

# Constitution

**Australian Drilling Industry Association Limited**

ABN 24 002 772 929

Constitution of the Australian Drilling Industry Association

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This amended document was completed in consultation with AMK Law  
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## 1. NAME OF THE ASSOCIATION

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The name of the Association is Australian Drilling Industry Association.

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## 2. TYPE OF ASSOCIATION

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- (a) The Association is a not-for-profit public company limited by guarantee.
- (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Association, undertakes to contribute to the property of the Association for:
  - (i) payment of debts and liabilities of the Association;
  - (ii) payment of the costs, charges and expenses of winding up; and
  - (iii) any adjustment of the rights of the contributories among Members.
- (c) The amount that each Member or past Member is liable to contribute is limited to one hundred dollars (\$100.00).

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## 3. REPLACEABLE RULES

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This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

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## 4. DEFINITIONS AND INTERPRETATION

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### 4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

**Act** means the *Corporations Act 2001*.

**AGM** means annual general meeting.

**Alternate Director** means a director appointed pursuant to **clause 25**.

**Annual Membership Fee** means the annual membership fee payable by Members pursuant to **clause 15**.

**Association** means Australian Drilling Industry Association.

**Board** means the board of Directors.

**Branch** means any regional group of Members from other states/territories.

**Business Plan** means the business plan referred to in to **clause 29(b)**.

**CEO** means Chief Executive Officer.

**Chairman** means the person holding that office under this Constitution and includes any assistant or acting Chairman.

**Chief Executive Officer** means the person appointed pursuant to **clause 28**.

**Committee** means a committee of the Board appointed pursuant to **clause 36**.

**Constitution** means this constitution as amended or supplemented from time to time.

**Co-opted Director** means a Director appointed to the Board by the Board pursuant to **clause 24**.

**Director** means any person holding the position of a director of the Association and Directors means the directors for the time being of the Association or, as the context permits, such number of them as have authority to act for the Association.

**Drilling Industry** means those groups of persons, firms and corporations which are involved in the drilling industry.

**Executive** means the Office Bearers.

**Financial Year** means the year ending on 30 June.

**General Meeting** includes an AGM, a general meeting and a special general meeting.

**Journal** means the Journal of the Association, currently known as "*Australasian Drilling*".

**Law** means the Corporations Law and any other relevant statutes or legislation.

**Member** means an individual or body corporate whose name is entered in the Register of Members, which implies that that individual or body corporate is a financial member of the Association.

**Member Present** means, in connection with a General Meeting, a Member being present in person or by proxy or attorney or by a Representative.

**Member's Guarantee Amount** means the amount referred to in **clause 2(c)**.

**Month** means calendar month.

**Objectives** means the objectives of the Association as set out in **clause 5**.

**Office Bearer** means the:

- (a) President;
- (b) Vice President; and
- (c) Secretary.

**President** means the president of the Association appointed pursuant to **clause 20(a)**.

**Register** means the Register of Members to be kept pursuant to the Act.

**Replaceable Rules** are the rules set out in the table in section 141 of the Act.

**Representative** has the meaning given to it in section 250D of the Act.

**Resolution** means a resolution other than a special resolution.

**Returning Officer** means the Chief Executive Officer or other person appointed by the Board from time to time in accordance with **clause 22(d)**.

**Seal** means the common seal of the Association and includes any official seal of the Association.

**Secretary** means the person appointed to the position of secretary pursuant to **clause 27**.

**Special Resolution** means a resolution:

- (a) of which notice has been duly given; and
- (b) that has been passed by at least seventy-five percent (75%) of the votes cast by Members entitled to vote on the resolution.

**Unconscionable Conduct** includes:

- (a) any conduct that demonstrates that the Member is unfit to continue to be a Member by persistently or wilfully acting in a manner prejudicial to the interests of the Association;
- (b) any contravention by the Member (whether by act or omission) of a provision of the Constitution;
- (c) any contravention by the Member (whether by act or omission) of a condition of membership to which the Member is subject;
- (d) using any false, misleading, revoked or cancelled licence, permit, certificate, diploma, membership, degree or testimonial, document or description in relation to himself or herself (or their business) in the Drilling Industry; or
- (e) any other improper or unethical conduct relating to the Drilling Industry.

**Vice President** means the vice president of the Association appointed pursuant to **clause 20(a)**.

## 4.2 Interpretation

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
  - (i) the singular includes the plural and vice versa;
  - (ii) each gender includes the other two genders;

- (iii) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
  - (iv) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
  - (v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
  - (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;
  - (vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (b) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- (c) Headings do not form part of or affect the construction or interpretation of this Constitution.

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## **5. OBJECTIVES**

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The Association is a not-for-profit company. The Mission of the Association is to support members and represent the drilling industry and to:

- (a) Provide industry activities, networking and services
- (b) Facilitate training and education
- (c) Advocate, campaign and promote on behalf of members
- (d) Foster industry standards
- (e) Govern and manage well

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## **6. INCOME AND PROPERTY**

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- (a) The income and property of the Association will be applied solely towards the promotion of the Objectives and the exercise of the Association's powers as set out in this Constitution.
- (b) No income or property of the Association will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Association. However, nothing in this Constitution will prevent payment in good faith:



- (i) to a Member in return for any services rendered or goods supplied or hired by the Association from a Member in the ordinary and usual course of business to the Association;
  - (ii) as remuneration to any employee of the Association;
  - (iii) of interest to a Member at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Association;
  - (iv) of reasonable and proper rent to a Member for premises leased by any Member to the Association; and
  - (v) for moneys representing reimbursement to a Member of out-of-pocket expenses reasonably incurred by the Member and to which the Member would be entitled if they were not a Member.
- (c) No payment shall be made to any Director other than the payment:
- (i) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
  - (ii) for any service rendered to the Association by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

## MEMBERSHIP

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### 7. MEMBER'S GUARANTEE AMOUNT

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All Members agree to assume the liability to pay the Member's Guarantee Amount.

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### 8. ADMISSION TO MEMBERSHIP

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- (a) Subject to **clause 10**, an individual or body corporate is entitled to become a Member if that individual or body corporate:
- (i) completes and submits an application form; and
  - (ii) agrees to assume the liability to pay the Member's Guarantee Amount; and
  - (iii) agrees to abide by all rules of the constitution; and
  - (iv) pays the Annual Membership Fee; and
  - (v) has its name entered into the Register.
- (b) Subject to the Act, a person becomes a Member on the registration of that person's name in the Register.

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## 9. APPLICATION FOR MEMBERSHIP

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- (a) Any individual or body corporate engaged in the Drilling Industry wishing to become an Active Member or an Associate Member shall submit to the CEO or a nominee of the CEO an application for Membership in the form prescribed by the Board from time to time.
- (b) An application for Membership, pursuant to **clause 9(a)**, must be either:
  - (i)
    - (A) in writing;
    - (B) signed by the applicant; and
    - (C) lodged with the CEO (or a nominee of the CEO);
  - or
  - (ii) completed online at the Association's website.
- (c) Application forms must be accompanied by the Annual Membership Fee and any other fees as determined by the Board from time to time.

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## 10. CLASSES OF MEMBERSHIP

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- (a) There are three (3) classes of Membership in the Association, being the following:
  - (i) Active Members;
  - (ii) Associate Members; and
  - (iii) Life Members.
- (b) In addition to those benefits attached to different classes of Membership as set out in this **clause 10**, the Board will determine from time to time what additional benefits shall attach to each class of Membership and may create, at its sole discretion, any new classes of Membership which are appropriate in the Board's opinion.
- (c) The eligibility criteria of the respective classes of Membership are as follows:
  - (i) Active Members

An individual or body corporate is eligible to become an Active Member within any of the following categories:

    - (A) *Contractors Division* if the individual or body corporate is engaged in drilling or related activities.
    - (B) *Manufacturers & Suppliers Division* if the individual or body corporate is actively engaged in the manufacture, distribution, supply, sales or service of equipment, materials or specialised services used in the Drilling Industry.

- (C) *Technical Division* if:
- (1) the individual or body corporate who engages drilling contractors is engaged in the supervision, testing, regulation, evaluation, investigation or development of groundwater or mineral resources or foundation engineering projects; or
  - (2) the individual is enrolled in an accredited university, college or secondary school or approved private study or is teaching a subject matter embracing the Drilling Industry; or
  - (3) the individual is employed by a State or Federal body or statutory authority directly involved in the Drilling Industry.
- (D) *Statutory Authority Division* if the body corporate is actively engaged in supervision, testing, investigation, regulation, evaluation or development of groundwater, mineral resources, foundation engineering, H.D.D. or environmental projects.

(ii) Associate Members

Any individual or body corporate that does not wish to, or is not eligible to, become an Active Member may become an Associate Member.

(iii) Life Members

- (A) Individuals of acknowledged eminence in the Drilling Industry or who have contributed some special service in furtherance of the Objectives may be nominated as a Life Member.
- (B) All nominations must be unanimously approved by the Board for the nominee to become a Life Member.
- (C) No more than four (4) Life Members shall be appointed in any one year.

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## 11. MEMBERSHIP ENTITLEMENTS

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(a) Active Members

Each Active Member:

- (i) has one vote; and
- (ii) may stand for election as a Director pursuant to **clause 22**.

(b) Associate Members

Each Associate Member:

- (i) is not entitled to vote; and

- (ii) is not eligible to stand for election as a Director.
  - (iii) will pay a reduced Annual Membership Fee
- (c) Life Members
- Each Life Member:
- (i) has one vote;
  - (ii) may stand for election as a Director and/or Office Bearer pursuant to **clause 22**; and
  - (iii) is not required to pay an Annual Membership Fee.

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## 12. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

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A right, privilege or obligation which a person has by reason of being a Member of the Association:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership whether by death or resignation.

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## 13. REGISTER OF MEMEBRS

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- (a) The Register shall contain the names of Members and specify the
  - (i) class of Membership; and
  - (ii) state in which the Member is a member.
- (b) Membership of the Association is maintained by the paying of the Annual Membership Fee.

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## 14. REPRESENTATIVE

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- (a) This **clause 14** only applies to Members and applicants for Membership which are body corporates.
- (b) Where a Member or an applicant for Membership is not an individual person, it must appoint as its Representative a natural person.
- (c) The name and address of the Representative will be entered in the Register as the representative of the body corporate Member.

All correspondence and notices from the Association will be served on that Representative and any notice served on a Representative will be deemed to be service on the body corporate Member which is represented by that particular Representative.

- (e) If the appointment of a Representative by the body corporate Member is made by reference to a position held, the appointment must identify the position.
- (f) Despite **clause 12**, a body corporate Member may remove and replace a Representative where the body corporate Member gives written notice to the Board in a form approved by the Board.
- (g) A signature by a Representative of a body corporate Member on behalf of that body corporate Member is taken to be the signature of that body corporate Member for the purposes of this Constitution.
- (h) Any power or right of a body corporate Member as granted by this Constitution can be exercised by the Representative of that particular body corporate Member.
- (i) Body corporate Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 54**.
- (j) The actions of a Representative bind the body corporate Member which is represented by that particular Representative.
- (k) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Association as if a Member himself or herself.
- (l) For the purposes of **clauses 19(b) and 22**, another employee of a Corporate Member may also be nominated to stand as a Director, as a replacement for or in addition to the Corporate Member's nominated Representative, provided that the nomination is endorsed by the existing nominated Representative of the member concerned.

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## 15. FEES AND SUBSCRIPTIONS

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- (a) There shall be an Annual Membership Fee payable by each Member to the Association.
- (b) The amount of the Annual Membership Fee and any other fees payable by a Member to the Association (**Subscription**), for each class of Membership shall be determined by the Board annually and notified to the Members in writing.
- (c) Subscriptions for each category of Membership shall be invoiced in June each year (or upon joining as a Member) and are payable within thirty (30) days of the date of invoice.
- (d) Any Member whose Subscription remains unpaid after two (2) months shall be considered unfinancial and removed from the Register until the invoice is paid in full.

- (e) The Board may in its discretion:
  - (i) determine that:
    - (A) no Subscription is payable; or
    - (B) a discounted Subscription is payable;
  - by a Member or Members in a given year; and
  - (ii) extend the time for payment of the Subscription by any Member.
- (f) The Board may, for such reasons as it considers appropriate, waive a Member's Subscription pursuant to an application in writing submitted by the Member to the CEO for consideration by the Board. The CEO will notify the applicant, in writing of the decision of the Board in this regard.

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## 16. CESSATION OF MEMBERSHIP

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- (a) A Member's Membership will cease:
    - (i) upon that Member dying;
    - (ii) on the date that the CEO receives written notice of resignation from that Member;
    - (iii) if the Member is expelled pursuant to **clause 17**;
    - (iv) subject to **clause 15(e)**, if that Member fails to pay the Member's Subscription for a period of two (2) months;
    - (v) if, being a body corporate Member:
      - (A) that Member is dissolved or otherwise ceases to exist; or
      - (B) that Member has:
        - (1) a receiver;
        - (2) a receiver and manager;
        - (3) a liquidator;
        - (4) an administrator;
        - (5) an administrator of a deed of company arrangement; or
        - (6) a trustee of other person administering a compromise or arrangement between the Member and someone else;
- appointed to it; or

- (vi) if the Association in general meeting resolves by Special Resolution, to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Association renders it undesirable that that Member continue to be a Member of the Association. The Member must be given at least twenty one (21) days' notice of the proposed Special Resolution and must be given the opportunity to be heard at the meeting at which the Special Resolution is proposed.
- (b) A Member may at any time, pursuant to **clause 16(a)(ii)**, resign as a Member but shall continue to be liable for:
- (i) any other monies due by the Member to the Association;
  - (ii) any sum for which the Member is liable as a Member of the Association under **clause 2(b)**; and
  - (iii) if applicable, the Member's Guarantee Amount.

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## 17. UNCONSCIONABLE CONDUCT BY MEMBERS

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- (a) Each Member agrees to:
- (i) abide by the rules and Objectives of the Association;
  - (ii) act in the best interests of the Association (and the Drilling Industry);
  - (iii) support, promote and further the Objectives; and
  - (iv) conduct themselves in a safe, professional and ethical manner.
- (b) The Board may resolve by a seventy-five percent (75%) majority to expel any Member or to suspend any Member from Membership of the Association if the Member:
- (i) breaches **clause 17(a)**; or
  - (ii) otherwise engages in Unconscionable Conduct.
- (c) A resolution of the Board pursuant to **clause 17(b)** will be of no effect unless the Board confirms the resolution in accordance with this clause at a Board meeting held not earlier than fourteen (14) days and not later than twenty-eight (28) days after the service on the Member of notice under **clause 17(d)**.
- (d) If the Board resolves under **clause 17(b)** to expel or suspend any Member, the CEO must serve the Member with a notice in writing:
- (i) setting out the resolution of the Board and the grounds upon which it is based;
  - (ii) stating that the Member may address the Board at a Board meeting to be held not earlier than fourteen (14) days and not later than twenty-eight (28) days after service of the notice;
  - (iii) stating the date, place and time of that Board meeting; and

- (iv) informing the Member that the Member may do either or both of the following:
  - (A) attend and speak at that Board meeting;
  - (B) submit to the Board at or prior to the date of that Board meeting written representations relating to the resolution.
- (e) At a meeting of the Board held in accordance with **clause 17(d)** the Board must:
  - (i) give the Member an opportunity to make oral representations;
  - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the Board meeting; and
  - (iii) resolve by a seventy-five percent (75%) majority whether to confirm the decision to expel or suspend the Member.
- (f) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal available under **clause 17(h)**.
- (g) A resolution confirmed by the Board under **clause 17(e)** does not take effect:
  - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution; or
  - (ii) if the Member exercises the right of appeal, until the Association confirms the resolution pursuant to **clause 17(k)**.
- (h) A Member may appeal to the Association in general meeting against a resolution of the Board, which is confirmed under **clause 17(e)**. Written notice of such an appeal must be lodged with the CEO within seven (7) days of service of the notice required under **clause 17(f)**.
- (i) Upon receipt of a notice of appeal, the CEO must convene a General Meeting of the Association to be held within thirty-five (35) days after the date of receipt of the notice. If possible, the CEO should include in the notice to the Members of the meeting any written representations of the Board and the Member.
- (j) At a General Meeting of the Association convened under **clause 17(i)**:
  - (i) no business other than the question of the appeal may be transacted;
  - (ii) the Board and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and
  - (iii) the Members Present must vote by ballot on the question of whether the resolution will be confirmed.
- (k) Confirmation of the resolution of the Board is by the Members passing a Special Resolution to that effect.



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## 18. DISPUTE RESOLUTION

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- (a) Disputes between Members (in their capacity as Members) shall be referred to the CEO in writing (**Notice**) and the CEO shall deliver the Notice to the Board who must endeavour to consider and resolve the dispute within twenty-eight (28) days of receiving the Notice from the CEO.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within twenty-eight (28) days of its being referred to the Board, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) The mediator must:
  - (i) in the case of a dispute between Members as to the appointment of the mediator, be appointed by the Board; and
  - (ii) ensure that each party has an opportunity to fairly present their case; and
  - (iii) ensure that natural justice is accorded to all parties concerned.
- (d) At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 18(b)** or **clause 18(c)(i)** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.
- (e) The costs of the mediator appointed pursuant to **clause 18(b)** or **clause 18(c)(i)** (as the case may be) shall be shared equally between the Members who are the parties to the dispute.
- (f) If the dispute is not resolved through mediation, the Directors will be called upon to resolve the dispute.

## APPOINTMENT AND REMOVAL OF DIRECTORS

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## 19. THE STRUCTURE OF THE BOARD

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- (a) The Board shall consist of a minimum of six (6) and a maximum of eight (8) persons.
- (b) Excluding the Co-opted Director elected pursuant to **clause 24**, each Director must be an Active Member or a Life Member or the Representative of a body corporate that is an Active Member or a Life Member.
- (c) The Board shall at all times consist of the following:
  - (i) two (2) Office Bearers; and
  - (ii) no less than four (4) and no more than six (6) other Directors.
- (d) Except for the Co-opted Director elected pursuant to **clause 24**, each Director shall hold office for a term of three (3) years and is entitled to be re-elected for further terms.

- (e) Except for the Co-opted Director elected pursuant to **clause 24**, each Director shall hold office from the conclusion of the AGM at which they are elected until the conclusion of the third AGM following the AGM at which they were elected.
- (f) At each AGM one third (1/3) of the Board (or the nearest whole number), excluding the Co-opted Director, shall retire and may be stand for re-election.
- (g) Directors shall be volunteers and shall not receive payment for any work undertaken to carry out their Board functions, except as permitted by **clause 6(c)**.
- (h) The Board shall ensure that it has adequate regional representation from each state and territory of Australia.

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## 20. OFFICE BEARERS

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- (a) The Board shall elect the Office Bearers from amongst themselves.
- (b) The Office Bearers shall constitute the “Executive” of the Association.
- (c) The President is limited to two (2), consecutive, two (2) year terms of holding that position. A Director may renominate for the President role after stepping down for a minimum two (2) year period.

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## 21. CAPABILITY OF DIRECTORS

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- (a) Directors accept their role as the leaders of the Australian Drilling Industry and agree to represent the Association in a professional manner.
- (b) Directors must be able to demonstrate the following attributes:
  - (i) commitment to the advancement of the Drilling Industry;
  - (ii) leadership ability;
  - (iii) management experience;
  - (iv) effective communication skills; and
  - (v) business acumen.
- (c) At least fifty percent (50%) of the Board will be persons with extensive drilling and operational experience and who work for active drilling contractors.
- (d) Directors are required to attend a minimum of seventy-five percent (75%) of Board meetings in any year in person or by teleconference.

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## 22. ELECTION OF DIRECTORS

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- (a) This **clause 22** does not apply to the Co-opted Director who will be elected pursuant to **clause 24**.

- (b) The Directors shall be elected by those Members who are eligible to vote.
- (c) The Board is responsible for ensuring, where practicable, that the Board is representative of all regions and Drilling Industry sectors.
- (d) The Board shall appoint the CEO or another person, agreed to by a majority of the Board, as the Returning Officer.
- (e) Subject to **clause 19(d)**, nominations of candidates for election as Directors must:
  - (i) be made in writing, signed by two (2) Members and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination);
  - (ii) be delivered to the CEO at least forty-five (45) days before the date fixed for the holding of the AGM at which the election is to take place; and
  - (iii) include a précis of the candidate's experience addressing the criteria in **clause 21(b)** and which may be supplied to all Members who are eligible to vote.
- (f) If insufficient nominations are received to fill all vacant positions, the candidates nominated will be deemed to be elected and the additional number of candidates required to fill all remaining vacant positions may be proposed and seconded at the AGM.
- (g) If the number of nominations received is equal to the number of vacancies for each position to be filled, the persons nominated shall be taken to have been elected.
- (h) If the number of nominations received exceeds the number of vacancies for each position to be filled, a ballot is to be held pursuant to **clause 22(l)**.
- (i) If an equality of votes is returned in the ballot for any position, the Chairman shall have the casting vote necessary to determine which of the candidates shall be declared elected.
- (j) In the event of a tie at any ballot, the Chairman has a casting vote which must be exercised.
- (k) If no nominations are received, the retiring Directors shall continue to act. If a retiring Director refuses to continue to act or vacates their position prior to the next AGM, that vacant position will be deemed to be a casual vacancy and the provisions of **clause 23(a)** and **clause 23(b)** will apply.
- (l) If a ballot is necessary, the Returning Officer shall distribute a ballot paper to all Members who are eligible to vote:
  - (i) at least thirty-five (35) days before the AGM at which the results of the ballot shall be announced;
  - (ii) setting out the name and experience of each candidate in an order to be determined by lot;
  - (iii) containing such directions as to the recording of votes as the Board shall from time to time determine;

- (iv) clearly defining the return address;
  - (v) clearly defining the closing date and time which shall be at 5:00pm, fourteen (14) days prior to the AGM at which the results of the ballot shall be announced; and
  - (vi) containing the details of when and where the ballot votes are to be counted.
- (m) The Returning Officer shall cause ballot papers to be prepared containing the names of the candidates in alphabetical order and containing such directions as to the recording of votes as the Board shall from time to time determine.
- (n) The procedure as to the conduct and declaration of elections shall be as prescribed by the Board. A majority of Members Present and entitled to vote is required for the successful election of a candidate as a Director.
- (o) The Returning Officer, or a deputy appointed by the Returning Officer, shall announce the results of the ballot and the names of the elected Directors at the AGM.

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## 23. GENERAL RIGHT TO APPOINT AND REMOVE DIRECTORS

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- (a) Subject to the Act, in the event of any casual vacancy in the position of:
- (i) an Office Bearer – the Board may at any time appoint a Director to fill that casual vacancy; or
  - (ii) a Director (excluding the Co-opted Director) – the Board may at any time appoint an individual Member to fill that casual vacancy; or
  - (iii) a Co-opted Director – the Board may at any time elect another Co-opted Director pursuant to **clause 24** to fill that casual vacancy.
- (b) Any Director appointed to fill a casual vacancy shall only hold office until the next AGM of the Association after the appointment is made.
- (c) The Board may act despite any vacancy in their body, but if the number falls below the minimum required by the Act, the Board may act:
- (i) for the purpose of increasing the number of Directors to the minimum; or
  - (ii) for the purpose of convening a General Meeting; or
  - (iii) in emergencies;
- but for no other purpose.
- (d) Subject to section 203D of the Act, the Members may by resolution in a General Meeting remove a Director from office prior to the expiration of the Director's term and the Members may by resolution appoint another qualified individual Member to hold office until the expiration of the term of office of the Director so removed.

- (e) A Director to whom a resolution under **clause 23(d)** relates may submit written representations to the Secretary or the President. The representations may be sent to each Member or, if they are not sent, the Director is entitled to require that the representations are read out at the meeting at which the resolution is considered.

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## 24. CO-OPTED DIRECTOR

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- (a) The Board may at any time resolve to elect one (1) Co-opted Director to the Board:
- (i) for the purposes of undertaking a specific project; and/or
  - (ii) to address a skills deficit and to bring a balance of skills and knowledge to the Board in light of the Board composition at that time.
- (b) In the event that the Board has resolved to appoint a Co-opted Director, the CEO shall write to all of the Directors inviting them to nominate a candidate for Co-opted Director to fill the position. Each Director shall only be entitled to nominate one (1) person for that position.
- (c) For the purposes of **clause 24(b)**, the CEO shall send each Director a form to complete whereby the Director writes in:
- (i) the name of the person they wish to nominate for the position; and
  - (ii) a brief explanation as to how the nominee they have nominated satisfies a skills deficit or is suitable for the specific project being undertaken (as the case may be).
- (d) The nominations of the Directors shall be collated by the CEO and presented to the Board at least seven (7) days immediately preceding the meeting at which the election is to occur. The Board will elect the Co-opted Director to fill the position from the list of nominees prepared by the CEO.
- (e) Each Co-opted Director appointed pursuant to this **clause 24** shall take office immediately and will hold office until of:
- (i) the date on which the purpose for which they have been appointed is satisfied; or
  - (ii) a period of two (2) years.
- (f) A Co-opted Director is eligible to be re-elected.
- (g) A Co-opted Director shall have the same rights and responsibilities as a Director.
- (h) The Board shall notify the Members of the election of the Co-opted Director at the first AGM following the Co-opted Director's election.

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## 25. ALTERNATE DIRECTOR

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- (a) Any Director, with the prior approval of the Board, may appoint an Alternate Director to exercise some or all of the Director's powers for a specified period.
- (b) Any appointment or termination of an Alternate Director must:
  - (i) be effected by a notice signed by the Director making the appointment or termination (or by the CEO on behalf of the Board where the Board has terminated the appointment); and
  - (ii) be served on the CEO or President; and
  - (iii) set out the terms (if any) of the appointment or termination.
- (c) The Alternate Director is entitled to receive notices of all Board meetings and may also attend and vote at those meetings if the Director who appointed the Alternate Director is not present at any such meeting.
- (d) The Alternate Director may exercise any powers that the Director making the appointment may exercise, and if the Alternate Director does so exercise a power, it will be taken to be an exercise of power by the Director who appointed the Alternate Director.
- (e) The Alternate Director may be terminated from the office of Director at any time, even if the period of initial appointment has not yet expired by either:
  - (i) the Director who initially appointed that Alternate Director; or
  - (ii) the Board having passed a resolution terminating the appointment.
- (f) If the Director who appointed the Alternate Director vacates his or her office for any reason, the office of the Alternate Director is automatically terminated.

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## 26. VACATION OF OFFICE

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- (a) Any Director may retire from office on giving written notice to the President of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the President) or upon its earlier acceptance by the Board.
- (b) The office of a Director shall become vacant if the individual who holds the office:
  - (i) becomes bankrupt or makes any arrangement or composition with creditors generally or becomes an insolvent under administration;
  - (ii) becomes prohibited from being a director of a company by reason of any order made under the Act;
  - (iii) becomes physically or mentally incapable of acting as a Director or becomes a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;

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- (iv) is absent from more than fifty percent (50%) of Board meetings without the permission of the Board and the Board resolves that the office be vacated;
- (v) is no longer a Member (unless the Director was a Co-opted Director);
- (vi) resigns in writing from the Board pursuant to **clause 26(a)**; or
- (vii) is removed from office pursuant to a resolution of Members at a General Meeting pursuant to **clause 23(d)**.

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## 27. SECRETARY

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- (a) The Secretary role shall be performed by the CEO unless there is not one employed, at which time the role will transfer to one of the Directors.
- (b) The Secretary:
  - (i) is responsible for overseeing the management of all financial matters pertaining to the Association; and
  - (ii) may be directed by the Board to manage other functions or processes as it sees fit from time to time.
- (c) The Secretary must keep minutes of:
  - (i) all elections and appointments of Office Bearers and Directors; and
  - (ii) the names of Directors present at a Board meeting or a General Meeting; and
  - (iii) all proceedings at Board meetings and General Meetings.

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## 28. CHIEF EXECUTIVE OFFICER

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- (a) A CEO shall be appointed by the Board to run the day to day affairs of the Association. The terms of his/her appointment shall be covered by a formal employment agreement agreed between the parties.
- (b) A person is qualified to be the CEO if the person:
  - (i) applies in writing to the Board;
  - (ii) satisfies the selection and performance criteria as determined by the Board; and
  - (iii) is approved and appointed by the Board in writing.
- (c) The CEO is entitled to attend Board meetings but is not entitled to vote and is not a member of the Board.
- (d) The Board may appoint a suitable person to act as acting CEO during any illness or absence of the CEO, and the person, whilst so acting, has and may exercise all the functions of the CEO and is taken to be the CEO.

## POWERS AND DUTIES OF DIRECTORS

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### 29. POWERS AND DUTIES OF DIRECTORS

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- (a) The Board, subject to the Act, this Constitution and to any resolution passed by the Association in General Meeting:
- (i) is to control and manage the affairs of the Association;
  - (ii) may exercise all such functions as may be exercised by the Association, other than those functions that are required by this Constitution to be exercised by the Association in General Meeting; and
  - (iii) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Association.
- (b) The Board shall approve a Business Plan that is aligned to the overall direction of the Association and current business trends or needs as they apply. The Business Plan shall be made available to all Members (upon request) and submitted at each AGM.
- (c) Directors must represent the Association in a professional manner and attend industry relevant meetings, seminars and other events on behalf of the Association, as required.
- (d) Directors may also be required to participate in the management of any other related organisations, in order to advance the objectives of the Membership of the Association as a whole.

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### 30. DELEGATED AUTHORITY

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The Board and CEO must have in place a delegated authority procedure which is reviewed annually with the business/operational plan.

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### 31. CONFERMENT OF POWERS

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- (a) The Board may from time to time confer upon any Director for the time being such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this **clause 31** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- (c) The Board shall define the powers, authorities, discretions and duties of the Secretary and any other officer of the Association and from time to time may alter or limit any such powers, authorities, discretions and duties in any manner as the Board may determine.

## DIRECTORS' DISCLOSURE OF INTEREST

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### 32. CONTRACTS

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- (a) The Association may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions that apply to such contracts or arrangements.
- (b) Any Director who has any direct or indirect interest with any organisation with which the Association is or may become involved shall, as a Director becomes aware of the interest, disclose the nature and extent of the interest to the Board.
- (c) The disclosure must be recorded in the minutes of the meeting at which it was made.
- (d) The Chairman of the meeting may request the Director to abstain from any deliberation or decision of the Board in respect to any contract pursuant to the interest, subject to compliance with section 195 and related provisions of the Act.

## PROCEEDINGS OF DIRECTORS

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### 33. BOARD MEETINGS

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- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit provided that they shall meet together not less than four (4) times each calendar year.
- (b) A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of Board by giving at least forty-eight (48) hours notice of the meeting to all Directors except a Director who the person convening the meeting reasonably believes to be outside Australia.
- (c) Notice of a meeting of the Board need not be in writing.
- (d) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.
- (f) All Board meetings shall be chaired by:
  - (i) the President; or
  - (ii) in the President's absence, the Vice President; or
  - (iii) in their absence, a Director appointed by the Directors present at the Board meeting.

- (g) The quorum necessary for the transaction of the Board's business is five (5) Directors.
- (h) A quorum must be present at all times during the meeting.
- (i) A Director who is disqualified from voting on a matter pursuant to **clause 32** shall be counted in the quorum despite that disqualification.
- (j) No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (k) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (l) The Board may act despite any vacancy in their body, but if the number falls below the minimum fixed for a quorum (in accordance with **clause 33(g)**), the Board may act only to convene a General Meeting for the sole purpose of electing new Directors but for no other purpose.

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## **34. VOTING**

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- (a) Except as otherwise provided in this Constitution, a resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chairman has a casting vote in addition to a deliberative vote.

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## **35. RESOLUTIONS BY DIRECTORS**

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- (a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- (b) An email transmission which is received by the Association and which purports to have been sent by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Association.

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## 36. COMMITTEE OF THE BOARD

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- (a) The Board may form and delegate any of its powers to a Committee consisting of such Directors as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- (b) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (c) A Committee may meet and adjourn as it thinks proper.
- (d) If at any Committee meeting the Chairman of the Committee is not present within five (5) minutes after the time appointed for holding the Committee meeting, the Committee members present may choose one of their number to be Chairman of the Committee meeting.
- (e) Questions arising at any Committee meeting shall be determined by a majority of votes of the Committee members present and in the case of an equality of votes, the Chairman of the Committee shall have a casting vote.
- (f) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.
- (g) Each Committee shall furnish to each Board meeting a report of the Committee's activities and shall tender to the Board such advice concerning the subject matter of its activities as it shall deem desirable.

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## 37. INVALIDITY OF ACTS OF DIRECTORS

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- (a) All acts done:
  - (i) at any meeting of the Board;
  - (ii) by any person acting as a Director; or
  - (iii) by any Committee,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

- (b) Any acts done by any Committee may, if it is discovered afterwards that the act was beyond the delegated powers of the Committee, be declared by the Board to be null and void.

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## 38. MINUTES

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- (a) The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:
  - (i) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of any Committee;
  - (ii) all orders, resolutions and proceedings of General Meetings and of meetings of the Board and of Committees; and
  - (iii) such matters as are required by the Act to be recorded in the record books of the Association including, without limitation, all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be passed by the Directors or Committee members present by consent at the next meeting. Minutes so recorded and approved shall represent a true and accurate account of the proceedings, resolutions or declarations to which they relate, unless the contrary is proven.
- (c) A copy of the approved minutes of any Board meeting(s) may be sent to any Member, provided the request is made in writing to the CEO or a Director and the CEO or the Director (as the case may be) approves of the provision of those minutes.

## GENERAL MEETINGS

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## 39. CONVENING OF GENERAL MEETINGS

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- (a) An AGM shall be held once in every calendar year within five (5) months after the end of the Financial Year.
- (b) Any three (3) Directors may, whenever those Directors think fit, convene a General Meeting of the Association.
- (c) The Board must, on the requisition in writing of not less than five (5) Members who are eligible to vote, convene a General Meeting of the Association within thirty (30) days of receiving a requisition in accordance with **clause 39(d)**.
- (d) A requisition of Members for a General Meeting under **clause 39(c)**:
  - (i) must state the purpose or purposes of the General Meeting;
  - (ii) must be signed by the Members who are eligible to vote and who are making the requisition;
  - (iii) must be lodged with the CEO; and
  - (iv) may consist of several documents in a similar form, each signed by one or more of the Members who are eligible to vote making the requisition.



- (e) If the Board fails to convene a General Meeting to be held within one (1) month after that date on which a requisition of Members for the General Meeting is lodged with the CEO, any one or more of the Members who made the requisition may convene a General Meeting to be held not later than three (3) months after that date.
- (f) A General Meeting of the Association may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the General Meeting.
- (g) Where a General Meeting is convened by Members, the Board shall meet the reasonable costs associated with holding the General Meeting.

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#### 40. NOTICE OF GENERAL MEETINGS

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- (a) Subject to consent to shorter notice being given in accordance with the Act, at least twenty-one (21) days notice of any General Meeting must be given specifying:
  - (i) the place, day and hour of the meeting;
  - (ii) the general nature of any business to be transacted at the meeting;
  - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;
  - (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
  - (v) any other information required by the Act.
- (b) The accidental omission to give notice of any General Meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- (c) All notices for General Meetings shall be posted to all Members at the address contained in the Register.

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#### 41. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

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- (a) Subject to the provisions of the Act and this Constitution, the Board may cancel a General Meeting of the Association:
  - (i) convened by the Board; or
  - (ii) which has been convened by a Member or Members pursuant to the Act or pursuant to **clause 39(c)** upon receipt by the Association of a written notice withdrawing the requisition signed by that Member or those Members.
  - (iii) written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a General Meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.

- (c) Where any General Meeting is cancelled or postponed or the venue for the same is changed:
- (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
  - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

## PROCEEDINGS AT GENERAL MEETINGS

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### 42. QUORUM

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- (a) No business may be transacted at any General Meeting unless a quorum of Members is present in person or by proxy at all times during the meeting.
- (b) Ten (10) Members who are eligible to vote present in person or by proxy or by Representative constitute a quorum for all General Meetings.
- (d) If with fifteen (15) minutes after the time appointed for holding a General Meeting a quorum is not present, the Chairman shall postpone the meeting for thirty (30) minutes.
- (d) If after the thirty (30) minutes referred to in **clause 42(c)** a quorum is not present:
  - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
  - (ii) in any other case:
    - (A) it will stand adjourned to another day, time and place as the Board may by notice to the Members appoint; and
    - (B) if at such adjourned meeting a quorum is not present within fifteen (15) minutes after the time appointed for the holding of the meeting, the Members Present (not being less than two (2)) shall constitute a quorum.

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### 43. CHAIRMAN

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- (a) The President, or in the President's absence the Vice-President, shall be the Chairman of all General Meetings.
- (b) The Chairman shall be entitled to preside as chair at every General Meeting.
- (c) Where a General Meeting is held and:

- (i) there is no Chairman; or
- (ii) the Chairman is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as Chairman of the meeting,

then the Members Present may elect one of their number to be Chairman of the meeting.

- (d) The Chairman of a General Meeting shall:
  - (i) ensure that all items on the agenda are dealt with, and in the sequence set out, unless the Members consent to the order being changed;
  - (ii) conduct the meetings in a manner designed to facilitate decision making and the transaction of business; and
  - (iii) superintend and control the proceedings in accordance with the requirements of any relevant law, this Constitution and the conventions of debate.
- (e) In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to his or her deliberative vote.

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## 44. ADJOURNMENTS

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- (a) The Chairman of a General Meeting at which a quorum is present:
  - (i) may adjourn a meeting with the consent of the meeting; and
  - (ii) must adjourn the meeting if the meeting so directs;to a time and place as determined.
- (b) No business may be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a General Meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for ten (10) days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

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## 45. VOTING MATTERS

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- (a) The matters upon which Members who are eligible to vote can vote are limited to those matters expressly provided for in the Act, this Constitution and the general law. Typically, Members who are eligible to vote have a right to vote on certain decisions relating to the structure and Constitution of the Association, including:
- (i) the adoption of and amendment to the Constitution;
  - (ii) changes to the name and type of the Association;
  - (iii) variations to the rights attached to a particular class of Membership;
  - (iv) the election of the Office Bearers and Directors;
  - (v) the removal of Directors pursuant to section 203D of the Act;
  - (vi) the appointment of the Association's auditor;
  - (vii) the initiation of a Member's voluntary winding up of the Association; and
  - (viii) any Special Resolution to be decided upon by the Members as notified in accordance with **clause 40(a)(iii)**.
- (b) A Member intending to bring a matter before a meeting must give notice in writing to the CEO at least one (1) month before the meeting specifying the nature of the matter and the CEO must include the matter in the next notice given under **clause 40(a)**.
- (c) In addition to any other business that may be transacted at an AGM, the business of an AGM is:
- (i) to confirm the minutes of the last AGM and of any General Meeting held since that meeting;
  - (ii) to receive from the Board reports on the activities of the Association during the last Financial Year including:
    - (A) the President's report;
    - (B) the CEO's report; and
    - (C) the Business Plan;
  - (iii) to elect Directors;
  - (iv) to receive and consider the audited statement of accounts, the auditor's report and the net profit and loss in respect of the most recently ended Financial Year, required to be submitted to Members pursuant to section 73(1) of the Act;
  - (v) to appoint the Association's auditor in accordance with the provisions of the Act; and
  - (vi) to announce the members of the Executive.

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## 46. DETERMINATION OF QUESTIONS

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- (a) At any General Meeting a resolution put to the vote shall be decided by a majority of votes cast by Members Present who are eligible to vote by a show of hands unless a poll is demanded by:
  - (i) the Chairman of the meeting;
  - (ii) at least two (2) Members Present and entitled to vote on the resolution.
- (b) Before a vote on a resolution is taken, the Chairman must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairman of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Association which has been signed by the Chairman of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

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## 47. SPECIAL RESOLUTIONS

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- (a) A Special Resolution of Members shall only be carried if at least twenty-one (21) days' written notice has been given to Members who are eligible to vote on the subject of the resolution and that notice:
  - (i) provides reasonable details of the proposed resolution; and
  - (ii) specifies the intention to propose the resolution as a Special Resolution.
- (b) Subject to the Act, the requirements of **clause 47(a)** shall not apply to the extent that all the Members who are eligible to vote agree to waive the requirements of **clause 47(a)**.
- (c) A Special Resolution is passed if it is passed by a majority which comprises no less than seventy-five percent (75%) of Members present who are eligible to vote.

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## 48. POLLS

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- (a) A poll may be demanded:
  - (i) before a vote on a resolution is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chairman of the meeting directs, subject to **clause 48(e)**.

- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chairman or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

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## **49. VOTING RIGHTS**

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A Member entitled to vote, both on a show of hands and a poll, and who is present in person or by proxy, in the case of an individual Member, or by Representative, in the case of a body corporate Member, shall have one (1) vote.

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## **50. VOTING DISQUALIFICATION**

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- (a) No person other than:
  - (i) a Member;
  - (ii) a proxy of a Member or of a Representative; and
  - (iii) a Representative of a body corporate Member;

where the Member in question is entitled to vote, shall be entitled to a vote at a General Meeting.

- (b) No Member shall be entitled to vote unless all moneys presently payable by that Member to the Association have been paid.

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## **51. OBJECTION TO QUALIFICATION TO VOTE**

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Any challenge as to the qualification of a person to vote at a General Meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairman whose decision shall be final and conclusive and a vote allowed by the Chairman shall be valid for all purposes.

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## **52. PERSONS OF UNSOUND MIND AND MINORS**

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- (a) A Member of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health or who is a minor may vote whether on a show of hands or on a poll by that Member's committee or by such other person as properly has the management or guardianship of that Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.

- (b) Any person having the right of management or guardianship of the person or estate in respect of a Member as referred to in **clause 52(a)** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

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### **53. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING**

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- (a) The Chairman of a General Meeting may invite any person who is not a Member to attend and address a meeting.
- (b) Any auditor of the Association shall be entitled to attend and address a General Meeting.

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### **54. RIGHT TO APPOINT PROXIES**

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- (a) A Member who is entitled to attend and vote at a General Meeting of the Association may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.
- (b) If a Member appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

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### **55. APPOINTING A PROXY**

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- (a) The instrument appointing a proxy must be in writing signed by the Member or the Member's attorney duly authorised in writing, and must be in or to the effect of the form which the Board may approve from time to time.
- (b) The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
- (i) the name and address of the Member;
  - (ii) the name of the Association;
  - (iii) the proxy's name or the name of the office of the proxy; and
  - (iv) the meetings at which the instrument of proxy may be used.
- (c) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (d) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 55(b)**.
- (e) An instrument of proxy may be revoked by the appointer at any time by notice in writing to the Association.

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## 56. LODGEMENT OF PROXIES

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- (a) An instrument appointing:
  - (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (ii) an attorney to exercise a Member's voting rights at a General Meeting or a certified copy of that power of attorney,

must be delivered to the Chief Executive Officer or, if directed, to the Chairman not less than forty-eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting, as the case may be, at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Association.

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## 57. VALIDITY OF PROXIES

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- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
  - (i) the death or unsoundness of mind of the Member;
  - (ii) the bankruptcy or liquidation of the Member;
  - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the CEO, or the Chairman (as the case may be), has not received written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least forty-eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the General Meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.



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**58. RIGHTS OF PROXIES AND ATTORNEYS**

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- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the Member attending and taking part in any General Meeting but if the Member votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the Member shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairman of a General Meeting may require any person acting as a proxy to establish to the satisfaction of the Chairman that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity he may be excluded from voting either upon a show of hands or upon a poll.

**EXECUTION OF DOCUMENTS**

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**59. EXECUTION OF DOCUMENTS**

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

**ACCOUNTS AND INSPECTION OF RECORDS**

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**60. AUDITOR**

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- (a) The auditor appointed at the AGM shall carry out an audit of all of the Association's books and accounts at the end of each Financial Year.
- (b) Such audit and financial report shall be tabled at the next meeting of the Board and AGM following its receipt and shall be available twenty-one (21) days prior to the AGM. The auditor shall also prepare and submit any other reports required by the Act or any other law.
- (c) The auditor shall not be a Director.

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## **61. ACCOUNTS AND INSPECTION**

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- (a) The Board shall cause proper financial records to be kept in respect to:
- (i) all sums of money received and expended by the Association and the matter in respect of which the receipt and expenditure takes place;
  - (ii) all sales and purchases of goods by the Association; and
  - (iii) the assets and liabilities of the Association,
- and must distribute copies of the financial reports of the Association and a Directors' report in accordance with the requirements of the Act.
- (b) The accounts shall be kept at the registered office of the Association, or at such other place or places as the Board thinks fit, and shall always be open to the inspection of the Directors.
- (c) The Board must also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Association or any of them will be open to the inspection of Members.

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## **62. CUSTODY OF BOOKS**

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Except as otherwise provided by this Constitution, the Secretary must keep in his or her custody or under his or her control all records, books and other documents relating to the Association.

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## **63. INSPECTION OF BOOKS**

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The records, books and other documents of the Association must be open to inspection, free of charge, by a Member during normal business hours.

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## **64. REGISTER OF MEMBERS**

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- (a) The Secretary must establish and maintain a Register specifying the name and address of each person or body corporate who is a Member together with the class of Membership of the Member and the date on which the person or body corporate became a Member.
- (b) The Register will be kept at the principal place of administration of the Association and will be open for inspection, free of charge, by any Member at any reasonable hour.

## NOTICES

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### 65. SERVICE OF NOTICES

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- (a) A notice may be given by the Association to any Member by:
  - (i) serving it on the Member personally;
  - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Association for the giving of notices;
  - (iii) sending it to the electronic address supplied by the Member to the Association for the giving of notices.
- (b) Any Member who has not notified the Association of his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting, except in the case of a notice of a General Meeting which is deemed as being effected three (3) days after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.
- (e) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Association to that effect shall be conclusive evidence of service.

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### 66. NOTICES OF ANNUAL GENERAL MEETINGS

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Subject to **clause 65(b)**, notice of every General Meeting must be given in any manner authorised by this Constitution to:

- (a) every Member; and
- (b) the auditor for the time being of the Association.

## INDEMNITY

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### 67. INDEMNITY

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To the extent permitted by law every Officer (and former Officer) of the Association shall be indemnified out of the funds of the Association against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Association under this clause unless:

- (a) it is in respect of a liability to another person (other than the Association or a related body corporate to the Association) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
  - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

### 68. PAYMENT OF INDEMNITY POLICY PREMIUM

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- (a) To the extent permitted by law the Association may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Association against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
  - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Association; or
  - (ii) a contravention of sections 182 or 183 of the Act.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- (c) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Association shall not be required to indemnify the Officer under **clause 67** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

### 69. INDEMNITY TO CONTINUE

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The indemnity granted by the Association contained in **clauses 67** and **68** shall continue in full force and effect notwithstanding the deletion or modification of those clauses, in respect of acts and omissions occurring prior to the date of the deletion or modification.

## WINDING UP

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### 70. WINDING UP

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- (a) If upon the dissolution or winding-up of the Association there remains, after the satisfaction of all its debts and liabilities, a surplus, the surplus shall not be paid to or distributed amongst Members, but shall be given or transferred to some another institution or corporation:
  - (i) having objects similar to the Objectives;
  - (ii) a constitution which requires its income and property to be applied in promoting its objects; and
  - (iii) a constitution which prohibits the distribution of its income and property amongst its members to an extent at least as great as is imposed on the Association under this Constitution.
- (b) The identity of the institution or corporation is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of Victoria for determination.

## ALTERATIONS TO CONSTITUTION

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### 71. ALTERATIONS TO CONSTITUTION

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- (a) The Members may modify or repeal the Constitution, or a provision of the Constitution, by Special Resolution passed at either an AGM or a General Meeting.
- (b) A Special Resolution adopting, modifying or repealing the Constitution takes effect:
  - (i) if no later date is specified in the resolution, on the date on which the resolution is passed; or
  - (ii) on a later date specified in, or determined in accordance with, the Special Resolution.
- (c) All alterations to the Constitution shall be published in the next edition of the Journal following the passing of the Special Resolution referred to in **clause 71(b)** by the Members, and shall detail the relevant changes.
- (d) All new Members shall receive a copy of the Constitution upon paying their Annual Membership Fee (or any other fee determined by the Board from time to time).
- (e) The Association shall send to any Member a copy of this Constitution within seven (7) days of the Member:
  - (i) forwarding a written request to the Association for a copy of the Constitution; and
  - (ii) paying any fee required by the Association.





