NSW SES VA Welfare Fund.
- (i) The Commissioner of Taxation must be notified in writing of any amendments to:
  - (i) Clause 72 of this Constitution;
  - (ii) Clause 73 of this Constitution;
  - (iii) Clause 74 of this Constitution;
  - (iv) Clause 75 of this Constitution; and
  - (v) The Terms of Reference.

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## **74. Winding Up of the Gift Fund**

Despite Clause 84, on the first occurrence of:

- (a) The winding up of the NSW SES VA Welfare Fund;
- (b) The winding up of the Company; or



- (c) The Company ceasing to be endorsed as a DGR for the operation of the NSW SES VA Welfare Fund,

any surplus assets of the NSW SES VA Welfare Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made under Division 30 of ITAA 97.

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## 75. NSW SES VA Welfare Fund Committee

- (a) The Company shall, in accordance with Clause 56 and as soon as is practicable after the establishment of the NSW SES VA Welfare Fund, establish a NSW SES VA Welfare Fund Committee and provide Terms of Reference for the NSW SES VA Welfare Fund Committee.
- (b) The NSW SES VA Welfare Fund Committee must, at all times, consist of at least three members the majority of whom must have a degree of responsibility to the wider Australian community by virtue of their tenure of public office, their professional standing and/or their position in the community.
- (c) The NSW SES VA Welfare Fund Committee must manage the NSW SES VA Welfare Fund and ensure that the NSW SES VA Welfare Fund is only used for the Principal Purpose of the NSW SES VA Welfare Fund.
- (d) Any release of monies from the Fund Account and the management of, and sale of, any assets of the NSW SES VA Welfare Fund must be authorised by the NSW SES VA Welfare Fund Committee.
- (e) The Board may from time to time appoint a member of the NSW SES VA Welfare Fund Committee to be the Chairman of the NSW SES VA Welfare Fund Committee, and may remove and replace the Chairman from time to time.

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## 76. Company to Maintain Scholarship Fund

- (a) For so long as the Company has endorsement as a DGR for the operation of a fund described (but not by name) in Item 1 of the table in section 30-15 of ITAA 97, the Company must maintain a Gift Fund to be known as the NSW SES VA President's Scholarship Fund (**Scholarship Fund**), in conformity with applicable requirements of the Income Tax Act, including the requirements that the Scholarship Fund be maintained as a fund:
  - (i) To which gifts or deductible contributions of money or property for the Scholarship Fund Principal Purpose are to be made;
  - (ii) To which any money or property received by the Company in respect of those gifts or deductible contributions is to be credited; and
  - (iii) That does not receive any other money or property.
- (b) The Scholarship Fund is to be established and maintained, for the principal purpose (**Scholarship Fund Principal Purpose**) of providing money for scholarships, bursaries or prizes that satisfy all of the following requirements (whether directly or via another organisation providing scholarships, bursaries or prizes meeting such requirements):
  - (i) they are only awarded to Australian citizens or permanent residents of Australia (within the meaning of the Australian Citizenship Act 2007);

- (ii) they are open to individuals or groups of individuals throughout a region of at least 200,000 people, or throughout at least an entire State or Territory of Australia;
- (iii) they promote a recipient's education in "tertiary courses" (within the meaning in the Income Tax Act), particularly in the field of emergency management; and
- (iv) they are awarded on the basis of merit or for reasons of equity.

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## 77. Scholarship Fund Rules

The following rules apply to the Scholarship Fund established and maintained by the Company:

- (a) The Scholarship Fund must be a public fund.
- (b) It is the intention of the Company that the public will contribute to the Scholarship Fund. As such, the public must be invited to contribute to the Scholarship Fund.
- (c) The Company must maintain sufficient documents to provide evidence of the Scholarship Fund's purpose and operations.
- (d) The Company must maintain a separate bank account for the Scholarship Fund (**Scholarship Fund Account**) and:
  - (i) Shall ensure that all gifts and deductible contributions for the Scholarship Fund Principal Purpose, and any earnings thereon, are kept in the Scholarship Fund Account and separate from any other money; and
  - (ii) The authority to commit expenditure of the Scholarship Fund Account shall be Scholarship Fund Committee members who are permanently located in Australia.
- (e) The Company must use the following only for the Scholarship Fund Principal Purpose:
  - (i) All gifts and deductible contributions made to the Scholarship Fund; and
  - (ii) Any money or property received by the Company in connection with those gifts and deductible contributions.
- (f) No payments from, or distributions of, the Scholarship Fund may be made directly or indirectly by the Company at any time otherwise than in accordance with Clauses 76 and 77.
- (g) The Company must issue or arrange for the issue of receipts in the name of the Scholarship Fund to those members of the public who make gifts or deductible contributions to the Scholarship Fund.
- (h) The Scholarship Fund shall be administered and managed at all times by the Scholarship Fund Committee in accordance with Clause 79 and the Scholarship Fund Terms of Reference and the Scholarship Fund Committee must ensure that the Scholarship Fund is only used for the Scholarship Fund Principal Purpose.
- (i) The Commissioner of Taxation must be notified in writing of any amendments to:
  - (i) Clause 76 of this Constitution;
  - (ii) Clause 77 of this Constitution;

- (iii) Clause 78 of this Constitution;
- (iv) Clause 79 of this Constitution; and
- (v) The Scholarship Fund Terms of Reference.

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## **78. Winding Up of the Scholarship Fund**

Despite Clause 84, on the first occurrence of:

- (a) The winding up of the Scholarship Fund;
- (b) The winding up of the Company; or
- (c) The Company ceasing to be endorsed as a DGR for the operation of the Scholarship Fund,

any surplus assets of the Scholarship Fund remaining after the payment of liabilities attributable to it must be transferred to a fund, authority or institution to which income tax deductible gifts can be made under Division 30 of ITAA 97.

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## **79. Scholarship Fund Committee**

- (a) The Company shall, in accordance with Clause 56 and as soon as is practicable after the establishment of the Scholarship Fund, establish a Scholarship Fund Committee and provide Scholarship Fund Terms of Reference for the Scholarship Fund Committee.
- (b) The Scholarship Fund Committee must, at all times, consist of at least three members the majority of whom must have a degree of responsibility to the wider Australian community by virtue of their tenure of public office, their professional standing and/or their position in the community.
- (c) The Scholarship Fund Committee must manage the Scholarship Fund and ensure that the Scholarship Fund is only used for the Scholarship Fund Principal Purpose.
- (d) Any release of monies from the Scholarship Fund Account and the management of, and sale of, any assets of the Scholarship Fund must be authorised by the Scholarship Fund Committee.
- (e) The Board may from time to time appoint a member of the Scholarship Fund Committee to be the Chairman of the Scholarship Fund Committee, and may remove and replace the Chairman from time to time.

### **Accounts, Audit and Records**

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## **80. Accounts**

The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act.

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## **81. Reports**

To the extent required by the Corporations Act, the Board must cause the Company to:

- (a) Prepare financial reports in accordance with the Corporations Act;
- (b) Prepare directors' reports in accordance with the Corporations Act;

- (c) Notify each Voting Member of the Voting Member's right to receive reports from the Company;
- (d) Provide Voting Members with reports, in a form and within such timeframe as may be required by the Corporations Act.

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## **82. Audit**

To the extent required by the Corporations Act or any other law, a registered company auditor must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

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## **83. Rights of Inspection**

Subject to the Corporations Act:

- (a) The Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Voting Members, and a Voting Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in a meeting of Voting Members;
- (b) Despite Clause 83(a), the Board may refuse access to a document where the Board (acting reasonably) considers that such access would or would be likely to cause the Company to lose the benefit of any form of evidentiary privilege, including legal professional privilege.

## **Winding Up**

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## **84. Winding Up**

Subject to Clause 74 and 78, on a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must not be paid to or distributed among the Voting Members, but must be given or transferred to:

- (a) One or more bodies corporate, associations or institutions (whether or not a Voting Member or Voting Members) selected by the Voting Members by resolution at or before the dissolution of the Company:
  - (i) Having object similar to the objects of the Company; and
  - (ii) Whose Constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Clause 7; or
- (b) If there are no bodies corporate, associations or institutions which meet the requirements of Clause 84(a), to one or more bodies corporate, associations or institutions (whether or not a Voting Member or Voting Members) selected by the Voting Members by resolution at or before dissolution of the Company, the objects of which are the promotion of charity and whose Constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Clause 7; or
- (c) If the Voting Members do not make a selection pursuant to Clause 84(a) or 84(b) for any reason, to one or more bodies corporate, associations or institutions meeting the requirements of either Clause 84(a) or 84(b) selected by the Board, subject to Board obtaining court approval pursuant to the Corporations Act to exercise this power.

## Transitional

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### 85. Area Representatives

- (a) In this Clause 85:
  - (i) **Area** means that geographic or demographic area as detailed in Schedule 1 of the Area Regulations.
  - (ii) **Area Representative** means a person appointed prior to the Transitional Date pursuant to the processes detailed in the Area Regulations and who held that office immediately prior to the Transitional Date;
  - (iii) **Area Regulations** means the NSW State Emergency Service Volunteers Association Regulations relating to the establishment and conduct of Area representation, as existing immediately prior to the Transitional Date.
  - (iv) **Transitional Date** means 19 November 2017.
- (b) An Area Representative will continue to hold that office for the balance of his or her term as specified in the Area Regulations.
- (c) An Area Representative may not be a Director.
- (d) An Area Representative is entitled to participate in activities in the Area which they represent (including participating in Area meetings) in accordance with the Area Regulations.