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## **Constitution of Environment Defenders Office (Victoria) Limited ACN 052 124 375**

**Corporations Act 2001**

**Company Limited by Guarantee not having a Share Capital**

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(Victoria) Ltd**  
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The Environment Defenders  
Office is an independent,  
not for profit, community legal  
centre, practising in public  
interest environment law

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## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 Definitions

In this Constitution:

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

**Annual General Meeting** means the annual general meeting of Members.

**Auditor** means the auditor or auditors of the Company.

**Board** means the board of directors of the Company.

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Chairperson** means the Director who is elected to this office in accordance with clause 19.4.

**Company** means Environment Defenders Office (Victoria) Limited.

**Constitution** means this constitution, as amended.

**Department** means the Commonwealth department with responsibility for the environment.

**Deputy Chairperson** means the Director who is elected to this office in accordance with clause 19.4.

**Directors** means the members individually or collectively of the Board.

**Extraordinary Meeting** means a meeting of Members other than an Annual General Meeting.

**Federal Treasurer** means the federal treasurer of Australia.

**Fund** means the public fund established under clause 7.1.

**General Meeting** means an Annual General Meeting or an Extraordinary Meeting.

**Guidelines to the Register of Environmental Organisations** means the guidelines of that name issued by the Department, as amended or replaced from time to time.

**Member** means a person admitted to membership of the Company in accordance with this Constitution.

**Minister** means the Commonwealth minister with responsibility for the environment.

**Register** means the register of Members kept in accordance with the Act.

**Registered Address** means the address of a Member shown in the Register.

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

**Representative** means a person as described in clause 9.

**Secretary** means the Director who is elected to this office in accordance with clause 19.4.

**Treasurer** means the Director who is elected to this office in accordance with clause 19.4.

## **1.2 Interpretation**

In this Constitution, unless the context requires otherwise:

- 1.2.1 a person includes a corporate body, association, firm, partnership, or other unincorporated body;
- 1.2.2 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.2.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 1.2.4 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 1.2.5 a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- 1.2.6 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 1.2.7 the singular includes the plural and vice versa;
- 1.2.8 a gender includes all other genders; and
- 1.2.9 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

## **1.3 Replaceable Rules Displaced**

Each of the provisions of the Act that would apply to the Company as a replaceable rule but for this clause, is expressly displaced and does not apply to the Company.

## **2. NAME OF THE COMPANY**

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The name of the Company is Environment Defenders Office (Victoria) Limited.

## **3. OBJECTS AND POWERS**

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### **3.1 Objects**

The objects of the Company are all or any of the following:

- 3.1.1 to provide, in the public interest, environmental and planning services to the community in connection with the conservation, protection and enhancement of the natural or cultural environment including advice and representation;
- 3.1.2 to promote and develop educational programs for the community in relation to environmental and planning matters;
- 3.1.3 to promote and encourage environmental laws and policies for the conservation, protection and enhancement of the natural or cultural environment;
- 3.1.4 to undertake any research necessary to further any of the objects specified above;
- 3.1.5 to do all such other lawful things as are incidental or conducive to the attainment of any or all of the above objects.

### **3.2 Powers**

The Company has the legal capacity and powers of an individual and also all the powers of a body corporate but only to the extent necessary or convenient to carry out, or incidental to carrying out, the Company's objects.

## **4. LIABILITY OF MEMBERS**

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The liability of each Member is limited to the amount of the guarantee specified in clause 5.

## **5. GUARANTEE BY MEMBERS**

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Every Member undertakes to contribute an amount not more than \$10 to the property of the Company if it is wound up:

- 5.1 while that person is a Member; or
- 5.2 within one year after that person ceases to be a Member,
- 5.3 for payment of:
  - 5.3.1 the debts and liabilities of the Company contracted before that person ceased to be a Member; and
  - 5.3.2 the costs, charges and expenses of winding-up.

## **6. APPLICATION OF INCOME AND PROPERTY**

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- 6.1 All of the income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- 6.2 No part of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or other profit distribution to any of the Members or Directors.
- 6.3 The Company must not pay directors' fees to the Directors. All other payments to Directors must be approved by the Board including but not limited to:
  - 6.3.1 reimbursement of out of pocket expenses incurred by a Director in performing a duty as a director of the Company; or
  - 6.3.2 payment for a service rendered to the Company by the Director in a professional or technical capacity or as an employee, other than in the capacity as a Director of the Company, where:
    - 6.3.2.1 the provision of the service has the prior approval of the Board; and
    - 6.3.2.2 the amount payable is not more than an amount which commercially would be reasonable payment for the service.
  - 6.3.3 The Company may pay interest on money borrowed from any Member and may pay reasonable and proper rent for premises let by a Member to the Company, where:
    - 6.3.3.1 the interest or rent of the service has the prior approval of the Board; and
    - 6.3.3.2 the amount payable is not more than an amount which commercially would be reasonably paid.

- 6.4 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by law and this Constitution.

## **7. GIFT FUND**

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If the Company is on the Register of Environmental Organisations:

### **7.1 Establishment and Purpose of the Fund**

- 7.1.1 The Company will establish a public fund called the Environment Defenders Office (Victoria) Gift Fund to support the Company's environmental purposes.
- 7.1.2 The Fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

### **7.2 Public Donations**

The Company will invite members of the public to make gifts of money or property to the Fund for the environmental purposes of the Company.

### **7.3 Management of the Fund**

The Company will appoint to administer the Fund a committee of management of no fewer than three persons, the majority of whom must be responsible persons, as defined by the Guidelines to the Register of Environmental Organisations.

### **7.4 Deposits and Accounting Procedures**

- 7.4.1 Money from interest on donations, income derived from donated property and money from the realisation of such property is to be deposited into the Fund.
- 7.4.2 A separate bank account is to be opened to deposit money donated to the Fund, including interest accruing on such deposits, and gifts to it must be kept separate from other funds of the organisation.
- 7.4.3 Receipts must be issued in the name of the Fund and proper accounting records and procedures must be kept and used for the Fund.
- 7.4.4 The Fund will be operated on a not-for-profit basis.

### **7.5 No Conduit Funding**

Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Company and will not be influenced by the preference of the donor.

### **7.6 Notification of the Department**

The Company must inform the Department as soon as possible if:

- 7.6.1 it changes its name or the name of the Fund;
- 7.6.2 there is any change to the membership of the committee of management of the Fund; or



7.6.3 there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.

### **7.7 Compliance with Ministerial Rules**

The Company must comply with any rules that the Federal Treasurer and the Minister make to ensure that gifts made to the Fund are only used for its principal purpose.

### **7.8 Statistical Information**

The Company must provide to the Department within 4 months of the end of the financial year:

- 7.8.1 statistical information requested by the Department on donations to the Fund; and
- 7.8.2 an audited financial statement for the Company and the Fund which provides information on the expenditure of the Fund monies and the management of the Fund assets.

### **7.9 Winding-up of the Fund**

In the case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is listed on the Register of Environmental Organisations.

## **8. MEMBERSHIP**

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### **8.1 General**

- 8.1.1 The following persons are Members:
  - 8.1.1.1 the persons who are members at the date of adoption of this Constitution; and
  - 8.1.1.2 any other person the Board admits to membership in accordance with this Constitution.
- 8.1.2 Every applicant for membership of the Company must apply in the form and manner determined by the Board.
- 8.1.3 Subject to clause 8.3.3, the Board may create eligibility criteria for membership and categories of membership with the same or differing rights or privileges.
- 8.1.4 After receipt of an application for membership, the Board must consider the application and determine whether to admit or reject the admission of the applicant. The Board need not give any reason for rejecting an application.

### **8.2 Membership Not Transferable**

Membership may not be transferred to another person.

### **8.3 Fees**

- 8.3.1 The Board may prescribe:
  - 8.3.1.1 the costs payable by Members by way of membership fees and such other fees as the Board thinks fit; and
  - 8.3.1.2 when and in what circumstances these fees are payable.

8.3.2 The Board must give Members not less than one month's notice of any change to the fees.

8.3.3 Payment of the prescribed fees renders a Member financial. If a Member fails to pay the fees prescribed by the Board pursuant to clause 8.3 within 2 months of such fees becoming due and payable and fails to rectify that default within one month of being given notice to do so, then upon the expiration of the period of notice, the Member will cease to be a Member.

#### **8.4 Voting Rights**

A financial Member is entitled to one vote at a General Meeting.

### **9. REPRESENTATIVE**

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#### **9.1 Nomination**

Where a Member is not a natural person, it must appoint as its Representative a natural person.

#### **9.2 Entry in Register**

The name and address of the Representative will be entered in the Register and all correspondence and notices from the Company will be served on that Representative.

#### **9.3 Powers of Representative**

The nomination must set out what the Representative is appointed to do and may set out restrictions on the Representative's powers. If the appointment is made by reference to a position held, the appointment must identify the position. Unless otherwise specified, the Representative may exercise on the Member's behalf, all the powers that the Member could exercise at a meeting or in voting or a resolution.

#### **9.4 Replacement of Representative**

A Member may remove and replace a Representative where the Member gives written notice to the Board in a form approved by the Board.

### **10. CESSATION OF MEMBERSHIP**

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#### **10.1 Death, Resignation and Other Events**

A person immediately ceases to be a Member if the person:

10.1.1 dies;

10.1.2 resigns as Member by giving written notice to the Company;

10.1.3 ceases to be a Member under clause 8.3.3;

10.1.4 is expelled under clause 10.2; or

10.1.5 becomes, if the Board determines in its absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with their registered address.

#### **10.2 Expulsion**

10.2.1 The Board, by a resolution passed by three-fourths of the Directors present and voting may expel a Member or implement appropriate disciplinary action if the Member:

- 10.2.1.1 has committed a breach of any obligation or duty under this Constitution; or
  - 10.2.1.2 has engaged in conduct detrimental to the interests of the Company.
- 10.2.2 At least 14 days before the meeting of the Board at which a resolution referred to in clause 10.2.1 is considered, the Member must be:
- 10.2.2.1 served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and
  - 10.2.2.2 given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit
- and the Board will take the explanation into consideration.
- 10.2.3 The Board will serve the Member with notice of any Board resolution made at the above meeting. If the Board resolves to expel the Member, that Member will cease to be a Member on the service of such notice.

### **10.3 Removal from the Register**

- 10.3.1 Where a person ceases to be a Member, their name must be removed from the Register.
- 10.3.2 Upon the removal of a person's name from the Register:
  - 10.3.2.1 the person will forfeit all rights and privileges attaching to membership and all rights which the person may have against the Company arising out of the membership; and
  - 10.3.2.2 the Company will have no liability to such person in respect of the removal from the Register.

### **10.4 Surviving Liability**

Any person who ceases to be a Member remains liable for:

- 10.4.1 any moneys which may be owing to the Company; and
- 10.4.2 in the case of the Company being wound up within one year of the date of cessation of membership, the relevant contribution under clause 5.

## **11. REGISTER**

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### **11.1 Register of Members**

The Company must keep and maintain the Register in accordance with the Act and otherwise as the Board determines.

### **11.2 Disputes**

Any dispute that arises in relation to the Register must be referred to the Board, whose decision will be final and binding on all Members.

## **12. GENERAL MEETINGS**

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### **12.1 Annual General Meeting**

The Company must hold an Annual General Meeting in every calendar year within five months of the end of its financial year at the time and place determined by the Board.

### **12.2 Extraordinary Meeting**

The Board may convene an Extraordinary Meeting at such time and place as the Board thinks fit, but must be convened in accordance with the Act. Members may also convene an Extraordinary Meeting, but only in accordance with the Act.

## **13. NOTICE OF GENERAL MEETINGS**

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### **13.1 General**

The Board must give not less than 21 days' written notice of a General Meeting to the Members, the Directors and the Auditor.

### **13.2 Contents of Notice**

The notice referred to in clause 13.1 must specify the following information:

- 13.2.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- 13.2.2 the general nature of the business of the meeting;
- 13.2.3 the details of any special resolutions to be proposed at the meeting; and
- 13.2.4 that Members are entitled to appoint a proxy who must be a Member.

### **13.3 Alteration of Procedure**

With the consent of all the Members entitled to vote at some particular meeting, that meeting may be convened by such shorter notice and in such manner as those Members may think fit provided that such action complies with the Act.

### **13.4 Failure to Receive Notice**

- 13.4.1 The accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.
- 13.4.2 A person's attendance at a General Meeting waives any objection that the person may have to:
  - 13.4.2.1 a failure to give notice, to the giving of a defective notice, of a General Meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - 13.4.2.2 the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

## **14. PROCEEDINGS AT GENERAL MEETINGS**

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### **14.1 Business**

The ordinary business of an Annual General Meeting may include:

- 14.1.1 the consideration of the annual financial report, the Directors' report and the Auditor's report;
- 14.1.2 the election and appointment of Directors; and
- 14.1.3 the appointment of the Auditor and the fixing of the Auditor's remuneration.

All other business transacted at an Annual General Meeting and all business transacted at an Extraordinary Meeting is deemed special business.

### **14.2 Meetings Conducted by Electronic Means**

- 14.2.1 All provisions of this Constitution relating to General Meetings apply, as far as they can and with any necessary changes, to General Meetings by telephone or other electronic means.
- 14.2.2 A Member who participates in a General Meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 14.2.3 A General Meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Members involved was at the place for the duration of the meeting.

### **14.3 Quorum**

No business may be transacted at any General Meeting except the adjournment of the meeting unless a quorum is present. The quorum for a General Meeting is 20 per cent of the membership, present in person or by Representative, proxy or attorney.

### **14.4 No Quorum**

If a quorum is not present within 30 minutes from the time appointed for a General Meeting:

- 14.4.1 if convened on the requisition of Members, the meeting will be dissolved; and
- 14.4.2 in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the chairperson appoints. If at that adjourned meeting a quorum is not present within 15 minutes from the time appointed for holding the meeting, the Members present will be a quorum.

### **14.5 Chairperson**

- 14.5.1 The Chairperson or in his or her absence the Deputy Chairperson will preside as chairperson at every General Meeting.
- 14.5.2 If at any General Meeting neither is present within 15 minutes after the time appointed for holding the meeting or if neither is willing to preside, the Members present will choose a Director to preside. If no Director is present or if all Directors present decline to preside, then those persons present will choose a Member who is present to preside as chairperson.

**14.6 Adjournment**

- 14.6.1 The chairperson of a General Meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by the meeting adjourn the meeting to another time or place (or both).
- 14.6.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a General Meeting.
- 14.6.3 Where a General Meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

**14.7 Show of Hands**

Every item of business submitted to a General Meeting will be determined in the first instance by a show of hands of the Members or their Representatives personally present and entitled to vote. The chairperson will not have a casting vote.

**14.8 Evidence of Resolution**

A declaration by the chairperson that a resolution has been passed or lost (having regard to the majority required) and an entry to that effect in the books of the Company, signed by the chairperson of that or the next succeeding meeting, will be conclusive evidence that the resolution has been passed or lost without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**14.9 Poll**

- 14.9.1 The chairperson or any Member present personally or by Representative, proxy or attorney may demand a poll before or on the declaration of the result of a show of hands.
- 14.9.2 The poll will be taken in the manner and at the time and place as the chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 14.9.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 14.9.4 The demand for a poll may be withdrawn.
- 14.9.5 If there is a dispute as to the admission or rejection of a vote, the chairperson will finally determine that dispute.
- 14.9.6 At a poll, the chairperson will not have a casting vote.

**14.10 Demand for Poll**

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

**14.11 Auditor**

The Auditor is entitled:

- 14.11.1 to attend any General Meeting;
- 14.11.2 to receive all notices of and other communications relating to any General Meeting which a Member is entitled to receive; and

- 14.11.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity and is entitled to be heard, despite the fact that the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting.

## **15. APPOINTMENT OF PROXY**

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### **15.1 General**

- 15.1.1 Any Member may appoint a natural person as a proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.

- 15.1.2 A proxy must be a Member or Representative.

### **15.2 Instrument Appointing Proxy**

- 15.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

- 15.2.1.1 the Registered Office;

- 15.2.1.2 a fax number at the Registered Office;

- 15.2.1.3 a place, fax number or electronic address specified for such purpose in the notice of meeting

not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

- 15.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

## **16. FORM OF PROXY**

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### **16.1 Required Information**

An instrument appointing a proxy must contain the following information:

- 16.1.1 the Member's name and address;

- 16.1.2 the Company name;

- 16.1.3 the type of membership held by the Member;

- 16.1.4 the proxy's name or the name of the office held by the proxy; and

- 16.1.5 the meetings at which the appointment may be used

and be signed by the appointor or their attorney.

### **16.2 Voting Instructions**

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

### **16.3 Authority**

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the person giving the proxy.

## **17. ATTORNEYS**

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### **17.1 Appointment by Member**

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. That power of attorney must be produced for inspection at the Registered Office or any other place the Board determines, together with evidence of the due execution of it the Board requires, before the attorney will be entitled to appoint a proxy for the Member granting the power of attorney.

### **17.2 Appointment by Directors**

The Directors may, by power of attorney, appoint any person whether nominated directly or indirectly by the Directors to be an attorney or attorneys of the Company. Such appointment may be for any purposes and with powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for periods and subject to any conditions as the Directors think fit. Any power of attorney may contain provisions for the protection and convenience of persons dealing with any attorney as the Directors think fit and may also authorise any attorney to sub-delegate all or any of the powers, authorities and discretions vested in them.

## **18. VOTING OF ATTORNEY OR PROXY**

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### **18.1 Validity**

A vote given in accordance with the terms of an instrument of proxy or power of attorney will be valid despite the previous death of the principal or revocation of the proxy or power of attorney, provided no notice in writing of the death or revocation has been received at the Registered Office before the meeting.

### **18.2 Attendance of Principal at Meetings**

The principal attending and taking part in the meeting will not revoke a proxy, unless that principal votes on the resolution to which the proxy applies.

## **19. DIRECTORS**

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### **19.1 Number and Qualifications of Directors**

19.1.1 The number of Directors comprising the Board will be no less than 5 and no more than 9 elected by the Members in accordance with this Constitution, except as provided in clauses 19.3.5 and 20.1.

19.1.2 Each Director must be a financial Member or a Representative of a financial Member.

### **19.2 Term of Appointment**

Each elected Director will hold office from the end of the Annual General Meeting at which they were elected until the end of the following Annual General Meeting when they will retire but will be eligible for re-election.



### **19.3 Election of Directors**

The election of Directors will take place in the following manner:

- 19.3.1 Any 2 Members may nominate any Member or Representative to serve as a Director.
- 19.3.2 The nomination of any Member or Representative as a candidate for election as a Director must be in writing and signed by the nominated person and their proposer and seconder. The nomination must be lodged with the Secretary at least 30 days before the Annual General Meeting at which the election is to take place.
- 19.3.3 If there are more candidates nominated than there are vacancies, balloting lists will be prepared containing the names of the candidates in an order determined by lot. The Board may determine the method of the ballot. Each Member is entitled to vote for any number of candidates not exceeding the number of vacancies.
- 19.3.4 If there are no more candidates nominated than there are vacancies, then the chairperson of the Annual General Meeting will declare those candidates elected as Directors.
- 19.3.5 If there is not a sufficient number of candidates nominated to meet the required minimum number of Directors, the Board must appoint a Member or Representative as Director, subject to their consent, so that the Board consists of at least the minimum number of Directors.

### **19.4 Officers on the Board**

At the first meeting of the Board after the Annual General Meeting, the Directors will elect from among their number a Chairperson, a Deputy Chairperson, a Secretary and a Treasurer, each of whom will hold office until the end of the next Annual General Meeting.

## **20. CASUAL VACANCIES**

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- 20.1 The Board may appoint a replacement Director to any casual vacancy arising in the office of a Director.
- 20.2 Any Director so appointed will hold office until the end of the next Annual General Meeting.

## **21. DISQUALIFICATION OF DIRECTORS**

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The office of a Director will be vacated if:

- 21.1 the Director becomes bankrupt or makes any arrangement or composition with his or her creditors or if being a director of a company which is a Member, a winding up order is made in respect of such company;
- 21.2 the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- 21.3 without leave of the Board the Director is absent from meetings of the Board for 3 consecutive Board Meetings, unless the Board makes a resolution to the contrary;
- 21.4 by notice in writing to the Company the Director resigns from office; or
- 21.5 the Director ceases to hold office by reason of any order made under the Act.

## **22. POWERS OF THE BOARD**

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- 22.1 The control and direction of the Company and the management of its property and affairs is vested in the Board.
- 22.2 The Board may exercise all powers of the Company that are not required to be exercised or done by the Company in General Meeting.

## **23. BORROWING**

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The Board may raise money in any manner it thinks fit including the borrowing of money on the security of the Company's assets and the issuing of a security for any other purpose.

## **24. INVESTMENT**

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The Board may invest funds of the Company in any manner and for any period as it thinks fit.

## **25. NEGOTIABLE INSTRUMENTS**

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The Board may determined how cheques, promissory notes, drafts, bills of exchange and other negotiable instruments must be signed, drawn, accepted, endorsed and otherwise executed (as applicable) by and on behalf of the Company.

## **26. PROCEEDINGS OF THE BOARD**

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### **26.1 General**

- 26.1.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 26.1.2 The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to a meeting of the Board by telephone or other electronic means.
- 26.1.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present at the meeting.
- 26.1.4 A meeting by telephone or other electronic means is taken as held at the place determined by the chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

### **26.2 Convening and Notice of Board Meetings**

- 26.2.1 The Board must meet at least 4 times a year.
- 26.2.2 The chairperson may convene a meeting of the Board whenever he or she thinks fit.
- 26.2.3 The Secretary must, on the request of any 2 Directors, convene a meeting of the Board.
- 26.2.4 Notice of a Board meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Board.
- 26.2.5 Notice of a Board meeting:

- 26.2.5.1 must specify the time and place of the meeting;
  - 26.2.5.2 need not state the nature of the business to be transacted at the meeting; and
  - 26.2.5.3 may be given in person or by post, telephone, fax or other electronic means.
- 26.2.6 The accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.
- 26.2.7 A Director's attendance at a Board meeting waives any objection that Director may have to a failure to give notice of the meeting.

### **26.3 Quorum**

- 26.3.1 No business may be transacted at a Board meeting unless a quorum is present at the time the business is considered.
- 26.3.2 Unless otherwise determined by the Board, a quorum for meetings of the Board is half plus one of the Directors, or if the number of Directors is not a multiple of 2, then the odd number nearest to and greater than half of the Directors.
- 26.3.3 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:
  - 26.3.3.1 must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and
  - 26.3.3.2 until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

### **26.4 Chairperson and Decisions**

- 26.4.1 The Chairperson will be the chairperson of the Board. If the Chairperson is not present within 15 minutes after the time appointed for holding that meeting (or being present is unwilling to act), the Deputy Chairperson will preside at the meeting. If the Deputy Chairperson is not present (or being present is unwilling to act) then the Directors present will choose one of their number to be the chairperson of the meeting.
- 26.4.2 Except as provided by the Act and by clause 10.2.1, questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.
- 26.4.3 The chairperson will not have a casting vote.

### **26.5 Written Resolutions of the Board**

- 26.5.1 If all the Directors (other than a Director on leave of absence approved by the Directors) have approved a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the resolution was approved and at that time at which the document was last approved by a Director or, if the Directors approved the document on different days, on the day on which, and at the time at which the document was last approved by a Director.

26.5.2 Any such resolution in writing may consist of several documents in identical terms, each approved by one or more Directors and must be entered in the relevant book of minutes of the Company.

26.5.3 In this clause 26.5, a Director gives approval by:

26.5.3.1 signing a document containing the resolution;

26.5.3.2 affixing an electronic signature to a document containing the resolution; or

26.5.3.3 using such other written means approved by the Directors.

26.5.4 A reference in clause 26.5.1 to all Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

## **26.6 Delegation by the Board**

26.6.1 The Board may delegate any of its powers to individual Directors, Members or employees or to committees consisting of such Directors, Members or employees as the Board thinks fit. Any individual or committee so formed must conform to any direction given to it by the Board in the execution of the delegated powers.

26.6.2 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

## **26.7 Defects in Appointment**

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

26.7.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee; or

26.7.2 the disqualification of any of them.

## **27. MINUTES**

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### **27.1 Minutes to be kept**

The Board must cause:

27.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;

27.1.2 the minutes to be entered in books kept for that purpose; and

27.1.3 the minutes to be signed within a reasonable time by the chairperson of the meeting or by the chairperson of the next meeting.

### **27.2 Evidence of Proceedings and Resolutions**

A minute that is recorded and signed in accordance with clause 27.1 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

## 28. ACCOUNTS

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### 28.1 Books of Account to be kept

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

### 28.2 Location of Books of Account

The books of account will be kept at the Registered Office or place or places as the Directors think fit and will be open to the inspection of the Directors during usual business hours.

## 29. AUDITOR

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The Company will observe the provisions of the Act in relation to the appointment, removal and resignation of an Auditor.

## 30. INDEMNITY

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### 30.1 Definition of Liability and Officer

In this clause 30:

30.1.1 **Liability** means costs, losses, liabilities and expenses.

30.1.2 **Officer** means a Director, secretary or other officer of the Company and includes a former Officer, but does not include an Auditor or agent of the Company.

30.1.3 A reference to **Officer** includes a reference to a former Officer.

### 30.2 Indemnity of Officers

Every Officer must be indemnified out of the assets of the Company against any Liability incurred by that Officer in the person's capacity as an Officer by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer, but excluding any Liability from or against which the Company is not permitted by the Act to exempt or indemnify the Officer.

### 30.3 Indemnity for Proceedings

Without limiting clause 30.2, every Officer must be indemnified out of the assets of the Company against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer but excluding any Liability from or against which the Company is not permitted by the Act to exempt or indemnify the Officer.

### 30.4 Insurance

The Company may, to the extent permitted by law:

30.4.1 purchase and maintain insurance; or

30.4.2 pay or agree to pay a premium for insurance,

for any Officer against any Liability incurred by the person as an Officer where the Board considers it appropriate to do so.

### **31. NOTICES**

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- 31.1 The Company may serve notice on any Member either personally, or by sending it through the ordinary prepaid post to the Member's Registered Address, or by leaving at the Registered Address in an envelope addressed to the Member or by sending it to the fax number or electronic address (if any) nominated by the Member.
- 31.2 A notice sent by fax is taken to be served if the correct fax number appears on the fax transmission report or log report generated by the sender's fax machine confirming transmission was completed.
- 31.3 A notice sent by other electronic means is taken to be served:
- 31.3.1 in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry or other confirmation; or
- 31.3.2 in the case of email or other electronic messaging system (other than those referred to in clause 31.3.1), at the time the email containing the notice has left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient.
- 31.4 Any notice placed in a correctly addressed prepaid envelope and placed in the post is taken to be served:
- 31.4.1 in the case of a notice of a General Meeting, on the day after the date of its posting; and
- 31.4.2 in any other case, at the time it would be delivered in the ordinary course of post.
- 31.5 If service under this clause 31 is on a day that is not a Business Day or is after 5.00pm (addressee's time), the notice is regarded as having been received at 9.00am the next Business Day.

### **32. DISTRIBUTION OF PROPERTY ON WINDING-UP**

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- 32.1 On the winding-up or dissolution of the Company any surplus assets remaining after the satisfaction of all the Company's debts and liabilities must not be paid to or distributed among the Members but must be transferred to some other institution or institutions:
- 32.1.1 which has objects similar to the objects of the Company;
- 32.1.2 which prohibits the distribution of its income and property among its members and directors to an extent at least as great as is imposed on the Company under clause 6 of this Constitution; and
- 32.1.3 to which income tax deductible gifts may be made.
- 32.2 This institution or institutions must be determined by:
- 32.2.1 a special resolution of the Members at or before the time of dissolution; or
- 32.2.2 if no such special resolution is passed, by a Judge of the Supreme Court of Victoria or other court of competent jurisdiction.